



## TECHNOLOGY AND DISABILITY POLICY HIGHLIGHTS

October 2012



### OVERVIEW

In October rules went into effect requiring closed captioning on certain Internet video programming added on or after September 30, 2012 to assist individuals with hearing loss, as part of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA). However, the Federal Communications Commission (FCC) granted petitions for class waivers of sections 716 and 717 of the Communications Act of 1934, as enacted by the CVAA, and Part 14 of the Commission's rules filed by the Consumer Electronics Association (CEA), the National Cable & Telecommunications Association (NCTA) and the Entertainment Software Association (ESA). Each waiver has an expiration date of October 8, 2015.

Netflix entered into a consent decree with the National Association of the Deaf (NAD) regarding the allegations that Netflix violated Title III of the Americans with Disabilities Act (ADA) due to inadequate provision of closed captioning on "Watch Instantly" streaming video programs. An agreement was reached requiring Netflix to pay \$40,000 to NAD and ensure increased access to Netflix for individuals who are deaf or hard of hearing.

The Consumer and Governmental Affairs Bureau of the FCC submitted the first Biennial Report to the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Energy and Commerce of the House of Representatives. The Commission evaluated the accessibility of telecommunications services and equipment to individuals with disabilities and reported that hearing aid compatibility needs are being met on equipment previously regulated but feature phones still have limited accessibility.

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## LEGISLATIVE ACTIVITIES

### **VOTING RIGHTS - EMPOWERING PEOPLE WITH DISABILITIES**

October 2012 — Senator Kirsten Gillibrand [D-NY] introduced **The Voter Empowerment Act of 2012** [S.3608] to the U.S. Senate in September. The primary intent of the bill is to “modernize voter registration, promote access to voting for individuals with disabilities, [and] protect the ability of individuals to exercise the right to vote in elections for Federal office.” Under this bill, States are required to allow individuals with disabilities to register and vote in elections for Federal office by absentee ballot procedures and accept all ballots received no later than 30 days before the election. In accordance with this provision, States are also required to establish a procedure that allows individuals with disabilities to request and receive voter registration and absentee ballot applications by mail or electronically. If S.3608 becomes law in its current form, pilot programs will be conducted in eligible States and funded by the Election Assistance Commission, allowing individuals with disabilities to register and vote using electronic means (to include the Internet and telephones with assistive devices) independently at their residences. In addition, a single office in each State will be responsible for providing information on registering and voting by absentee ballot procedures to individuals with disabilities. The bill is currently being reviewed by the Committee on Rules and Administration.

#### ADDITIONAL INFORMATION

[PDF of Bill](#)

[<http://www.gpo.gov/fdsys/pkg/BILLS-112s3608is/pdf/BILLS-112s3608is.pdf>]

[Bill Text](#)

[<http://www.govtrack.us/congress/bills/112/s3608/text>]

[Bill Status and Summary](#)

[<http://www.govtrack.us/congress/bills/112/s3608>]

## **BLIND AMERICANS EQUALITY DAY**

October 15, 2012— In a Presidential Proclamation, President Barack Obama announced October 15, 2012 as Blind Americans Equality Day. President Obama discussed the continuing efforts to ensure that individuals with disabilities have equal access to education, information, and job training. Such efforts included: continued implementation of the 21st Century Communications and Video Accessibility Act; development of video description standards by the FCC for television stations; a report completed by the Department of Justice evaluating the accessibility of federal government electronic and information technology, in accordance with Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. § 794d); and the Department of Education’s promotion of accessible learning tools for individuals with disabilities. President Obama noted: “We renew our commitment to innovative projects and initiatives that will propel us further toward full access, inclusion, and opportunity for blind and visually impaired Americans.”

### **ADDITIONAL INFORMATION**

[Press Release](#)

[<http://www.whitehouse.gov/the-press-office/2012/10/15/presidential-proclamation-blind-americans-equality-day-2012>]

## **REGULATORY ACTIVITIES**

### **CLOSED CAPTIONING FOR INTERNET PROGRAMMING**

October 3, 2012 — On September 30, 2012, rules went into effect requiring closed captioning on certain Internet video programming to assist individuals with hearing loss, as part of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA). The rules apply to programming that is shown on television and added to the online distributor’s inventory on or after September 30, 2012 and is not significantly edited for the Internet. Additional rules will be implemented at a later date requiring closed captioning for live or near live programs, for programs significantly edited for the Internet and for archived programs added to the online distributor’s inventory before September 30, 2012.

### **ADDITIONAL INFORMATION**

[Press Release](#)

[[http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-316599A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-316599A1.pdf)]

### **HOW ACCESSIBLE ARE TELECOMMUNICATIONS SERVICES AND EQUIPMENT?**

October 5, 2012 — In accordance with the Twenty First Century Communications and Video Accessibility Act of 2010 (CVAA), the Consumer and Governmental Affairs Bureau of the Federal Communications Commission submitted the first Biennial Report to the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Energy and Commerce of the House

of Representatives. The overall purpose of the Report was to provide information and evaluate the accessibility of telecommunications services and equipment to individuals with disabilities.

One objective of the Report was to assess compliance with sections of the Communications Act. The Commission noted that with regard to Section 255, "equipment subject to this longstanding statutory obligation generally are meeting the hearing aid compatibility needs of people with hearing loss," but "feature phones continue to offer only limited accessibility for consumers who are blind or visually impaired." The Commission agreed with the American Council of the Blind that the complaint process within Section 255 is not fully adequate, as it has resolved only simple complaints. The Commission found that there was insufficient information available to provide an accurate assessment of compliance with Section 716, while Section 718 is not effective until October, 2013. The Report also commented on accessibility barriers related to existing and new communications technologies. Particular emphasis was placed on new video conferencing technologies being incompatible and therefore not fully effective for individuals who communicate with American Sign Language.

#### ADDITIONAL INFORMATION

[2012 Biennial Report](#)

[[http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2012/db1005/DA-12-1602A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db1005/DA-12-1602A1.pdf)]

#### **NETFLIX ENTERS CONSENT DECREE WITH NATIONAL ASSOCIATION OF THE DEAF**

October 9, 2012 — A consent decree was entered into by plaintiffs National Association of the Deaf (NAD), Western Massachusetts Association of the Deaf and Hearing Impaired, and Lee Nettles and the defendant Netflix, Inc. (Netflix). The **Consent Decree** [Case No. 11-30168-MAP] settles allegations that Netflix violated Title III of the Americans with Disabilities Act (ADA) due to inadequate provision of closed captioning on "Watch Instantly" streaming video programs. In addition to the \$40,000 Netflix will pay NAD, the agreement outlines additional terms to ensure increased access to Netflix for individuals that are deaf or hard of hearing. These include: provision of Conforming Captions or subtitles on 90% of Netflix On-demand Streaming Content by September 2013 and 100% of content by September 2014; adding Conforming Captions within 30 days to On-demand content added from September 2014 to September 2015, within 15 days by September 2015 and within 7 days by September 2016; and training of Netflix customer service representatives to address questions regarding captioning issues.

#### ADDITIONAL INFORMATION

[Consent Decree \(Case No. 11-30168-MAP\)](#)

[<http://dredf.org/captioning/netflix-consent-decree-10-10-12.pdf>]

## **WAIVERS OF ACCESSIBILITY RULES GRANTED BY FCC**

October 15, 2012 — In October, petitions filed by the Consumer Electronics Association (CEA), the National Cable & Telecommunications Association (NCTA) and the Entertainment Software Association (ESA) were addressed by the Consumer and Governmental Affairs Bureau of the Federal Communications Commission [CG Docket No. 10-213]. The petitions were for class waivers of sections 716 and 717 of the Communications Act of 1934, as enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA), and Part 14 of the Commission’s rules that require advanced communications services (ACS) and equipment be accessible to people with disabilities. Specifically, CEA requested a waiver until July 1, 2012 for Internet protocol-enabled television sets (IP-TVs) and video players (IP-DVPs) manufactured before July 1, 2016. Similarly, NCTA requested a waiver until July 1, 2016 for set-top boxes leased to customers and manufactured before July 1, 2016. ESA requested a waiver until October 8, 2021 for new or updated Class I, Class II, and Class III gaming equipment and software. Each waiver was granted in part with an expiration date of October 8, 2015.

### **ADDITIONAL INFORMATION**

[Commission Document \(CG Docket No. 10-213\)](#)

[\[http://www.fcc.gov/document/class-waivers-advanced-communications-services-rules\]](http://www.fcc.gov/document/class-waivers-advanced-communications-services-rules)

[PDF of Order](#)

[\[http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DA-12-1645A1.pdf\]](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-12-1645A1.pdf)

## **JUDICIAL ACTIVITIES**

### **LANDMARK DECISION MAKES TEN MILLION BOOKS ACCESSIBLE TO DISABLED**

October 10, 2012—In October, Judge Harold Baer of the United States District Court for the Southern District of New York granted the National Federation of the Blind’s (NFB) Motion for Summary Judgment in *The Authors’ Guild v. HathiTrust* case (Case Number: 11-cv-6351-HB). Initially, the Author’s Guild accused HathiTrust and faculty at the University of Michigan, University of California, University of Wisconsin, Indiana University, and Cornell University of violating the Copyright Act by permitting mass digitization of their library collections. NFB intervened, as this is the largest digital collection available and Judge Baer adopted the NFB’s arguments that digitizing the material for individuals with disabilities was a “transformative use” and therefore fair use under the Copyright Act and the Americans with Disabilities Act (ADA). The decision allows university libraries to digitize all books and printed media, resulting in approximately ten million books being accessible in digital format specifically to individuals with visual and print disabilities.

Dr. Marc Maurer, President of the NFB, noted the significance of Judge Baer’s decision: “For the first time ever, blind students and scholars will have the opportunity to participate equally in library

research. The blind, just like the sighted, will have a world of education and information at their fingertips.”

#### ADDITIONAL INFORMATION

NFB Press Release

[\[https://nfb.org/national-federation-blind-applauds-landmark-court-ruling?utm\\_source=HathiTrust+Victory&utm\\_campaign=HathiTrust&utm\\_medium=email\]](https://nfb.org/national-federation-blind-applauds-landmark-court-ruling?utm_source=HathiTrust+Victory&utm_campaign=HathiTrust&utm_medium=email)

Summary Judgment PDF

[\[http://www.nysd.uscourts.gov/cases/show.php?db=special&id=232\]](http://www.nysd.uscourts.gov/cases/show.php?db=special&id=232)

## WIRELESS RERC NEWS

### **NEW APP TO IDENTIFY U.S. CURRENCY**

October 9, 2012 — The Department of Education announced today the launch of IDEAL Currency Identifier, a free downloadable application (app) designed to assist individuals who are blind or visually impaired to denominate U.S. currency on Android mobile devices. IDEAL Currency Identifier was developed by IDEAL Group, IQ Engines, and the Wireless Rehabilitation Engineering Research Center’s App Factory. The IDEAL Currency Identifier initiative supports the U.S. Department of Treasury’s Bureau of Engraving and Printing (BEP) mandate to provide increased access to U.S. currency for persons who are blind and visually impaired.

IDEAL Currency Identifier handles three generations of U.S. currency notes beginning in 1993 and is compatible with Android 4.0 or higher devices with rear-facing cameras.

The app can be downloaded for free to more than 1,250 different wireless devices. Android-based devices are produced by 48 manufacturers and distributed by 60 wireless service providers, in 136 countries. It was developed by Apps4Android, Inc., a subsidiary of IDEAL Group that focuses on developing accessible mobile applications.

Dr. Charlie Lakin, the Director of NIDRR, commented: “Though our dialogue with the BEP, a special opportunity emerged to fulfill our mission in support of persons who are blind and visually impaired. IDEAL Currency Identifier uses advanced image recognition technology to read a note and, in a matter of seconds, provides users with an audible response indicating the note’s denomination.

#### ADDITIONAL INFORMATION

Press Release

[\[http://www.ed.gov/news/press-releases/us-department-education-announces-new-app-identify-us-currency\]](http://www.ed.gov/news/press-releases/us-department-education-announces-new-app-identify-us-currency)

## PUBLICATIONS AND REPORTS

### **INCREASING BROADBAND ACCESS TO THE DISABLED**

October 2012 — The National Telecommunications and Information Administration (NTIA) reported on the status of Broadband Technology Opportunities Program (BTOP) activities completed between April 1, 2012 and June 30, 2012 in the BTOP Quarterly Program Status Report. Focusing on the BTOP Public Computer Center (PCC) grants, approximately 36,000 new or upgraded public workstations were installed across 40 states in the last quarter. This provided 1.4 million training hours to 371,000 PCC users. In addition, technical assistance to PCC recipients was provided by NTIA, which consisted of seven webinars focused on various broadband topics. In particular, one webinar provided information on “making services more accessible to individuals with disabilities.” The continued progress of the PCCs is important for increasing broadband access to underserved populations, which includes low-income individuals, the unemployed, senior citizens, children, minorities, tribal communities, and individuals with disabilities.

#### ADDITIONAL INFORMATION

[BTOP Quarterly Program Status Report](#)

[[http://www.ntia.doc.gov/files/ntia/publications/btop\\_14th\\_quarterly\\_report.pdf](http://www.ntia.doc.gov/files/ntia/publications/btop_14th_quarterly_report.pdf)]

### **ENFORCING THE RIGHTS OF STUDENTS WITH DISABILITIES**

October 2, 2012 — The Department of Education’s Office for Civil Rights (OCR) published *Disability Rights: Enforcement Highlights*, in celebration of the 39th anniversary of Section 504 of the Rehabilitation Act of 1973. With regards to accessibility of technology, in 2010 OCR and the Department of Justice issued letters of guidance to college and university presidents informing them that under Section 504 and the ADA that requiring use of technology that is inaccessible to blind students is prohibited, unless proper modifications or accommodations are made. In 2011, OCR extended this guidance to include elementary and secondary schools. In addition, OCR’s assistant secretary served as a commissioner on the Advisory Commission on Accessible Instructional Materials in Postsecondary Education for Students with Disabilities (AIM Commission), which released a report in December 2011. The report encouraged Congress to allow the United States Access Board to establish guidelines for and encourage development of accessible instructional materials.

The importance of OCR’s work is captured in U.S Secretary of Education Arne Duncan’s comment: “The best way to celebrate this important anniversary is to renew our common commitment to ensuring equal opportunity for people with disabilities in school, in the workplace, and throughout our public life”.

#### ADDITIONAL INFORMATION

[Press Release](#)

[<http://www.ed.gov/news/press-releases/secretary-duncan-white-house-officials-join-disability-stakeholders-commemoratin>]

Disability Rights: Enforcement Highlights

[<http://www2.ed.gov/documents/news/section-504.pdf>]

## OTHER ITEMS OF INTEREST

### **FILLING IN THE HOLES IN MOBILE INTERNET**

October 3, 2012 — The Federal Communications Commission (FCC) announced the winners of the first ‘Mobility Fund’ auction in the U.S., a market based competition to distribute a total of \$300 million to those carriers with the lowest cost-per-mile bids that would increase mobile coverage across the U.S. Winners ranged from large national carriers like T-Mobile and U.S. Cellular to smaller carriers, such as Pine Belt Cellular, Inc. in Alabama. The auction was part of the Commission’s 2011 reform of the Universal Service Program. Over the next three years the winners will collectively increase access to mobile networks covering up to 83,000 U.S. road miles within 31 states in areas that currently lack access to 3G and 4G mobile service. In addition, the Commission is contributing \$50 million in one-time support to Tribal lands and \$500 million annually to support mobile services in Phase II of the Mobility Fund. There were approximately 900 bids submitted from thirty-eight companies and subsidiaries.

The allocations of the auction funds represent part of the Commission’s efforts to provide universal mobile service to all Americans, including those with disabilities. Julius Enachowski, the FCC Chairman, noted:

“For too many, dead zones in mobile Internet coverage are too common—and today’s winners will help the U.S. close those gaps. But today’s real winners are the American people, millions of whom will soon have greater access to the job, education and healthcare opportunities of America’s world-leading mobile economy.”

### **ADDITIONAL INFORMATION**

Press Release

[[http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-316600A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-316600A1.pdf)]

Public Notice

[[http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2012/db1003/DA-12-1566A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db1003/DA-12-1566A1.pdf)]

Full List of Winners

[[http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2012/db1003/DA-12-1566A2.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db1003/DA-12-1566A2.pdf)]

Map of Areas across U.S. Receiving Support from Mobile Fund

[[http://apps.fcc.gov/auction901/map/auction\\_result\\_ext.html](http://apps.fcc.gov/auction901/map/auction_result_ext.html)]



## UPCOMING EVENTS

### **2012 ANNUAL COMPENDIUM BRIEFING AND RESEARCH-TO-POLICY ROUNDTABLE**

The release of the 2012 Annual Compendium of Disability Statistics and the Second Annual Research-to-Policy Roundtable will both take place on November 28, 2012 in Washington, D.C. The briefing on the 2012 Annual Compendium will include a one-hour workshop on the sources and uses of disability statistics. The Compendium is a web-based tool that pools disability statistics published by various federal agencies. The Research-to-Policy Roundtable event will “provide an opportunity for disability advocates, policymakers, and researchers to discuss ways that research can assist policymakers in developing programs, policies, and legislation that support people with disabilities”.

A live webcast of the 2012 Annual Compendium Briefing will be available online for those individuals that are unable to attend in person. It is presented by the Kessler Foundation in partnership with the Institute on Disability / UCED at the University of New Hampshire.

### ADDITIONAL INFORMATION

[Event Page](#)

[<http://www.researchondisability.org/statsrrtc/event-detail/2012/05/22/2012-annual-compendium-of-disability-statistics-research-to-policy-roundtable>]

[Event Registration](#)

[[https://www.events.unh.edu/RegistrationForm.pm?event\\_id=10960](https://www.events.unh.edu/RegistrationForm.pm?event_id=10960)]

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### **TECHNOLOGY AND DISABILITY POLICY HIGHLIGHTS**

October 2012

Technology and Disability Policy Highlights reports on national and local public policy events and recent wireless technological advances and political activities; and tracks emerging issues of interest to individuals with disabilities. *Technology and Disability Policy Highlights* is published monthly by the Wireless RERC. The Wireless RERC is a research center that promotes universal access to wireless technologies and explores their innovative applications in addressing the needs of people with disabilities. For more information on the Wireless RERC, please visit our web site at [<http://www.wirelessrerc.org>].

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