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Summary

This proceeding represents a critical opportunity for the Commission to rectify the long-standing loophole in its advanced communications services (ACS) rules by finally addressing the accessibility and usability of video conferencing services for people who are deaf, hard of hearing, or DeafBlind and those with other disabilities. While Congress sought to ensure this result more than a decade ago by requiring the Commission to ensure the accessibility of “interoperable video conferencing services,” the Commission’s implementation of the ACS rules in 2011 stopped short of reaching these services, putting accessibility on hold to impart an independent meaning to the term “interoperable.” In an accompanying notice of proposed rulemaking, the Commission sought comment on alternative definitions of “interoperable,” but it is not clear that any of those definitions will effectively fulfill Congress’s clear intent to ensure that people with disabilities have access to video conferencing systems.

Fortunately, the Commission has a simple and straightforward solution before it that it did not pursue in 2011: it can simply affirm that the CVAA’s statutory definition of “interoperable video conferencing services,” already in the Commission’s rules, accurately and fully reflects Congress’s intent. This result is compelled by the application of basic principles of statutory interpretation, which direct the Commission to use Congress’s statutory definition—“a service that provides real-time video communications, including audio, to enable users to share information of the user’s choosing”—to cover these services under its ACS mandates. Alternatively, to ensure that people with disabilities have equal access to this essential mode of communication, the Commission could adopt a definition that includes (a) video conferencing services capable of connecting users among different video conferencing services, including VRS and/or (b) video conferencing services capable of being used on different types of hardware and different types of operating systems. Taking either of these steps is both legally sound and will ensure, at least in part, that the ACS rules cover the range of contemporary

video conferencing services and equipment that have become a critical part of American life during the COVID-19 pandemic.

We applaud the Commission for reopening this issue, and urge that it now adopt rules to vindicate Congress's intent to ensure an accessible video conferencing ecosystem at the time it enacted the CVAA. The Commission should proceed to the critical business of ensuring the accessibility of interoperable video conferencing services by applying the ACS rules to these systems and implementing the Disability Advisory Committee's recommendations to enable telecommunications relay services to work with video conferencing services. This action is essential to fulfill the CVAA's overarching promise to ensure that all Americans, including Americans with disabilities, have access to what has become an indispensable mode of distance communication in the United States and worldwide.

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Discussion

The above-signed Accessibility Advocacy and Research Organizations respectfully respond to the Commission’s Public Notice inviting comment in the above-referenced docket (“2022 IVCS PN”).¹ The Advocacy Organizations collectively advocate for equal access to video programming, communications, and other technology for the more than 48 million Americans who are deaf, hard of hearing, DeafBlind, or who have those and additional disabilities. The Research Organizations work in conjunction with the Consumer Groups to address the technical challenges faced in securing access to communications and other technology.

We applaud the Commission for returning its attention to one of the most critical contemporary communications barriers facing people who are deaf, hard of hearing, or DeafBlind, as well as those with other disabilities, during the pandemic: equitable access to interoperable video conferencing services (IVCS). In the *2011 ACS FNPRM*, the Commission sought comment about the scope of these services—an inquiry that has remained unresolved ever since.² In the intervening decade-plus, the accessibility and usability of IVCS, which now dominate communications in nearly all social, business, education, healthcare, education, and other contexts, have languished while the

¹ *Consumer and Governmental Affairs Bureau Seeks to Refresh the Record on Interoperable Video Conferencing Services*, Public Notice, CG Docket No. 10-213 (Apr. 27, 2022) (“2022 IVCS PN”), <https://www.fcc.gov/document/pn-refresh-record-re-interoperable-video-conferencing>.

² *Implementation of Sections 716 and 717 of the Communications Act of 1934*, Report and Order and Further Notice of Proposed Rulemaking, CG Docket Nos. 10-213 and WT Docket No. 96-198, 26 FCC Rcd. 14,557, 14,684–87, ¶¶ 301–305 (Oct. 7, 2011) (“2011 ACS Order and FNPRM”), <https://www.fcc.gov/document/accessibility-rules-advanced-communications-services-0>.

importance of IVCS has become ever more paramount during the ongoing COVID-19 pandemic.³

The Commission now returns to the *2011 ACS FNPRM*, inviting comment on the appropriate scope of IVCS covered by the Commission’s advanced communications services (ACS) accessibility rules under the Twenty-First Century Communications and Video Accessibility Act (CVAA).⁴ At the outset, we reiterate the enormous significance of and need for ensuring equitable access to IVCS,⁵ as well as the broader array of multimodal communications services, including the need for interconnection between these systems and telecommunications relay services (TRS). These issues are addressed in substantial detail in the record of this and other proceedings and in the recommendations of the Commission’s Disability Advisory Committee (DAC), which we incorporate by reference here.⁶

³ See *2022 IVCS PN* at 3 & nn.20–21 (citing various sources, including comments of some of the Advocacy and Research Organizations).

⁴ See *id.* at 5.

⁵ *E.g.*, Comments of TDI, et al., CG Docket No. 10-213 at 8–13 (Apr. 4, 2022), <https://www.fcc.gov/ecfs/search/search-filings/filing/10405209120282> (detailing ongoing accessibility barriers to video conferencing services).

⁶ *E.g.*, Comments of TDI, et al., GN Docket No. 21-140 at 14–16 (June 7, 2021) (“*2021 Omnibus Comments*”), <https://www.fcc.gov/ecfs/search/search-filings/filing/106082300102808> (highlighting the need for the Commission to extend to multimodal services, including IVCS, obligations to include built-in closed captioning functionality, support third-party accessibility and TRS services, and allow for user control and customization); *Recommendation of the FCC Disability Advisory Committee on TRS Use on Video Conferencing Platforms* (Feb. 4, 2022) (“*TRS–Video Conferencing Report*”), <https://www.fcc.gov/file/22912/download> (outlining a variety of considerations for the use of TRS on video conferencing platforms). In particular, the *2021 Omnibus Comments* called for the Commission to require all multimodal services, including their IVCS components, to: (1) include built-in closed captioning functionality, whether through the use of human captioners, ASR solutions, hybrid solutions, or other approaches that may be developed; (2) integrate support for third-party captioning services, third-party video interpreting services, and current and next-generation relay services; and (3) allow users to control the activation and customize the appearance of

These comments focus on the legal inquiry presented by the 2022 *IVCS PN*: “the meaning of the term ‘interoperable’ in the context of video conferencing services and equipment.”⁷ As accessibility advocates have consistently explained in the decade-plus since the 2011 *ACS FNPRM*, the Commission easily and lawfully can and must simplify its inquiry into the scope of “interoperable video conferencing service” by affirming its earlier decision to incorporate the statutory definition of the term—“a service that provides real-time video communications, including audio, to enable users to share information of the user’s choosing”⁸—into its rules,⁹ and applying this definition to its ACS mandates. In doing so, the Commission should dispense with the attempts made in 2011 to divine a separate meaning of the term “interoperable.” That complex approach, which has harmfully resulted in the delay of accessibility requirements for video conferencing services for more than a decade, is indefensible as a matter of lawful statutory interpretation.

Adopting the statutory definition both comports with basic principles of statutory construction and serves the CVAA’s overarching goal by ensuring that contemporary video conferencing applications are covered and made accessible. If the Commission chooses not to adopt the statutory definition, it must be wary that the separately proposed definitions of “interoperable” risk, to varying degrees, may result in

captions and video interpreters, including ASL interpreters and cued language transliterators, on their own clients instead of leaving that control to meeting hosts. Additional features are essential to address the needs of people with other types of disabilities, such as screen reader compatibility and keyboard shortcuts for platform features used by people who are blind, low vision or have mobility disabilities. *See generally 2021 Omnibus Comments* at 14–15.

⁷ *See 2022 IVCS PN* at 5.

⁸ 47 U.S.C. § 153(27).

⁹ *See* 47 C.F.R. § 14.10(m); *e.g.*, Comments of TDI, et al., CG Docket No. 10-213 at 6-7 (Feb. 12, 2012) (“*2012 ACS FNPRM Comments*”), <https://www.fcc.gov/ecfs/search/search-filings/filing/6016985604>; *2021 Omnibus Comments* at 12–14.

contradicting Congress’s goal of making video conferencing services accessible by continuing to exclude some or all video conferencing services from the ambit of the Commission’s ACS rules.

Whatever the approach selected, the Commission should apply the ACS rules to IVCS, and implement the DAC’s recommendations on enabling telecommunications relay services (TRS) to work with video conferencing services.

I. Sound statutory interpretation of “interoperable video conferencing service” compels the Commission to adopt and apply the CVAA’s definition of the term.

As always, when interpreting a statute, the Commission must begin with the statutory text.¹⁰ Here, simply incorporating the statutory definition of IVCS into the Commission’s rules is a straightforward application of the statute legally and logically compelled by the CVAA’s clear and obvious definitional structure.

Section 716 of the Communications Act, added by the CVAA, makes clear that providers of “advanced communications services” (ACS) and equipment used for ACS must ensure that ACS and the equipment used with ACS are accessible unless doing so is not achievable.¹¹ Under the CVAA, “advanced communications services,” in turn, include any “interoperable video conferencing service” (IVCS).¹²

As noted *supra*, the CVAA defines an IVCS as “a service that provides real-time video communications, including audio, to enable users to share information of the user’s choosing.”¹³ This straightforward definition, directly linked to the scope of ACS, should effectively end the Commission’s inquiry. The Commission may not impose further limitations on the scope of IVCS beyond those limitations explicitly provided by Congress. Indeed, the need to attend in detail to the specific meaning of each word

¹⁰ See, e.g., *Advoc. Health Care Network v. Stapleton*, 137 S. Ct. 1652, 1658 (2017) (“Start, as we always do, with the statutory language . . .”).

¹¹ 47 U.S.C. § 617(a)–(b).

¹² 47 U.S.C. § 153(1)(A).

¹³ 47 U.S.C. § 153(27).

within the definition of “interoperable video conferencing services or to separately limit the scope of “interoperable” video conferencing services is obviated by Congress’s explicit decision to specifically define IVCS in the CVAA the way it did—*i.e.*, to include *any* service that provides real-time video communications (with audio) used to enable users to share information of their choosing.¹⁴

Put simply, the CVAA affords the Commission no latitude to interpret the term “interoperable” separately from the statute’s explicit definition of “interoperable video conferencing services. As the Supreme Court has made clear, “[w]hen a statute includes an explicit definition of a term, we must follow that definition, even if it varies from a term’s ordinary meaning.”¹⁵

Congress’s provision of a clear definition of the term “interoperable video conferencing service” provides no opening for the Commission to go further. Nothing in the plain text of the definition restricts its application under the ACS rules to a specified subset of interoperable video conferencing services, and Congress in no way authorized the Commission to separately define “interoperable” in a way that might limit the definition’s application to a subset of real-time video communications intended for coverage under the Act.

Accordingly, the *2011 ACS NPRM* and *Order’s* decisions to separately assign meaning to “interoperable” aside from the CVAA’s definition of “interoperable video conferencing service” added a new, unnecessary limitation, interpreting a word already fully accounted for by Congress’s explicit definition. The *2011 ACS NPRM’s* proposal to further limit the scope of IVCS beyond the supplied definition failed to identify any attribute or

¹⁴ *See id.*

¹⁵ *E.g., Van Buren v. United States*, 141 S. Ct. 1648, 1657 (2021) (cleaned up and internal citations and quotations omitted).

quality of the statutory text that warranted pulling out and separately interpreting the term “interoperable” from the rest of the definition.¹⁶

Moreover, moving down a level of abstraction to the terms of the IVCS definition affirms that there is no basis for the Commission to engage in any further interpretation of the term “interoperable.” The definition Congress provided for IVCS is robust and—at least for the purposes of understanding Congress’ meaning in including the term “interoperable”—free from problematic ambiguities.

The *2011 ACS NPRM* affirmed as much by specifically using the exact language of the CVAA’s IVCS definition to analyze the scope of “video conferencing services” separately from the term “interoperable.”¹⁷ Additionally, the *2011 ACS Order* did not identify any generalizable ambiguities within or concerns about using the statutory definition as a basis for scoping the Commission’s coverage of IVCS under the ACS rules.¹⁸ Indeed, the *Order* directly codified the statutory definition as Rule 14.10(m),¹⁹ where it remains today and easily could go into effect without further modification.

For these reasons, the *2011 ACS NPRM* was incorrect to separately interpreting the term “interoperable.”²⁰ Instead of following the statute’s clear structure, the *NPRM* rested its interpretive logic on an unwarranted and unavailing reading of the CVAA’s legislative history, noting that:

¹⁶ See *Implementation of Sections 716 and 717 of the Communications Act of 1934*, Notice of Proposed Rulemaking, CG Docket Nos. 10-213 and WT Docket No. 96-198, 26 FCC Rcd. 3133, 3147, ¶ 35 (Mar. 3, 2011) (“*2011 ACS NPRM*”), <https://www.fcc.gov/document/implementation-sections-716-and-717-communications-act-1934-0>

¹⁷ *Id.* at 3147.

¹⁸ The *NPRM* did, however, address arguments about the inclusion of personal computers, tablets, and smartphones under the scope of the rules. See discussion *infra*, n.40.

¹⁹ 26 FCC Rcd. at 14,709 (codifying 47 C.F.R. 14.10(m)).

²⁰ See 26 FCC Rcd. at 3147, ¶ 35.

- a) The non-final House version of the CVAA had *not* included the term “interoperable,” while the final Senate version had; and
- b) The definition of the term “interoperable video conferencing service” in the final Senate version and references to the term in the Senate Report were identical to the corresponding definition in the House version and references in the House Report.²¹

The plain terms and structure of the CVAA compel the Commission to abandon this extra-statutory approach. As a threshold matter, the very consideration of the CVAA’s legislative history in interpreting the scope of IVCS was unwarranted and unnecessary. As the Supreme Court has explained:

Legislative history can be a legitimate guide to a statutory purpose obscured by ambiguity, but in the absence of a clearly expressed legislative intention to the contrary, the language of the statute itself must ordinarily be regarded as conclusive. Unless exceptional circumstances dictate otherwise, when we find the terms of a statute unambiguous, [the] inquiry is complete.²²

As noted *supra*, the *2011 ACS NPRM* and *Order* identified no ambiguity, lack of clarity, or any other exceptional circumstances raised by the term “interoperable video conferencing services” or the CVAA’s plain text defining this term that warranted consulting the legislative history over the meaning of “interoperable.”²³ By incorporating this definition directly into the Commission’s ACS rules without modification, the

²¹ See *id.* The *2011 ACS Order* largely reiterates this analysis, accompanied with the implication that separately interpreting the term “interoperable” was required to avoid “read[ing it] out of the statute.” See 26 FCC Rcd. at 14,576.

²² See *Burlington N. R. Co. v. Oklahoma Tax Comm'n*, 481 U.S. 454, 461 (1987) (cleaned up and internal citations and quotations omitted).

²³ See discussion *supra*, part I.

Commission tacitly concluded that Congress’s definition was sufficiently robust to be codified in those mandates.²⁴

Moreover, as further discussed *infra*, the *NPRM* acknowledged the wide range of video conferencing services and equipment that would be covered by this definition, “including, but not limited to, videophones and software applications used for conversation between and among users.”²⁵ This preliminary inquiry should have ended the interpretation and affirmed the conclusion explicitly compelled by the CVAA: that the plain text provided in the statutory definition governs.

Even if the *2011 ACS NPRM*’s consultation of the CVAA’s legislative history had been warranted, a close examination of the CVAA’s House and Senate Reports yields a conclusion in direct opposition to the *NPRM*’s approach to this matter. The *2011 ACS NPRM*’s analysis implies that the House and Senate Reports’ lack of explanation for the addition of the term “interoperable” was a reason to ascribe significant meaning to the addition:

[L]anguage in the Senate Report regarding “interoperable video conferencing services” is identical to language in the House Report regarding “video conferencing services.” . . . In light of . . . the reports prepared by each chamber of Congress, we will first seek comment on the meaning of “video conferencing service” and then on the meaning of “interoperable” in this context.²⁶

The D.C. Circuit, however, has cautioned against “drawing inferences regarding legislative intent from changes made . . . without explanation,” noting that amendments may simply represent “a better means for expressing a provision in the original bill” instead of “evidenc[ing] a substantive change.”²⁷ Of course, as the *NPRM* acknowledges,

²⁴ 26 FCC Rcd. at 14,709 (codifying 47 C.F.R. 14.10(m)).

²⁵ See 26 FCC Rcd. at 3147, ¶ 36. See discussion *infra*, Part II.

²⁶ See 26 FCC Rcd. at 3147, ¶ 35

²⁷ See *W. Coal Traffic League v. United States*, 677 F.2d 915, 924 (D.C. Cir. 1982).

neither the House or Senate Report identified any reason for the addition of “interoperable” or assigned it any particular significance.

In the absence of any specific explanation for the addition of “interoperable,” the *NPRM* failed to acknowledge the importance of what stayed the same in the Reports: the unambiguous statutory definition of IVCS. In particular, the House and Senate Reports’ discussions of video conferencing services both lead by explaining the meaning of each relevant term—in the House version, “video conferencing service”; in the Senate version, “interoperable video conferencing service”—using the *exact* definitional language provided in the statute’s final version —“a service that provides ‘real-time video communications, including audio, to enable users to share information of the user's choosing.’”²⁸ Consulting the House and Senate Reports, even if it were warranted, leads to the same result as the plain statutory text commands: Congress intended the term “interoperable video conferencing service” to be wholly defined by the statute, as it is.

II. Adopting the CVAA’s definition of “interoperable video conferencing services” is consistent with the CVAA’s goals of ensuring accessibility and usability.

Adopting the CVAA’s statutory definition of IVCS is not only compelled as a matter of good statutory interpretation; it will result in sound, defensible public policy, serving the ends of the CVAA by ensuring that contemporary interoperable video conferencing services are covered by the Commission’s accessibility and usability rules for ACS. As the Commission alludes in the *IVCS PN*, an interpretation of the scope of IVCS that maps to the contemporary video conferencing marketplace is critical to fulfill the CVAA’s goals of accessibility and usability for all Americans with disabilities.²⁹

²⁸ S. Rep. No. 111-386, at 1 (2010); H.R. Rep. No. 111-563, at 23 (2010) (“House Report”).

²⁹ See 47 U.S.C. § 617(a)–(b); *IVCS PN* at 5 (seeking comment on “additional relevant information about what types of services are currently available in the video conferencing marketplace, the kinds of interoperability they currently offer, and how

Fortunately, as the Commission explained in the *2011 ACS NPRM*, the statutory definition of IVCS is fully capable of covering a range of contemporary video conferencing services and equipment. As noted above, the *NPRM* “propose[d] to classify a range of services and end user equipment under this statutory definition, including, but not limited to, videophones and software applications used for conversation between and among users.”³⁰ In the *2011 ACS Order*, the Commission also made clear that “webina[r] and webcas[t]” functionalities count as “video conferencing services” so long as they “provide real-time video communications, including audio, *between two or more users . . .*, even if they can also be used for video broadcasting purposes (*only from one user*).”³¹

The Commission further enumerated a range of then-contemporary equipment and services used for video conferencing. The Commission explained that “[e]xamples of video conferencing software applications include, for example, Google Voice & Video Chat, ooVoo, AOL Instant Message (“AIM”) Chat, WebEx, and Skype.”³² For equipment, the Commission explained that “equipment includes smart phones and computers with the capability of using interactive video, text and audio conferencing applications such as the Apple iPhone 4.0, Motorola Droid X and computers and videophones such as ASUS Skype, Grandstream, Ojo, and Polycom.”³³

such developments may assist in reaching an interpretation of ‘interoperable’ that is consistent with the intent of Congress in enacting the CVAA.”)

³⁰ 26 FCC Rcd. at 3147, ¶ 36. The Commission did identify limited disagreement over the coverage of video relay services (VRS), webinars, and non-real-time services such as video mail in the *NPRM*. *See id.* at 3147–50, ¶¶ 37–42. The Commission addressed the dispute over webinars but held off on deciding the questions on VRS and non-real-time services, adding these to the *FNPRM*. *2011 ACS Order*, 26 FCC Rcd. at 14,576, ¶¶ 46, 50–51 & n.95.

³¹ *See* 26 FCC Rcd. at 14,578, ¶ 50 (emphasis in original).

³² 26 FCC Rcd. at 3147, ¶ 36.

³³ *See id.*

Although the video conferencing ecosystem has evolved over the past decade, the broad contours of the contemporary video conferencing ecosystem that the Commission identified in 2011 are largely applicable today and even include many of the same equipment and services, as well as their direct successors. As many of the advocacy and research organizations explained in June 2021 comments on the Commission’s omnibus review of its CVAA regulations, ubiquitous modern IP-based communications have gravitated to a range of what the organizations have broadly labeled “multimodal services.”³⁴

On the services side, modern multimodal services typically heterogeneously pair video conferencing services along with Voice over Internet Protocol (VoIP) services—both its connected and interconnected flavors—and text-based electronic messaging services in unified real-time user interfaces.³⁵ By way of non-exhaustive example, these services include:

- Multiparty meeting services such as Zoom, Google Meet, Cisco WebEx, LogMeIn GoToMeeting, and BlueJeans Meetings;
- Video and audio services built into team-based collaboration tools, such as Microsoft Teams, Discord, and Slack; and

³⁴ *2021 Omnibus Comments* at 4–7.

³⁵ *Id.* As the Commission alludes, many of these services combine different flavors of non-video conferencing advanced communications services—electronic messaging, interconnected and non-interconnected VoIP—with video conferencing services. *See IVCS PN* at 5 (“Are telecommunications services, interconnected and non-interconnected VoIP, and electronic messaging services included in some video conferencing services?”). As the Commission also alludes, significant accessibility problems persist with the non-video ACS components of these multimodal services. *See id.*; *2021 Omnibus Comments* at 10. We have encouraged the Commission to specifically address the accessibility and usability of non-video-conferencing components of multimodal services under its existing ACS rules. *2021 Omnibus Comments* at 8–10. We also have provided detailed feedback on how the Commission’s ACS rules cover these non-video-conferencing components, which we incorporate by reference here. *See id.* at 8–9 & nn.36–38.

- Direct communications services, including Apple FaceTime, Google Duo, Skype, Facebook Messenger, Signal, and WhatsApp.³⁶

These services neatly meet the statutory definition of IVCS because they allow users “to share information of [their] choosing” via “real-time video communications, including audio,”³⁷ and fit neatly within the analysis that the Commission deployed to enumerate a very similar list—including some of the very same services—in the *2011 ACS NPRM*.³⁸ Likewise, many of these modern multimodal services also offer webinar and webcast functionality that meet the statutory definition under the reasoning of the *2011 ACS Order* because they can be configured for two or more users—even in modes where those users are “broadcasting” to others.³⁹

On the equipment side, as in 2011, multimodal services typically continue to be deployed on general-purpose computing platforms. These platforms include laptops, tablets, and smartphones running operating systems—increasingly developed by the same vendor and vertically integrated with the equipment—and distributed by vendors, including Apple (macOS, iOS), Google (Android, ChromeOS), and Microsoft (Windows).⁴⁰ In addition, the past decade has seen some proliferation of dedicated,

³⁶ *Id.* (internal citations omitted and incorporated by reference).

³⁷ See 47 U.S.C. § 153(27).

³⁸ See 26 FCC Rcd. at 3147, ¶¶ 35–36.

³⁹ 26 FCC Rcd. at 14,578, ¶ 50 (emphasis in original).

⁴⁰ In the *2011 ACS Order*, the Commission “reject[ed] CTIA’s argument that personal computers, tablets, and smartphones should not be considered equipment used for interoperable video conferencing service” and the notions that general purpose computing devices “are not primarily designed for two-way video conferencing” and that “accessibility should be required only for equipment designed primarily or specifically for interoperable video conferencing service.” 26 FCC Rcd. at 14,578, ¶ 49. As the Commission now alludes in the *2022 IVCS PN*, the fact that modern multimodal services—including video conferencing services—typically can be “accessed from a wide range of user equipment . . . and device operating systems” provides support for the notion that they are in some sense “interoperable.” See *IVCS PN* at 5. As we note *infra*, the additional definition of “interoperable” proposed in response to the *2011 ACS NPRM*,

integrated enterprise equipment typically devoted to hosting video conferences via a single service, such as Zoom Rooms,⁴¹ Microsoft Teams Rooms,⁴² and WebEx rooms.⁴³

Again, this equipment neatly fits into the statutory scope of “equipment used for advanced communication services”—i.e., IVCS⁴⁴—and even includes some of the successors of the specific devices and operating systems identified in the *2011 ACS NPRM*.⁴⁵ Indeed, the Commission affirmed in the *2011 ACS Order* that “[c]onsumers get their advanced communications services primarily through multipurpose devices, including smartphones, tablets, laptops, and desktops.”⁴⁶ This conclusion holds true today.

III. In the alternative, the Commission should use a definition of interoperable video conferencing services that ensures full access to these services under the Commission’s ACS rules

Adopting the CVAA’s statutory definition is the most straightforward approach to moving forward in this proceeding. In the event that the Commission finds that a

which “would apply to those video conferencing services capable of being used on different types of hardware and different types of operating systems,” IVCS PN at 5 & n.19, may indeed be a viable interpretation for securing coverage of these systems under the ACS rules. See discussion *infra*, Part III.

⁴¹ Zoom, *Zoom Rooms*, <https://explore.zoom.us/docs/en-us/zoomrooms.html> (last visited June 9, 2022).

⁴² Microsoft, *Teams Rooms Managed Services*, <https://rooms.microsoft.com/managed> (last visited June 9, 2022).

⁴³ Cisco, *WebEx Room Series*, <https://www.cisco.com/c/en/us/products/collaboration-endpoints/webex-room-series/index.html#~room-systems> (last visited June 9, 2022).

⁴⁴ See 47 U.S.C. §§ 153(1)(D); 617(a)(1).

⁴⁵ See 26 FCC Rcd. at 3147, ¶ 36.

⁴⁶ 26 FCC Rcd. at 14,577, ¶ 49. As noted *supra*, n.40, the Commission specifically rejected arguments that multipurpose equipment is not covered by the CVAA, noting that “[i]f Section 716 applies only to equipment that is used exclusively for advanced communications services, almost no devices would be covered by Section 716, and therefore Congress’s aims in enacting the statute would be undermined.” *Id.* at 14,578, ¶ 49.

definition of interoperable is nevertheless necessary to bring video conferencing services under the coverage of the ACS rules, two of the Commission's proposed definitions may be tractable.

The first is the Commission's proposed definition for video conferencing services to be "able to connect users among different video conferencing services, including VRS."⁴⁷ While this may be enough to extend the reach of the ACS rules to many video conferencing services, it also presents a Catch-22: because coverage under this definition is dependent on the ability to achieve a VRS interconnection as a threshold criteria, its success turns on the extent to which PSTN interconnection is and remains a feature of IVCS.

As the DAC's *TRS–Video Conferencing Report* explains, some modern video conferencing systems allow TRS users, including VRS users, to interconnect via the public switched telephone network (PSTN).⁴⁸ But many, including key communications tools such as Slack, FaceTime, and Signal, do not. And as the transition away from the PSTN continues, it is unclear that this feature is likely to persist in platforms that do have it.

Moreover, as the *TRS-Video Conferencing Report* also explains, VRS users can at most interconnect to video conferencing systems only via *audio*, and not *video*.⁴⁹ This constitutes at best a second-class form of communications access that leads to a wide range of accessibility and usability problems,⁵⁰ and does not allow for connectivity of the critical *video* component of a video conferencing service. This is why the report

⁴⁷ See *2012 ACS FNPRM* at 14,686, ¶ 303.

⁴⁸ *TRS–Video Conferencing Report* at 2–3.

⁴⁹ *Id.* at 3.

⁵⁰ *Id.* at 3–4.

specifically recommends the facilitation of native relay interoperability that bypasses the PSTN.⁵¹

As a result of these trends, hinging coverage of IVCS to PSTN interconnection would risk placing the CVAA’s accessibility and usability mandates on a crumbling foundation. Nevertheless, the possibility of connecting to video conferencing services via the PSTN may provide a plausible, if non-ideal and potentially unsustainable, pathway for the Commission to treat PSTN-interconnected video conferencing services as “interoperable.”

The second definition, noted by the *IVCS PN* and offered in response to the *2011 ACS FNPRM*, “would apply to those video conferencing services capable of being used on different types of hardware and different types of operating systems.”⁵² The *2022 IVCS PN* notes that modern multimodal services—including video conferencing services—typically can be “accessed from a wide range of user equipment . . . and device operating systems” provides support for the notion that they are in some sense “interoperable.”⁵³ We agree that this definition could be workable, at least as a short-term policy matter, because most contemporary video conferencing services can be installed across different hardware and operating systems.⁵⁴

Though less concerning than the problems with PSTN interconnectivity in the first definition, it remains somewhat unclear the extent to which the second definition will prove workable in the long run. As noted *supra*, many video conferencing services now

⁵¹ *Id.* at 4.

⁵² *See IVCS PN* at 5 & n.19.

⁵³ *See id.*

⁵⁴ *See discussion supra*, Part II.

offer dedicated “rooms”⁵⁵ and are experimenting with dedicated appliances that run only their services,⁵⁶ while others limit features on some platforms.⁵⁷

The CVAA did not contemplate that the accessibility and usability of advanced communications services—and the civil rights of people who are deaf, hard of hearing, or DeafBlind to access those services on equal terms—would hinge on incremental evolutions in these types of software-hardware stacks. Nevertheless, this definition would result in substantial coverage of mainstream video conferencing platforms, and we support the Commission’s consideration of this definition if it chooses to reject the straightforward and legally sound approach of adopting and applying the CVAA’s statutory definition of IVCS discussed *supra*.⁵⁸

Finally, we note that the Commission has raised the possibility that multiple specific definitions of “interoperable” could be “encompassed in a single [overarching] definition . . . such that a video conferencing service would be deemed interoperable as long as any of the three alternative criteria is satisfied.”⁵⁹ To the extent that the Commission considers these definitions, it should treat any video conferencing service as sufficiently “interoperable” to be subject to the rules so long as it meets any one of them, and the Commission should reject any calls to require platforms to meet more than one of the definitions.

⁵⁵ See discussion *supra*, Part II.

⁵⁶ E.g., Jared Newman, *Please don’t buy a dedicated Zoom machine*, Fast Company (June 17, 2020), <https://www.fastcompany.com/90528511/no-one-needs-a-dedicated-zoom-machine-but-zoom-launched-one-anyway> (describing a dedicated Zoom device).

⁵⁷ E.g., Matthew Bolton, *FaceTime is coming to Android and Windows, but here are the limitations*, T3 (June 7, 2021), <https://www.t3.com/us/news/facetime-is-coming-to-android-and-windows-but-these-are-the-limitations>.

⁵⁸ See discussion *supra*, Part I.

⁵⁹ IVCS PN at 2.

IV. The remaining definitions of “interoperable” proposed by the Commission could exempt contemporary video conferencing services from the ACS rules and thereby contravene the CVAA’s goals.

The *2011 ACS NPRM* set forth two additional proposals for a definition of video conferencing:

- (1) “interoperable” means able to function inter-platform, inter-network, and inter-provider; [and]
- (2) “interoperable” means having published or otherwise agreed-upon standards that allow for manufacturers or service providers to develop products or services that operate with other equipment or services operating pursuant to the standards.⁶⁰

We are concerned that either of these definitions would contravene Congress’s intent as expressed in the CVAA because they are likely to exempt video conferencing services from the scope of the ACS rules.

First, there is little reason to seriously consider the first definition—“able to function inter-platform, inter-network, and inter-provider.” This is because the Commission has already effectively disclaimed its suitability for meeting the statute’s intent. As the *2011 ACS NPRM* explains, “limiting coverage of [‘interoperability’] to only currently available video conferencing services that are ‘inter-platform, inter-network, and inter-provider’ may undermine the statute's intent to the extent the definition results in little or no video conferencing service or equipment being ‘interoperable.’”⁶¹ The Commission reaffirmed this conclusion in the *2011 ACS FNPRM*, noting that “this proposed definition would exclude virtually all existing video conferencing services and equipment from the accessibility requirements of Section 716,” which, the Commission acknowledged, “would be contrary to Congressional intent.”⁶²

⁶⁰ *2012 ACS FNPRM* at 14,686, ¶ 303.

⁶¹ 26 FCC Rcd. at 3151, ¶ 45.

⁶² 26 FCC Rcd. at 14,685, ¶ 301.

Some commenters, however, urged the Commission to conclude that this interpretation was acceptable because technology *might someday* arise that met the Commission’s definition of “interoperable.”⁶³ The *2011 FNPRM* indulged this invitation to speculate on the future of cross-platform video conferencing services, claiming that “[i]nterest in and consumer demand for cross-platform, network, and provider video conferencing services and equipment continues to rise” and rejected concerns that video conferencing systems would not adopt cross-platform/network/provider functionality because they would “hamper service providers’ attempts to distinguish themselves in the marketplace and thus hinder innovation.”⁶⁴

More than a decade later, essentially none of the speculative efforts the *2011 ACS FNPRM* cited have come to fruition. Apple, Microsoft, and Google still do not interoperate their video services in the manner described in the Commission’s proposed first prong.⁶⁵ The Open Visual Communications Consortium, which the *FNPRM* cited as a favorable collaboration “spearheaded by Polycom with Verizon, AT&T, and others as members”⁶⁶ no longer exists.⁶⁷ The *FNPRM*’s lauded collaboration between Comcast and Skype to allow Comcast customers to “video chat on their TV sets from the comfort of

⁶³ *Id.* at 14,684–05, ¶ 301.

⁶⁴ *Id.* at 14,686–87, ¶ 305.

⁶⁵ See Mark Milian, *Why Apple, Google, Microsoft won't streamline video chat*, CNN (May 16, 2011), <http://www.cnn.com/2011/TECH/mobile/05/16/video.chat.standard/>, cited critically by *2011 ACS FNPRM*, 26 FCC Rcd. at 14,686, ¶ 305, n.777.

⁶⁶ *2011 ACS FNPRM*, 26 FCC Rcd. at 14,686, ¶ 305, n.777.

⁶⁷ Wayback Machine, <http://www.ovcc.net> (July 19, 2016), <https://web.archive.org/web/20160719101109/http://www.ovcc.net/> (noting that the OVCC had been renamed to the “i3 forum,” which appears to have no active working groups focusing on interoperable video conferencing, i3 forum, *Work Groups*, <http://i3forum.org/work-groups/> (last visited June 9, 2022)).

their living rooms”⁶⁸ no longer appears, as far as we can tell, on the Xfinity site, except in archival documentation.

Indeed, we are aware of no widely used services developed since the *2011 ACS FNPRM* that arguably meet the proposed first prong of the definition—“able to function inter-platform.” This is because contemporary video conferencing services typically require their users to connect via an integrated vertical stack of a client application and service and do not allow their users to use their software to connect to other services.

The second proposed definition—“having published or otherwise agreed-upon standards that allow for manufacturers or service providers to develop products or services that operate with other equipment or services operating pursuant to the standard”—fares no better, and for much the same reasons. We again are aware of no widely used video conferencing service that has been developed since the *2011 FNPRM* whose provider publishes and adheres to a set of common standards that allow its interoperation with other services.

Moreover, at least one industry commenter tacitly concedes that little has been accomplished on the video conferencing standardization front. CTIA specifically notes that “[t]he Commission should continue to encourage . . . technical experts to *evaluate* the issue”—implying that no progress has been made—and cites a report that begins by explaining that “[a]s video conferencing products become increasingly popular with consumers, *interoperability amongst different video conferencing products remains rare.*”⁶⁹

⁶⁸ Brian Stelter, *Comcast to Offer Customers Skype Video Calls on Their TVs*, NY Times (June 13, 2011), cited by 2011 ACS FNPRM, 26 FCC Rcd. at 14,686, ¶ 305, n.777.

⁶⁹ Comments of CTIA, GN Docket No. 21-140 at 18–19 (June 7, 2021), <https://www.fcc.gov/ecfs/search/search-filings/filing/106073090603661> (emphasis added) (citing Interoperable Video Calling Working Group (IVC WG), *Report on Interoperable Video Calling*, North American Numbering Council (NANC) (July 28, 2020), [https://nanc-chair.org/docs/IVCFinalReport7-28-20\(002\).pdf](https://nanc-chair.org/docs/IVCFinalReport7-28-20(002).pdf) (emphasis added)), cited by IVCS PN at 5, n.30.

V. The Commission should swiftly apply the ACS rules to IVCS and implement the recommendations contained in the DAC’s *TRS-Video Conferencing Report*.

Video conferencing services have not been covered by the Commission’s ACS accessibility and usability rules for more than a decade. Meanwhile, these services have become predominant, ubiquitous and essential features of American and global communications.⁷⁰ Sound public policy—and, as the Commission has acknowledged, the need to interpret the scope of IVCS to avoid contravening Congress’s clear intent in enacting the CVAA⁷¹—demand that the Commission take swift action to ensure the accessibility and usability of IVCS.

Statutory interpretation and sound public policy analysis alike make clear that the Commission should not pull apart the definition of IVCS to separately define “interoperable.” Instead, the Commission should return to the approach the CVAA has commanded all along, and which sound public policy supports: to simply use the statutory definition of IVCS to conclude that these services are a covered form of ACS. In an alternative, the Commission should adopt a definition of “interoperable” that will be effective in fulfilling Congress’s intent for Americans with disabilities to have the same comprehensive access to video conferencing services as people without disabilities have. While we continue to support the Commission’s efforts to encourage interoperability as a *policy objective*,⁷² it must approach those efforts independently from the critical threshold effort to ensure that video conferencing services themselves are accessible to people with disabilities.

Finally, we note that merely resolving this threshold issue of legal scope is not enough. In proceeding to final action on the *IVCS PN*, we reiterate that in applying the ACS rules to IVCS, the Commission should mandate the inclusion of essential

⁷⁰ *E.g.*, 2021 Omnibus Comments at 12.

⁷¹ 2011 ACS FNPRM, 26 FCC Rcd. at 14,685, ¶ 301.

⁷² *See, e.g.*, 2011 ACS FNPRM, 26 FCC Rcd. at 14,686–87, ¶ 305.

accessibility features on video conferencing systems, including built-in closed captioning functionality, integrated support for third-party captioning services, third-party video interpreting services, compatibility with and access to current and next-generation relay services, and accessible user controls for the activation and customization of all video conferencing features, including the appearance of captions, ASL interpreters, and cued language transliterators.⁷³ The Commission should also proceed with haste to implement accessibility features identified by people with other types of disabilities, as well as other recommendations in the DAC's *TRS-Video Conferencing Report*.⁷⁴

⁷³ 2021 Omnibus Comments at 14–15 (detailing the application of the ACS rules to modern multimodal services).

⁷⁴ See *TRS-Video Conferencing Report* at 5–6.