

# FCC Accessible Communications Regulations: Legal Requirements and Real World Implementation

October 2, 2013

Presented by Maria Browne and Tim Springer

This session is scheduled to begin at 1:00pm Eastern Time

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# Agenda



- About DWT and SSB
- Communications accessibility laws overview
- Covered entities, services and equipment
- Requirements governing design and development
- Recordkeeping and reporting requirements
- Complaints
- Real world implementation



# About Davis Wright Tremaine LLP



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Lawyers in our Communications Practice Group have decades of federal and state regulatory experience advising clients in every area of the communications industry. Our communications practice:

- Counsels clients on the business and regulatory approvals for communications transactions;
  - Lobbies government officials and agencies to help shape laws that affect our clients' businesses; and
  - Handles compliance, litigation and dispute resolution in the manner that best meets our clients' strategic and financial objectives.
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# About SSB BART Group



- Unmatched Experience
  - Accessibility Focus
  - Implementation-Oriented Solutions
  - Solutions That Reduce Legal Risk
  - Organizational Stability and Continuity
  - Knowledge That Is Up-to-Date, All the Time
  - Published and Peer Review Auditing Methodology
  - Fourteen hundred organizations (1452)
  - Fifteen hundred individual accessibility best practices (1512)
  - Twenty-three core technology platforms (23)
  - Twenty-two thousand audits (22,408)
  - Fifteen million accessibility violations (15,331,444)
  - One hundred twenty-one thousand human validated accessibility violations (121,290)
- (Statistics provided as of January 2013)



# LEGAL OVERVIEW

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# Legal Overview



- Congress passed the [21st Century Communications and Video Accessibility Act of 2010](#) (CVAA) which:
  - Focuses on ensuring that new forms of communication and video are accessible to users with disabilities.
  - Primarily targets broadband service providers, software and equipment manufacturers, video programming distributors and producers of video content.
  - Requires that much of the communications and video programming that passes over the Internet is provided in an accessible manner to individuals with disabilities.
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# Legal Overview: CVAA Organization



- **Title I – Communications Access**

- Broken down into six parts
- Primarily amends the Communications Act of 1934
- Significant item of note is the Advanced Communication Services requirements of Section 716 and Recordkeeping Requirements of Section 717
- Rulemakings on these sections are largely completed and rules are currently effective

- **Title II – Video Access**

- Also broken down into six parts
  - Focuses on ensuring video delivery systems are accessible
  - Rulemakings on this section still in progress
  - Not a subject of this webinar series
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# Legal Overview: CVAA: Title I



- Section 101 – Definitions
  - Section 102 – Hearing Aid Compatibility
  - Section 103 – Relay Services (fund extended to VoIP)
  - Section 104 – Access to Internet-based services and equipment
    - Establishes § 716 of Communications Act, which requires access to Internet based communication services and equipment.
    - Establishes § 717 of Communications Act, which defines recordkeeping rules for Sections 255, 716 and 718.
    - Establishes § 718 of Communications Act, which requires mobile phone browsers to be accessible to blind or visually impaired persons
  - Section 105 – Relay Services for deaf-blind individuals
  - Section 106 – Emergency Access Advisory Committee
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# Legal Overview: CVAA: Title II



- Section 201 – Video Programming and Emergency Access Advisory Committee
  - Section 202 – Video description and closed captioning
  - Section 203 – Closed captioning decoder and video description capability
  - Section 204 – User interfaces on digital apparatus
  - Section 205 – Access to video programming guides and menus on navigation devices
  - Section 206 - Definitions
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# CVAA Section 104



- Section 716 requires equipment manufacturers and service providers to make ACS, including the enabling software for such ACS, accessible to and usable by persons with disabilities (including persons who are blind and visually impaired, deaf or hearing impaired, physically or cognitively disabled, including a combination of any of these), if achievable, or if not, compatible with existing assistive technologies, if achievable.
  - Section 717 imposes new record keeping requirements and enforcement rules on ACS and Section 255 Services
  - Section 718 requires accessibility of mobile browsers
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## Key Aspects of the Law



- Does not require retrofitting
  - Does not require changes resulting in “fundamental alteration”
  - Does not extend to customized services or equipment
  - Imposes significant outreach and recordkeeping obligations
  - Gives broad discretion to FCC to enforce through monetary and performance remedies
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# FCC Rules Implementing 716-718: 47 CFR Part 14



- Subpart A – Scope
  - Subpart B – Definitions
  - Subpart C - Obligations
    - Accessible to and usable by individuals w/disabilities or compatible with existing devices
    - No impediment of accessibility or usability
    - Incorporation in product design and development
    - Information pass through
    - Information, documentation and training
      - Call centers
      - Print mailing
      - Web support
    - Performance objectives
  - Subpart D - Recordkeeping and Complaints
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# Communications Act Section 255: Telecom and Interconnected VoIP



- The CVAA also reinvigorated Section 255 of Communications Act
  - Section 255 requires accessibility of telecom and interconnected VoIP services and equipment, call status features and voicemail/interactive menus:
    - Applied to telecom, features, VM and menus in 2000
    - Extended to interconnected VoIP effective October 2007
  - Includes similar accessibility, usability and compatibility requirements
  - Standard is “readily achievable” - easily accomplished without much difficulty or expense
  - Recordkeeping and enforcement provisions updated to be same as adopted for ACS
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# FCC Rules Implementing Section 255: 47 C.F.R. Parts 6 and 7



- Part 6: Telecommunications and Interconnected VOIP services (including call features such as call forwarding) and CPE
    - Subpart A: Scope
    - Subpart B: Definitions
    - Subpart C: Obligations
    - Subpart D: Enforcement
  - Part 7: Voicemail and interactive menu services and equipment
    - Same subpart structure
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# COVERAGE AND SCOPE

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# Covered Entities: ACS Defined



- Interconnected VoIP not covered by Section 255 and non-interconnected VOIP
  - Electronic Messaging Services –real time or near real time non-voice messages in text between individuals over communications networks, e.g., emails, texts (not blog or on-line posts on social networking sites, human- or machine- to machine communications, or customized enterprise service)
  - “Interoperable” video conferencing services that provide real time video communications, including audio, to enable sharing of information
  - Part 14, Subpart B
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# Covered ACS Examples



- Products or services that provide text messaging, instant messaging, e-mail or other text based communication
    - Web-based email, G-mail, Outlook web client, AOL Instant Messenger, iMessage, web based chat and portions of web sites that provide communication services like Facebook's message service and related equipment – laptops, phones, tablets, set top boxes and gaming devices
  - Products or services that provide non-interconnected VoIP based communication
    - Skype, Google Talk, Facebook Chat or any other chat services
  - Products or services that provide video based communication
    - Skype, Google hangouts and Facetime
    - Webinars and other products that allow for real-time video communication over the Internet
  - Products or services that provide access to covered communication services
    - Internet browsers
    - E-mail and messaging clients, i.e., Microsoft Outlook and AOL instant Messenger
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# Responsibility for ACS Accessibility



- Manufacturers of ACS end user equipment, network equipment and component software
- ACS provider interpreted broadly to include all entities that make ACS available in any manner
  - E.g. those that make web based email available, those that provide non-interconnected VoIP services through applications that consumers download to their devices; those that provide texting services over cellular networks; providers of software that gives consumer ability to send and receive email, text messages or non-interconnected VoIP

# Covered Entities: Section 255 Defined



- Telecommunications Service Providers
    - Voice Service, Call Features, Voicemail, Menus
  - Telecommunications Equipment and CPE Manufacturers
  - Interconnected VoIP Service Providers
    - Voice Service, Call Features, Voicemail, Menus
  - Interconnected VoIP Equipment and CPE Manufacturers
-

# Covered Section 255 Examples



- Landline Telecom Carriers
    - Verizon and AT&T
  - Fixed line, mobile or VOIP phones
    - iPhone, Samsung Galaxy, Polycom VOIP Phone, Touch Tone Phones
  - Products or services that provide IP voice based communication and connect to PSTN
    - Comcast, Charter, Vonage, Google Talk
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# Responsibility for 255 Compliance



- Communications Providers - includes all entities that make communications services available, including resellers and aggregators, and providers of software that gives consumers the ability to use communications (e.g., send/receive email or texts), such as user interfaces and browsers
    - Wholesale providers (e.g. IBBS/ALEC) and branded service resellers; FCC Form 499 Filers
  - Communications Equipment Manufacturers - includes those that make or produce end user equipment, network equipment and software used for communications including the device and its operating system, user interface, application, network services, accessibility API and technology, and browser
    - Firefox Thunderbird Messaging Client, Google Talk Client, AOL Instant Messenger
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# REQUIREMENTS

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# Nature of Accessibility Requirement



- 47 CFR14.20: covered ACS must be “ accessible to and usable by” persons with disabilities, if achievable
  - Can be built in or use third party solution available at nominal cost and supported
  - If not achievable, must be compatible, if achievable
  - Pass Through – Network platforms and pass-through systems are responsible for ensuring that any standard accessibility information is maintained and not stripped out
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# Requirements: Accessible



- Accessible means that
    - (1) the input, control and mechanical functions of a covered service or device are locatable, identifiable and operable in accordance with 10 FCC performance objectives geared toward specific disabilities defined in 47 CFR 14.21 and
    - (2) that the information necessary to use and operate the product (text, images, icons, labels, sounds and cues) meets 9 performance objectives.
      - These performance objectives are the same as those defined for Section 255 requirements
      - Performance objectives go well beyond user modalities defined in Section 508 requirements.
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# FCC Accessibility Performance Objectives



Sec.14.21(b)(1) input, control and mechanics must be

- (i) Operable without vision
    - (ii) Operable with low vision and limited or no hearing
    - (iii) Operable with little or no color perception
    - (iv) Operable without hearing
    - (v) Operable with limited manual dexterity
    - (vi) Operable with limited reach and strength
    - (vii) Operable with a Prosthetic Device
    - (viii) Operable without time-dependent controls
    - (ix) Operable without speech
    - (x) Operable with limited cognitive skills
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# FCC User Interface Requirements



Section 14.21(b)(2): Information necessary to operate and use covered products (such as text, images, icons, labels, sounds or cues) must ensure:

- Availability of visual information (for blind)
  - Availability of visual information for low vision users
  - Access to moving text
  - Availability of auditory information (for deaf)
  - Availability of auditory information for hard of hearing
  - Prevention of visually induced seizures
  - Availability of audio cut off
  - Non-interference with hearing technologies
  - Hearing Aid Coupling
-

# Requirements for Design/Development



- Part 14, Rule 14.20(b) requires
    - ACS manufacturers and service providers to consider performance objectives at the design stage as early as possible and to implement them, if achievable
    - Must identify barriers to accessibility and usability as part of such evaluation
  - Record keeping requirements infer that outreach to disabled communities is required at this stage
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# Measuring Accessibility Compliance



- Focus of the requirements under CVAA are functional in nature rather than normative in nature (i.e., standards driven) as often provided in other accessibility standards.
- Ultimate concern is that people with disabilities can utilize the covered products and services
  - Meeting a specific technical standard is mainly important as a means to this end.

# Measuring Accessibility Compliance



- FCC has provided some guidance for acceptable solutions:
    - US Access Board –tasked to develop technical standards – has been trying for over four years – with recommendations from TEITAC; still in ANPRM stage.
    - Provider of web-based email service could build to W3C Web Content Accessibility Guidelines V. 2.0
    - Services downloaded to operating system (OS) of desktop could be coded to work with Accessibility API for the OS of the device (i.e., IOS, Android, Microsoft Active Accessibility)
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# Rule of Construction



- Section 716(j) of the CVAA provides rule of construction:
    - “This section shall not be construed to require a manufacturer of equipment used for advanced communications or a provider of advanced communications services to make every feature and function of every device or service accessible for every disability.”
  - FCC rules reflect this concept in achievability criteria—i.e., offers different services at different price points
  - Conceptually the FCC doesn’t require every product to conform to every user need; there just need to be solutions for various different modalities across the entire product line
  - Practically how this will be interpreted in the enforcement process is still very much an open question
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# Waivers and Exemptions



- Customized Equipment or Services
    - Exempt by statute
  - Primary Purpose Waivers
    - The FCC declined to adopt class based waivers in the rules but has granted requested “Primary Purpose Waivers” to NCTA (set top boxes), CEA (IPTVs and DVDs) and ESA (certain classes of gaming devices), that have communications components that are not device’s primary purpose.
  - User Installed Apps – Manufacturer is not responsible for software that end users independently install or choose to use in the cloud but is responsible for software that it directs the consumer to install to use the product or service.
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# Third Party Solutions



- Regulations provide for achieving accessibility through the use of such third party solutions but must
    - Make available at nominal cost i.e., small enough not to factor into consumer decision to acquire
    - Identify the solution
    - Notify consumers of the solution
    - Ensure solution readily available “ around the same time as when the product or service is purchased ”
    - Find and arrange to install the solution
    - Provide support for the solution for the longer of the life of the primary product or two years after the third-party solution is no longer available.
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# Third Party Solutions



- Covered entity assumes responsibility for third party solution effectiveness
  - If the third-party solution identified by the manufacturer or service provider to provide accessibility is no longer available on the market, then the manufacturer or service provider must identify a new solution
  - In practice this approach is likely to be the most common route for implementing accessibility on many covered products
-

# Third Party Solutions



- Third party solution
  - E.g., NVDA or the OS standard ATs - Windows Narrator, Magnifier (JAWS too costly)
- A common example is that most smartphones will not provide self voicing kits but will, instead, work with a platform specific screen reader to support access by people that are blind or visually impaired
  - iOS – VoiceOver
  - Android – TalkBack

# Usability



- “Usable” means that individuals with disabilities have access to the full **functionality** and **documentation** for the covered service or product
  - FCC equates functionality with accessible user interface and has focused usability as guides, bills and product support communications
- Written documentation available in large print and braille
- Call centers accept TRS/TTY
- Online support (i.e., web page management tools and customer chat) must be accessible
- Installation videos should be captioned



- Rule 14.20(d) requires information, documentation and training to be accessible
  - Such “documentation” includes installation guides, bills, and customer service support in print format, online, in training videos, or via CSRs at call centers
    - **Websites** that offer online support or management must be accessible (DOJ interprets ADA to require all commercial websites to be accessible – *Netflix* case)
      - Chat must have screen reader built in
    - **Call center** CSRs must respond to TRS calls
      - CSRs must be trained about disabilities
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# Section 255: Usability Refresh



- FCC Rules
    - 255 covered entities must provide alternative modes upon request at no additional charge (e.g., braille, tape) on request (FCC Rule 6.11)
    - ACS must be “accessible” (FCC rule 14.20(d))
  - Support (Information and Training)
    - FCC Rule 6.11(c) instructs covered entities’ training to consider:
      - Accessibility requirements of individuals with disabilities
      - Means of communicating with individuals with disabilities
      - Commonly used adaptive technology
      - Designing and solutions for accessibility
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# Possible ADA Overlap



- Americans with Disabilities Act may also govern
  - Ex. *National Association of the Deaf v. Netflix*
    - DOJ filing says that website is a place of public accommodation (Circuits are split) and that no conflict with CVAA (notwithstanding specific captioning rules)
    - DOJ ANPRM issued in 2010; Title III NPRM expected in Dec.
  - Ex. DOJ *Wells Fargo* Settlement under ADA
    - Afford TRS calls the same response time as calls received through other channels
    - accepts TRS calls during the same time periods during which it accepts calls through other telephonic channels and
    - does not require any additional levels of authentication for TRS calls than it requires for other channels of telephonic communication
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# Compatibility



- If built-in or third party solution accessibility is not achievable, the product or service must be compatible with peripheral devices and specialized consumer premises equipment
  - Removes the “nominal cost” and “support” requirements
  - Product or service must work with commonly used assistive devices, e.g., must have:
    - External electronic access to information and control (i.e. information must be screen reader compatible)
    - Connection point for external audio processing with standard signal
    - TTY connectability and signal compatibility (but not every phone must have a TTY jack)
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# Achievability



- “Achievable” is standard applied to ACS and means with reasonable effort or expense
  - “Readily achievable” standard applied to 255 services and means easily accomplished without much difficulty or expense
  - In determining whether accessibility, usability or compatibility is achievable the FCC will consider:
    - The nature and cost of the steps needed
    - The technical and economic impact on the operation/development of the covered service (financial resources of entity and parent)
    - The type of operations of the covered entity
    - The extent to which accessibility is incorporated in varying service/product levels and price points
-

# Achievability



- Burden for showing that accessibility “not achievable” is high; “readily achievable” less so
  - Entities opting not to provide accessibility based on it being “not achievable” to do so will face the burden of proving this approach in resolving complaints
  - Accordingly, there are a variety of different documentation requirements implied when organizations seek to claim a non-achievability status
  - When it is not achievable to make a product or service accessible, must make it compatible, if achievable
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# Communications Act Section 718: Mobile Browsers



- Mobile phone manufacturers and service providers must ensure that mobile browsers they include or arrange to include are accessible to and usable by individuals who are blind or have visual impairment, if achievable
  - Not responsible for third party browsers or for making Internet content, applications, or services accessible or usable
  - Same standards apply for accessibility and usability as apply to Section 716 services (overlap somewhat)
  - Internet browsers used for advanced communications services (ACS), that are installed or included by ACS equipment manufacturers or provided by ACS service providers, are software subject to section 716 of the Act
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# Sections 716 and 718: When is compliance required?



- Section 716 (FCC Part 14): accessibility and usability must be considered in design and development as of Jan. 1, 2012, unless exempt small business or otherwise
    - Small businesses exempt until Oct. 8, 2013 unless extended
      - Small business is defined using the SBA standards set forth in 13 CFR Sec. 121.201 by NAICS code (1,500 employees for telecom and \$35.5 million annual revenue for cable)
    - Set Top Boxes, IP TVs and DVPs, and gaming devices and software exempt until Oct. 8, 2015
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## Sections 716 and 718: When is compliance required?



- Section 716 (FCC Part 14): must meet performance objectives for ACS offered or upgraded after 10/8/2013 (no retrofit of inventories or deployed products/services)
    - Primary purpose waivers excepted
  - Section 718 (FCC Part 14 Subpart E): must meet performance objectives for ACS offered or upgraded after 10/8/2013 (no retrofit of inventories or deployed products/services)
  - Individual primary purpose based waivers may be sought at any time
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# What is “offered or upgraded”?



- “By October 8, 2013, we expect that manufacturers and service providers will be incorporating accessibility features deep within many of their most complex offerings, instead of patching together ad-hoc solutions shortly before enforcement begins”
- FCC said “consistent with 255 Order”
- Obligation to consider accessibility not limited to initial design
- Whenever a natural opportunity to review the design of a service or product arises
- Natural opportunities could include, for example, the redesign of a product model, upgrades of services, significant rebundling or unbundling of product and service packages, or any other modifications to a product or service that require the manufacturer or service provider to substantially re-design the product or service

# Performance Objectives Compliance



- Upgrade triggering compliance versus retrofit
- Companies must review their products for accessibility at every "natural opportunity," including when they re-design products, upgrade services, or significantly change the way they group together product and service packages.
- Cosmetic changes that do not change the product's actual design, such as changes in the color, make, model name, or designation of a product, may not trigger the need to reevaluate access
  - Example: network provider improves speed of email service or network provider improves customer web-interface
  - Equipment changes less ambiguous



## Sections 716 and 718: What happens if don't comply?



- Extensive FCC enforcement provisions start 10/8/13
- Fines of up to \$100,000 per day for violation, \$1 million dollar cap per violation per amendment to 47 USC 503(b)(2)
- Possible damages against carriers (Sec. 14.40)
- FCC may require next generation to be compliant in reasonable time
- Details of enforcement process discussed in later segment

# Section 717 of Communications Act



- Section 717 requires companies to keep contemporaneous records of efforts to comply with Sections 255, 716 and 718, including:
    - Efforts to consult with persons with disabilities
    - Efforts identify barriers to accessibility and incorporate solutions into design and development of covered services and products
    - Accessible features of products and services
    - Compatibility with assistive technologies
    - Decisions that accessibility, usability and/or compatibility was not achievable (readily achievable)
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# Section 717 of Communications Act



- Section 717: FCC Record Keeping requirements in Rule 14.31 started Jan. 1, 2013
  - Annual certification started April 1, 2013
  - Exception for “small entities,” which have until Oct. 8, 2013 (not going to be extended by FCC)
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# RECORDKEEPING

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# Recordkeeping Requirements



- Entities covered by Section 255, 716 and 718 must create and maintain records of efforts taken to implement conformance with relevant sections of the Act.
- Records must be maintained for at least two years after a product or service ceases to be manufactured or offered by the covered entity (directly or through a third party or reseller).
- Regulations governing the record keeping, [47 CFR 14.31](#), provide a significant amount of latitude in terms of the exact format of the records.
- Records do not need to be made public until filed in response to a complaint and then are subject to certain confidentiality protections.
- FCC has said it will not create a database of the more than 3,000 filers but that contact information submitted with certifications will be available in October when complaint processes are effective.

# Recordkeeping Requirements



The FCC regulations specifically identify three types of records that must be kept as part of the overall record keeping activity:

- “Information about the manufacturer's or service provider's efforts to consult with individuals with disabilities
- Descriptions of the accessibility features of its products and services
- Information about the compatibility of its products and services with peripheral devices or specialized customer premise equipment commonly used by individuals with disabilities to achieve access.”

*The items above define specific records that must be kept as part of the activity but do not define **all** the records that must be kept. The records, overall, must show “records of the efforts taken by such manufacturer or provider to implement sections 255, 716, and 718 with regard to this product or service.” For example, if claiming that accessibility compliance is not achievable, must keep records that will help sustain burden of proof.*

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## Non-Achievability Documentation



- The Act only requires that products be made accessible if doing so is “achievable.”
  - When covered entities do not make their products or services accessible, and claim as a defense that it is not achievable for them to do so, they bear the burden of proof on this defense.
  - While entities are not technically required to keep records to this end they should note that they bear the burden of proof for justifying such claims.
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# Non-Achievability Documentation



If a complaint was to arise, and a claim of “not achievable” was to be made, the FCC would require that an organization provide records demonstrating:

- The nature and cost of the steps needed to make equipment and services accessible in the design, development, testing, and deployment process to make a piece of equipment or software in the case of a manufacturer, or service in the case of a service provider, usable by individuals with disabilities;
- The technical and economic impact on the operation of the manufacturer or provider and on the operation of the specific equipment or service in question, including on the development and deployment of new communications technologies;
- The type of operations of the manufacturer or service provider; and,
- The extent to which the service provider or manufacturer in question offers accessible services or equipment containing varying degrees of functionality and features, and offered at differing price points. (FCC 11-151 ¶221)



# Confidentiality



- Section 717(a)(5)(c) requires FCC to keep confidential records that are (1) produced in response to complaint; (2) created or maintained pursuant to the rules; (3) directly relevant to equipment or service at issue in complaint
- Not protected: other materials not required by the recordkeeping rules i.e., defense of achievability
- Any materials filed in response to FCC complaint should be filed with a confidentiality request pursuant to Section 0.459 of the FCC Rules
- Assert the statutory exemption for disclosure pursuant to Section 0.457 of the FCC Rules

# Certification



- As of April 1<sup>st</sup>, 2013 an officer of all covered entities must certify under penalty of perjury to the FCC that they are keeping the required records.
  - Certification mandates that a recordkeeping process is in place and the FCC requirements are being met.
  - Certification is supported by “an affidavit or declaration under penalty of perjury, signed and dated by the authorized officer of the company with personal knowledge of the representations provided in the company's certification.”
  - Certifying entity must identify the name and contact details of the person or persons within company that are authorized to resolve complaints and the name and contact details of person within company designated for receiving complaints (or registered agent).
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# Certification



Filing occurs online via the RCCI Registry system:

- <https://apps.fcc.gov/rccci-registry/login!input.action>
- Application provides for the creation and signature of certification online
- Identification via FCC Registration Number [FRN]

The screenshot shows the FCC Recordkeeping Compliance Certification and Contact Information Registry web application. The page title is "New Recordkeeping Compliance Certificate for Entities Subject to Section 255, 716, or 718 of the Communications Act". The page includes a navigation menu with options: "Records", "New Recordkeeping Compliance Certificate", "New Contact Information for Consumers", "New U.S. Agent for Service Contact Information", and "Support". The main content area is titled "COMPANY INFORMATION" and contains a form with the following fields:

- Company Name: \*
- Company Type: (select all that apply for this filing)
  - Section 255 - Telecommunications Service Provider
  - Section 255 - Telecommunications Equipment Manufacturer
  - Section 255 - Interconnected VoIP Service Provider
  - Section 255 - Interconnected VoIP Equipment Manufacturer
  - Section 716 - Non-interconnected VoIP Service Provider
  - Section 716 - Non-interconnected VoIP Equipment Manufacturer
  - Section 716 - Electronic Messaging Service Provider
  - Section 716 - Electronic Messaging Equipment Manufacturer
  - Section 716 - Interoperable Video Conferencing Service Provider
  - Section 716 - Interoperable Video Conferencing Equipment Manufacturer
  - Section 718 - Mobile Phone Service Provider that arranges for inclusion of an Internet browser
  - Section 718 - Mobile Phone Equipment Manufacturer that includes an Internet browser
  - Other
- Time Period Covered: \* (Please Select)

Below the form, there is a declaration section with the following text:

I am duly authorized by the above named company to sign and file this annual compliance certificate with the Federal Communications Commission. The above named company has established operating procedures that are adequate to ensure compliance with section 14.31(a) of the Commission's rules, 47 C.F.R. § 14.31(a), and records are being kept in accordance with that section. I have personal knowledge of the representations provided in this certification.

If executed within the United States, its territories, possessions, or commonwealths:  
 I declare under penalty of perjury that the foregoing is true and correct.  
Executed on

If executed without the United States:  
 I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.  
Executed on

Below the declaration, there is a section titled "CONTACT INFORMATION OF DECLARANT" with the following fields:

- Job Title: \*
- Salutation: \*
- Middle Initial: \*
- Suffix: \*
- Address Line 1: \*
- Address Line 2: \*
- First Name: \*
- Last Name: \*



# ENFORCEMENT

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# Enforcement



- CVAA regulations are enforced by the FCC and can result in forfeitures up to \$100,000 a day and \$1,000,000 dollars in total for each complaint; common carriers also subject to damages
  - Decentralized governance runs the material risk that a product will not develop or maintain the relevant records needed to defend complaint
  - In that event, should a complaint occur, the organization could find itself in the uncomfortable position of having certified to the FCC that records are being kept when, in fact, no such records exist. We would expect the FCC to react negatively to such a situation.
  - A basic governance model requiring that these records be filed centrally with a group under the authority of the certifying party would seem to meet the requirements of the FCC and ensure conformance to the process.
  - Pursuant to FCC rules, the company must designate a **company representative** that is authorized to resolve complaints as well as a **designated agent** for service of complaints
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## Two Complaint Paths, Informal or Formal, Both Requiring Advance Efforts to Resolve

- Informal complaints must be preceded by a Request for Assistance to FCC Consumer Govern. Affairs Bureau
  - Informal complaint must include certification that Request for Assistance was filed within 30 days
  - FCC will help parties try to reach resolution in 30 days after which, if not resolved, complainant can file informal or formal complaint
- Formal complaints
  - Must include certification that complainant has engaged in (or attempted to engage in) good faith efforts to settle dispute including a certified letter outlining the allegations that form basis of complaint

# Complaint Requirements



An informal complaint must be addressed to the FCC's Enforcement Bureau, which will then forward the complaint to the defendant agent

- The company has 20 days to file an answer, supported by a declaration of an officer of the company, demonstrating its due diligence in exploring accessibility and achievability throughout the design, development, testing and deployment stages of a product or service
  - Must include all documents that support position
  - FCC has 180 days to resolve the informal complaint
-

# Complaint Requirements



A formal complaint must be filed with the full FCC and served on the defendant's designated agent

- Must be preceded by Certified Letter indicating that a Formal Complaint will be filed, to which company has 20 days to respond
  - The company's attempts to discuss the possibility of settlement must be documented
- When a Formal Complaint is served on the company's Agent, the company has 20 days from service to file an Answer, which must conform to the FCC's formal complaint proceeding rules
- The Formal Complaint may be accompanied by a request for up to ten (10) written interrogatories to which the defendant has 10 days to respond
- Supplemental complaint for damages against a common carrier may be filed within 30 days of a liability order



## Step 1: Determine the Nature of the Complaint



- If a complaint does not mention government agency (i.e. FCC) but is instead directed to a **customer service** representative, it should be handled in the ordinary course.
- If a complaint is lodged with **the company representative**, it should be escalated internally but does not trigger response obligations at the FCC.
- A **Request for Assistance** will be served on the company's Agent by the FCC's Consumer and Governmental Affairs Bureau and should be referred to the company's legal department.
- An **Informal Complaint** will be addressed to the FCC's Enforcement Bureau in the event that the parties are unable to resolve the dispute pursuant to a previously filed a Request for Dispute Assistance. The FCC's Enforcement Bureau will forward Informal Complaints to the company's Agent who should refer to the company's legal department.
- A **Formal Complaint** must be filed with the FCC and be served on the Company's designated Agent directly by the Complainant. A Formal Complaint should be referred to the company's legal department. A Formal Complaint however must be preceded by **Certified Letter** to the company or the Agent, providing a reasonable time for a response to discuss the possibility of settlement with the company prior to filing the Formal Complaint. Any certified letter should be forwarded immediately to legal department.
- **Supplemental Damages Request** must be served on agent after liability determination.



## Step 2: Determine FCC Response Requirements

- **Request for Assistance** - the FCC's Consumer and Government Affairs Bureau will assist the requester and company in reaching a settlement of the dispute over a thirty day period. In the event the dispute is not resolved, the requester will have the option of filing an informal or formal complaint.
- **Informal Complaint** - the company has 20 days to file an answer, supported by a declaration of an officer of the company attesting to the truth of the facts, demonstrating its due diligence in exploring accessibility and achievability throughout the design, development, testing and deployment stages of a product or service. The company must include all documents that support its position but such documents may be requested to be confidential. If the answer is designated as confidential, a non-confidential summary of the answer must be filed that contains the essential elements of the answer.
- **Certified Letter** indicating Formal Complaint to be filed - the company has a "reasonable period of time" to respond. Because the time period is not defined, the company should respond within the shortest number of days that is reasonably possible. The company's attempts to discuss the possibility of settlement must be documented in any Answer to a Formal Complaint. Unless the company believes the issue can be easily resolved, the company should begin preparing documents and arguments in response to the Formal Complaint that will likely follow.

## Step 2: Determine FCC Response Requirements



- **Formal Complaint** - The Company has 20 days from service on its designate agent to file an Answer. The Answer must comply with the FCC's formal complaint proceeding rules and respond to the material allegations of the complaint, and contain proposed findings of fact, conclusions of law and legal analysis. It also must include a description of all documents, data compilations and tangible things in the company's possession, custody or control that are relevant, including the dates the documents were created. The Formal Complaint may be accompanied by a request for up to ten (10) written interrogatories. The company has ten (10) calendar days to file any opposition or objections to such interrogatories. The FCC will establish time frames for answering interrogatories at an initial status conference.
    - All materials provided in response to any complaint that are confidential must be designated as such by clearly marking each page or portion thereof for which a proprietary designation is asserted.
    - Complaints against multiple defendants will be subject to a schedule established by the Commission.
  
  - **Certified Letter indicating that a Supplemental Complaint for Damages** will be filed - company has a "reasonable period of time" to respond. Because the time period is not defined, the company should establish a goal of responding within the shortest number of days that is reasonably possible.
  
  - **Supplemental Complaint** - the Company has 20 days from service on designated agent to file an Answer that comply with the FCC's formal complaint proceeding rules.
-

# Governance Model



- The CVAA implies a strong, central governance model for conformance
    - Generally a materially different governance model than that currently used for accessibility
    - Most organizations have a governance model that requires each service product line to maintain its own records for accessibility
    - A central accessibility office may play a coordinating and supporting role across the organization, but typically has no authority to compel product groups to produce documentation
  - Current approach was developed under and aligns well with accessibility procurement laws such as Section 508
  - Section 508, however, has no enforcement mechanism, as it relates to service providers and manufacturers and is a procurement law
    - Reality – it's a pretty low risk law with spotty enforcement
    - Worst case scenario – organizations don't buy your product
-



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# PRODUCTS AND SERVICES RECORDKEEPING REQUIREMENTS

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# Functionality Questionnaire



- Develop a basic functionality questionnaire that covers all the potential product/service features that are covered under Sections 255, 716 and 718 of the Communications Act
  - If the product or service has functionality that answers “yes” to any of questions
    - Complete a more extensive compliance and record keeping process for the covered functionality.
  - If the product or service answers “no” to all questions
    - Then the completed questionnaire can be submitted to the organization's record-keeping repository and the product can exit the process.
-

# Functionality Questionnaire



- Is the product a fixed-line telephone or telephone-like device?
    - E.g. Polycom VOIP Phone, Touch Tone Phones
  - Is the product a mobile telephone?
    - E.g. iPhone, Samsung Galaxy
  - Does the product or service provide for text messaging, instant messaging, e-mail or other text based communication?
    - G-mail, Yahoo mail, Outlook web client, AOL Instant Messenger, iMessage, branded web-based email provided through a service providers site
  - Does the product provide for voice based communication?
    - Inter connected VoIP (such as offered by cable MSOs), Skype, Google Talk, Facebook Chat
  - Does the product provide for video based communication?
    - (Also) Skype, Google Talk, Facebook Chat
-

# Functionality Questionnaire



- Develop a basic functionality questionnaire that covers all the potential features that are covered under Sections 255, 716 and 718 of the Communications Act
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-



# Functionality Questionnaire



- Two core methods we see in practical use
  - Online questionnaire in AMP or equivalent
  - File based questionnaire in Excel, Word or PDF
- SSB recommends the online questionnaire as it allows both (i) records to easily be stored and (ii) an adaptive compliance process for all products

Question	Examples	Answer
<b>General Questions</b>		
Is the product being developed as a custom product for a single customer?	This question relates to whether the product is a custom product provided for a specific customer. If the product is solely being developed for the needs of a specific customer, it may be exempt from the accessibility requirements.	No
Does the product provide networking infrastructure?	This relates to any product that provides network services that transmit content or perform services that may impact products or services covered below. This includes things like network switches, routers, private branch exchanges and other network equipment. This does not include client software or networking functionality such as laptop or tablet wireless networking services or desktop Ethernet services. It is focused solely on items that deliver and route network information.	No
<b>Telecommunications Products and Services</b>		
Is the product a fixed-line telephone or telephone-like device?	This question relates to classic telephones that are meant to plug into the wall or an Ethernet socket and use the public telephone network directly, or through a Voice over Internet Protocol (VOIP) connection. It includes physical fixed line phones, cordless phones and VOIP phones.	No
Is the product a mobile telephone?	This question relates to standard mobile phones, including feature phones and smartphones. The requirements here generally relate to all mobile phones.	Yes
Does the product contain a telephone-like device meant to be held up to the ear to talk through?	This question relates to phone-like devices that are meant to be held up to the ear and used with Advanced Communication Services (ACS). These include telephone mimicking devices used by products that qualify as voice carrying ACS services but that do not connect to the public phone network.	No
Does the product or service provide voicemail or interactive voice response functionality?	This question relates to classic voice mail services and more expanded interactive voice response services.	
Does the product provide	This question relates to any telecommunications products or	

Make it happen Cancel

# Functionality Questionnaire



- Limit the numbers of questions to products that are relevant to the organization
- Provide examples that can be recognized by product teams
- Decide if CVAA Title II – Video (47 CFR 79) covered products and services will go through the same process – if so add relevant questions
  - Not subject to recordkeeping requirements
  - Likely subject to accessibility requirements
- Ideally this is a ten minute process with conservative “pass” approach
  - If regulation could, reasonably, apply we review the system

Question	Examples	Answer
Is the product being developed as a custom product for a single customer?	This question relates to whether the product is a custom product provided for a specific customer. If the product is solely being developed for the needs of a specific customer, it may be exempt from the accessibility requirements.	No
Does the product provide networking infrastructure?	This relates to any product that provides network services that transmit content or perform services that may impact products or services covered below. This includes things like network switches, routers, private branch exchanges and other network equipment. This does not include client software or networking functionality such as laptop or tablet wireless networking services or desktop Ethernet services. It is focused solely on items that deliver and route network information.	No
<b>Telecommunications Products and Services</b>		
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Is the product a mobile telephone?	This question relates to standard mobile phones, including feature phones and smartphones. The requirements here generally relate to all mobile phones.	Yes
Does the product contain a telephone-like device meant to be held up to the ear to talk through?	This question relates to phone-like devices that are meant to be held up to the ear and used with Advanced Communication Services (ACS). These include telephone mimicking devices used by products that qualify as voice carrying ACS services but that do not connect to the public phone network.	No
Does the product or service provide voicemail or interactive voice response functionality?	This question relates to classic voice mail services and more expanded interactive voice response services.	
Does the product provide	This question relates to any telecommunications products or	

# Design Checklist



- Provide a list of best practices that a system must implement to be usable by people with disabilities and meet the implementation requirements of the relevant regulations.
  - The core criteria used for this are the relevant portions of the CFR that relate to the CVAA, including 47 CFR 6, 7, 14
    - Can add 47 CFR 79 but this is generally not currently covered by recordkeeping requirements and derives from Title II of the CVAA.
  - Checklists will cover all of the best practices related to the technology platform used in the product.
  - Checklists should cover all the core development platforms
    - Web, iOS, Android, Embedded Software, Windows Software, Hardware, ACS Services, etc.
  - Don't try to build this yourself – recommend licensing this from SSB or another qualified vendor
    - Subject matter is complicated and changes rapidly
-

# Design Checklist



Define a method of implementation for each requirement on the checklist:

- Native Implementation – Best practice will be addressed directly in the product, i.e., built-in
  - Accessibility API – The best practice will be implemented by supporting the relevant OS or platform level accessibility API
  - Third-party – The best practice will be addressed through the use of third-party accessibility solutions, available to consumer through covered entity at nominal cost
    - Triggers a need to support the third party solution
  - Non-Achievable – Conformance with the best practice is “not achievable” as defined by the CVAA.
    - Triggers a need to provide secondary documentation surrounding the determination of non-achievability
  - Not Applicable – Best practice is not applicable in context of the product
-

## Design Checklist - Timing



- As part of the FCC accessibility requirements, products and services must ensure that accessibility is considered and evaluated as early as possible in the product development life cycle.
  - Covered entities are directed to complete an accessibility evaluation as part of the design phase of the product (47 CFR §6.7, 7.7 and 14.20(b)), and to ensure that the accessibility requirements defined for the product/service are addressed as early as possible in the development process
  - As noted earlier this is often in contrast with current accessibility governance models where accessibility is considered after the fact
-

# Design Checklist



- Audit design comps, prototypes and specifications for the system
- Essentially a system audit performed against the design assets of the system
- Create a audit report covering potential issues based on design
- During implementation ensure each of the potential issues is addressed
- Common “outsourced” approach
- [Example Design Checklist](#)

The screenshot shows a software testing tool interface titled "Module Testing Tree". The main area displays a checklist of accessibility issues under the heading "Bulk Actions Applies To (0) Selected". The checklist is organized into a tree structure with the following items:

- Color Checker
- Add Instance
- Add Pattern
- Add Global
- Gmail: Email from Google
  - Flagged
  - Review Guided Automatics
  - Manual Checklist
    - AJAX and Dynamic Content
      - Avoid forced focus changes that are not user-initiated
      - Ensure auto-updating dynamic content can be paused, stopped, or ...
        - Add New Instance
      - Ensure content updates define focus updates appropriately
        - Add New Instance
      - Ensure that dynamic content is rendered in-line with the control...
      - Ensure that textual equivalent information is updated appropriat...
      - Inform assistive technologies of changes in content
      - Provide an accessible alert method for content changes that occu...
    - Animation
      - Ensure animated content is sufficiently described in text**
      - Ensure decorative animations are played a limited number of time...
      - Ensure elements blink or flash in a safe threshold
      - Ensure screen transition animation settles within 5 seconds
      - Ensure scripts that cause moving or slow blinking are avoided

On the right side of the interface, there is a "Review" panel with buttons for "Review", "Fix", "Test", and "Technology Platform". The "Review" panel displays the selected issue: "Ensure animated content is sufficiently described in text". Below the title, the panel provides a detailed description: "When complex images, imagery, or image text are used in an animation, care should be taken to ensure text is displayed in an accessible manner or audio sufficiently describes the images or imagery shown in the animation. The end result should be that users who are blind or visually impaired can take away an equivalent experience without being able to see the visual content."

# Design Checklist



Best Practice	Answer	Comment	Actions
Ensure audio information is not the only method used to indicate completion or error Audio, Video and Multimedia 7 3 7	Native Implementation		
Provide a text transcript for audio only presentations Audio, Video and Multimedia 7 5 4	Native Implementation		
Provide synchronized captions for multimedia content	Third Party		
Ensure visual multimedia content is sufficiently described in the audio portion of the multimedia	Third Party		
Ensure audio does not disrupt text to speech functionality of assistive technologies.	Native Implementation		
Provide text transcript or audio track of video only presentations	Not Applicable		
Ensure color and text formatting are not the sole means of communicating information	Not Applicable		
Ensure color and text formatting are not the sole means of communicating selection	Not Applicable		
Ensure text and images of text provide sufficient color contrast	Not Applicable		

- Product team reviews each best practice and commits to a method of support
- Requires explicit sign-off on each requirement from product team
- Selected method of compliance can be used to help shape future audits and trigger further compliance activities
- Common “in-house” approach



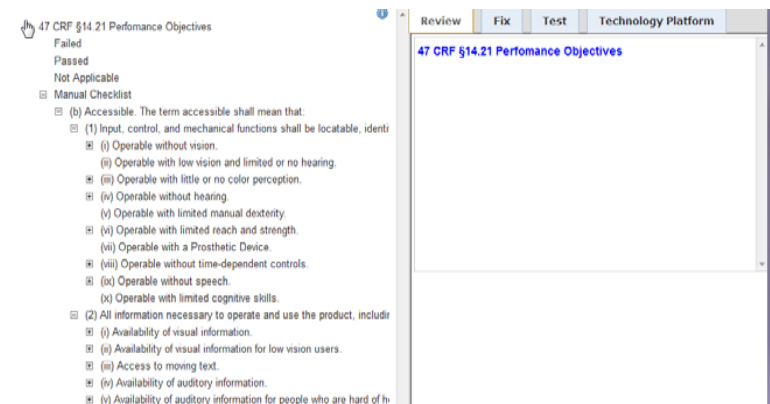
- The process is not simple
    - Accessibility is complex and requires a significant amount of domain expertise to evaluate and implement
    - Simplifying design checklists and evaluation approach is likely to result in gaps in coverage under 47 CFR 6,7, 14 and 79
    - A core hurdle for an organization is understanding this is expensive to build in and requires material time, energy and budget to do properly
    - Often when lines of business understand the level of effort they move towards a outsourced approach coordinated through the central program office
-



# Design Checklist



- Checklists organized around regulatory language are far more difficult to use than checklists organized around best practices
- Regulations are written around user modalities not design and development requirements
- *Provide alternative text for images* is far more specific and actionable than *Ensure operation without vision*
  - Best practices supported by code examples, reference technical standards, and test cases
  - Mapped to regulatory language for justification
  - Mapped to widely used accessibility standards for context and justification



# System Assessments



## Technical Requirements

- Requires a system to have a conformant technical implementation
- Testing requirements are split between those that can be tested Automatically (24.8%), Manually (48.3%) and Globally (26.9%)
- Automatic testing is the cheapest and most common testing but covers only a small fraction of legal requirements

## Functional Requirements

- Requires a system to be usable to people with disabilities using current assistive technologies
- Functional testing coverage for sensory and mobility impairments is generally required

## Support Requirements

- Requires a system to be accessible in deployment



# System Assessments



- SSB utilizes a Unified Audit Methodology to provide a single method to create audits for organizations covered by CVAA requirements
- Provides a single, unified process for auditing all technology platforms and relevant standards
- Testing coverage for full compliance requirements
- Repeatable and scalable testing methodology
- Code level remediation guidance
- As needed independent validation and verification of compliance
- Creation of CVAA specific record keeping requirements

# Functional Testing



- User testing of the product/service by individuals with disabilities
  - Ensures (i) user input into the development process and (ii) to provides validation of the use of the system in supported assistive technologies
  - Strongly implied requirement under 47 CFR 14.21 (a) – Accessible
  - Hard requirement of 47 CFR 14.31 (a) (1) and (3)
  - Broad industry consensus that testing with users with disabilities is a requirement for ensuring accessibility
  - Materially the same concept define in 36 CFR 1194.31 requirements of Section 508 with broader scope
  - [Example Report](#)
-



- Execute a set of core use cases **by individuals with disabilities** to determine if users can complete core tasks in the system
  - Use cases are constructed as simple acceptance tests performed by users of assistive technologies
  - Functional assessment should be completed in conformance to the use case testing methodology provided as part of SSB's Unified Audit Methodology
  - Testing performed in assistive technologies that meet the definition of nominal cost
-

# Accessibility Features Document



- Based on assessment results and product development activities organizations develop a list of “features” that support accessibility
- SSB recommends the features document state the compliance issues that were found in the assessment and subsequently fixed in the product
- Features document should be cumulative across releases
  - As the product/service implements more accessibility requirements this should be reflected in the document



- A publicly available features document is required under usability requirements of performance objectives (47 CFR 14.21 (c))
  - Can be the same document used to satisfy the recordkeeping requirements or a shorter document for public consumption
  - For ease of maintenance SSB recommends a single document be used for both requirements
  - Similar in construction to requirement under 47 CFR 1194.41 (b)
-

# Accessibility Features Document



- **Overview** – High level information about organization's commitment to accessibility
  - **Contact Information** – How to get in touch with organization if there are questions or accessibility concerns
    - Provide a clear method of addressing accessibility issues ideally without getting regulatory authorities involved
  - **Accessibility Features** – Specific accessibility features in the product
  - **Supported Assistive Technologies** – Product supported assistive technologies – generally those that meet the definition of nominal cost
  - **Additional Resources** – Other relevant resources from the organization
  - **Keyboard Shortcuts** – Standard and supported keyboard shortcuts for product or service
-



# Recordkeeping Repository



- SSB recommends that organizations maintain a central repository of the product records that are maintained for each product or service that is covered under the CVAA.
  - This central repository should be maintained by a single group – generally compliance - that has the authority to require and compel products to submit the relevant paperwork
  - We see such a centralized approach as the clear implication of certification requirement for an officer with “personal knowledge of the representations provided in the company's certification”
  - The legislative and regulatory intent aligns with this – the goal of the recordkeeping is accountability
-



**LIVE DEMO**

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