TESTIMONY OF
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CTIA – THE WIRELESS ASSOCIATION®

BEFORE THE U.S. HOUSE OF REPRESENTATIVES SUBCOMMITTEE ON COMMUNICATIONS, TECHNOLOGY AND THE INTERNET

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Good morning, Chairman Boucher, Ranking Member Stearns, Representative Markey and members of the Subcommittee. My name is Bobby Franklin, and I am the Executive Vice President of CTIA – The Wireless Association® ("CTIA"). Thank you for affording me this opportunity to share with you the views of CTIA on H.R. 3101, the Twenty-first Century Communications and Video Accessibility Act of 2009.

Today, my comments will highlight the significant contributions the wireless industry is making to enhance the way we all communicate, including persons with disabilities. CTIA believes that access to wireless products and services is being advanced through readily achievable and technologically feasible solutions. We are equally committed to continuing collaborative initiatives with the accessibility community that help industry to identify, prioritize and address accessibility in wireless products and services.

Throughout the legislative process, CTIA and other industry representatives have actively worked with the Coalition of Organizations for Accessible Technologies ("COAT") regarding the need to update current accessibility laws as they apply to communications equipment and services. While CTIA continues to believe the wireless industry is meeting the needs of persons with disabilities, we recognize that as the communications industry

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innovates we must continue to ensure the needs of all our consumers are met. CTIA supports many of the provisions in H.R. 3101 but has serious reservations about whether the bill's accessibility standard, reporting requirements and other provisions are the appropriate ways to ensure innovative wireless products and services continue to meet the needs of persons with disabilities.

I. THE WIRELESS INDUSTRY PROVIDES CHOICE AND OPPORTUNITIES FOR PERSONS WITH DISABILITIES UNDER CURRENT ACCESSIBILTIY REQUIREMENTS AND MARKET-DRIVEN INITIATIVES

Over the last quarter century, wireless devices and services have become central communications, information and safety tools for persons with diverse abilities. In the National Broadband Plan, the Federal Communications Commission ("FCC" or "Commission") recognized the important contribution wireless technologies provide the accessibility community and we agree with the Commission that accessible mobile broadband technologies are a "big deal" for all Americans.[1] Indeed, the FCC noted that industry innovation and collaborative efforts offer tremendous potential for persons with disabilities.[2]

Today, as the result of a robust and competitive wireless ecosystem, U.S. consumers have the kind of choice and value that consumers around the world strive for. U.S. wireless companies serve more than 285 million active subscriber connections and offer consumers access to more than 600 unique wireless devices.[3] As mobile broadband availability and smartphone penetration have grown, so too has the number of applications that are available

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[1] FEDERAL COMMUNICATIONS COMMISSION, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN 181, CHAPTER 9 (2010) ("National Broadband Plan"), http://www.broadband.gov/plan/; *see also*, Elizabeth Lyle, *A Giant Leap & A Big Deal: Delivering on the Promise of Equal Access to Broadband for People with Disabilities*, FCC OBI Working Paper Series, 13 (April 2010) ("FCC Accessibility White Paper").

[2] *FCC Accessibility White Paper* at 12.

[3] CTIA Wireless Industry Indices Report: Year-End 2009 (rel. Mar. 2010), *available at* www.ctia.org.

for use on the mobile platform. While the first "app" store launched in July 2008, today, there are more than 240,000 applications ("apps") available from seven different stores.[4]

This innovative and competitive mobile ecosystem has provided benefits to persons with disabilities unmatched in other communications industries. In fact, the market for accessible wireless products has evolved significantly in just the two years since CTIA last came before this Subcommittee to describe the wireless industry's accessibility efforts.[5] As a result of the wireless industry's collective commitment to key accessibility issues, barriers to adoption of wireless – such as cost and accessibility – have been reduced and satisfaction with the wireless industry has increased. According to a recent survey by the Rehabilitation Engineering Research Center for Wireless Technologies ("Wireless RERC"), more than 86 percent of individuals with disabilities own or have access to a wireless communications device and, after voice communications, text messaging, e-mail, and Internet access are the most important uses of a wireless device among people with disabilities.[6]

CTIA has continuously demonstrated that innovation and competition throughout the wireless ecosystem provides benefits to the accessibility community, as carriers compete to offer service plans and accessible software specifically for persons with disabilities.[7]

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[4] Written Ex Parte Communications of CTIA-The Wireless Association, WT Docket No. 09-66, GN Docket No. 09-157, and GN Docket No. 09-51 at 9-10 (April 29, 2010); Steve Jobs, Chief Executive Officer, Apple, Inc. Keynote Address at the Apple World Wide Developer Conference 2010 (June 7, 2010) *available at* http://events.apple.com.edgesuite.net/1006ad9g4hjk/event/index.html.

[5] Testimony of K. Dane Snowden, Hearing on Twenty-first Century Communications and Video Accessibility Act, HR. 6320, Subcommittee on Telecommunications & the Internet, U.S. House of Representatives, 110th Congress (May 1, 2008).

[6] Wireless RERC, Second Report: Findings of the Survey of User Needs (SUN) for Wireless Technology 2007-2009, 5 (March 2009) ("Second SUN for Wireless Technology 2007 – 2009"); *see also*, Broadband Expanded, *Disabilities – Stats, Data & Observations*, NEW YORK LAW SCHOOL (June 2010) *available at* http://www.broadbandexpanded.com/policymakerfiles/disabilities/Disabilities_Stats&Data.pdf.

[7] *See*, AT&T, Text Accessibility Plans (TAP), http://www.wireless.att.com/learn/articles-resources/disability-resources/disability-resources.jsp (last visited June 5, 2010); Sprint Relay Data Only Plan, http://sprintrelaystore.com (last visited June 5, 2010); T-Mobile Smartphone ® Plans www.sidekick.com (last visited June 5, 2010); U.S. Cellular, Deaf and Hard of Hearing/Text-Only Calling Plans,

Moreover, competition is vigorous among manufacturers to increase market share and serve persons with disabilities by incorporating "built-in" accessibility features, including text-to-speech and screen readers, Hearing Aid Compatibility ("HAC"), support for Tele-Typewriters ("TTY") and Assistive Technology ("AT"), predictive text, word completion, voice-activated features and closed-captioning.[8] Persons with disabilities can now find innovative, lower-cost mobile devices and services to replace expensive, immobile assistive communication devices.

This era of intense competition, innovation and investment in the mobile communications marketplace has occurred under Section 255 of the Communications Act's "readily achievable" standard, a regulatory regime that has provided the wireless industry flexibility to respond to market demands and regularly incorporate new accessibility features into existing equipment based on technologically feasible solutions.[9] When Section 255 was enacted, the only types of AT available to make mobile and wireline phones accessible were

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http://www.uscellular.com/uscellular/common/common.jsp?path=/plans/text-only.html (last visited June 5, 2010); Verizon Wireless, Nationwide Messaging Plans, http://aboutus.vzw.com/accessibility/index.html (last visited June 5, 2010).

[8] *See* Apple, Inc., www.apple.com/accessibility/ (last visited June 5, 2010); Motorola, Inc., www.motorola.com/accessibility (last visited June 5, 2010), Nokia, Inc. http://www.nokiaaccessibility.com/ (last visited June 5, 2010); RIM, Inc., BlackBerry Accessibility http://na.blackberry.com/eng/support/devices/blackberry_accessibility/ (last visited June 5, 2010); National Center for Accessible Media ("NCAM"), Captioning Solutions for Handheld Media and Mobile Devices - Device Comparison Chart http://ncam.wgbh.org/invent_build/web_multimedia/mobile-devices/devices (last visited June 5, 2010).

[9] Section 255 of the Communications Act requires that a covered product or service must be accessible to the extent "readily achievable", and if it is not accessible, must be "compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access, if readily achievable." 47 U.S.C. § 255(b)-(d). "Readily achievable" is defined as "easily accomplishable and able to be carried out without much difficulty or expense" and incorporates four factors to be considered in determining whether an action is readily achievable. 42 U.S.C. § 12181(9).

items such as TTYs, handset amplifiers, and telecoil loops, which required the wireless industry to devote significant resources to ensure compatibility.[10]

Today, text-based wireless services, such as SMS ("short message service"), e-mail or IM ("Instant Messaging"), are more commonly used by persons with disabilities than TTYs, and mainstream accessories for mobile devices, such as Bluetooth® keyboards and headsets, provide AT benefits without incorporating specific hardware.[11] Additionally, as the FCC described in its recent White Paper, manufacturers are incorporating accessible features into their application requirements which is encouraging increasing numbers of third-party applications to utilize built-in accessibility features, often yielding more efficient and affordable accessibility solutions than dedicated AT devices.[12]

For example, "LookTel", which CTIA awarded a 1st Place Emerging Technology Award at CTIA Wireless 2010®, is a downloadable application to help visually impaired or blind users identify everyday objects and landmarks by utilizing a device's built-in touch-screen and camera features.[13] There is also "iCommunicate", an Augmentative & Alternative Communication ("AAC") application that uses a wireless device's built-in touch-screen and audio output features to make customized storyboards and visual schedules for children with developmental delays and autism.[14] In addition to the many other applications dedicated to

[10] The Federal Communications Commission's rules require that wireless devices and services must be capable of transmitting 9-1-1 calls from individuals with speech or hearing disabilities through the use of TTY devices. 47 C.F.R. § 20.18(c).

[11] Wireless RERC, *Second SUN for Wireless Technology 2007 – 2009* at 9.

[12] *FCC Accessibility White Paper* at 13.

[13] http://www.looktel.com/ (last visited June 5, 2010).

[14] Wheelchair Diffusion Blog, *The iPad Disability Connection* (April 16, 2010) *available at* www.usatechguide.org/blog/the-ipad-disability-connection (last visited June 5, 2010).

accessibility, mainstream applications from Twitterific to Slacker Radio to Mashable and Facebook are utilizing the built-in accessibility features of mainstream mobile devices.[15]

CTIA believes these "app" solutions are just the beginning of a mobile revolution that allows persons with disabilities to access the wireless products and services of their choice. The accessibility community also recognizes the substantial efforts the wireless industry has taken to address accessibility via designing "built-in" features, compatibility with AT, and providing application programming interfaces ("API") to encourage the development of accessible "apps."[16]

Persons with disabilities are benefiting substantially from wireless services that are improving quality of life opportunities in employment, education, health care, and public safety.[17] A recent article in PCWorld highlighted how Apple's iPad has built-in accessibility features and available third party accessibility applications which can help employers efficiently comply with requirements under the Americans with Disabilities Act ("ADA").[18] For example, as the FCC recently noted, a dedicated AAC device may cost $8,000 or more,

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[15] Maccessibility.net, *iPhone – Accessible Apps***,** http://maccessibility.net/iphone/apps/# (last visited June 5, 2010).

[16] Darren Burton, *Can an Android Make Your Mobile Phone Accessible?* and *A Review of Oratio: A Screen Reader for BlackBerry*, Vol. 11 AMERICAN FEDERATION OF THE BLIND ACCESSWORLD No. 2 (May 2010) http://www.afb.org/afbpress/pub.asp?DocID=aw110202 (last visited June 5, 2010); Press Release, National Federation of the Blind, *National Federation of the Blind Commends Apple for Including VoiceOver on iPad* (Jan. 28, 2010) *available at* http://www.nfb.org/nfb/NewsBot.asp?MODE=VIEW&ID=545 (last visited June 5, 2010).

[17] Comments of CTIA – The Wireless Association®, *NBP Public Notice #4- Broadband Accessibility for People with Disabilities Workshop II: Barriers, Opportunities, and Policy Recommendations*, GN Docket Nos. 09-47, 09-51, 09-137 (filed Oct. 6, 2009); *see also*, Broadband Expanded, *Disabilities – Stats, Data & Observations*, NEW YORK LAW SCHOOL (June 2010) *available at* http://www.broadbandexpanded.com/ (last visited June 5, 2010).

[18] Tony Bradley, *Apple iPad Helps Businesses Meet Needs of Disabled Employees*, PCWorld (March 29, 2010) *available at* http://www.pcworld.com/businesscenter/article/192800/apple_ipad_helps_businesses_meet_needs_of_disabled_employees.html; *see,* The Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327 (1990) (codified at 47 U.S.C. §225) ("ADA Title IV"); *see also,* Comments of CTIA – The Wireless Association®, *NBP Public Notice #3-Telework*, FCC GN Docket Nos. 09-47, 09-51, 09-137 (filed Sept. 22, 2009).

while a $300 smartphone can run $200 text-to-speech software and work more effectively than the AAC device.[19] CTIA supports H.R. 3101's allocation of Universal Service funds to promote broadband adoption among persons with disabilities who should be encouraged to use fund support to take advantage of increasingly accessible wireless feature phones, smartphones, netbooks, tablets and more. CTIA also supports the FCC's recommendation that healthcare policies in programs such as Medicare can utilize efficiencies in mainstream mobile technologies with built-in accessibility features or available third-party applications.[20]

Consumers with disabilities also place significant importance on wireless for communications during an emergency. The wireless industry and public safety communities has invested substantially in deploying Wireless E-911 ("Enhanced 9-1-1") service and designing wireless handsets to be TTY compatible for everyday and emergency communications.[21] Today, long-term and significant work is underway to transition our nation's 9-1-1 system to an IP-based 9-1-1 system that may have the capability to support direct voice, text and data communications access with careful attention to the needs of persons with disabilities.[22]

In the case of text-based communications to 9-1-1, specifically for the deaf or persons with hearing loss, CTIA believes all text-based communication formats should be

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[19] *FCC Accessibility White Paper* at 24.

[20] *FCC Accessibility White Paper* at 24.

[21] *See* Comments of CTIA – The Wireless Association®, *Wireless E911 Location Accuracy Requirements*, PS Docket No. 07-14 (filed July 5, 2007).

[22] Among other duties, the FCC's Communications Security, Reliability and Interoperability Council ("CSRIC") is required to "develop and recommend best practices to facilitate the communication of emergency information to the public, especially people with special needs such as people who do not speak English, individuals with disabilities, the elderly and people living in rural areas." Charter of FCC's CSRIC *available at* www.fcc.gov/pshs/docs/advisory/csric/csric-charter-final.pdf (last visited June 5, 2010); *see also*, National Emergency Number Association ("NENA"), NG9-1-1 Project, Operations Development – Accessibility Committee, http://www.nena.org/operations-committee-accessibility (last visited June 5, 2010).

considered. Reliance on a single solution, such as the current focus on TTY, may result in the solution being outdated as technology evolves, or in stagnation as innovation is impeded by a required adherence to an inflexible standard. The wireless industry is an active partner with the FCC, public safety representatives and the accessibility community in the necessary transition to Next Generation 9-1-1 ("NG9-1-1"), which may open untold accessibility features for all citizens, especially those with disabilities. As such, CTIA recommends against addressing these issues in the context of H.R. 3101.

While these examples highlight the potential of mobile devices for persons with disabilities today, the selection of a wireless device continues to be a highly personalized choice for every consumer based on a range of unique factors and product awareness, both of which are central to finding the right mobile device and service. Wireless carriers and manufacturers have taken a number of steps to educate the accessibility community and senior citizens about the plethora of available and affordable wireless products, services and features through company websites and direct outreach.[23] In addition, CTIA, along with our carrier and manufacturer members, provides information about accessible products and features at *www.AccessWireless.Org* and hosts the Wireless RERC's five-part video series to help consumers choose a HAC wireless device.

Today, consumers are better informed because of industry and accessibility community collaborative educational efforts, but more can be done to ensure consumers make informed choices when choosing from the variety of accessible wireless products,

[23] *See*, John P. Krudy, *Seniors Tackle Cell Phone Tech*, THE WASHINGTON TIMES (June 1, 2009) *available at* http://www.washingtontimes.com/news/2009/jun/01/seniors-tackle-cell-phone-tech/?feat=article_related_stories; *see also*, AT&T, National Center for Customers with Disabilities (NCCD), http://www.wireless.att.com/learn/articles-resources/disability-resources/nccd.jsp (last visited Oct. 2, 2009).

services, and "apps."[24] CTIA intends to participate in the FCC's *Accessibility & Innovation Forum*, which is being established to share best practices, hold workshops, and aggregate information about accessible products and solutions for consumers.[25] Collaborative processes have proven effective at addressing the fast-moving, innovative and ever-changing aspects of the wireless industry while providing persons with disabilities the information needed to make informed decisions. CTIA and its members are committed to continuing these and future collaborative initiatives in partnership with the accessibility community.

II. CONGRESS CAN BEST ENSURE ACCESSIBILITY FOR PERSONS WITH DISABILTIES BY ESTABLISHING FLEXIBLE ACCESSIBILITY STANDARDS WHICH ENCOURAGE MARKET-DRIVEN SOLUTIONS AND INDUSTRY AND CONSUMER COLLABORATIONS

a. *Consensus Support for Hearing Aid Compatibility (HAC) and Accessibility Clearinghouse Between Industry and COAT*

Throughout the legislative process, CTIA and other industry representatives have collaborated and actively worked with representatives of the accessibility community regarding the need to extend protections similar to those in Section 255 to IP-enabled services and devices. In addition to the overall goals of this legislation, which CTIA supports, the wireless industry and COAT agree on a number of provisions, including updating the current HAC requirements and establishing an accessibility clearinghouse. Specifically, the HAC language in S.3304 incorporates the COAT-industry consensus language which clarifies that HAC requirements apply to equipment that is intended to be

[24] Among all communications industries (wireline, cable, and wireless), the FCC's Consumer & Government Affairs Bureau reported receiving a limited number of accessibility complaints (773 total) during the period October 1, 2008 to September 30, 2009, including 98 (13%) for Section 255 generally, 210 (47%) for relay services, 436 (55%) for closed captioning, 24 (3%) for emergency information over video programming; and 5 (0.6%) which addressed wireless Hearing Aid Compatibility (HAC). FCC, Consumer & Government Affairs Bureau, Disability Rights Office, http://www.fcc.gov/cgb/dro/ (last visited June 5, 2010); FCC, Consumer & Government Affairs Bureau, Disability Rights Office, http://www.fcc.gov/cgb/dro/ (last visited June 5, 2010); *see also*, Wireless RERC, *Second SUN for Wireless Technology 2007 – 2009* at 7 and 12; Wireless RERC, *Hearing Aid Compatible Cellphones: Findings from the Annual Survey of Consumer Experiences*, 2006-2008 (May 2009).

functionally equivalent to a telephone, maintains existing HAC requirements, and establishes a process for the adoption and utilization of industry-developed technical standards in consultation with persons with hearing loss.[26]

CTIA also strongly supports the "Clearinghouse" and "Education and Outreach" provisions outlined in H.R. 3101. As previously discussed, there is a plethora of wireless devices and services that are currently available and under development that incorporate accessibility features and functions for persons with disabilities. Although CTIA and our members provide information about accessible products and services, CTIA believes that more can be done to ensure consumers are better informed about their choices.

For example, Sgt. Brian Pearce recently testified to the Senate Commerce Communications Subcommittee that he was unable to find a wireless device to meet his low vision needs, despite discussions with a wireless carrier's customer service representatives.[27] Subsequent to the Senate hearing, the wireless carrier reached out to Sgt. Pearce and determined that they will introduce a wireless handset specifically intended for use by senior-citizens, and persons and veterans with disabilities that may meet his needs. As demonstrated in this case, CTIA believes a central resource coupled with education and outreach regarding the availability of accessible products, services and solutions will help persons with disabilities navigate the diverse advanced communications marketplace.

b. CTIA Supports an "Achievable" Standard with Factors for Consideration Based on the Specific Product or Service Which Will Provide the Needed Flexibility and Certainty to Bring More Accessible Devices and Services to All Consumers

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[25] *See*, FCC, BlogBand, Disabilities Access, http://blog.broadband.gov/?categoryId=13843 (last visited June 5, 2010); *National Broadband Plan* at 181; *FCC Accessibility White Paper* at 28.

[26] Equal Access to 21st Century Communications Act, S. 3304, 111th Congress §102 (2010).

[27] Testimony of Sgt. Brian Pearce, U.S. Senate Commerce Subcommittee on Communications "Innovation and Inclusion: The Americans with Disabilities Act at 20" (May 28, 2010).

Foremost among CTIA's concerns with H.R. 3101 is the mandate that equipment and services shall be "accessible to and usable by individuals with disabilities" unless such accessibility and usability results in an "undue burden" on a manufacturer or service provider. CTIA supports extending the concepts underlying Section 255 of the Communications Act to Internet Protocol (IP)-based services and devices, but we believe that the standard under which our members have operated since enactment of the 1996 Telecommunications Act – a standard that requires equipment and services to be accessible and usable "if readily achievable" – is the logical and proper standard to apply to any obligations on new advanced communications products and services.

Both the "readily achievable" and "undue burden" standards originated in the ADA, but they apply in different contexts.[28] Under the ADA, the more flexible "readily achievable" standard is the one selected by Congress for determining whether existing structures, such as buildings and public accommodations, should have to be modified to be accessible, in recognition of the fact that retrofitting such structures is often difficult and costly. "Undue burden" carries a heavier obligation – it means that accessibility is required unless it would impose "significant difficulty or expense" – but it is applied more selectively and applies differently to government and private entities. For government entities, the "undue burden" standard applies to the accessibility of government "services, programs, or activities," which, while pre-existing, can be made accessible without necessarily making structural changes to existing facilities, although alterations may be required if there is no other way to make services, programs, or activities accessible. With respect to private entities, however, the "undue burden" standard applies only to "auxiliary aids" that are not

[28] The term "readily achievable" was introduced in Title III of the ADA and is defined as "easily accomplishable and able to be carried out without much difficulty or expense." 42 U.S.C. § 12181(9). Section 255 adopts this definition. 47 U.S.C. § 255(a)(2).

themselves pre-existing but are rather only add-ons that can be made accessible more easily than a physical structure.

The "undue burden" standard imposes substantial burdens, which is why Congress in the ADA limited its private sector applicability to auxiliary aids. Even to the extent the standard is applied to require the retrofitting of government buildings, the cost of such changes can fairly readily be amortized over the relatively long useful life of a building. By contrast, IP-based communication networks and associated consumer devices are changing constantly. The continuous introduction of new standards, new equipment, and new capabilities are the norm in this dynamic sector, and networks and devices are an ever-changing mix of old and new elements. For this reason, extending the "undue burden" standard beyond auxiliary aids to cover IP-enabled communications services and equipment would not only represent a departure from the carefully considered structure of the ADA, it would also potentially threaten innovation and discourage technological development because of the significant costs that would be imposed on providers each time the network or a consumer device or operating system were introduced, modified or upgraded.

By contrast, the "readily achievable" standard is the most appropriate standard for advanced communications services and equipment, just as it is for telecommunications networks and equipment. Neither networks nor equipment can properly be considered auxiliary aids. Rather, networks are pre-existing structures; even when they are upgraded they are not rebuilt from scratch but rather modified on an incremental basis. The same is true for equipment; "new" devices are often based on pre-existing platforms. In addition, in both cases, upgrades and features are added frequently. Requiring accessibility to be built into each such change would inhibit all changes.

As fast as technological development occurs in the wireless industry, bringing new products to market involves numerous variables and requires balancing technical limitations with trade-offs, flexibility, and creativity. The development of an information or telecommunications product to get it to market in a timely fashion is highly time-driven, but is also an iterative process, with new features being added or removed constantly in a series of small development and testing cycles determining what capabilities, dimensions, and other factors can realistically be put into a product that is capable of competing successfully in a highly competitive market. If developments in each of these cycles were viewed against a set of difficult-to-meet standards and the cost – from detailed record-keeping at all stages of product design and implementation to justify business decisions, to administrative and legal proceedings – of potentially huge liability, the innovation of new products and services could be seriously impeded.

Given the multiple, sometimes conflicting, needs of persons with different levels of ability, it is important that rules allow industry a level of flexibility that will ultimately lead to a greater number and variety of products to meet different user needs. Further, maintaining the "readily achievable" standard established in Section 255 promotes consistency in both the legislation and implementation efforts. Maintaining the same standard enables manufacturers and consumers to benefit from the design processes and procedures developed to implement Section 255 and now embedded in industry practices. Any change to the standard could result in a disruption to the planning and design process that could undermine manufacturers' efforts to bring accessible products to market in a timely manner.

Notwithstanding these reasons, should the Committee choose to depart from the template that has guided the industry successfully for almost a decade and a half, we strongly

urge you to not adopt the "undue burden" standard. A better approach would be to embrace the "achievable" standard incorporated in S. 3304 and add supplementary language to provide needed clarity and guidance to industry, the Commission, and consumers. The standard used in S.3304 would require manufacturers and service providers to determine which accessible solutions are "reasonable" rather than which solutions are "easy" to implement.

Additionally, CTIA urges that the legislation clarify that reasonableness determinations should focus on whether a proposed solution will "fundamentally alter" the individual product or service from its intended functionality. This guidance would address COAT's expressed understanding that not every wireless device or service available must consider every recognized disability to meet the goals of the legislation.

CTIA also recommends that if the "achievable" standard is employed, the standard incorporate recognized factors to provide clarity to industry, the Commission and consumers as to the process for determining whether accessibility is "achievable" with respect to a specific product or service. Consideration factors are recognized by industry and consumers as providing guidance for the determination of "reasonable" accessibility features in the design processes of specific products and services. It also would be consistent with established precedent under current accessibility standards in other contexts (i.e. the Americans with Disabilities Act and Section 508 of the Rehabilitation Act). The factors which CTIA proposes also recognize the increasing availability of accessible wireless solutions from third-party sources which offer opportunities for persons with disabilities and third-parties serving persons with disabilities previously unmatched in other communications industries.

c. *Provisions Limiting Liability from Third Party Sources Is Consistent with the Committee's Approach to Innovative Communications Products and Services*

Beyond the need to clarify the standard, we urge the Committee to incorporate provisions which clarify the limits of any new accessibility obligations on manufacturers and service providers. In the "walled garden" environment that characterized wireless offerings just a few years ago, it was perhaps reasonable to assign the responsibility for accessibility to wireless carriers and manufacturers and think that the issue had been fully addressed. Now, as the wireless ecosystem continues to evolve toward open platforms, significant operating system competition, and greater consumer choice and control, service providers and handset manufacturers have limited control over services, programs, and applications which may be downloaded by consumers. While CTIA accepts that its members should make the products and services they offer accessible, we believe new law in this area should clarify that they are not responsible for applications provided by third-parties, often and increasingly without any knowledge by the carrier or manufacturers.

Adding language to the bill which imposes limitations on liability for third-party actions would be consistent with the Committee's approach in other legislative contexts, including the Digital Millennium Copyright Act (P.L. 105-304), the Ryan Haight Online Pharmacy Consumer Protection Act (P.L. 110-425), and several pending pieces of legislation, including H.R. 2221 (the "Data Accountability and Trust Act") and H.R. 4173 (the "Wall Street Reform and Consumer Protection Act"). In each of these Acts or bills, the Committee has made an effort to make it clear that a service provider is not liable for all electronic communications by a third party which are transmitted, routed, or stored in intermediate or transient storage by such service provider. That same limiting principle should apply in this instance as well.

d. *Reporting Obligations Should Focus on Tools Helpful for Consumer Awareness of Available Accessible Products and Services Rather Than Developing a Record for Enforcement*

CTIA also urges the Committee to streamline H.R. 3101's proposed reporting requirements. While we understand that there may be instances in which the Commission will request access to service provider or equipment provider records, the reporting requirements proposed in the current legislation would do little to provide consumers with the information they need to make informed choices about available wireless products and services. Instead, the proposed reporting requirements, which require every entity offering advanced communications products or services to make annual filings, would be burdensome, raise competitive and confidentiality concerns, and, given the time lag that is often associated with other Commission data collection and reporting practices, fail to produce information that is useful to the public in a timely manner.

A better approach would be to require advanced communications service providers and manufacturers to maintain, in the ordinary course of business and for a reasonable time period, records of the efforts they have taken to implement the accessibility requirements imposed by the bill. These records could be produced upon receipt of a request by the Commission. In addition, the clearinghouse and education and outreach provisions of this bill would better serve the accessibility community by providing timely, relevant information which will help them to navigate the diverse wireless marketplace.

e. *A Real Time Text Advisory Committee is Unnecessary in Light of Current and On-Going Government and Industry Efforts*

CTIA and its member companies strongly support providing persons with disabilities equal access to emergency services, whether 9-1-1, mobile alerts or other critical services. While there can be considerable value in delegating complex technical matters to an advisory committee, the real-time text advisory committee created by this legislation largely

duplicates existing industry, Commission and international efforts. For example, the FCC's National Broadband Plan recommends the FCC initiate a Notice of Inquiry on the replacement of TTY with real-time text (RTT) and a subcommittee of the FCC's Communications, Security, Reliability and Interoperability Council is charged with studying the feasibility of text based communications to 9-1-1.[29] Furthermore, the Canadian Radio-television and Telecommunications Commission (CRTC)., the equivalent of the FCC in Canada, recently accepted the report of a technical subcommittee which found that "text messaging to 9-1-1 (T9-1-1) via SMS, IM, RTT, and IP Relay technology are not viable solutions at this time for people with hearing or speech disabilities to access 9-1-1 call centres."[30]

CTIA understands that consumers with disabilities place significant importance on wireless for communications during an emergency, which is why we support the long-term and significant work already underway to transition our nation's 9-1-1 system to an IP-based 9-1-1 system that may have the capability to support direct voice, text and data communications access with careful attention to persons with disabilities. However, we are concerned that the Emergency Access and Real-Time Text Advisory Committee proposed in H.R. 3101 could potentially impede these ongoing efforts, as well as the unknown variable of mandating one particular standard on a technology that is relatively new and will continue to

[29] *See, National Broadband Plan*, Chapter 16, Recommendation 16.15 (recommending the FCC "initiate an additional proceeding to address how [Next Generation 9-1-1] can accommodate communications technologies, networks and architectures beyond traditional voice-centric devices."); *FCC Accessibility White Paper* at 31 (recommending the FCC "coordinate its work with Next Generation E-911 efforts to implement a real-time, interoperable voice, video, and text E-911 system."); *see also*, *Charter of FCC's CSRIC*, *supra* note 22.; *see also*, National Emergency Number Association ("NENA"), NG9-1-1 Project, Operations Development – Accessibility Committee, http://www.nena.org/operations-committee-accessibility (last visited June 5, 2010).

[30] Canadian Radio-Television and Telecommunications Commission - Interconnection Steering Committee *Improving access to emergency services for people with hearing and speech disabilities*, Telecom Decision CRTC 2010-224 (April 21, 2010) *available at* http://www.crtc.gc.ca/eng/archive/2010/2010-224.htm (last visited June 7, 2010).

evolve. As such, CTIA recommends against addressing these issues in the context of H.R. 3101.

IV. CONCLUSION

In a relatively short period, the wireless industry has evolved from the classic, voice-only "brick phone" to all-in-one mobile computers that offer voice, text, Internet, video, and thousands of applications, with each generation of device and service incorporating more accessibility features and functions than the last. We think this is a great story, and we're confident it will continue to get better with time. We look forward to working with the Committee to craft flexible, forward-looking policies which encourage this advancement while providing the accessibility community with assurances that they will not be left behind. Thank you for the opportunity to participate in today's hearing.

ATTACHMENT

Wireless Industry Accessibility Initiatives & Features

June 2010

Built-In Wireless Accessibility Features Under "Readily Achievable"[31]

Hearing/Speech	Visual/Blind	Cognitive	Physical
Push-based, real-time messaging (SMS/IM) Hearing Aid Compatibility (HAC) Closed Captioning (on select devices) Support for TTY/ 3rd Party Relay Services Support for Assisted Listening Devices Multimodal notifications, with extended vibration setting Visual Displays to Indicate Call Functions	Text-to-speech and screen readers Voice activation and control features Customizable font style, contrast, and "zoom" to magnify on-screen content Customizable shortcuts, hotkeys and icons Devices with physical keys and nibs Magnifiers using built-in camera features Alternate billing formats	Clickable touch screen Predictive text and Word completion (AutoText) Automation spell check Context-sensitive menus Programmable alarms and reminders Customizable fonts, themes and icons Visual voicemail Location based services	Multiple device form factors (touch, flip, candy bar, etc.) Non-slip side surfaces Clickable touch screen or hands-free functions Customizable shortcuts, hotkeys and icons Voice activation and control features Predictive text and Word completion (AutoText) Support for 3rd Party "AT" Alternate billing formats

Third Party Applications[32]

Beyond built-in accessibility features, many wireless devices and smartphones can be customized by adding or downloading applications (or "apps"). Third party developers may offer mainstream apps with accessibility features to entertain, inform or meet a consumer's specific accessibility needs including text-to-speech, screen readers, automated object recognition and Augmentative and Alternative Communication (AAC) functions which may be added to a wireless device at the consumer's choice.

[31] Features listed have been generalized to demonstrate the range of accessible features available on various wireless devices and handsets from wireless carriers or application providers.

[32] To date, there are more than 240,000 applications available on seven different stores which consumers have downloaded more than 4 billion times. *See* Written Ex Parte Communications of CTIA-The Wireless Association, WT Docket No. 09-66, GN Docket No. 09-157, and GN Docket No. 09-51 at 9-10 (April 29, 2010) *available at* http://files.ctia.org/pdf/filings/100429_CTIA_Rebuttal_Letter.pdf.