WRITTEN TESTIMONY OF BOBBIE BETH SCOGGINS

ON BEHALF OF THE

NATIONAL ASSOCIATION OF THE DEAF
AND THE
COALITION OF ORGANIZATIONS FOR ACCESSIBLE TECHNOLOGY

Subcommittee on Communications, Technology, and the Internet
Committee on Commerce, Science, and Transportation
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Innovation and Inclusion: The Americans with Disabilities Act at 20

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Good afternoon, Chairman Kerry, Ranking Member Ensign, and Members of the Senate Subcommittee on Communications, Technology, and the Internet. My name is Bobbie Beth Scoggins and I am honored to have this opportunity to speak to you about innovation and inclusion 20 years after the Americans with Disabilities Act (ADA) became law and the importance of ensuring communications access to the millions of Americans who are deaf, hard of hearing, late-deafened, deaf-blind, blind, or who have low vision.

I am the president of the National Association of the Deaf (NAD). The NAD was established in 1880 by deaf leaders who believed in the right of the American deaf community to use sign language, to congregate on issues important to them, and to have its interests represented at the national level. These beliefs remain true to this day, with American Sign Language (ASL) as a core value. As a nonprofit national federation of affiliated organizations and individual members, the mission of the NAD is to preserve, protect, and promote the civil, human and linguistic rights of deaf and hard of hearing individuals in the United States of America.

I am privileged to present this testimony on behalf of the Coalition of Organizations for Accessible Technology (COAT), which the NAD co-founded in 2007. COAT is a coalition of over 300 national, state, and community-based organizations dedicated to making sure that as our nation migrates from legacy telecommunications to more versatile and innovative digital communication technologies, people with disabilities will not be left behind.[1] This coalition's rapid growth and attraction to organizations across the nation demonstrates the urgency of the issues being discussed at this hearing. COAT works on behalf of over 36 million individuals who are deaf or hard of hearing, more than 25 million individuals who are blind or who have vision loss, over 70,000 persons who are both deaf and blind, and millions of individuals with other disabilities who need accessible communications.

At the advent of 20th anniversary of the Americans with Disabilities Act (ADA), it is amazing to have witnessed and participated in the changes in accessibility for people with disabilities, and for us, individuals who are deaf or hard of hearing. The passage of ADA has helped us move toward a more even playing field. For people who are deaf and hard of hearing, communication access enables the right to education, employment, and to participate in fullness of American civic life and society. All of this is possible as a result of advancements in technology and the implementation of provisions of the ADA. Today, more than ever before, *communication* with everyone is the cornerstone of a wide open world!

The last two decades have revealed the initiation of many changes, including the passage of the ADA, designed to improve the quality of life for individuals who are deaf and hard of hearing. The passage of the ADA has created a series of new moral and legal laws with ramifications for people with disabilities in economic, social, attitudinal, and cultural aspects.

[1] Information about COAT and a list of COAT affiliates is available at http://www.coataccess.org.

So what does this mean for deaf and hard of hearing individuals? Technological advancements, first through text-based communications and relay services, then evolving into video-based and captioned relay services and equipment have enabled greater independence and greater freedom than we have ever known. Wireless pagers, e-mail, and text messaging have also enabled us to be more independent and self-reliant. It was amazing to see how everyone has jumped on the bandwagon, trying to keep up as technology changed from the TTY, to text pagers, to iPhones, and to ever-changing products and services. It has become clear to deaf and hard of hearing consumers that advancements in technology and quality of services are bringing us closer to functionally equivalent communications.

All of this has opened up so many doors and opportunities for deaf and hard of hearing people, moving into areas where they have never gone before, becoming lawyers, doctors, university professors, performing artists, and so much more. The sky is the limit with the ADA as the backbone to protect and promote our civil rights.

Introduction and Background

During the 1980s and 1990s, Congress took major steps to improve telecommunications access for people with disabilities. In fact, as you know, this Subcommittee was responsible for helping to pass several pieces of legislation requiring relay services, hearing aid compatibility, closed captioning, and access to telecommunications services and equipment.

Nowadays, new communications technologies are changing even more the way our society stays in touch and does business. Now there are all kinds of new opportunities to communicate with anyone, anywhere, at any time, from any place.

But many newer innovations, especially technologies that use the Internet, are no longer covered by the federal accessibility laws that now exist. What this means is that millions of

Americans who, like me, cannot hear, may not be able to use these new technologies. That is why I am here today: to ask you to make the Equal Access to 21st Century Act (S. 3304) the strongest possible legislation that will ensure that I and other Americans who are deaf or hard of hearing have access to the Internet and digital communications tools that are needed to enable them to maintain and increase their independence, productivity, and privacy.

We all know that technology companies design their products and services for certain markets – most of the time, these are American markets that are youthful and able-bodied – they have more money, and they are willing and able to try out new, fancy devices. But often these products or services are not built for people who have some difficulty hearing, seeing or speaking. Why don't companies include access when they develop services and products for the general public? I believe there are several reasons. Some companies are simply unaware of the needs of people with disabilities. Other companies don't want to use their resources to create accessible products if their competitors aren't doing the same thing. I understand that it is hard for people with disabilities to create enough market pressure to influence companies to design accessible products – especially when companies believe their money is better spent on trendy electronic features that appeal to a wider public.

This is why we have come to you. If you direct all companies to make new Internet-based and digital innovations used for communication accessible, all companies will be affected equally and no one company will have an advantage over another. Even more importantly, if companies ensure that accessibility features are built into Internet services and products now, while they are still being developed, the costs of including these features will be a small fraction of the overall costs of producing these products. But if these companies wait until later, after their products are already on the market, retrofitting will cost a lot more and the resulting access

is not likely to be as effective. These are the principles of universal design contained in Section 255 of the 1996 amendments to the Communications Act, and they are the principles that should be followed when this new bill is enacted.

People with disabilities do not want to be relegated to obsolete technologies, or have to buy "specialized" equipment that is often hard to find and more expensive. They want an equal opportunity to benefit from the full range of mainstream Internet products that they see being used by their friends, relatives and colleagues. The "Equal Access to 21st Century Communications Act" (S. 3304) will help to accomplish these goals. Not only will it direct accessibility solutions for Internet-enabled and digital communication-based technologies, it will also require the creation of a clearinghouse of information on accessible telephone-like products and services used for communication over the Internet. This clearinghouse, along with greater outreach and education by the Federal Communications Commission (FCC) will help educate consumers about accessibility solutions and how to find products and services that they can use.

We are particularly pleased that S. 3304 includes provisions that require caption decoder circuitry or display capability in all video programming devices; extends closed captioning obligations to video programming distributed over the Internet; and requires easy access to closed captions via remote control and on-screen menus. S. 3304 will also require easy access to television controls and on-screen menus by people who are blind; restore video description rules; and require access to televised emergency programming for people who are blind or have low vision.

We are committed to continuing to work with you and others to ensure that S. 3304 achieves the greatest possible increase in communications access. We advocate for defining covered advanced communications to include non-interconnected as well as interconnected

VoIP, video conferencing, and electronic messaging (to ensure access to SMS text messaging, electronic mail, and instant messaging); adoption of the well-established and appropriate undue burden compliance standard for prospective obligations; extending relay service obligations to non-interconnected VoIP providers; and timely action by the delegated authority. Addressing these concerns would benefit the deaf and hard of hearing community and our friends in the blindness and visual impairment community for whom these provisions are so vital to ensure truly equal access.

Real-Time Text in an Internet-Based World

One of the most important things that S. 3304 does is that it guarantees deaf and hard of hearing people who rely on text (rather than voice) the ability to continue having conversations in real-time, as communications move to digital and Internet-based technologies. When I was growing up, I communicated with friends and relatives using TTYs. But TTYs use very old technology ("Baudot"). These devices are also very slow (transmitting a maximum of 60 words per minute), work only in one direction at a time (you have to wait until one party finishes typing before you can respond), and generally are not reliable over Internet networks. Their many drawbacks have caused me and many other deaf people to turn to text messaging and instant messaging as our principal means of text communication. But the problem is that these newer methods do not transmit letters as they are typed (as TTYs did). Instead, with these data-based devices, individuals type and then send text in bursts of phrases, lines, or sentence-by-sentence, rather than sending each character as it is typed.

For millions of people who are deaf or hard of hearing, particularly people who do not communicate in American Sign Language, communicating by text is functionally equivalent to communicating by voice. Just like there are times when hearing people need to have a

conversation in real-time (as compared to sending text messages on cell phones or instant messages over a computer), there are times that people who cannot hear need to have their message received as it is being sent. For example, in emergencies it is very important to be able to convey and receive every piece of information as quickly as possible and at the exact time that it is happening.[2] S. 3304 will ensure that there is a uniform and reliable real-time text standard so that people who are deaf, hard of hearing or who have a speech disability can communicate in a manner that is more functionally equivalent to communication between people who can use their voices.

Universal Service

In addition to enjoying text-messaging through hand-held devices, a great number of deaf people now use Internet-based forms of relay services, and in particular Internet Protocol text and captioned telephone services, and video relay services (VRS). The reason is simple: these forms of relay service offer far more effective ways to communicate than traditional text-based relay services. Internet-based text and captioned telephone relay services allow the transmission of text at much faster speeds than TTYs, and enables conversations to travel simultaneously in both directions. VRS allows individuals who use American Sign Language to have conversations that flow more naturally, quickly, and transparently between the parties, achieving a telephone experience that more closely parallels the experience of people without hearing disabilities. Approximately one million deaf individuals who sign can benefit from VRS as well

[2]AOL began offering real time text communication in 2008. Their press release explained: "The new real-time IM feature within AIM enhances instant message conversations by enabling users to see each letter that a buddy types rather than waiting for a friend to press the send button to view and read a message. This enables deaf users to respond and react to words as they are typed just as hearing people would do as words are spoken in a voice conversation." AOL Press Release, "AOL Launches Real-Time Instant Messaging Targeted to Deaf and Hard of Hearing Users" (January 15, 2008)

as from being able to have direct video conversations with other people who sign. In addition, millions more people who are hard of hearing can benefit from using Internet-based video connections to see people's faces as they speak and lipread conversations. Likewise, more than 2.5 million people whose speech is difficult to understand may benefit from video communication because their gestures and facial expressions can be seen by the parties to the call.

Unfortunately, not every person can afford to pay for the high speed broadband Internet service that is needed to support Internet-based text, captioned, or video communication. Some of these individuals meet the income criteria to be eligible for Lifeline/Link-Up phone service subsidies, but they cannot use these discounts toward the cost of broadband services. Because the Lifeline and Link-Up programs are tied to telephone network-based services, these programs offer no financial assistance for low income individuals with disabilities who want to replace their TTYs with improved, Internet-based forms of communication. Under S. 3304, individuals with disabilities who need the Internet to communicate over distances would be able to choose whether to use their Lifeline or Link-Up subsidies for telephone network-based services *or* high speed broadband services.

A second universal service provision addressed by S. 3304 will greatly impact people who are both deaf and blind. Although the universal service provisions enacted by Congress in 1996 were designed to make sure that everyone in America has access to telephone services, one group of Americans – deaf-blind Americans – continue to be denied this promise. Although a few states have programs that distribute specialized customer premises telephone equipment, the vast majority of these programs do not provide telecommunications equipment that is accessible to deaf-blind people. One reason is that typically this equipment (such as communication devices with refreshable Braille key pads) costs thousands of dollars per unit. The result is that

of all people with disabilities, deaf-blind individuals are the least able to access current telecommunications systems.

It is for this reason that we are asking for a very small portion of the Universal Service Fund (USF) – $10 million annually – to be set aside each year to fund the distribution of specialized telecommunications devices needed by approximately 100,000 Americans who are deaf-blind. The small size of this targeted amount will not be overly burdensome for the USF, but will make a huge difference in the lives of people who are deaf-blind, which remains one of the most underserved populations in telecommunications history. Allocating these funds will also inform the world that, as the United States moves to upgrade its telecommunications systems, it is not leaving behind this previously unserved population of individuals.

Hearing Aid Compatibility and Relay Services

Another important provision in the bill will ensure that millions of people who use hearing aids, cochlear implants, and other assistive hearing devices, will be able to use these devices with telephones that connect via the Internet. Federal law has required wireline, cordless, and many wireless telephones to be hearing aid compatible since 1988. However, new smart phones entering the marketplace are not working for hearing aid users, and their coverage under this law has come under question. As an aging nation, we simply cannot go forward without ensuring that these Internet-enabled phones are also hearing aid compatible.

Also important is a provision in S. 3304 to allow users of one type of relay service, such as VRS, to call a user of another form of relay service, for example, a text relay service. The FCC has been interpreting the Communications Act to mean that relay services can only be used to provide telephone services between a person with a hearing or speech disability and a person without a disability. The result has been that people with speech and hearing disabilities who use

different technologies, equipment, and relay services have not been able to call each other. This surely could not have been Congress's intent back in 1990 when it directed the creation of a nationwide system of telecommunications relay services to integrate people with hearing and speech disabilities into the public telecommunications network!

Conclusion

Mr. Chairman, this concludes my testimony. We call upon Congress to ensure that people with disabilities – including the rapidly growing population of senior citizens who experience reduced hearing with increasing frequency and our veterans returning with hearing loss – are not left behind as communication technologies move to the Internet and new digital technologies. Thank you for the opportunity to speak before you and members of the Senate Subcommittee on Communications, Technology, and the Internet. I hope my testimony has given you more insight into why this bill is important for people who are deaf and hard of hearing. I also hope my testimony has encouraged you to support making S. 3304 the strongest legislation possible to ensure that people with disabilities have access to communication – the gateway to the world.