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>> THOMAS E. PEREZ: Good morning. My name is Tom Perez. I have the privilege of serving as the Assistant Attorney General for Civil Rights. We are going to get going here in 30 seconds. So, if you have your seats, that's great. If you are thinking of taking a seat, if you can do it right now, we are going to get going here quite literally in about 30 seconds. Thank you.

>> THOMAS E. PEREZ: Good morning again. Can you hear me in the back, Kathy? You can hear me okay? I apologize for those I can't see because of this big wall here.

But again, I'm Tom Perez and I have the privilege of serving as the Assistant Attorney General for Civil Rights at the Justice Department. I've been on the job for about 14 months now, and one of our top priorities has been ensuring the aggressive and evenhanded and independent enforcement of the Americans with Disabilities Act.

I'm very proud to be surrounded by the remarkable career staff in the Disability Rights Section, led by John Wodatch. And I'm also here and joined by my colleague, Sam Bagenstos, who is our Principal Deputy Assistant Attorney General for Civil Rights, and frankly, the architect of a lot of what we are doing to enforce the Olmstead decision and to ensure so much of what we are doing here in the Civil Rights Division.

I also want to thank all of my colleagues in the Civil Rights Division who have been involved in so many critical issues in addition to Olmstead, such as making sure that public entities are in compliance with their obligations under Title II in our Project Civic

Access Program, making thousands of businesses ranging from convenience stores to hotels to cruise ships accessible to persons with disabilities, making sure that people can go to a movie theater and have accessibility in the movie theater.

I also want to introduce my colleague, Mazen Basrawi, who is one of the counsels in the front office who works on the disability rights agenda. Today's hearing is the second of three scheduled to allow us to hear public comments on our four advanced notices of proposed rulemaking implementing Titles II and III of the ADA.

The ANPRMs cover Internet website access, movie captioning and audio description, equipment and furniture, and Next Generation 911. In short the areas covered by the proposed new rules are integral to American life in 2010 and beyond. And the rules are designed to bring the ADA fully into the 21st century. The ANPRMs are a first step in the regulatory process to address areas where we see a need to provide regulatory guidance to public entities and businesses.

The Internet as we all know has become an essential part of our daily lives and a major driver of our economy. Many of us do a substantial amount of learning, shopping, and interacting with others online.

Unfortunately, all too often we have seen government, university, and commercial websites shut out persons with disabilities, especially persons with visual disabilities who use screen reading software to access the Internet. Videos on the Web often lack captions for persons who are deaf or have severe hearing loss as well as audio description for persons who are blind or visually impaired.

While the Internet is a relatively new facet of our lives, movies have been an archetypal leisure activity in this country for a century.

But, persons who are deaf and hard-of-hearing and require captioning often find that theaters lack any capacity to provide closed captioning.

Similarly, rarely do persons who are blind or visually impaired find films that have audio description let alone theaters that carry the long existing technology to make audio description available to patrons.

Two decades after the passage of the ADA, this is frankly and simply unacceptable.

Technology is constantly improving all of our lives and new technologies exist to provide greater accessibility, and we intend to make sure that those technologies are leveraged to provide individuals with disabilities accessibility to all areas of public life.

Meanwhile, we continue to work to improve accessibility in our physical environment. Although we have physical access in order for people with disabilities to get into buildings and navigate within buildings, a lack of regulation of furniture and equipment means many places remain inaccessible.

Chief among these are medical facilities, where far too often people with disabilities are denied necessary medical care because doctors and hospitals simply do not have the accessible medical equipment and furniture for people with physical disabilities. In hotels, meanwhile, even where persons using wheelchairs can move around in a hotel room, hotel beds are often too high for a person in a wheelchair to transfer to the bed, recreational facilities such as gyms are often inaccessible denying persons with both physical and visual disabilities the opportunity to engage in preventive healthcare through physical fitness.

Finally, new forms of communication such as cell phone text messaging have given individuals who are deaf or hard-of-hearing new avenues of communication. We must ensure that public entities are prepared to communicate with and provide emergency 911 services for people with communication impairments, but can still communicate through other means.

As I said, the ANPRMs that we are here to discuss today are a first step in the regulatory process. Our role in these hearings is to listen to you, the members of the public, so that we can craft the best regulations possible that serve the needs of individuals with disabilities, while also minimizing costs to regulated entities.

We have asked a series of 90 questions in our ANPRMs to which we need answers. In our first hearing in Chicago, we heard from organizations representing people with disabilities, trade associations, medical professions, business owners, and persons with disabilities.

Our agenda today is packed with all of that and more. After today, we have one more hearing, scheduled for San Francisco on January 10, 2011.

Once all the comments both written and oral are received, we will carefully review them and propose regulations in these areas, which we will again submit for public comment. So you will have additional opportunities to weigh in on what we are doing.

Unfortunately, I cannot be with you the entire day. I have another commitment I have to attend to. But, I will be here for the next 30 or 40 minutes or so. But, I have the fullest confidence in John and Mazen and others, who are able to be here all day as well as the dedicated career staff from our Disability Rights Section.

As some of you may know, and before we go to the first commenter, I want to spend a special moment, if you will indulge me, to recognize a wonderful friend and champion of civil rights, and that is our good friend John Wodatch who is the chief of the Section, and has been a federal servant for 42 years, having entered government service at the age of 12.

John is the founding father of the Disability Rights Section, and not only that, he can be credited with writing the first regulations to implement The Rehab Act of 1973, ADA regulations in 1992, and again, in 2010. He is quite simply a giant in the disability rights field.

For those of you who may not be aware, John has announced his intent to retire next summer. And, I accepted that announcement with great sadness. And, I know my sadness was eclipsed by the sadness of his dedicated career staff in the division and all those in the civil rights community who have had an opportunity to work with you.

And, over the next seven months or so, I've asked John to actually come up to the front office to serve as an Acting Deputy Assistant Attorney General where he will work just as closely with the Disability Rights Section, but also work on a number of other critical issues as we continue our process of restoration and transformation of the Civil Rights Division. And, I would be remiss, John, if I could not in this hearing take a minute or two, simply to say thank you for your service. The bar is high and I am confident though that the Section will continue to thrive because you have built such remarkable capacity in the Section and in the division.

Now we will turn to comments. And, one of the things that we learned in Chicago was that people who were commenters were very disciplined. And, we were grateful for that because we have over 50 people who have signed up to comment and we want to listen to all of you. And, we want to make sure that person number 52 is not commenting at 10:30 tonight because person's number 3 and 4 went too long.

And so, every commenter has five minutes. We would ask you to keep to that five minutes. You are going to see some lights here and there are also for those who may have a hearing impairment; you will hear bells as your time is coming to a close. And, I would ask you to keep to that five-minute time frame so that person number 51 and person number 52 will get the same courtesy as persons number 1 and persons number 2.

It's great to see so many friends in the audience and I appreciate your comments. We don't know what we don't know. Without listening and learning from you, we simply can't do our job. Let's turn to the first commenter and that would be Mika Pyyhkala.

>> MIKA PYYHKALA: Good morning. My name is Mika Pyyhkala. I'm the vice-president of the Association of Blind Citizens, as well as the president of the National Federation of the Blind of Massachusetts, and a national board member.

I'd like to thank members from President Obama through the Obama administration, Mr. Perez and other colleagues in the Department of Justice for really embracing accessibility and the ADA. I was really struck with a sense of optimism, especially beginning around the July 20th period this summer, when I witnessed the 20th anniversary of the ADA and the celebrations that took place.

I've been following accessibility in the ADA mainly with a blindness focus since about 1990 or perhaps a little bit before. I'd like to focus my comments mainly with regard to the new proposed rules in regard to both websites as well as equipment and furniture, which is quite an interesting catch-all category.

So what I'll be doing is talking about each area. I'll kind of give some examples of a few companies that are kind of doing the right thing, and some examples of companies where improvement is needed, and that will really highlight the urgent need for additional regulations and active enforcement in these areas.

Beginning with the area concerning websites, as has been noted, the Web and Internet applications have become as important or sometimes more important than what we thought of in 1990 as a place of public accommodation.

I was thinking about this over the last couple weeks, and websites are kind of virtual places of public accommodation in today's society. Websites are used for critical functions from banking, to e-mail, to commerce, to travel. I would encourage DOJ to not only narrowly focus on websites, but also kind of next generation technologies that are emerging in the market.

So, websites are and will remain critically important, but things like mobile phone applications, you have for example the IOS applications in operating systems, which are provided on the iPhone and various devices, Android applications and Blackberries. So while websites are extremely important, increasingly we are finding that these mobile applications are just as important, and provide people the opportunity to engage in commerce and social participation in society, just as much as websites and that will be increasing.

As we are at this juncture, where we are building these new regulations, it would really behoove us to embrace mobile applications as well and to make it open-ended and not to solely cover websites.

As far as companies doing the right thing, we often find ourselves in a position where we are needing to contact companies and ask them to make accessibility improvements to both websites and mobile applications.

For example, there is a mobile application called Travel Tracker Pro, which is on the IOS, or iPhone platform, that allows you to do a number of things with your travel itineraries, including access map data of where a flight is in any given time.

Now, most of these map data applications are not accessible because they render information in a visual map method only. However, Travel Tracker Pro by Silverware Software also shows you the city and the state that the flight is flying over, so that a blind person can track where he or she is on the plane, or where someone is coming in.

It's using readily achievable and available technology to render this small bit of information and text, and it's a small bit of information in terms of the code, or, you know, the city and state, but it's a huge improvement for people who are blind. An example where we have more difficulty, on November 29th, I received a notification from the city of Boston that they were changing their emergency alert system to a contractor called Everbridge, which is based in California.

Essentially a citizen goes to the Everbridge website and signs up for emergency and other types of alerts, such as snow alerts, which is timely on a day like this in Washington especially.

So, you go in and you fill out your name and user name and password, but there is an inaccessible CAPTCHA. We have contacted Everbridge in the city and they kind of told us they are working on this, but I really have no idea if they are going to fix this in five minutes, tomorrow, or in a couple weeks, or months, or I really don't know.

Now moving to an equipment --

>> JOHN WODATCH: Can you wrap up, please? That was the five-minute buzzer. I do want to try to keep us on schedule. And, if you have written testimony, we will be happy to accept that.

>> MIKA PYYHKALA: Excellent. Thank you.

>> JOHN WODATCH: Okay. Thank you. Miss Hamlin.

>> LISE HAMLIN: I'm the Director of Public Policy for Hearing Loss Association of America. And, I want to thank you for this opportunity to speak before you today. Hearing Loss Association represents people with hearing loss who are directly impacted by the department's upcoming rulings, rulemakings. Our comments today address the Department's advance notice of proposed rulemaking on movie captioning and video description, but our comments will focus on movie captioning.

There are approximately 37 million Americans living with hearing loss. Hearing loss affects all ages. There are more than six million people in the U.S. between the ages of 18 and 44, and we all know the baby-boomers are going to be aging into hearing loss very soon now.

HLAA has been and continues to be contacted daily by people who grew up going to the movies, enjoying the movies and then losing their hearing later in life. Those people would very much like to return to the movies with their friends and family again.

HLAA believes people with hearing loss can and should be able to enjoy movies just like everyone else, anywhere, any time, any movie.

Instead, we have only had the kind of experience, that kind of experience if we are fortunate enough to live near a theater that provides closed caption showings, and up to this point, it's been Rear Window.

Rear Window, according to WGBH, has over 100 films in the last year that were captioned using their technology in over 250 theaters And I think it's approaching 300 now. However, according to the National Association of Theater Owners, NATO, as of 2009, there are some 38,000 screens -- excuse me, 38,605 screens and over 5,561 indoor movie theaters.

Clearly, we are not seeing everything that is out there. The only other option we have has been going to what are called special open caption showings for the deaf and hard-of-hearing.

These special showings separate us out from the rest of the audience. We can't see it at the same time as everyone else for fear that the people who are hearing won't like those captions. I myself attended an open captioned showing at 9:00 on a Monday night, which is not exactly the time I would have chosen to see a movie.

But, there are other issues. When movies arrive captioned or at what time in the run we will be able to see a movie captioned is a mystery to consumers. We can't choose them. They get chosen for us, which ones get captioned, which ones don't. If a film is not mainstreamed, chances are we are not going to see it captioned. The other thing is that when I wanted to see *Avatar*, I had a choice. I could see a captioned *Avatar* or I could see it with no captions at all, or I could see it not at all. I could see it captioned but not 3D, or I could see it 3D, one way or the other, or I could just choose to not see it. Hearing Loss Association of America's position is very clear and simple.

All movies should be made accessible and available to moviegoers with a significant hearing loss through captioning. People with hearing loss should be able to see any movie at any time on any day. We do not specify the method or technology to use to caption the movie, as long as it provides effective communication, and we feel that the time for captioned movie, waiting for captioned movies is over. The technology is available. There are more and more systems out there. It is time to make it captioned for all people.

We think a date certain should be created. It should be 100 percent, and it should be between two and five years to give the industry enough time to come up to speed, but we are seeing digital movies come into place, digital film theaters, theaters that have digital movies, and those can easily be linked to the technology that is out there now. But, in some cases we are even seeing, because the technology to caption the sound is digital anyway, we can see that happening even faster.

We would like a date certain between 2013 and 2016, not ten years from now. In short, we disagree with the Department's proposed approach of capping the theater owner's responsibility to provide captioning at 50 percent, which would only go in effect five years after a rulemaking is issued. This is a long time from now.

We think that to exempt an entire class of movie theater owners and operators and to require non-exempt owners and operators to provide captioning for no more than 50 percent of the films shown would not result in a full and equal enjoyment required by Title II of the ADA.

And thank you again.

>> JOHN WODATCH: Thank you. Martha Goldstein.

>> MARTHA GOLDSTEIN: Good morning. Thank you for allowing me, giving me this opportunity to testify. My name is Martha Goldstein and I'm from Worchester, Virginia. I appreciate the opportunity to testify today on places of public accommodation, equipment and furniture. As an individual with disability, with more than 40 years of professional experience working on behalf of people with disabilities, I am extremely

pleased that for the first time since ADA was written the DOJ is addressing furniture in public places.

Furniture is as much as a barrier to some Americans with disabilities as stairs or narrow doorways. Over the past several years, as hotels and other places of lodging redecorate their bedrooms, the beds, especially the beds in the ADA accessible rooms have become difficult if not impossible to get up into or out of because of the increased use of high pillow top mattresses and/or mattresses that are too high for people with disabilities, let alone the average American to climb into.

Indeed, according to the CDC and Prevention in 2002, the height of the average American male is 5'9-1/2", while the height of the average American female is 5'4" and weighs 164.2 pounds. If you use a wheelchair or are as short as I am -- I'm only 4'10" -- these beds are useless.

I was in a hotel in Philadelphia last year. You should see me try to get into bed. It was a riot.

Hotels and places of lodging are installing high top and/or extra tall mattresses in the name of luxury. Additionally, some hotels are replacing their open frame beds with platform beds, so the hotel housekeeping staff doesn't have to spend extra time vacuuming under the beds.

Between the increased heights from the floor to the top of the mattress, and the platform, with no clearance for a Hoyer lift, making lodging reservations can be a nightmare for people with disabilities to travel freely across the country. It also makes my job more difficult because I do come from planning, and I'm becoming the mattress person. I go in to a site, review a hotel, go in the room, first thing I do is pick up the bedspread, and see what type of frame. The salesperson is wondering what I'm doing, why I'm doing this.

I'm here to tell you that these mattresses have become insurmountable barriers to people with disabilities. Even if the maintenance department is willing to remove a platform of the bed from an ADA accessible room, in many cases, that is not a good solution; it usually causes the reverse problem. You can get in but you can't get out.

Also, a question comes up regarding safety and liability. Is the hotel still responsible if there is an accident and someone gets injured because the hotel maintenance staff altered the bed? I find hotels take mattresses off the platform, build the mattress up with blocks on all four sides so the lifts can get under. While this works, it is incredibly an unsafe solution as the mattress can move.

I urge DOJ recommend one or both of the following: Hotels go back to the old mattresses, box springs and open frame beds, or the hotels keep these beds in their storerooms, so when somebody requests it, they can put it in.

My last comment, when it comes to restaurants and bars, the new design includes high cocktail tables and chairs. They are three and four feet high, are problematic to people with mobility and dexterity issues. These restaurants are switching to high tables and chairs, making it difficult for people with mobility issues to get in and out of the high chairs. I don't know how many times I've almost fell.

Someone who uses a wheelchair will find the tabletop usually come up to their neck or their nose. Is that a way to be equal and social? I don't think so.

If the establishment chooses to have high tables and chairs, they should also be required to intersperse standard tables and chairs throughout the establishment, so people with disabilities, and average Americans alike, can eat at one type of table or the other.

>> JOHN WODATCH: Thank you very much.

>> MARTHA GOLDSTEIN: Thank you. And, because of my speech, I amended and copied my testimony.

>> JOHN WODATCH: Thank you very much. Appreciate your testimony. Mark Richert.

>> MARK RICHERT: Thank you. Thank you very much. Listening to the eloquent words of our previous speaker and hearing that the average American male is 5'9-1/2" and being exactly 5'9-1/2", I don't know if I should be really thrilled or extremely intimidated and disappointed that I'm just the average American male. The rest of you don't need to laugh at that too much, because I'll get really shy.

It's a pleasure to be here. I'm Mark Richert from American Foundation for the Blind, public policy director and it's cliché at the beginning of remarks like this to thank the convener and staff who have put this event together, and for taking the action that you all have taken.

But the thoughts are most assuredly not cliché. Congratulations. Thank you. Some of us have really made pests of ourselves over the course of five years and more, urging the kind of action that you all have taken, and you really all are to be congratulated. It is a testimony to your commitment personally and professionally to people with disabilities and to making the most of the ADA that you have taken the actions that you have, and you really are to be commended, not least of whom, of course, John. And, congratulations on not only your past work but certainly on the next phase of your life.

I want to spend a couple minutes talking about, hopefully providing a perspective that we've developed over time that should, we hope, inform the development of the proposed rules and eventually the rules that you all adopt.

I want to make three observations or three recommendations. They are essentially these in brief and I'll hopefully have time to go through each of these. The first has to do of course with the application of the ADA in a digital/virtual environment. We feel very strongly that we need to and this is a golden opportunity to take the steps that are necessary to ensure that there is no mistaking the ADA's true applicability in a nonphysical, virtual context.

Secondly, we want to talk about the fact that the various proposals and the questions that you all have asked in your ANPRMs really do involve overlapping and integrated questions, and so as much as possible, whatever proposed rules you all adopt, and indeed rules eventually that you, proposed rules that you make and rules you eventually adopt, that those rules are integrated as much as possible so we are not siloing issues.

And then, finally, particularly with respect to equipment, we want to make sure that there is an understanding that we don't have the perfect being the enemy of the good. So, we don't have a situation where simply because equipment may not be available at a given date and time, that covered entities don't believe that they don't have ADA obligations. I think we all understand that they do. But, we feel very strongly that whatever rules are eventually adopted that indeed that is reflected clearly.

So, first, with respect to the general sort of observation about ADA applying in a virtual environment, the clearest case law that we have at the moment, and there is not much of it, but the clearest case law we have, namely the *Target* decision, which blazed trails certainly from a public relations point of view but didn't necessarily create new law with respect to establishing the ADA applies to the web, reflects the basic problems with the way the ADA is currently being interpreted, namely that you can cover websites if there is a corresponding physical location, but to the extent to which there is not a corresponding physical location the ADA may not apply.

These rules such as they hopefully will eventually be, should be very clear that the ADA prevents discrimination on the covered entities and it has zero to do with which modality those covered entities use to deliver the goods and services and programs, et cetera, that people with disabilities purchase or are required to use. The ADA is about what those covered entities must do. It has nothing to do with whether or not it happens to be a website, a cell phone, fill in the blank.

That is an important point to make. The second has to do with the fact that these rules need to be integrated. The reality of it is, especially as technology develops over time, you are not going to just talk about video description in the context of a physical movie theater down the street. If marksmovietheater.com makes movies available, there should be expectations that not only that website be accessible but indeed the video description requirements apply to that deliverer of service.

Indeed, any applications that I download to my smart phone themselves ought to be accessible based on the rules.

Finally, with respect to equipment, the ANPRMs ask a lot of very specific questions. They are great questions to ask. I think what we need to make sure happens is that when the equipment is not available, and more often than not at least initially it's not going to be available, that there is still an expectation clearly articulated in your rules that steps are taken to make basic modifications to make that equipment as accessible as can be under the circumstances. I hear the time. We have got examples of point of sale machines right now that have been made partially accessible through the on-lay of templates, et cetera. That is great.

Those kinds of modifications ought to be not only available but required by your rules, and so even though a piece of equipment ought to be fully accessible and certainly if it's commercially available, the entity should provide it. That does not mean that there shouldn't be interim steps taken. With that, thank you very much.

>> JOHN WODATCH: Thank you very much. Kenneth Shiotani.

>> KENNETH SHIOTANI: Good morning. My name is Kenneth Shiotani, Senior Staff Attorney with the National Disability Rights Network. NDRN is the membership association of the protection and advocacy agencies that are located in all 50 states, the District of Columbia, the Native-American community and the four corners, Puerto Rico and the territories. The protection and advocacy programs are authorized and funded to provide legally based advocacy services on behalf of persons with all types of disabilities in a variety of settings.

The PNA system comprises a nation's largest provider of legally based advocacy services for people with disabilities. We thank the Department for the opportunity to comment today. We commend the Department for moving forward to develop specific regulations in areas that have needed clear guidance from the Department, particularly on the accessibility of Internet websites and movie captioning.

We also commend the Department's decision to move forward to address accessibility of furniture and equipment, as well as to address access to Next Generation 911.

We generally support the direction the Department appears to be heading, and urge the Department to move forward expeditiously, after considering the public comments and to issue proposed regulations and then ultimately final regulations that have been long needed.

We hope that the Department -- we hope that this rulemaking will proceed more quickly than the ADA Title II and III regulations, that were originally proposed in an ANPR in 2004 and did not get finally published until 2010, about six years later. We also want to note that in the original 2004 ANPR, you did say that you may address furniture and equipment, or you were considering addressing furniture and equipment but that did not happen.

We hope that you move forward quickly on these provisions. On my substantive comments, I'll be focusing mostly on certain aspects of the Internet, questions and certain aspects of movie captioning, and one or two issues on furniture and equipment.

Regarding websites, we fully support the Department in moving to issue regulations to regulate the commercial activities of public entities that provide goods and services through the use of Internet websites, regardless of whether they have a brick or mortar facility.

At the same time, we also want to caution the Department that any exemptions that you seem to be considering should not swallow the rule. We agree that it makes sense to have an exemption for the Web content of individuals posted for private and noncommercial use, but that exemption must be drawn carefully and narrowly. In addition, the context for an exemption is critical.

For example, if the school, college or university uses Facebook to communicate with students or conduct class activities, the school, college or university must ensure that they are still complying with ADA Title II and III. They can't get out of their obligation by using a forum that is often private and noncommercial, but certainly if the school is using something like Facebook, the school is going to need to ensure that all that material that is related to the school activity is accessible to anybody with disabilities.

On the issue of effective dates for a Web Internet rule, we urge a uniform six-month effective date. Creating or modifying websites to provide accessibility is very different from designing buildings, offices, stadiums or theaters, which often take years. Most commercial websites are being changed and updated daily, hourly, if not, or even if not that frequently, they are being updated regularly, and therefore, requiring revising them should not be unnecessarily delayed.

On movie captioning and description, we similarly urge a prompt effective date to provide accessibility, particularly for the vast majority of movie theater screens that are operated by the major chains. Given that representatives of the theater industry stated at the Chicago hearing that the vast majority of their screens were going to be -- have digital projection by the end of 2013, there should be no delay in the rulemaking to require captioning and descriptive narrations to be available, particularly for the large chain theater's screens.

Also on the movie captioning, I want to specifically speak to some issues that were raised in your questions 8 and 9. One of --

>> JOHN WODATCH: I see a number of pages left there. If you could possibly wrap up in 30 seconds, we are already kind of falling behind here. I want to be respectful of the others.

>> KENNETH SHIOTANI: Sure. The thing we do want to support, one of our affiliates, Virginia Protection and Advocacy, worked with Regal Cinemas over the past few years on when captioned movies were shown. Typically, captioned movies were shown if at all on weekdays, afternoons, long after a movie's initial release.

Recently, Regal agreed to provide a number of open caption screenings of the latest Harry Potter movie, *Harry Potter and the Deathly Hollows*, on both opening night and over the opening weekend. As far as we know, this is the first time that has ever been done. And, we commend Regal for doing that.

Being able to experience a movie with captioning and description on opening night was a particular experience that up until now had been denied to people with disabilities. For families that had a person with a disability and a person without a disability, the ability to go to the theater together and enjoy the movie on opening night or on opening weekend was critical.

We fully support a prompt implementation of that. Again, we do support the Department's move on the furniture in hotel rooms and accessible information technology.

>> JOHN WODATCH: Thank you very much for your testimony. Mr. Shandrow.

>> DARRELL SHANDROW: Good morning. Ladies and gentlemen, I'm Darrell Shandrow. I'm just a blind guy who wants to learn, work, and live and participate in society just like everyone else. I'm not here to represent the interest of any government agency or company or organization.

Two years ago, I lost my job, because my employer refused to make critical technology accessible to me as a blind person. I was converted from a contributing tax-paying member of the society earning about $33,000 a year, into a Social Security beneficiary, taking $16,000 from the system, from taxpayers like yourselves.

It was needless. It was done because of inaccessible Web information and services, and, "equipment and furniture" and so on and so forth.

Technology does exist to do the right thing. Accessibility is a choice, not a matter of technical barrier. Here in the 21st century there is no reason for any agency, company, business, small business, organization of any size, not to be accessible. If they are not accessible now, there is no reason why they can't start phasing in accessibility over a reasonable amount of time, meaning six months or a year, not five or ten years, by the way.

There are examples of doing the right thing, including the prop in my hand, which is a Apple iPhone. It is a touch screen based device that allows me as a blind person to access Web information and services, and apps, travel information, weather, text messages, social media, anything that a sighted person on the iPhone can access, I can access too, so long as the developer has again, the apps, has done the right thing.

This is it. This is, you know, this is how, you know, what will you do as a Justice Department to help companies who refuse to do the right thing, to guide them towards accessibility? Apple has done this largely voluntarily, and we appreciate that.

But there's, again, this device in my hand is one example of doing the right thing. Let's get more of those. Let's get more phones, more smart phones. Let's get more websites. Let's get more exercise equipment accessible.

How would you feel if you go to the grocery store and you bought all your groceries and you went to the checkout line and you couldn't check out, because the payment terminal is not accessible and you can't use your debit card to pay for your groceries? How would you feel about that if you had to tell your PIN to someone else so that the person behind you who is looking over your shoulder maybe has a card reader, now they have your information off your card and your pin and they go down the street and spend $5,000 and wipe your credit card account out or your checking account out for you?

And you know, because you had to divulge personal information, in order to make a transaction that is not accessible.

How would you feel if you go to the health club, and you can't work out? They will take your money, just like anyone else, but you can't work out because all of the equipment is based on flat panels, and touch screens and things like that, and oh, by the way, we really don't have the staff and resources to bother to help you, to set you up on the equipment and use the equipment.

It doesn't matter that blind people and other people with disabilities have a recognized deficit in exercising and doing physical activities. This accessibility doesn't help that.

I would like to say that there are many resources out there in the world for improving accessibility. There are organizations like the world -- let's see, like the Web Accessibility Initiative, and Web Accessibility in Mind, who do a lot of great work. There are government agencies like the Access Board who provide guidelines. And, there are many other resources. Let's make sure that the value of blind people and other people with disabilities is considered to be equal, that the value of our lives is considered to be equal to that of people without disabilities. And, that we are not thrown away into the dumpster just like yesterday's newspaper. Thank you very much for your time.

>> JOHN WODATCH: Thank you Mr. Shandrow. I'd like to announce we have been joined at the front table by two people from the Disability Rights Section, Renee Wohlenhaus, who is a deputy section chief in the Section, and a renowned expert on a number of issues, but most recently on enforcement of the *Olmstead* case; and Sarah DeCosse, one of our attorneys working on the regulations that we are discussing today.

I'd also like to thank Tom Perez and Sam Bagenstos for being part of the hearing today. I think we in the Disability Rights Section feel we have been enjoying a renaissance of disability rights enforcement, and it's in large part attributable to both Tom and Sam's leadership on disability rights issues.

Now we will turn to Anne Taylor.

>> ANNE TAYLOR: Good morning. On behalf of the National Federation of the Blind, the nation's oldest and largest consumer organization of the blind, I thank you for the opportunity to address some key point we feel should be considered as the Department revises its ADA regulations.

The opinion I am expressing today are not mine alone but are a result of the collective experience of nearly 50,000 members of our organization. The passage of ADA was intended to prohibit discrimination, remove barrier to access, and guarantee civil rights for people with disabilities. In the 20 years since the ADA was signed into law, the Internet has expanded from a military research network to an essential component of life in the 21st century.

A network providing instant access to shopping, education, government resources, was not envisioned when the original regulations were written. Today the websites are fundamental part of the society. Equal access is a civil right. And, Web inaccessibility is an infringe on that right.

Although I'm the Director of Access Technology at the National Federation of the Blind, I still encounter inaccessibility that directly compromises my ability to participate in my profession as an equal.

When taking part in a Web conference, whether for professional development training or remote meeting with business partners, I can rarely access meeting material or web-based presentations. In every way, I am an equal to my peers, except that I am one step behind when it comes to communication. How can I be expected to make business decisions without access to relevant material? I would like to have the necessary data to become a contributing member of the project, and I firmly believe that the technology exists to justify a requirement to make that happen.

Now, I can go on and cite other inaccessibility barriers that I daily encounter, but because of the time is short I'm going to skip that and turn it in as part of my written testimony.

Despite the wealth of accessibility information, companies continually release product that remain inaccessible to the blind. It is essential that the Department release regulations guaranteeing Web accessibility as a civil right. By seeking public comments on the revising of the ADA regulations, the Department is taking initiative to update the laws so it properly reflects the developments in technology.

We applaud you for addressing the accessibility gap that undermines the original intent of the ADA and threaten the independence of the blind. The National Federation of the Blind urges the Department to adopt the Worldwide Web Consortium Web accessibility content guidelines version 2 as its standard for Web accessibility.

These guidelines are the most current and well-developed guidance available, and the W3C has made a considerable effort to make the guidelines technology agnostic, ensuring their applicability to both current and future technology.

We would like to emphasize, due to the fact that it is possible to follow all availability, all available technical guidance, and still have websites that aren't usable by the blind, the importance of implementing functional performance standard guaranteeing access to all transactions with equivalent ease of use. We also would like -- we have some concerns about the Department proposals.

First, we believe that an implementation time line of two years is too generous, considering the technologies and training material already exists to assist in accessibility process.

Additionally, the regulatory process is quite lengthy, and we believe that six months after the final ruling is published, in the federal register, is a more reasonable deadline.

We also discourage the Department from adopting -- discourage Department from adopting existing government accessibility standard, as they simply do not offer the scope and performance of the previous recommended WCAG 2.0.

We finally would like to say that we would encourage the Department to continue on with a functional test, and of the website, and make sure that blind people with real technology examine the website, and there are much more comment that you can review in my written testimony. Thank you very much for the opportunity this morning.

>> JOHN WODATCH: Thank you very much Ms. Taylor. We appreciate your being here. We will look forward to your written comments. Our next commenter is going to come via the telephone, and it's Jo-Tina DiGennaro.

>> JO-TINA DIGENNARO: Yes, hello.

>> JOHN WODATCH: Hello. Welcome.

>> JO-TINA DIGENNARO: Thank you. My name is Jo-Tina DiGennaro, and I'm honored to give testimony to help update the Americans Disability Act in relation to cyberspace.

I speak for my family, my community, and on behalf of our grass-roots organization in Bayville, New York called BRACT, Bayville Residents Against Cell Towers. I became very involved in the issue we have in Bayville, which is a cell tower containing 60 antennas located across the street from our elementary school, in the middle of a residential neighborhood, and sitting right atop our water tower, the very water we drink.

We have a high incidence of both adult and childhood cancers in our town, quite a few cases in our school, which although I cannot say is directly caused by the cell tower, I do believe it is a contributory factor especially with the dirty electricity issues that ensue from it.

We in Bayville feel that we were blind-sided by the proliferation of these antennas as they were put up quickly and quietly with no written notice to the residents nearby. Most residents did not know of their existence until it was much too late. Some still don't know about them or the raging controversy that surrounds them.

To me, it made perfect common sense if the safety of this technology cannot be proven, conclusively, then keep it away from where people congregate, especially children. To quote the EMR Policy Institute, contrary to popular belief, wireless technology has not been proven safe by the FCC, or the wireless industry itself.

This technology has advanced at an unprecedented rate without regard to the impact on the health and well being of the people engaged in its use, or living in the vicinities of antenna sites. Who will be held responsible? When I approached the mayor, I was told that because of the Telecom Act, Section 704, she was powerless to do anything.

This is because that law states that issues of health cannot be cited as reasons for not having a tower some place, as long as emissions from the tower meet government standards of safety. Make no mistake, radiation is being emitted from these towers 24/7, and with all the towers in our country we are beginning to live in an electromagnetic smog.

Since when can we in America not argue anything? This is, this law is unconstitutional and needs to be repealed. I feel that my civil rights have been violated because although I can choose whether or not to use a cell phone and I have chosen not to, I have no choice of where this -- of the cell tower popping up in my backyard.

But most importantly, when adverse health effects are discovered, using the so-called safe standards, it's time to re-address the standards. They are already doing this in Europe. The telecom industry got a free pass for safety testing when cell phones were first introduced in America. Then, when they tried to prove safety after the fact, all scientists who found safety issues were banned, ridiculed, and their research dollars dried up. The industry has not looked at independent research since 1985.

It states that there is no evidence to link cell phone use or living close to cell towers with cancer or other ill health effects. Well, you won't find the evidence if you don't look, like the dismissal of tobacco, asbestos and first responders to Ground Zero, to name a few. The independent research shows strong links to brain cancer, DNA damage, childhood leukemia, neurological disorders, ADD, learning disabilities, autism and insomnia. We are creating a population of sick people, some more than others. Hypersensitivity to electromagnetic radiation is a growing disabling condition.

I conclude by saying this is an amazing technology, and I know it can help people with disabilities in profound ways. But the protection of their health using them should be at the forefront of the Justice Department's responsibilities, as well as ensuring that we do not create many more disabilities by disregarding the safety and health issues of wireless technology.

>> JOHN WODATCH: Thank you very much for your thought-provoking testimony.

>> JO-TINA DIGENNARO: Okay.

>> MALE SPEAKER: Next we will turn to Marco Maertens.

>> MARCO MAERTENS: Good morning. My name is Marco Maertens. I'm here from Accessibility Associates, a provider of Web accessibility, consulting and training services.

I'd like to start by thanking the Department of Justice for the opportunity to speak here today. Accessibility Associates will be providing detailed answers to the questions listed in the Advance Notice of Proposed Rulemaking in regards to applying the Americans with Disabilities Act to Web information.

I've been working in Web accessibility for eleven years now. I would like to take my time here today to address question number 10 on whether there should be a safe harbor for existing material on the web, and should that be exempted from a requirement to make that material accessible.

Now, as a provider of Web accessibility services, I'm always happy when a company comes to me and wants my help to make their existing material accessible to effectively retrofit their site.

However, on this issue, my answer is that, yes, there should be a safe harbor provision exempting current content from being made accessible. Let me explain why.

I'd like to talk about some experiences that I've had just over the last year in working with private companies who have been making their websites accessible.

Let me start with saying that there are two broad approaches to this. One is, of course, when a new material is created, you can plan for Web accessibility from the very beginning. So, when a new website or Web material is put up, accessibility is thought out immediately and is part of the plan of creating it.

The other of course is retrofitting the existing websites where material may be partially accessible or not accessible at all.

Let me start with the first one, starting material from the very beginning. In the past year, I've worked on several projects, including one where, including several actually, where we were building websites from scratch, with a requirement for accessibility.

In these projects, the extra cost of providing accessibility to these websites came into the range of 3 to 6 percent. These are the extra costs in development. There is a lot more that goes into building a website. But, just in terms of the development, we had, we saw 3 percent, 3 to 6 percent, which includes my time as an accessibility consultant, and the extra efforts that was required on the part of the Web developers, the programmers to make the changes that I recommended.

Let me take a look at the other side, in terms of retrofitting existing sites. Again, just earlier this year, I was working on a project for a large Fortune 500 company, a large e-commerce site that had tens of thousands of pages on their site.

I conducted an assessment based on a sample of 650 representative pages. That effort took 300 person hours for the whole team to complete and to make recommended fixes. Three hundred person hours is two person months of work. This found errors in the representative pages and proposed recommended fixes. In those 300 person hours, the work of actually remediating the site was not included.

When the information was provided to the client, and they realized how much work they would have to do to put their site into compliance to make it accessible, they were quite honestly taken aback. Almost six months later, even the most egregious violations that were brought to their attention have not yet been implemented on the site.

So, retrofitting existing material is costly, time-consuming, and burdensome. And to make that a requirement I feel would undermine the efforts to implement accessibility, to get to the ultimate goal of making Web accessibility the norm on the web. Accessibility for new material is low cost and very feasible. This brings us to the ultimate goal of inclusion for persons with disabilities in the Web just like we do in the physical space.

Thank you for your time. I appreciate the opportunity to speak here.

>> JOHN WODATCH: Thank you. We appreciate your taking the time to come and comment. Again, our next commenter is going to be over the telephone. And it will be Ms. Katherine Kleiber.

>> KATHERINE KLEIBER: Thank you, sir. I have radio frequency sickness. Radio frequency sickness is a functional impairment caused by overexposure to radio frequencies, which includes the microwave frequencies used in wireless communication.

Once one has radio frequency sickness, exposure to radio frequencies causes functional impairments, which can range from frustrating to life threatening.

I spent a lot of time thinking about which of the many examples I should give you to illustrate how seriously the increasing levels of microwave radiation from wireless technology is impairing the ability of persons with radio frequency sickness to participate in society.

I finally realized the five minutes is not sufficient time to relay the numerous experiences you need to hear about, such as how exposure to microwave communication signals has caused my fit, trim, Type 1 diabetic husband's blood sugar to elevate, be unresponsive to insulin, and then plummet to dangerously low levels when the exposure ended because of all the additional insulin he had been taking in an attempt to control his blood sugar was finally able to work; how we had to leave family Christmas early, an event my children usually love, relatives, cookies and presents, because the transmitting meters made my 4-year-old son feel so sick, that he was crying and begging to leave after only 2-1/2 hours.

How we can no longer leave our farm, and go into town, use public transportation, stay in hotels, go on vacation or visit family and friends without being impaired and feeling sick.

How we had to restrain my usually well-behaved 6-year-old son in his car seat in order to say good-bye, when he could no longer control his own behavior after only about two hours near to transmitting utility meters at my in-laws. He had been no closer than about 30 feet.

How we have been forced to home school in order to protect our children's health and cognitive function, because our local public school has Wi-Fi transmitting meters and is highly electrically polluted. How I had to quit taking my son to gymnastics because additional microwave radiation exposure from the transmitting utility meters and other patrons made the level so high that my older son had serious trouble learning and listening and we all felt sick. In spite, this in spite of the gym itself accommodating us by turning off their Wi-Fi.

How individuals who contacted me through my website, www.electricalpollution.com, can no longer live in their own homes and are camping with family due to the forced installation of transmitting utility meters.

Or, how less than half an hour of exposure to Wi-Fi from a laptop and wireless mouse used by our crop insurance adjuster in our own home left me with a rapid heartbeat and heart rhythm irregularities for two days, illustrating how difficult it is to conduct daily business.

I close here because it is very important for you to understand how severe a problem this is. I had a heartbeat irregularities and a racing heart and yet I could not go to the hospital. If one Wi-Fi laptop wireless mouse could do this, what of the numerous Wi-Fi laptops and sundry other wireless equipment at the hospital?

I now worry that if I or my family need hospital care, that ignorance about radio frequency sickness, lack of wide recognition among emergency personnel, and inability to safely accommodate patients with radio frequency sickness could cause hospitalization itself to exacerbate the situation, leading to irreversible injury or death.

I'm only 37 years old, physically fit, and active. When I'm in an electromagnetically clean environment, I have no heart issues or health issues. Yet this recent reaction is clearly a potentially life-threatening, environmentally induced functional impairment in response to wireless technology. In the last several months, I have had a few incidents where exposure to wireless technology caused my heart to pound, but it always returned to normal immediately when my radio frequency exposure ended.

Obviously, this latest incident shows that the damage being inflicted is now of a more permanent nature.

Please open a supplemental docket to establish ADA rules specific to radio frequency sickness. Please read my written testimony, which I will be submitting for additional detail.

>> JOHN WODATCH: Thank you very much. We will look forward to hearing, reading the testimony that you are going to provide to us. We will now turn to Kelsey Whitlock. Please proceed.

>> KELSEY WHITLOCK: Good morning. Members of the panel, thank you for your time. My name is Kelsey Whitlock. And, today I'm testifying on behalf of the Crohn's and Colitis Foundation of America or CCFA. CCFA advocates for 1.4 million Americans who suffer with medical conditions collectively known as inflammatory bowel disease or IBD. IBD includes Crohn's disease and ulcerative colitis. The cause of these diseases is unknown and there is no cure.

I've suffered from ulcerative colitis for 21 years. Symptoms include pain and cramping, diarrhea, bleeding, and a lack of control over bowel movements. In other words, when an IBD patient has to go to the bathroom, we can't just hold it. And trying is extremely painful, if possible at all.

Patients go through periods of remission and flares. During a flare the patient may use the bathroom 30 times a day or more. Last year, I had surgery to remove my entire colon. The surgery saved my life, but I still need a bathroom four to eight times a day, and I still need to get to a bathroom quickly or I have a lot of pain.

Living with IBD has not only a physical component, but there is a psychological component as well. Many patients, myself included, have feared leaving their homes because of the issue of access to a restroom. We cannot just take a pill and go on with our day; our symptoms control our lives in times of flares. Given these symptoms, there is one problem that persists for all IBD patients, and we need your help. We need access to bathrooms in all establishments.

Unfortunately, an immediate restroom, while it may be available is not always accessible. For example, a store that has an employees-only restroom. In the case of an IBD patient, it isn't as simple as moving on and asking at the next store. It is a situation that can quickly become humiliating, reinforcing not only the physical limitations of this disease but the psychological tolls. Some patients, such as myself, carry a medical access card, which explains that restroom access is an emergency situation.

Generally, I have not had to use my card. But, unfortunately, I have also experienced every IBD patient's nightmare: being denied access to a bathroom. Earlier this year, I found myself in a familiar panic of needing a bathroom immediately. My father and I were driving on a back road with not much around, but luckily we were approaching a gas station. I was still very much recuperating from surgery and pulling over was not an option.

We pulled into the station and I went in to ask for access to the restroom. The attendant at the desk refused. I was clearly in pain; I explained that it was an emergency, that I had a medical condition and that I couldn't hold it. At this, the attendant started laughing, as though I had told a joke.

That part of the humiliation did not hit me until after the incident. I was too busy trying to pull out my medical access card while I was doubled over in pain. I handed the card across the counter and said, "Look, I have a medical condition, this is an emergency and I must use your bathroom or I'm going to have an accident. Please, I am begging you." At this he laughed even harder. My father by this time had come into the store. I was nearly paralyzed with pain. My father again explained that this was not a joke, that it was not funny and that this was an emergency situation, and the clerk still refused.

Sadly, throughout all of this, there was not only one bathroom but two bathrooms available, one on the inside, a mere couple of feet away that was labeled "Employees Only," and the other on the outside, locked with a key that was just on the other side of the counter.

Neither were accessible to me. It was mortifying, dehumanizing, and degrading. I can honestly say I will probably never recover from the blow to my confidence that that situation caused.

I wrote a letter to the station owner and the CEO of Mobile and received no response. One of my main frustrations was that all I could fall back on in terms of trying to convey the seriousness of the situation were city plumbing codes and citing the few states that have set a precedent with restroom access laws, of which California where the incident occurred is not one.

Though it's a great start, it should not take 50 states passing this law. As of the ADA Amendments Act of 2008, people with digestive diseases and ostomies are covered. But the one tangible thing that we need the most on a day-to-day basis is still not accessible to us.

That is why I'm here today. Even though my story is not easy for me to tell, it is important to get this message out that this is a serious problem for millions of Americans who suffer from digestive and other diseases. I hope that you will seriously consider implementing this rule, which would improve the lives and confidence of so many by allowing bathroom access under proven circumstances for those who have a necessity.

Thank you for your time.

>> JOHN WODATCH: Thank you very much. We appreciate your coming forward with your story and testimony. Our next commenter is going to be over the phone, Sam Ditzion. Mr. Ditzion, please proceed.

>> SAM DITZION: Thank you for allowing me to testify today. It's really an honor to have this opportunity. My name is Sam Ditzion. I am the CEO of Boston-based consulting firm Tremont Capital Group. By way of background, I am considered to be one of the top experts in the United States in all aspects of the ATM industry including ADA compliance. My clients include a large number of businesses and groups. Some of my clients include ATM deployers that are banks, nonbank independent ATM deployers, ATM manufacturers and servicers and many other related categories of clients. I also regularly consult to the ATM Industry Association, which is a global nonprofit trade association with nearly 2,000 members in 60 countries.

However, I want to be very clear that I'm testifying only on my own behalf as an industry expert today, and not as a representative of any client. First, I'd like to say that I have been a long-time supporter of the ADA and the protections and values they promote. As we all know, the ADA has made this country a truly better place for millions of people.

In my testimony today, my goal is to seek clarification of several aspects of the new regulations, based on concerns I've heard from many members of the ATM industry.

I'm hopeful that this panel and the Department of Justice will ultimately clarify the following topics, which I know many ATM deployers find to be areas of confusion.

In order for this panel to better understand the ATM industry, I thought it was important to let you know that the industry is divided into two distinct segments, bank deployers and nonbank independent ATM deployers.

My firm, Tremont Capital Group, estimates that there are currently nearly 402,000 ATMs in the United States today, slightly more than half of which are operated by nonbank independent ATM operators, primarily in merchant locations such as convenience stores, restaurants and other retail establishments.

The equipment used in these sites, which typically only offers cash withdrawals and no advance functionality, is frequently not owned by the deployer, but rather owned by the retail merchant who outsources the processing to an independent ATM operator.

In this context, it would be very helpful to the industry if the Department of Justice could help clarify which specific entities other than physical owners of ATMs, if any, are in any way liable for ATMs that are not in compliance with the applicable ADA standards. This is the first area in which clarification would be very helpful.

Another primary area of confusion within the ATM industry is whether or how these public hearings will influence the Department's interpretation of Section 707 of the 2010 ADA standards, which has already been finalized and appeared to already specifically regulate ATMs.

It is my understanding that one purpose of these public hearings today as it relates to ATMs is to evaluate whether or not equipment and furniture that is not, "fixed" to a facility, should be treated any differently than equipment and furniture that is "fixed" to a facility.

If that is the purpose of these hearings or at least one of them, it would be extremely helpful to the ATM industry if the Department of Justice can provide a clear definition of the term, "fixed" in the context of ATMs.

For example, is a freestanding ATM in a convenience store fixed or not fixed? What if, for example, that freestanding ATM in the convenience store is somewhat portable, but ultimately bolted to the floor for security purposes?

What if, for example, rather than using a phone line for data connection, the ATM uses a wireless connection? Again, these are just some of the ways that the nonbank ATMs often differ from large through the wall ATMs located in bank branches. It would be extraordinarily helpful for the Department of Justice to clearly define if or how this other category of ATMs will be treated differently, with respect to Section 707 of the 2010 standards.

I believe that it is in both the ATM industry's best interests as well as the best interests of the Department of Justice and all consumers to have very clear rules that clarify each of these uncertainties, so that everyone will know how the Department of Justice intends to interpret and enforce ADA regulations.

>> JOHN WODATCH: Thank you very much.

>> SAM DITZION: Thank you for your time and the opportunity to testify today.

>> JOHN WODATCH: Thank you very much. Today is not the appropriate forum for us to respond to the clarifications that you are asking.

>> SAM DITZION: I understand.

>> JOHN WODATCH: But we have received similar inquiries to these, and I think we will be proceeding to provide answers to some of the questions that you are asking, not just through the rule making we are discussing today, but in our responsibility to respond to policy questions and provide technical assistance. And, I think there will be forms that will be able to provide some of the information you are seeking today.

>> SAM DITZION: I appreciate the opportunity. Thank you.

>> JOHN WODATCH: Now we will proceed to Steve Jubb.

>> STEVE JUBB: Thank you very much. I represent the PGA of America, Professional Golfers Association. I'm director of PGA Charities. Part of my responsibility is overseeing the development of golf programs to serve individuals with disabilities. The PGA appreciates this opportunity to comment today on the proposal that is within the advanced ruling that deals with accessible golf carts.

The PGA is committed to serving individuals with disabilities, and applauds your Department of Justice on highlighting the importance of providing these individuals access to our game.

The PGA of America has 27,000 men and women, members and apprentices throughout the United States serving the game of golf. Members of the PGA provide golf services at facilities throughout this country, to golfers of all skill levels, including individuals with disabilities.

Our mission as an organization is to promote the interest in the game, and to make it accessible to everyone, everywhere.

To fulfill this mission, we support a number of organizations and programs that reach out to individuals with disabilities.

The PGA provides instruction to players with disabilities and trains PGA members to meet those players' special needs.

We accept the PGA members into our organization that have disabilities by modifying our playing ability requirement as well as reasonably accommodating their physical condition.

We fully comply with the requirements of ADA at our PGA-owned golf facilities around this country, and provide education on how other facilities can make it compliant as well.

We allow qualifying professionals in major tournaments to compete utilizing golf carts if needed. We provide information to help golfers with disabilities as well as our own PGA members on websites such as PGA.com and playgolfamerica.com. The PGA supports the growing of the game for all disabilities and supports programming for effectively addressing the needs of thousands of individuals with disabilities within the game.

We have worked with programs such as individuals with cognitive disabilities, such as Special Olympics, individuals with mobility disabilities, such as working with the National Amputee Golf Association and other programs, individuals with visual impairments, people with hearing impairment, and also our wounded warrior programs that serve our military and our veterans. And, in the audience today we have one of our PGA professionals, Jim Estez from Olney, Maryland, that does an admirable job serving our wounded warriors in the game of golf.

In addition to supporting programs that are designed for the disabled as I mentioned above, the PGA is proud to have members of our organization that are disabled individuals as well.

One example is an instructor in Savannah, Georgia at the Wilmington Island Club, Don Vickery, who is an assistant golf professional there who earned his PGA membership in 2009 after surviving an accident resulting in the loss of both of his legs, a bilateral double amputation.

We offer the following comments to the DOJ on the proposals that golf courses may be required to purchase accessible golf carts. Traditional golf carts were originally designed for individuals with disabilities. That was the reason that they eventually became into being.

Traditional golf carts, we find, suffice for a majority of the individuals with disabilities and are often preferred over the accessible single rider type of golf car by individuals with disabilities.

The analysis of this proposal should take into account the following. It has been determined -- it has not been determined whether single rider accessible golf cars meet ANC or national golf cart manufacturer standards of safety like traditional golf cars go through.

This brings into the question of whether these are safe for the occupants and also the liability issue that lies with the golf course owners and fleet operators. Also, there has not been any training standards developed relative to facility staff usage, nor customer usage, with an individual with disabilities.

Until and unless single rider accessible golf carts are subjected to this type of safety standards as well as this training, we are not sure they should necessarily be mandated by DOJ. A recent survey that we conducted of our membership showed that of those few facilities that have accessible golf cars that are very few uses or request for uses. In addition, the military, which was required a couple years ago by DOD to acquire two golf cars per facilities of 150, only 16 of them have had any use over ten times a year.

In conclusion, I thank you, and look forward as an organization to working with the DOJ, to come to a common ground on this issue.

>> JOHN WODATCH: Thank you very much. We appreciate you being here today with us. Next we will turn to Thomas Panek.

>> THOMAS PANEK: Good morning, Mr. Wodatch. My name is Thomas Panek. I'm a vice-president at National Industries for the Blind, better known as NIB.

Today, I will address REN1190 AA61, the Department's Advanced Notice of Proposed Rulemaking. NIB and its 89 associated agencies are the largest employer of persons who are blind in the United States.

NIB has a stake in ensuring that the websites of public accommodations and public entities are accessible to people who are blind. At NIB, it is our mission to enhance opportunities for economic and personal independence of persons who are blind, primarily through creating, sustaining and improving employment.

Today, I will present NIB's recommendations for enhancing website accessibility for people who are blind, while recognizing that regulation should only be enacted where self-regulation is insufficient.

Every day, NIB and our associated agencies use technology and professional training to make more jobs more accessible to persons who are blind.

As a national model for working with the government to make websites accessible, we regularly partner with the government to create employment opportunities and to deliver products and services to the federal customer.

One of the best examples of this is our contract management support training program, known as CMS. In 2008, the federal government spent more than $500 billion on the purchase of various goods and services. As a result, the government needed more qualified contract specialists to manage new contracts. NIB developed the CMS training program to help the government meet this growing need. CMS provides persons who are blind high-level career training through this program. Training is completed on-line through the Department of Defense's Defense Acquisition University.

This partnership has also given NIB the opportunity to open a dialogue with the Department of Defense, and the federal government, to update other legacy systems and on-line resources.

Today, the Web training modules are accessible to persons who are blind, because NIB has worked hand in hand with Web content developers to enable navigation through the training modules using a screen reader. I note I am using a screen reader today to provide this testimony.

In just one year, more than 20 people who are blind have found contract management positions in the federal government or private sector.

I can tell you from my experience as a person who is blind, that getting a job is a life-changing event. It opens the door to independence and fulfillment.

It also saves the government money, as more job creation means fewer people on government assistance.

As employers and business owners are building future websites, there are standards that can be applied to provide greater accessibility for persons who are blind.

First, NIB recommends that business owners work in partnership with the blind community to identify what access areas can be improved upon, and also identify the potential solutions that exist.

NIB supports the Department adopting requirements that revise the Americans with Disabilities Act or ADA Title II regulation to establish requirements for making the services programs or activities offered by state and local governments to the public via the Web accessible.

Second, the Department should adopt the technical standard of WCAG version 2.0 AA standard for website accessibility for public accommodations.

NIB has found that government sites including those that employees utilize in providing and accessing services, fail to incorporate or activate features that enable users with disabilities to access all the site's information or elements. Third, NIB also recommends that the Department maintain and provide a list of resources for technical assistance to help public entities complying with proposed rules.

NIB would like to be considered as a partner and a service provider to help make the websites of public entities accessible. While the public and private sector have indeed made great progress towards creating accessibility in the workplace for persons who are blind, much more needs to be done.

Seven out of ten persons who are blind are not employed. Every step we take to improve accessibility is a step towards lowering that unemployment rate.

NIB looks forward to continuing to be a resource for the government on this issue. Please contact us if you have any further questions.

>> JOHN WODATCH: Thank you very much. We appreciate your testimony today. Our next commenter will be via the telephone. Michele Hurts. Please proceed.

>> MICHELE HURTS: Hello, my name is Michele Hurts. I'm 51 years old. I have two sons, 17 and 21. I'm married. I had good health until a digital smart electric meter was put on my home in June of '09. After ten months of living with the radiation from the meter in my home, I got sick. With the help of an electrician, we were able to pinpoint that pulsed radiation from the meter. Finally, with a note from my doctor, Con Edison, the local electric utility, removed the meter.

The worst of my symptoms stopped. I no longer thought I was getting Alzheimer's and the terrible nightmares completely stopped. My heartbeat went back to normal at home, and the horrible buzzing in my ears lessened. Before this happened, I had a cell phone and we used wireless devices in our home.

Now, I cannot be near any wireless equipment without becoming ill. I am a completely different person from who I was. When exposed to the radiation from wireless devices, my symptoms are dizziness, ear buzzing, nausea, pain in my head and ears, heart palpitations, throat closing, tingling feeling especially in my fingers, severe brain fog, and often depression will follow. Life has become a nightmare. I have wondered at times how I can continue to live in a world that is covered in technology that makes me so sick.

Although we don't have a smart meter anymore, my whole neighborhood is filled with them. I have measured the radiation that they emit outside. It is extreme and pulsing, 24/7, many times per minute. I feel the radiation hit me when I'm outside walking my dogs.

I can't go to friends' houses who have wireless equipment and smart meters. Up to now, I have been an active participant in our community. I can no longer go to our municipal building for meetings, or to the farmers market in the parking lot there, because there are cell transmitters on that building. A few weeks ago I forced myself to go to a meeting at the municipal building, about yet another cell tower that T-Mobile wants to put in Hastings.

It is very convenient for the cell companies that people like me can barely function enough when exposed to speak up, and the Telecommunication Act of 1996 prohibits me by law to speak honestly and say how sick all this has made me.

The library is right there too. I have measured the radiation in downtown Hastings. It is extremely high. I have lived here for 14 years and have loved it. Now I am extremely uncomfortable here.

I can no longer go to hotels. This summer when we visited our son, while he was in a music program in New Hampshire, we stayed in a beautiful bed and breakfast. After some convincing, the owner turned the Wi-Fi off at night. That was great. But the next night he forgot. I was up all night; I couldn't sleep.

I asked him the next day if I could sleep in their field in the back of the inn, in my car, to get away from the radiation.

He felt terrible and remembered to turn it off for me that night. I can't go to hotels. They all have Wi-Fi. In Scotland this summer, I had to leave my family in Edinburgh and find an inn, an hour out of the city, because I felt too sick in the city.

I live a half an hour from Manhattan. I avoid going there. My husband is an attorney. I can no longer go to social events with him in Manhattan, where the transmitters are everywhere, and everyone has a wireless device.

I feel cell phones ring when they are on silent mode, and when someone gets a text. I get an instant headache and a feeling of pulling inside my head and ears. It feels as though the radiation is going right through my head.

Sometimes when I'm driving, particular cell towers are so strong that my brain becomes dangerously foggy. It is my understanding that the people who work at the towers can regulate their power input. Who are those people? Do they have any idea what effect on biological life they are having? There are no regulations that take this into account.

I wasn't, but now I am functionally impaired. My life has become so different. I have not worked for a year. I'm an artist. There are no governmental agencies who are willing to recognize this. There is no relief and no help. People like me are completely on our own.

There needs to be a moratorium on any new antennas and wireless devices until it is proven that they are safe, and utility meters should be required to be run on phone lines. They don't have to be wireless.

With no regulations, I am afraid that more and more people are going to be adversely affected, like myself, by the radiation from wireless technology.

Thank you so much for taking my testimony.

>> JOHN WODATCH: Thank you very much. We appreciate your taking the time to give us your testimony. Next we are going to hear from Jerry Kerr.

>> JERRY KERR: Good morning. As an advocate for universal design, we believe that computer applications as well as websites should be designed in a manner which offers access by people with the broadest range of physical abilities possible.

The Department of Justice has said that it is clear that the system of voluntary compliance has proved inadequate in providing website accessibility to individuals with disabilities.

For many of us, this standard is a statement which calls into question the current accessibility to goods and services in the virtual world to that of the real world. We are witnessing changes in technology, which are doing more to increase access for people with disabilities, to education, employment, commerce and the ability to live independent, high quality life beyond that which was thought possible when the ADA was passed.

New technologies are allowing advancements in website design, computer applications, which along with the deployment of broadband services are creating an environment which is literally leveling the playing field for people with disabilities.

Advancements in website development, computer software, applications and new hardware, which is more powerful and smaller, and continually evolving, progressing at such a rapid pace that that which was cutting edge yesterday may be obsolete and found on the cutting room floor tomorrow. Today's advancements which have been made in website development and deployment are allowing people with disabilities not just an opportunity to be visitors of websites, and patrons of e-commerce, but they are empowering them in a manner which they can exercise their own entrepreneurial talents at a very low cost.

We now have ability, the ability to easily create our own websites, allowing us to open virtual offices, and virtual stores, and compete in the worldwide market, all from the comfort of our homes.

We strongly support the Department's desire that websites and access to the virtual world become more accessible for people with disabilities.

We are, however, very concerned that when it comes to technology, not only the Department's ability to issue new regulations which will not stifle innovation, but also their capacity and resources for the enforcement of new regulations.

People with disabilities have been and continue to be victims of well-intended regulations which have backfired, have stifled innovation, and resulted in lost opportunities, regulations like the Medical Devices Act of 1976, which defined wheelchairs and mobility devices as medical devices, shackling us to 19th century technologies and preventing us from fulfilling and fully participating in the technology revolution.

Issuing regulations certainly does not ensure compliance. The Department of Justice has very limited resources, and the challenge is to protect the rights of the disabled have been daunting over the last 20 years, and many of those same challenges are unresolved today.

The Department has also faced challenges dealing with the application of new technologies under the ADA, and that is evidenced by the Segway. We believe adopting a policy of remaining flexible and nimble and issuing clear guidance about your expectations under the existing regulations and allowing individual innovative efforts to continue, will result in continued improvements in accessibility for people with disabilities, and more widespread compliance, and ultimately better results for all of us. Thank you very much.

>> JOHN WODATCH: Thank you for your thought-provoking testimony. Now, Joan Stein. Welcome.

>> JOAN STEIN: Thank you. Good morning. I would like to take this opportunity to

thank the U.S. Department of Justice for the opportunity to speak today. I will focus my comments on the medical equipment and furniture.

My name is Joan W. Stein and I am the president and CEO of Accessibility Development Associates otherwise known as ADA Incorporated of Pittsburgh, Pennsylvania. We are a company that has been providing a wide range of Americans with Disabilities Act and other disability-related consulting services to governmental, civic, business, and other publicly and privately owned organizations across the United States since 1992.

Our mission is to assist organizations to identify and remove both the architectural and the attitudinal barriers that exist within their organizations that prevent individuals with disabilities from entering and fully participating.

I'm here today to speak about the need for standards for accessibility of equipment and furniture for individuals with disabilities.

From an historic perspective, dating back to the Rehabilitation Act of 1973 as amended, requirements have generally been stated as, accessible to, and usable by individuals with disabilities. This lack of specificity creates too many opportunities for interpretation and speculation.

The value of the ADA standards for accessible design as "minimum standards" is that they provide specific scoping and technical requirements that should serve as a starting point for the design of construction -- design and construction of the built environment. As my colleague Gray Bloomer from the National Center on Accessibility says the ADAG should be the worst that you do. Even with the ADAGs as enforceable standards for more than 18 years, many design and construction professionals continue to treat the requirements as building codes that can be negotiated with code officials or as construction tolerances in the field. An individual's civil rights can neither be negotiated away nor be treated as an afterthought.

I'm not here today to discuss the ADA standards but only intend to use them as a frame of reference. Many people ask the question, what does the ADA cover? The typical answer has always been, when you turn the room upside down, whatever doesn't fall is covered. I'm happy to be here today to participate in the long awaited process of changing that answer.

A built environment that is accessible to and usable by individuals with disabilities does not stop at walls, doors, and permanent fixtures. Everything associated with that environment plays a critical role in whether someone with a physical or sensory disability can maneuver through and use the space.

Many of those items may be fixed or installed, but they are currently not regulated in the same manner.

Let me give you several examples. I'm sure we have all seen the gigantic paper towel and toilet paper dispensers being marketed in the field. The sales brochures and specification cut sheet clearly say, ADA compliant. However, they are very large, and they are marketed primarily to help users as a key selling point, as if they are large enough to hold a large supply of toilet paper or paper towels, therefore, reducing the maintenance cost.

However, the dispenser is so large, that for the toilet paper it often requires being mounted over the grab bar, which will be allowed under the 2010 standards. But, oftentimes is mounted so far away from the toilet, that it makes it unsafe for somebody with a disability to reach the toilet paper dispenser.

With paper towel dispenser, they often become protruding objects to individuals with visual disabilities, because they are very often mounted right next to the door, or on the circulation route to the door.

Now, the manufacturer was correct in noting that these dispensers met certain ADA requirements, typically, the operating controls.

However, the end result is that because of the size, and potential of clear -- lack of clear instructions for the contractor, it becomes noncompliant.

A disinfectant wipe dispenser oftentimes is mounted on the wall but it's more than four inches deep. Again it becomes a protruding object.

Feminine item dispensers are my favorite. They say they are ADA compliant and they have the turn knob so you have to tightly grasp and twist your wrist in order to operate it. These are just a few of the myriad of dispensers, equipment and furniture that design professionals, building owners and purchasing departments unwittingly and unknowingly purchase. They read the ADA compliant statement and believe that to be equal to the Underwriters Laboratory, the UL symbol.

The signing of the Patient Protection and Advocacy Affordable Care Act in March 2010 was a landmark. It provides the opportunity for the U.S. Access Board to take an important step in making equipment accessible. In closing, I would like to thank the Department of Justice. I've been an ADA consultant for more than 18 years and as a person with a disability I appreciate the opportunity to make my comments this morning. Thank you.

>> JOHN WODATCH: Thank you very much, Joan. We hope that we will get some written comments with more of the kind of detailed information on equipment you were providing today. Next, we will turn to Maureen McCloskey.

>> MAUREEN MCCLOSKEY: Good morning. I'm Maureen McCloskey. I'm advocacy director for Paralyzed Veterans of America. We certainly appreciate the opportunity to testify, and we are strongly supportive of DOJ's and the Access Board's ANPRM on accessible furniture and equipment. We believe that, as Joan said, it's time to address the things that do fall out when you turn the building upside down.

PVA's members are honorably discharged veterans of the United States Armed

Services, and virtually all use wheelchairs for mobility. Our members encounter barriers in medical facilities, pretty much any medical facility that is not a Veterans Affairs medical center for spinal cord injury. Those centers are few and far between. They are not geographically accessible. We have members who must go to VA clinics, which interestingly are not -- do not provide accessible equipment.

And generally, VA hospitals that are not SCI centers also do not provide accessible equipment.

And, the personnel at those, the C box, the community clinics don't have the training nor do the people, the staff at the regular VA's.

As we all know, medical situations are generally a stressful situation, and it's going to be exacerbated if you have a patient who cannot independently transfer on to an exam table. As is noted in the ANPRM the physical exams that are done to a patient in a wheelchair are less than thorough. Independent transfers to exam tables are rarely possible. If an individual is assisted in a transfer to an examining table, any vital information that was taken may be inaccurate due to stress, physical stress and anxiety caused by the transfer.

I certainly know and most of us would experience that in an emergency situation, you are already at a pretty high level of stress.

I would like to offer Paralyzed Veterans of America's architecture program. Our architects specialize in design of wheelchair accessible medical facilities including exam rooms, hospital rooms, and therapy rooms.

Obviously and ideally, the patient should be able to transfer independently or with a sliding board to all beds or exam tables. Should a lift be required, our architects recommend an H type transfer lift, which has ceiling tracks on both sides of the bed, and a motor driven crossbar that allows to which you attach the cradle or sling. It works regardless of the patient's size, the level of injury, or center of gravity, and allows the individual to be placed appropriately in the bed with one transfer. Under no circumstances should a staff assisted lift or transfer be considered a substitute for independent access, under no circumstances.

Spinal cord injury professionals train for extended periods on how to correctly perform patient lifts, and staff in general hospitals, general emergency rooms, general doctor's offices do not have that experience or training.

A preferred practice in the VA spinal cord units is to use an adjustable hospital bed as an exam table and even as physical therapy tables. The bed is wider and longer than a standard exam table, and provides more space and security, which is critically important to individuals who have difficulty with balance or can't easily adjust their position if asked to turn onto either side.

It also allows the patient to remain in the bed should further tests be required or even admission to the facility.

It obviates the need for a gurney or any extra transfers. In therapy rooms, any therapy platforms should be meeting the current ADA standards, 17 to 19 inches in height. Benches should meet the provision of Section 903 of the ADA Accessibility Standards. Seats for any type of exercise equipment should be swing away or be able to be moved to allow a wheelchair user to perform the exercise without a transfer. Clear floor space must be maintained around equipment and anything that would require a transfer. We imagine and suggest if not happening that the Department and Access Board revisit spinal cord injury rehab center for the best ideas of accessible equipment.

For gynecological exam rooms, accessibility equipment is absolutely critical. I don't know if anybody has testified on it, but women who have mobility impairments have -- gynecological exams are not fun at the best of times, and when you are not, they are not accessible facilities, it becomes even more stressful.

They may need, people may need assistance in positioning and remaining in the proper position for an exam, and I was talking to someone who, her muscles don't allow her legs to stay in the right position, and they bring another person into the room, to keep her legs in a position that is required, and who seemingly chitchats to her during the whole exam. Not ideal. Perhaps Velcro arm or leg loops or straps or somehow could be done.

Mammography machines generally are adjustable for height and they should be adjustable to be low enough that a woman should be able to have the exam performed in her own wheelchair. Basically, for medical care, examination, first of all, examination tables must be considered diagnostic equipment. They must have standards developed.

Accessible weight scales must be standard and a simple attachment to current scales will allow an individual using a wheelchair to roll on, at least one adjustable height bed per medical practice, or hospital department, and adjustable exam tables, if beds are not used. H tract transfer lift where accessible beds are used, accessible controls with newly defined reach range and pressure requirements, for the controls in a hospital room, at least one accessible bed in emergency rooms, at least one H lift in emergency rooms, and at least one portable x-ray machine that allows seated or lying down x-rays.

I'm sure that you all are familiar with -- is that, they are beeping me?

>> JOHN WODATCH: Yes.

>> MAUREEN McCLOSKEY: Okay, well then, let me get to hotel beds quick. We also encounter barriers at the hotels. In fact, the more expensive the hotels, the more likely there is a barrier in the accessible room. The primary culprit, of course, being the pillow top mattress. We received no calls from people who have had trouble getting out of the bed once they have transferred in, but numerous from members who cannot get into the bed. Only individuals with great upper body strength can make this transfer unaided. Gravity helps everybody get back down into the chair.

One member likened it to the high jump for which he was ill-equipped, and had to request hospital staff every time he had to get in and out of bed. Considering that many paras and quadriplegics transfer back to the bed to dress, the entire process makes the accessible room inaccessible.

We have submitted standards before to the Department of Justice, at which we hope we will look at again. We will be submitting more detailed comments for your perusal. We offer our architectural staff for consultation for anything that you may need help for in the medical department area. I thank you for the opportunity.

>> JOHN WODATCH: Thank you very much. We appreciate that. We look forward to the same kind of detail would be very helpful to us, as we look at these rules. We look forward to your comments. Next, we will turn to Joe Isaacs. Mr. Isaacs.

>> JOE ISAACS: Thank you. On behalf of millions of Americans with spinal cord injuries and disorders nationwide, the United Spinal Association wishes to thank the U.S. Department of Justice, Civil Rights Division for this opportunity to comment publicly on the possible revisions of the ADA regulations to address accessible Web information and services, accessible communication, supports and adaptive equipment and furniture.

My name is Joe Isaacs. And I am the vice-president of public policy at the United Spinal Association. My brief remarks today will focus on feedback we have received from our constituents via survey about their challenges and clinical facilities settings relative to the proposed regulations and will reinforce much of what was said by Ms. McCloskey.

Accessibility to doctor's offices, clinics, and other health care providers is essential in providing medical care to people with disabilities. Due to barriers both physical and communication related, individuals with disabilities are not as likely as those without disabilities to receive routine examinations and preventive medical care nor are they as likely to be informed partners in their care.

Access to medical care is legally required by the Americans with Disabilities Act, but feedback from our constituents suggests that many providers continue to be out of compliance with the law.

United Spinal Association asked its members and others with disabilities about the barriers they encounter when seeking medical care and treatment. The most frequent response involved access to medical equipment such as examination tables, dentist chairs, scales, and mammography and colonoscopy equipment. Tables and chairs are not adjustable for easy transfer; create a huge barrier to individuals using wheelchairs or those of short stature.

If they were not informed in advance to bring someone to help them make the transfer onto the furniture or equipment, these patients were often told at their appointment, that they could not be treated at that particular facility.

Another barrier is weight scales, as most patients are required to stand and be weighed as part of a routine medical examination. Even if a scale is accessible, and is able to weigh a person still sitting in his or her wheelchair, the accuracy should not depend on the patient's knowledge of the wheelchair's exact weight, which they are often inquired about.

Not having the weight of a patient or an accurate weight may hinder the effectiveness of any medication that is based on the patient's weight and related absorption rate. The United Spinal Association would like to see adjustable examination tables, accessible scales, Hoyer lifts and other adaptive medical equipment be readily available in all clinical settings to serve people with disabilities with accompanying technical criteria to ensure their appropriate use.

Additionally, we have received numerous complaints about the unwillingness of medical practices to address communication challenges with people with disabilities by denying needed sign language interpreters, who are critically important to ensure patient understanding of complicated medical procedures, new treatment regimens and billing issues. These constituents were typically told that they needed to be accompanied by a family member or friend to address their communication needs, or no accommodation would be provided otherwise.

This is particularly important in the era of health information technology, the transfer of that information. We are not addressing the Web questions, but the electronic means of communicating information on one's healthcare status, maintaining a personal record, will need to see accommodation within the ADA.

In closing, we would like to urge the Department of Justice to more strictly enforce the current ADA regulations to ensure that the needs of persons with disabilities in medical care facilities are adequately accommodated with the provision of adaptive furniture and equipment that does not deprive these patients from receiving care equal to other consumers of healthcare. Moreover, we emphasize the need to ensure that healthcare providers provide effective communication to and from patients with disabilities. Thank you again for this opportunity to comment.

>> JOHN WODATCH: Thank you very much. Now we will turn to Bruce Renard. Mr. Renard.

>> BRUCE RENARD: Thank you, sir. Good morning. My name is Bruce Wayne Renard, and I'm the Executive Director of the Alliance of Specialized Communications Providers, ASCP, here today representing the interest of ASCP's ATM Council.

The ATM Council sincerely appreciates and thanks the Department for this opportunity to provide comments regarding the ANPRMs and the specific ANPRM addressing those ADA rule modifications related to automated teller machines.

The ATM Council is a national not-for-profit trade association, representing the interests of independent providers of ATM services and equipment across the U.S.

Our member companies are small and medium size businesses who operate independently of the banking industry.

Based upon industry estimates, this independent segment of the ATM business in total accounts for over 210,000 ATM machines in service today throughout the U.S.

We are approximately one-half of the total number of ATMs now deployed across the nation.

The ATM Council acknowledges and supports the spirit and intent of the ADA regulations presently under consideration, to provide our nation's disabled citizens with access to reasonable and adequate public accommodations that will permit those citizens to enjoy the same services and quality of life experience available to the general populace.

However, the ATM Council conservatively estimates that the specific ADA rules requiring a slash cut compliance with the 2010 voice guidance requirements for ATMs on or before March of '012 will trigger an egregious and wasteful expenditure of $300 million for independent ATM operators.

This expenditure level will be unsustainable, and likely will lead to a number of business failures or severe financial disruptions.

For many providers, the cost of compliance will exceed a full year's earnings, constituting a substantial and adverse economic burden that we think can be avoided, with minimal impact upon overall ATM accessibility for those that need it. This is done by simply extending the safe harbor provisions to alleviate the slash cut requirements and allow us to spread compliance costs over a reasonable period of years versus the term that is currently provided.

To reiterate, if not afforded safe harbor treatment or equivalent phased in approach, the voice requirements will have an unintended and significantly adverse financial consequence for this small business segment.

Without meaningfully furthering a valid public policy purpose, two-thirds of the total ATM base out there today will be immediately compliant with this accessibility requirement, and the remaining one-third can be phased in, in a reasonable business manner that will happen automatically in the normal course. The operational impacts to this industry sector requiring changes and upgrades to the existing equipment and short time frame allotted are also very difficult for us.

There are real questions as to whether there are sufficient qualified technicians, parts, supplies, and an overall manpower available to ensure that this segment of our nation's existing ATM base will be able to come into full compliance with the voice guidance directives in the time frame now provided.

Moreover, early tests of certain upgrade kits for this equipment have already revealed parts and service issues and problems that will require manufacturer intervention, retooling and multiple site visits to ensure ongoing functionality of these upgrades.

If a reasonable transition period is not made available, we will see gouging in parts and skilled labor in this segment. We will have rushed work that really doesn't deliver the results that the Department desires and a needless harm to a small business segment that employs thousands of individuals and pays good taxes.

We respectfully request that the Department revisit and modify the current rule, or issue the appropriate guidance to confirm that ADA compliance with respect to implementing voice guidance features will be made subject to the safe harbor provisions.

Let me also endorse the comments earlier that were made for the need generally for guidance in respect to ATM compliance. And to say that we will submit furthermore detailed comments for your consideration and would like to be available as a resource for the Department to make sure this transition for ATMs goes well. Thank you so much.

>> JOHN WODATCH: Thank you Mr. Renard. If I can at least respond partially to one issue that you raised that has been raised by others. We have looked at the issue -- I hadn't heard of it as the slash cut issue -- we think of it as the clear or correct key that has a slash instead of the backwards arrow. I think we have looked at that issue.

And, in our view, determined that is in the words of the ADA itself, a communication barrier that is structural in nature, and that if that key has a slash on it, it would be subject to the safe harbor that is in the regulation, but that the other issues you are talking about, the speech enabled nature of, is a communication barrier and is dealt with under the effective communication and would be required by the March 15, 2012 date.

We will provide further clarification and guidance on those issues for your industry. Thank you.

>> BRUCE RENARD: Thank you so much.

>> JOHN WODATCH: Next comment is by telephone. Paul Farber. Mr. Farber, please proceed.

>> PAUL FARBER: Yes. Hi. Good morning. My name is Paul Farber. I'm the president of Farber Consulting, which is a Phoenix, Arizona based accessibility consulting firm. I would like to focus my comments today on the topic of accessible medical equipment, specifically on the topic of wheelchair scales.

First I'll give you some information about my background. I'm certified as an accessibility specialist, by the International Code Council. I also have a law degree and a background in ADA compliance law. I've consulted and analyzed hundreds of properties in the Phoenix area for issues involving accessibility for people with disabilities, and the methods and cost of barrier removal.

I've been recognized by the U.S. District Court as an ADA expert and have testified as an expert in numerous accessibility matters. Among my clients are a growing number of healthcare providers attempting to navigate the complicated accessibility landscape.

In my experience in the accessibility community, I've found that not getting their weight taken in doctor's offices and other healthcare settings is a universal complaint among wheelchair users. Most wheelchair users have no idea how much they weigh, not having been properly weighed in years, and most don't even know that wheelchair scales exist.

And, very few know that they are entitled under the ADA to have their weight measured like all other patients as part of basic medical treatment. The good news is that wheelchair scales are in my opinion, the so to speak the low-hanging fruit of the accessible medical equipment world. Relatively speaking, wheelchair scales are inexpensive and easily obtained. Scales on the market today range in retail price from about $750 on the low end to around $4,000 on the high end.

I happen to know that the technology is improving to the point where wheelchair scales will be cheaper, more portable, and lighter in weight in the coming years.

I would not be surprised if the typical wheelchair scale is priced in the hundreds instead of the thousands of dollars fairly soon. They may also be lighter in weight, less bulky and more easily stored.

I feel that it's important for you to realize that such advances are on the horizon especially when you consider scoping requirements.

On the issue of scoping for wheelchair scales, I would urge you to issue broad requirements for all medical facilities including smaller doctor's offices. Small primary care practitioners are the first line of defense when it comes to preventive care. It's critical that patients be weighed in these facilities. Excuse me.

With the availability and relatively low pricing on these scales, not to mention significant tax credits available for small businesses, there really is no reason why they should not be available everywhere that patients get weighed.

Keep in mind that these scales can serve standing patients as well, and can be used as a single all-purpose scale for this facility.

Healthcare is provided in countless different settings, from small medical offices to larger clinics, hospitals and nursing homes with equally countless medical specialties.

In all of these settings, the decision to take a patient's weight is a medical decision based on the standard of care under the circumstances.

Rather than crafting a scoping requirement based on the size or specialty of the medical facility, I would suggest a cleaner and simpler approach tied to the standard of medical care, a standard that is already a recognized concept in tort law.

My suggestion would be a scoping requirement that mandates at least one accessible scale be readily available everywhere that the standard of care requires that medical practitioners weigh their patients.

In other words, where the standard of care calls for the weighing of an able-bodied person, then at least one accessible scale must be made available to weigh patients in wheelchairs.

Anything short of this would result in unequal medical care. This approach would also make it straightforward for providers such as psychiatrists or ophthalmologists who may never weigh their patients to determine if they are subject to the wheelchair scale requirement. If no patients need to be weighed in their facilities, no wheelchair scales are required.

I would also make the requirement broad enough to cover the category of medical treatment, and assessments performed outside of traditional medical facilities, such as in homes or offices.

In terms of the time frame of implementation, I would strongly urge you to require compliance with the accessible scale requirement over a time frame of one year or less. While more expensive medical equipment may require a phased in implementation as I mentioned, wheelchair scales are easily obtained at a relatively modest cost, and wheelchair users have waited long enough for fully accessible medical care.

To sum up, first I would urge you to recognize the growing affordability and port ability of wheelchair scales. Second, I would urge you to implement a scoping requirement that requires at least one wheelchair scale be available in all settings where the standard of care calls for weighing all patients.

That is all I have for you today. Thank you very much.

>> JOHN WODATCH: Thank you, Mr. Farber. We appreciate your testimony and staying within the five minutes. Next is Maureen Fitzgerald.

>> MAUREEN FITZGERALD: I'm with the Disability Policy Collaboration, which is a partnership of the ARK and United Cerebral Palsy. Both of those organizations have affiliates and chapters throughout the nation. Both have been in existence for over 60 years.

They, both organizations represent the interests of people who have intellectual and developmental disabilities. It's estimated that there are about 5 million people with intellectual and developmental disabilities in this country.

Despite the progress that we have made over the past 20 years in making every day life accessible to people with disabilities, we still confront lots of barriers. The four areas that you are proposing to regulate I think will go far in addressing some of those barriers.

We would urge DOJ to move forward as quickly as you possibly can. We would also like to just take a moment to commend you for the vigorous enforcement we have seen over the past couple years, especially in the area of Olmstead. We really are very appreciative of that and encourage you to keep it up. Keep up the good work.

I'm just going to address a couple of areas very briefly. We will submit more detailed written comments.

In the area of medical equipment, people with intellectual and developmental disabilities are -- have some of the most complex healthcare needs of anybody. Yet many of them are denied access to medical care because of inaccessible medical equipment.

Procedures such as MRIs, mammograms, bone density scans, stress tests, are not available to people because the equipment is not accessible. Some folks with intellectual and developmental disabilities have never had any of these exams.

They are also denied the benefit of early detection. Lots of diseases such as cancer can be treated more effectively if they are discovered early, but if the equipment is not accessible, people don't have that luxury.

We have talked about scales. That is an issue for people with intellectual and developmental disabilities who are not able to be weighed, and medications are prescribed based on guesses rather than accurate information.

As far as Web accessibility goes, the Web is important, as important to people with intellectual and developmental disabilities as it is to anybody. It's a gateway to government services, to on-line transactions of all kinds, to products, to education, to entertainment, to information about healthcare, to information about current events, and to find out what is happening in your neighborhood.

It lets a lot of people who have a real difficult time leaving their homes be employed. It also gives people with intellectual and developmental disabilities a way to have friendships, to be socially connected, to talk to others about what is happening because of their disability, what is working for them, what is not working for them.

All of these accessibility requirements are not really new, and yet we are still not there. We haven't seen -- people with disabilities are being left behind because there is not compliance with what we've already got. Moving forward with these specific requirements is very needed. We would recommend that the Web accessibility requirements be, the implementation time line be six months. People are on good notice that this is coming. It has been required for some time. There is really no need to make people wait any longer.

The other thing we would encourage you to do, as much as possible, is to craft language that makes it very clear that as new technologies are evolving, they must be made accessible to people with disabilities. I think there are things that we can't even imagine that will be in place quickly, so to keep the regulations flexible enough that they address those issues.

Thank you very much.

>> JOHN WODATCH: Thank you. I appreciate your testimony. We look forward to your written comments. Next, we'll hear from Kelly Buckland. Mr. Buckland, please

proceed.

>> KELLY BUCKLAND: Thank you Mr. Wodatch. My name is Kelly Buckland. I am the director of the National Council on Independent Living. NCIL is the oldest, national cross disability grassroots organization run by and for people with disabilities. I present the following information today, on behalf of the governing board of NCIL and in particular the ADA civil rights and healthcare subcommittees for their organization.

We appreciate the opportunity to give our perspective on the Department of Justice's Advanced Notice of Proposed Rulemaking and, NICL will be presenting more detailed written comments on all four topics in which DOJ is seeking input. But my comments today will be limited because of the time constraints.

Regarding the issues that we have heard most about from our membership is access to the equipment, furniture, and particularly medical equipment and examination tables.

Much useful information was produced as a result of the Department's actions in the Washington hospital settlement as well as the case as also posted on the ADA.gov website concerning Valley Radiology Associates.

There a chair or a chart or a table was established after determining what equipment was available at various offices of the same company with locations within a measured area.

An inventory of the imaging machines in all of the available lift and transfer equipment was included, and on what machines particular issues existed. A lift team was also established that could respond within a limited time to any location within that network of offices for walk-in imaging services.

The use of lifts or staff to lift patients should not be considered a substitute providing independent access to medical equipment, but rather, considered as a possible alternative method to independent transfer. Lifting should always be a last resort unless it is the preferred method upon the expressed advice of the individual receiving services.

Regarding the need for separate standards for bariatric medical equipment and furniture, we understand there is ongoing research in the medical community as to the specific needs of people seeking bariatric services.

Exceptions to the standards for features like providing a 24-inch center line at toilets, additional structural supports, additionally reinforced grab bars and oversized and reinforced accessible fixtures in area facilities providing bariatric services would be appropriate. In addition with the -- where provided as the trigger standards for minimum number and size of waiting room seating, bariatric duty exam tables and hospital beds and oversized testing equipment may be appropriately specified for facilities providing bariatric services.

Regarding the scoping and triggering events for medical equipment and furniture, as the

Department has stated in existing hospital with multiple medical departments, a reasonable number might include one accessible examination table in each department. For larger entities, the scoping of one or five percent, whichever is more, that we see in other areas of accessibility, may work well here.

However, in readily achievable barrier removal in radiology and imaging departments, a reasonable number of diagnostic equipment may be one of each type of diagnostic equipment or more importantly, equipment that provides for each type of exam or test to be accessible.

Many times in existing structures hospitals are faced with additional renovation challenges, like lead lined walls and tiny restrooms. When planning for barrier removal, the type of test to be performed may require attention to providing accessible facilities or features first such as the radiology room where fluoroscope examinations are performed, as the person receiving the test needs to immediately use an accessible restroom following the test.

When considering time frames for entities to come into compliance, the NCIL membership feels 18 months is more than enough time for entities to come into compliance with medical equipment and furniture requirements. A shorter time frame would be better for new facilities just being built versus existing facilities, which we would assume would have an ongoing obligation of barrier removal.

All new purchases of equipment and furniture should be in compliance with the standards as of the effective date of the standards. Responsibility for compliance will need to be addressed carefully as many doctors are given their offices and exam spaces as part of their agreement to work at a particular hospital or location, and their furniture and equipment are many times supplied or leased by the hospital responsible.

Given the time, I also want to just express NCIL's gratitude for the extensive enforcement that has been going on at the Department of Justice lately. We really appreciate it. It is nice to see a new sheriff in town, and a vigorous enforcement going on. Thank you again.

>> JOHN WODATCH: Thank you very much, Mr. Buckland. Our next commenter and the last commenter of the morning, as I understand it, is that correct? One more after this? Okay. Our penultimate commenter of the morning is Ms. Arielle Schacter who is going to be testifying by telephone. Ms. Schacter, please proceed.

You may proceed, Ms. Schacter.

We got disconnected.

Let's see if we can reestablish the connection.

It's okay.

>> ARIELLE SCHACTER: Hi.

>> JOHN WODATCH: Good morning. Please go ahead.

>> ARIELLE SCHACTER: Hi. My name is Arielle Schacter. I am a 16-year-old New Yorker who besides being the editor-in-chief of bf4life-hearing, a website for teens and tweens who are deaf and hard-of-hearing, I have a moderate to severe hearing loss. Currently, I'm calling to support the options being considered to acquire movie theater owners or operators to exhibit movies that are captioned for patrons who are deaf and hard-of-hearing. Being a teenager, I love to see the newest, latest films with my friends. However, I'm often unable to understand the phones in the theater since I cannot always hear with an assistive listening device and I need captions. The regulation should require movie theater owners and operators to exhibit caption and video described movies beginning on the day of their release.

Everyone wants to fit in. Who wants to be the last person not in the loop, not having a clue what film everyone is talking about? I want to be able to see and to understand the films with my friends when they first come out. I often have to wait until the movie is over, after everyone has then moved on to the next movie, while I have yet to see the last cool film. Instead, waiting for captions and appropriate access, delaying the release of captions and video description is discriminatory. Who is able to -- for a teen and those who have a disability to be segregated from the larger population who is able to see the film while waiting for access. People who have a hearing loss or low vision have a right to see a film and understand the film the day it comes out like everyone else.

In terms of fitting in, I also believe that the regulation should require open captioning instead of rear window captioning, since the latter is large and bulky, completely noticeable to all.

Being a teenager, I do not want to be essentially a neon sign that points out my disability. Who wants to be the weirdo in the room whose equipment forces others to stare at you? Who wants to be pinpointed as a teenager or adult who is deaf and hard-of-hearing? Having a hearing loss is hard enough. Many people are embarrassed just to wear their hearing aid so why would they use noticeable equipment? The rear window captions have become a waste of money stuffed in the closet for lack of use.

The nice thing about open captioning is that no one knows who needs the technology. Also, I don't want to sit in just certain sections because, but want to sit where I want and with my friends, and where they want to sit. I don't want to sit in a disability ghetto. I attend a mainstream school, so why should I sit in a special section for people with disabilities? Also, sometimes when I use the screens, they are dirty, scratched, and/or damaged. It is hard enough to receive a headset with new ear pads. Most of the time they try to hand me ear pads with hair on them, which is just disgusting and must be a health department violation.

If they can't change ear pads, how are they going to keep the screens clean and scratch free? It would be wonderful for movie theaters to be required to have open captioning. For once, I would love to understand a film in the theater the same way I do at home.

Without proper accessibility, I couldn't even be able to make this very phone call, which I'm using to testify. Thank you. Hello?

>> JOHN WODATCH: Thank you very much Ms. Schacter. We appreciate you taking the time to give us your testimony today.

>> ARIELLE SCHACTER: Thank you.

>> JOHN WODATCH: Our last commenter of the morning will be Richard Dolesh. Mr. Dolesh.

>> RICHARD DOLESH: Thank you, I came 35 miles in the snow and I was hoping I could get here before you broke for lunch. Thank you very much. Good timing.

It will just take me one second to get ready. Hi, I'm Richard Dolesh. I'm the Chief of Public Policy for the National Recreation and Park Association.

Just by way of quick background, NRPA is a national nonprofit organization, representing over 20,000 citizen and professional members that broadly represents the interest of public parks and recreation in America.

NRPA represents a majority of public park and recreation agencies, and we are a leading voice advocating on behalf of the importance of parks and the provision of recreational opportunities for the public, including making all public park and recreational facilities and services fully accessible to all persons. NRPA has had a long history of contributing analysis and recommendations regarding advance notices and proposed notices. We try to gather the best collective input of our members, both professionals and citizens, regarding accessibility for parks and indoor recreation, indoor and outdoor recreation facilities.

NRPA has convened a task force to consider the questions posed by the ANPRM and will provide final comments from NRPA by the January 30th deadline. But, we have some preliminary comments from the task force that we would like to share with you.

We will -- and I want to go through the questions in order, 12 to 15, and just quickly hit each one of them. We will provide a list of accessible equipment. We don't feel it's our responsibility, though, to identify and determine what is on the market and we want to approach this question as from a slightly different point of view, and that is to let you know what public park and recreation agencies are using and what is most efficient and effective for them at the present time.

We will address the issues of persons that are blind or with vision impairments or manual dexterity. We do believe, NRPA believes that the Department of Justice should require covered entities under Title II and III to provide accessible exercise equipment and furniture. We believe this is consistent with the intent and letter of the ADA law and that the proposed change in regulation will provide much needed clarity as to what will be required and what public agencies should provide.

A preliminary answer to the question of how much of each type of equipment and furniture should be provided. NRPA believes this is one of the most important questions for you to answer. We recommend that the approach to answering the question should be based more on function and outcome rather than on the specific type of equipment or the percentage of equipment relative to non-accessible equipment in a given facility or location.

We note that there are a number of types of equipment that serve multiple functions that produce different outcomes depending upon how they are used. We also grapple with the question of small and large facilities. There is no definition of that. We are going to give you our best guess of what is typical in a public park and recreation facility.

We will not address at this time but note that important consideration is in the enactment and implementation of any proposed new regulation will be the real and perceived cost of new equipment and the timing or staging of the implementation.

We will provide input on that in our final comments.

With regard to question 14, the golf carts, a hot topic in public parks and recreation, we would like to offer some preliminary answers addressing the needs of golfers with mobility disabilities.

And with the other questions in the ANPRM we will submit final comments by the January 30th deadline. General overview, there is a great diversity of opinion within public parks and recreation on how the needs of golfers with mobility disabilities should be addressed.

We note that many public park and recreation courses have made management and operational considerations for years to accommodate the needs of golfers with mobility disabilities, including provisions to accommodate golfers with mobility issues on walking only courses.

We recognize that this is a complex question, and we believe there is no simple one size fits all answer.

We note that when the Department of Justice considered this question for swimming pools, access to swimming pools, it recognized that all solutions are not suitable for all users and the range of solution, that a range of solutions is required to allow full access to pools, and we believe there should be similar considerations applied to the matter of golf courses.

There is also a consideration on swimming pools of large and small size facilities and we believe that will apply here with golf courses too.

Additionally, there is significant questions regarding cost, operations, management, staffing, regarding the provision of accessible golf carts to persons on public park and recreation courses. These would include recommendations on how to best provide accessible golf carts for all courses. We note that some agencies have adopted pooling practices, some of least accessible or single rider cars and that some have made operational and management considerations including red flag policies that grant greater consideration to golfers with mobility issues. We are not fully prepared to address the question at this time. We will work to devise recommendations that provide the best range of solutions for the full range of users.

We note that one important consideration is safety and there is presently no adopted safety standard for single rider cars.

We are soliciting input across a spectrum of our profession, the professionals, the citizens, the users of public park and recreation courses, and will address the sub questions under 14 regarding hand controls, swivel seats, stability and other issues related to safety and/or adapted or commercially available golf cars.

We are also seeking member input on the impacts on courses based on the weight of carts in the day-to-day course management decisions to allow off path access to courses and greens by mobility -- by those with mobility difficulties.

With regard to the question, regarding the price of accessible cars, and generally the affordability of public sector agencies and providing accessible cars, we will provide a thorough consideration of the answers facing public nonprofit governmental and governmental courses. We have many knowledgeable sources from which to draw and we prepared some questions and surveys that are going out to our members now.

On question 15, the question of scoping requirements, it's a complex and multi layered question. We are in the process of seeking member input on pooling, on the buying and releasing of accessible cars, information on economic impact, and the potential implications of implementation of a regulatory change.

We note that successful outcomes will require more than just the provision of accessible cars. It will involve, and many of our members have told us this already, an upgrade to really excellent customer service by some public agencies.

Considerations of advanced scheduling, maximizing the use of available resources, the capacity of agencies to meet demand and the efficient use of staff and equipment. All of those are very important considerations in the implementation of any proposed rule change.

Again, we say this is a question for which there is no one size fits all answer. But we will attempt to provide a full range of recommendations that address all the relevant issues.

Finally, two additional comments were made by our task force members. Task force is being chaired by John McGovern. Many of you know him I believe. John pointed out that over the past several years, that the Department of Justice has called golf cars by many names.

There is no standard nomenclature for what we are describing and trying to define. We recommend that may be a topic that you may want to address. Also the issue of golf courses' practice ranges and driving ranges. It's not considered in the ANPRM and we feel there are considerations for public, at least public courses, as well as private.

Thank you for your time on this and I'd be happy to answer any questions you might have.

>> JOHN WODATCH: Thank you very much. I would just like to remind you, you mentioned January 30th as the date that you were seeking, the comment period ends on January 24th.

>> RICHARD DOLESH: Oh, thanks. Very good.

>> JOHN WODATCH: We hope that doesn't unduly challenge you, but we hope you will be able to get the comments in by then.

>> RICHARD DOLESH: I stand corrected. We will have them in by then.

>> JOHN WODATCH: Thank you very much. I'd like to thank everyone who are here in attendance for the morning session. I think it has been an exciting and energizing set of comments that we received this morning. We are going to recess, and we will resume again at 1:30 for additional comments. Thank you all.

(Lunch break)

>> JOHN L. WODATCH: Good afternoon, everyone. We're going to begin the second phase of our hearings. I'll begin with a couple announcements. Those of you who are watching across the country on the Internet -- for those here, this event is being live streamed -- we may have some changes in our schedule for this afternoon, as it goes along.

We're in the middle of a snow event in Washington, D.C., and our area's reputation for not dealing well with a couple inches of snow is happening once again. And so there may be some discombobulations. We may have some people who couldn't make it here to the hearing testify by phone. We hope that will be a way that we can get to hear from people who had scheduled to testify.

I'd like to say to the people in the room, if you have cell phones, we'd like you to turn them off. There is a lot of equipment here, that is being used for the live streaming, as well as for taking calls from around the country, and the frequencies have been interrupting some of our ability to do that smoothly. If you can accommodate us in that way, we appreciate it.

I remind our speakers this afternoon, that we would like you to keep your comments to five minutes. We did that so that we could have the maximum number of people testifying today. We let you know, you can send us written comments, and we hope that you will, and supplement what you are testifying to today.

The panel has changed from this morning. I'm John Wodatch. I'm Chief of the Disability Rights Section. I'm joined by Mazen Basrawi, who is the counsel to the Assistant Attorney General for Civil Rights. And we are joined also by Sally Conway who is a deputy chief in the Disability Rights Section. And Gretchen Jacobs who is a senior trial attorney in the Disability Rights Section, who has played a significant role in the development of our recently published ADA regulations.

With that, we will begin, and we are going to begin this afternoon's testimony with Claude Stout. Mr. Stout, please proceed.

>> CLAUDE STOUT: (through Interpreter) Thank you. Thank you for the opportunity to present this afternoon. My name is Claude Stout. I'm the Executive Director of the Telecommunications for the Deaf, Inc. And this is a national advocacy organization that focuses on ensuring Americans who are deaf or hard-of-hearing have access to telecommunications media.

My presentation today will focus on access to NG 911 services. Over the past ten years we have had a tremendous change in the way that individuals use technology, to communicate and obtain access to emergency services.

Today, PSAPs are only required to make voice carry over and TTY calls, connected with the public switch telephone network.

Now, people with disabilities have discontinued the use of the traditional TTYs, and have moved on to other methods. And that is so that they can be more efficient and effective. Access to the telephone relay services and the technology for their communication needs, through VRS, IP relay, and Internet captioning services should be provided.

Now the ITRS, and other broadband technologies for their communication needs, such as the video relay system, Internet protocol relay, and real time text services should be provided for deaf and hard-of-hearing people. Now, this should reach these emergency service providers under all crises.

We advocate two approaches to 911 accessibility. The first approach is the direct access to 911 and communications with PSAPs. The call takers use voice, text, and video, or a combination of voice, text and video. The second approach is the indirect means of using the TRS, or ITRS, when a communication assistant is involved in the call, and the PSAP call-taker experiences the call as a voice call.

TDI supports the mandatory PSAP procedures and standards. And most 911 procedures and standards are localized, and most localities do not have the same means or the incentive to upgrade their systems so that all citizens can receive appropriate emergency services.

As a result, many national voluntary guidelines have been ignored. Adequate funding is also necessary to ensure that the PSAPs have the potential to upgrade their system to the Internet protocol environment that is compatible with advanced technologies.

TDI also strongly supports the development of a split screen technology. And that would permit a PSAP operator to see the image of the VRS caller at the same time as the PSAP operator hears the interpreter, via the relay service, which will improve the ability of the PSAP operator to understand the nature of the emergency.

In the event that the call is cut off in an emergency situation, the emergency responder would get the same amount of information as they would as if a caller were using a traditional phone to respond as part of the message, even though he or she did not receive the entire message.

So, for people who are deaf or hard-of-hearing, who rely on text and cannot use sign languages, RTT holds great promise. Thank you once again for the opportunity to speak with you today about these important issues.

>> JOHN L. WODATCH: Thank you very much. We appreciate you coming, especially in the snow, to take the time and give us your testimony. Next, we are going to hear from Haze Lancaster.

>> HAZE LANCASTER: Thank you, I'm here today on behalf of the ATMIA. We are a global nonprofit trade association representing the whole ATM industry established in the United States in 1997. The association now is just under 2,000 members.

I'd like to read the mission statement of the ATMIA to you. As an independent nonpublic, nonprofit trade association, our mission is to promote ATM convenience growth and usage worldwide, to protect the ATM industry's assets, interests, good name and public trust. And to provide education, best practices, political voice, and network opportunities for member organizations.

I also wish to mention that the ATMIA is busy preparing a written submission, and we will do this in the next couple weeks, as follow-up action to my public comments today.

Also, I want to state that our association wholeheartedly supports the values and purposes of the ADA as it applies to ATM machines in your rulings.

Secondly, I would also like to mention that ATMIA would definitely like to open dialogue with the DOJ on this crucial matter through subsequent conference calls with the appropriate staff once our written submission has been received.

Convenience has always been a core value of the ATM industry which is why we endorse the principle of enabling disabled and child and citizens to access and use ATMs with a comfort level enjoyed by other citizens. In particular, we would like to discuss logistical and economic implications of mass migration of over 400,000 U.S. ATMs toward enabled ATMs, which will be comfortable for disabled citizens to use.

We support a realistic time frame to migrate thousands of machines to this enabled status so as to avoid any premature de-installations and waste of perfectly good ATM machines not yet near the end of their natural cycle. In addition, we do not wish to see millions of non-disabled cardholders lose their current levels of convenient access to

ATMs during the migration process, as a result of any such premature de-installations.

We would like to discuss with the DOJ the details of a realistic, fair, and satisfactory time frame for the migration. And we would offer our channels of communication for assisting with what we think would be a colossal transformation of the U.S. ATM industry. The criteria for a successful migration of this nature would be fairness and convenience for all, including both disabled and nondisabled cardholders.

We thank you for this opportunity to speak with you today and look forward to handing in our written submission within the next few weeks and to continued discussions thereafter. Thank you.

>> JOHN L. WODATCH: Thank you very much, Mr. Lancaster, we appreciate your comments. Our next commenter will be via the phone, and it will be Katie Singer. Ms. Singer, please proceed.

>> KATIE SINGER: Thank you. I first want to say thank you for the opportunity to speak, and for considering my testimony. I'll be speaking about furniture and equipment, I believe?

I'm a writer and a teacher. My novel, the *Wholeness of a Broken Heart*, was published by Riverhead Penguin and was a selection of Barnes and Nobles Discover Great New Writers program. I've also published several books about the menstrual cycle and natural family planning, including the *Garden of Fertility*, which was published by Penguin.

My teaching has been featured in a half hour documentary for National Public Radio. I've taught physicians and laypeople how a woman can gauge her gynecological health.

In 1997, I bought a new computer. And I saw flickering. Everyone said, "It's a flicker-free screen." I said, "Well, I'm still seeing flickering." And I actually got so sick that I returned it within a few days. Over the years I have tried all sorts of computers and projector monitors. And each time I've gotten so sick, that I've returned the computer. My eyes get very blurry. And I also get intense flu-like symptoms. I tried a cell phone ten years ago and got such a buzz that I haven't used one since.

Being under fluorescent lights or in a building with Wi-Fi for an hour or two makes my eyes so blurry, that I am unable to read for three or four days. Until a few years ago, I considered these my personal problems.

I hired helpers who read my e-mail to me, and who typed my dictated reply. I hired a woman who can digitalize my handwritten or typed manuscripts. And friends and doctors turned off their fluorescent lights and their Wi-Fi whenever I arrived.

As fluorescent lights and wireless networks have become more ubiquitous, however, my ability to function has become increasingly impaired. The things that I've done to adapt no longer work. In the last few months, wireless gas meters were installed around New Mexico, and several antennas in Santa Fe went to 3G. My eyes have become constantly strained and blurry. I can only read hard copy that is at least 14 point.

I've tried prescription glasses, contact lenses and behavioral optometry, and none of it has helped. My sleep has also become increasingly disrupted as more wireless networks have been installed. I'm not able to teach anymore, because schools are now flooded with Wi-Fi and fluorescent lights.

The high school near me has a cell phone antenna on the property. Because hotels are flooded with fluorescence and Wi-Fi, I can no longer teach at conferences. I worked briefly as a cook at a farm in Vermont last year, and considered moving there. But then the neighboring farm installed an antenna on his barn. I've looked to live in other rural areas, in Pennsylvania, New York, and New Mexico. But they are also now flooded with electric fencing or Wi-Fi antennas, all that stuff, that leave me unable to sleep. I'm very concerned that smart meters and Wi-Max will soon be installed around New Mexico. I really don't know where I can live at this point.

I have a website. One of them is gardenoffertility.com where women send me questions about reproductive health. In their e-mails they report very strange menstrual cycle disruptions. The night lighting techniques and dietary remedies that I've suggested for years are no longer helping them like they used to.

I now suggest that women keep their mobile phones away from their ovaries, and that they turn their Wi-Fi off while they sleep. But these women cannot get away from workplace or neighbors' wireless networks. They can't get away from antennas or wireless utility meters. So, I'm seeing this as a larger issue beyond myself.

What would I like? One, I hear that fluorescent lights will not be available after 2012. I would love to see them kept on the market. Two, could schools and other buildings of public accommodation use LED lights, rather than fluorescent lights? Three, could an opt-out be allowed on wireless utility meters? Also, as I understand, utility meters could run on phone lines, and then they wouldn't have to be wireless and emit radiation.

And four, could the government really look at the impact of electrification on wireless networks on health and create legislation that respects scientific findings. One article that I found very helpful was in *Prevention* magazine in January of this year. It's called "Electroshocker" by Michael Segell. Thank you again very much.

>> JOHN L. WODATCH: Thank you, Ms. Singer, for your testimony. Next we will hear from Alfred Sonnenstrahl.

>> ALFRED SONNENSTRAHL: (through Interpreter) Hi, nice to see you, John, it has been a long time. I'm Al Sonnenstrahl, and I'm from SAC, Sonny Access Consultants. And I'm happy about these four ANPRMs. There's a lot of issues to cover. And I know the time is limited to only five minutes, so I'll make my comments brief and discuss some of the very important issues.

Before I go on, I want to make sure that I'm clear that from a person who is deaf, compared to a person that can hear, hearing people, there is a group of people that have disabilities that are hearing and might have disabilities that don't relate to hearing. And then there's the deaf group that are hearing disabled. From another person's perspective, there is a possibility of a third group. A group of people who can hear, people that can hear that have other disabilities, and then there is also a group of people with hearing disabilities.

There's actually three groups. I, for one example, am in a group of people with hearing disabilities, I'm deaf. I require interpreting services. I use text messaging. People who are in wheelchairs are people who are hearing, and they, as I do, need accommodation, they need a wheelchair. But there are separations. There are differences. People who are hearing that have disabilities.

And why am I making this such a big deal and emphasizing this is because people with hearing disabilities are in a different group. And when they go and talk with people with hearing -- to make the process easier, they have to make sure that they have interpreters, to make the process equal.

We insist that text access to emergency services, in particular, NG 911. I know that's coming up. And I'm not really sure exactly when. I know that there are deaf people that have the right to have that access to emergency services. So, I don't know. We have been waiting for this for some time. When Next Generation NG 911 is available, then we'll have access. But at this point, we have been waiting a long time, and we need to have that ability to have the access to the emergency services now. So, what I'm saying, and what I recommend to you, is that we do have the ability to have text access to 911, and to the 911 system.

It's ready. It's readily achievable. I know that Arkansas already has a statewide program. Sacramento in California, they already have a program established. We should have the same nationwide.

The third issue. I'm requesting that all medical facilities, such as hospitals, have a videophone. Right now, they don't have them. They have TTYs, and they are pretty much obsolete. People are not using TTYs any longer. They should have text telephones and videophones for availability for deaf people when they go to the hospitals.

Do I have time? I have another issue I'd like to discuss. NG 911 should include the video interpreters. This is very important. The interpreters themselves need to be very well trained in these emergency situations. Website access should also include promotions. It has to be captioned. The promotions have to be captioned to include all, so that people with hearing disabilities that are deaf can be involved in these programs as well. There are many situations that are not captioned, and they should be.

For example, Macy's has a customer service department, where you can go or you can call. And so you call in to the customer service for whatever situation you might have, and to get your customer service, or you can go in person to the office. We would need to make sure that that also is accessible for people with disabilities or for people who are deaf.

Before I end, I also want to make sure that I include Braille. Braille is shrinking. People are not using it. It is becoming obsolete. They are using more audio equipment. And I think that that is something that we should address as well, Braille and audio equipment. Braille should be maintained and audio equipment should also be used. Thank you so much.

>> JOHN L. WODATCH: Thank you very much. We appreciate you coming and testifying today. Next we'll hear from Janet Bailey. Ms. Bailey, go ahead.

>> JANET BAILEY: Thank you. I'm here representing the Registry of Interpreters for the Deaf and our 15,000 members who are the sign language interpreters you see and hear every day.

We thank you for the work that you are doing to review and improve the current regulations. And we thank you for the opportunity to share our views specifically today related to E911 calls through VRS.

The FCC mandated that 911 emergency calls made through VRS receive priority attention so that they will be answered by the first available CA, or communication assistant, ahead of all other nonemergency call. And this makes sense in theory. Currently, the VRS providers expect that their interpreters will do just that and take that next available call.

We can all agree, I do believe, that it takes a very special person to be an emergency first responder. Individuals who train and work in our nation's public safety answering points, or PSAPs, face life and death situations on a daily basis. These courageous people receive specialized in-depth training so that they will be ready to answer the call, quite literally.

They are also provided personal support and assistance should they be involved in a highly emotional or tragic experience. VRS interpreters face that very same emergency situation. One PSAP staff member pointed out to me that the interpreters are watching the drama unfold as opposed to listening on a telephone, which is much different.

And yet, the interpreters are not provided with the same level of training and/or the support. The RID believes and strongly suggests these calls be handled by an emergency call CA team, if you will, that has specific experience, credentials and training.

Our interpreters have shared with us that they are sometimes fearful, unsure, and hesitant about accepting that next call, if it's an emergency. Some of our VRS interpreters are not certified. They don't have any community interpreting experience, where they have met deaf people in doctors' offices, hospitals, or worked with police or emergency personnel. They do not have adequate training. The training that is being provided currently tends to focus more on the corporate procedures, and not about the emergency situations.

We believe that limited experience in training can negatively affect a CA's ability to appropriately interpret an emergency call. Therefore, RID recommends strongly that VRS CAs must meet minimum standards to handle E911 calls. That could be national certification, years of experience, and specialized training.

We believe that anyone working in this situation must take both introductory and ongoing training. And we believe that anyone working in this area must be provided adequate support, whether that be EAPs, support protocols that would allow for teaming, or breaks, or on-site counseling.

We also believe that consumer education must be provided. Many deaf callers don't really understand the system and the role of the interpreters. And they tend to want to explain their problems to the person who can sign to them. So when that interpreter shows up on the VRS screen, they tend to want to get right to it and tell them exactly what is going on. And that is not what they need. In fact, what they need is to be connected to the PSAP as quickly as possible.

Because the E911 services are new to many deaf and hard-of-hearing users, and new to the VRS systems and new to the PSAPs, we strongly suggest that emergency E911 calls should be separated from regular VRS calls, with special rules, or if possible, exceptions to the VRS rules.

For example, as often as possible, one interpreter or a team of interpreters should stay with the consumer throughout the call. And if a call is dropped, that interpreter should be, if possible, reconnected. That will save time and provide a more successful experience.

Interpreters should also be allowed, and trained, to assist the communication to make sure that there is timely connection to the PSAP. As I mentioned before, they should be able to break in and say, "Don't tell me everything that is going on. We need to know where you are and how to get to--" whatever it is they need to do, to get them connected to the PSAP. As a result of this exception, there need to be protections in place to assure that the interpreter is protected for doing the right thing.

Lastly, video remote interpreting needs to be accepted in this situation, because oftentimes, when they're finished with the actual call, there will be no interpreter. The PSAPs can't afford to bring in an interpreter, and they need to have that. So, we are suggesting that video remote interpreting be allowed under the funding of the VRS for that.

We thank you very much for your attention.

>> JOHN L. WODATCH: Thank you very much. We appreciate your testimony today. I'd like to take a break just to say that David Capozzi, who is the Executive Director of the United States Access Board is in the room today. And on behalf of the Department of Justice, thank you for allowing us to use your superb facilities for the hearing today and for the support of your staff. We really appreciate it. Thanks. Next we're going to hear from Suzanne Robitaille.

>> SUZANNE ROBITAILLE: Thank you very much. Thank you for having me. My name is Suzanne Robitaille. I'm the founder of AbledBody.com. A-B-L-E-D-B-O-D-Y.

I'm here today to talk about online programming. My colleague and I, Michael Janger, who is in the audience, have written a white paper. And it came out today, but I still can't remember the title of it. It's so long. "The French Chef Still Waits For The Annoying Orange." I'll explain. Making online programming accessible to people with disabilities. I'd love to give you all a copy. I have it in alternative formats. Let me know which one you would like.

So, this paper is really about online programming, and the emerging content that is out there that is sort of out of scope of the 21st century Communications and Video Accessibility Act. It is a great step in the right direction, but it's really not enough. The problem is that most online emerging formats are not included in the law, including the webisodes and Netflix streaming movies, and consumer generated content like YouTube videos, when 35 hours of videos are uploaded every minute. While NBC's *Hulu*, for example, has to caption its programming like *Glee*, there are hundreds of other online only channels that get a free pass.

This Web caption dilemma has drawn the attention of this great panel here today, and rightfully so. We ask that you look closely at how TV, cable and satellite providers are migrating more of their programming online on to emerging online formats where captions are not mandated.

Cable and satellite providers, in an attempt to combat rising subscriber losses, are now giving their paying subscribers free access to their online movie and video libraries, also most of it not captioned.

No industry understands legal loopholes better than the movie studios. For years, they have petitioned against having to provide captions on movies shown in every movie theater. No surprise then, when Sony Picture Entertainment launched crackle.com, Warner Brothers founded VWB.com and Epics, a third player, is owned jointly by Viacom's Paramount Pictures, MGM, and Lion's Gate Entertainment. None of the content on these websites offer captions. But the companies claim to be working on them.

Companies that are seemingly innovators in the streaming media space don't necessarily fare much better. Netflix, which offers an Internet only movie subscription service plan, says it's working on captioning its Internet movie library but has dragged its feet for years.

Netflix also raised the price of its DVD by mail plan, which has captions, and lowered the price of its Internet-only plan, which doesn't. The deaf community is calling this a deaf tax.

While it's good that your panel has raised a red flag, that doesn't mean private sector companies that create videos and other programming for use online should be regulated. Some companies already make good faith efforts, which the deaf community appreciates. More companies should take the time to learn about the benefits of accessibility and the do-it-yourself tools and captioning services available to help them.

Captioning gives companies the opportunity to make their content findable on search engines, which will drive more customers to their sites. Businesses that innovate with captions and other features will enrich the user experience for the disabled, the aging population, non-English speaking viewers, and others. The royalty and profitability will follow.

Once a cottage industry, emerging online formats now have the potential to lock out a huge marketplace for content for the deaf and hard-of-hearing population, unless new regulation and innovation spurs more businesses, including emerging online programmers to embrace accessibility. Waiting for the hundreds of online only providers to do the right thing with no other incentives will take too long.

That's the message you should convey to the public. That is what businesses and content creators should think about going forward. A parting thought for those still on the fence. The Annoying Orange generated more than 56 million monthly views in October, more traffic than some cable channels get, and it is exempt from the captions law. While some say this Web series isn't worth the time, this is a decision that deaf and hard-of-hearing people should be able to make on their own. Thank you very much.

>> JOHN L. WODATCH: Thank you very much. Next we will hear from Eve Hill.

>> EVE HILL: Good afternoon. My name is Eve Hill, and I'm the senior vice-president of the Burton Blatt Institute at Syracuse University. I'm here today to comment on the ANPRMs on furniture and equipment and on websites. My focus is on accessibility of electronic and information technology, also known as EIT. Despite 20 years of the ADA, the websites of public accommodations and state and local governments are still being developed, maintained and updated to be inaccessible. And electronic and information technologies beyond websites are rapidly being developed and deployed by governments and public accommodations without consideration of accessibility.

Technology is becoming central to education, retail goods and services, healthcare, employment and government services. Today Internet use is essential to get and keep a job, to get an education, to buy goods and services, and to access government services.

Technology offers the potential to allow people with disabilities more access to our communities, to allow us to stay in our homes when otherwise we might be forced to move to institutions, and to allow us to build new communities. But without accessibility, it ends up having the reverse effect, and excluding us even more.

Examples of some of the technologies that are changing the landscape now, include in education, technologies like the Kindle DX which was deployed by several colleges and universities, despite its lack of accessibility for blind students. Self-service kiosks for registration, library services, banking, et cetera, and wireless clickers for in-class interaction with professors and other students.

In healthcare, self-service kiosks that handle check in, check out, medical testing and monitoring, and even prescription dispensing. In retail, electronic menus, self-checkout, electronic vending machines, concierge systems with turn-by-turn directions, product information, and just-in-time coupons. In-store networking, so you can ask your friends who are not shopping with you, "Do these jeans make me look fat?" Body scanning, and facial recognition that will allow the stores to make recommendations like, "You are really a size bigger than you thought you were," or, "If you like that, you might like this." And holographic ads. In government services, kiosks and online systems for vehicle registration, jury service, payments, building permits and voting are just the beginning.

These technologies are fast replacing human staff. So, no longer will there necessarily be someone there to help you use the technology or to provide an alternative to the technology. And the technologies which are available 24 hours a day and in flexible locations simply can't rely on alternative methods of communication, which are available during limited hours and limited locations in order to be effective.

They must be made accessible, so individuals with disabilities can access the same information and services at the same time for the same price as individuals without disabilities.

As other witnesses have testified and will testify, difficulty in cost are not the problem. Rather awareness and priorities are the problem. The equipment and website ANPRMs are therefore right to bring accessibility of EIT to the forefront, to make it priority and to provide specificity and standards. We believe the appropriate standards to be adopted is the World Wide Web Consortium's Web Content Accessibility Guidelines, commonly referred to as WCAG, version 2.0, level AA for website accessibility. It's the most currents and well-developed guidance available. It was developed by a wide array of stakeholders including industry, government, people with disabilities, and technology experts, and represents an international and internationally accepted standard. It provides core principles, performance standards, and technical guidance. And it is technology agnostic, allowing it to apply to both current and future technologies.

It is also, importantly, testable, which provides a basis for ensuring accessibility by covered entities and monitoring accessibility by people with disabilities.

We don't believe staggered implementation dates for website accessibility are necessary or advisable. Businesses and governments who have wanted to comply with the law have been making their websites accessible for years. And those who have not should not be encouraged to further delay by claiming the accessibility standards aren't enforceable yet. Websites aren't like buildings, in that they are constantly being updated, refreshed, and having content added.

For EIT equipment other than Web-based equipments, all new and altered EIT equipment should be required to be accessible. Making a percentage accessible doesn't make sense either for consumers or for covered entities. How will the blind person know which checkout is accessible? Moreover, the additional cost of accessible devices essentially disappears when multiple devices are purchased, and as accessible devices become the norm will disappear entirely. Does it now cost any more to buy an accessible elevator, when inaccessible elevators essentially aren't available at all?

For existing EIT equipment, accessibility features should be added as necessary to achieve effective communication subject to the undue burden defense. We applaud the Department for taking this important step, and thank you for the opportunity to comment.

>> JOHN L. WODATCH: Thank you very much. We appreciate your testimony today. Next, we are going to hear from Jennifer Simpson.

>> JENNIFER SIMPSON: Good afternoon, I'm Jennifer Simpson, Senior Director of Government Affairs at the American Association of People With Disabilities. We are very pleased that this rulemaking is under way because of the impact of changing technology on all ADA regulations. I'm going to offer some brief comments on behalf of the AAPD on all four of the topics of the ANPRM. I'll try to be brief.

With regard to Web accessibility, we think it's hugely important to clarify the scope of the ADA in regards to the Internet and what is expected of whom. Clear rules make for clear understanding by people with disabilities and by the industries affected. We also note the growth of the Internet and the activities conducted by the Internet is exponential. CISCO's chief futurist said there are 35 billion devices attached already to the Internet, and in ten more years it is likely to be well over a trillion devices connected.

There are some sense of urgency here, I believe, in terms of the accessibility issues for what is going to be found on the Internet for people with disabilities. The connectivity may include cars, home appliances, dogs, pets, health information technology and hundreds of other things that people here have already mentioned. The ability to access, to get a ramp on to the Internet, and the content of the Internet pages and all other activities on the Internet is just as important that those be accessible.

We know there are numerous guidelines and standards already out there. We echo others who have talked about the Worldwide Web Consortium, WCAG 2.0 standards. We believe these are very good standards to be working with. We know the Access Board, too, and its 508 rulemakings has explored many other pieces of technology that need to be made accessible.

We also support others who believe that there should be captioning and video description of online material as a means of accessibility. It's quite true the 21st Century Act didn't go as far as we would have liked it to have done when we lobbied for it at AAPD. But, clearly, this is another place where the DOJ can pick up where another statute left off. In regard to movie captioning and audio or video description in movies, we would obviously support 100 percent of captioning of video description in movie theaters.

Obviously, the industry is going to object to that because we know the industry will always object to things like that when we ask for 100 percent captioning. But it's quite possible to work out schedules for implementation to reach 100 percent captioning or video description. We also think that captioning and video description are not used solely by people with disabilities. For instance, open captioning is used by a lot of people who don't even realize it's captioning. They just see it as another form of access. So, we believe that much more needs to be done about making these more mainstream, these means of accessibility, so everyone can benefit from them regardless.

In regard to accessibility of Next Generation 911, we know there's a lot of people using the new forms of text-based technology to get to PSAPs. But we ask that DOJ to proceed cautiously. We know there are still TTY device users out there, particularly among low-income people, rural people and elderly people who have not yet transitioned to the new technologies. So, we would ask for caution there until there is a new standard established for real time text. We know the FCC is working on this. They've got that new committee over there as a result of the 21st Century Act. And we also understand under the Net 911 Aact that was signed in 2008, we, in fact, did succeed in getting some accessibility language in the planning to be done by state and local governments as they do now in E911 Next Generation technologies. We are happy to see that you have a DOJ representative over there at the FCC on those committees.

We also would urge consideration of pushing out more at the local level with the state and local governments, more participation by people with disabilities, in E911 efforts that may be occurring locally. That raises the issue at a very visible way at the local level. So, if it's possible to have a requirement around that, that would be good.

In terms of equipment and furniture, we would like the rules to look at it from the point of view of customers and also employees of institutions that have the furniture. It's not just about consumers using it. It is also about everything else.

Particularly, around medical and exercise equipment and furniture. We know dental equipment is a real problem. My son himself who is a wheelchair user, we had to basically conduct a tri-state search to find a dentist that had an accessible set of x-rays for him to have his wisdom teeth looked at and then have them pulled out, of course. This equipment is not easily found. Providers are not easily found for things like this.

We obviously need to have more done with this industry to make sure that more equipment is accessible. We hear too often at APD about hotel beds that are too high and electronic controls in hotel rooms that are not usable and accessible. So, definitely moving into what gets used in hotels is very important.

We are very happy that you are doing this rulemaking. We want to submit written comments, and we'll obviously go into greater detail with everything I've said. We do know historically the marketplace doesn't take care of this and that working with the industries is one way to do it. But good, strong, clear rules certainly act as a way for industry to get there. Thank you.

>> JOHN L. WODATCH: Thank you very much. We appreciate your comments today. Next, we'll hear from Norman Williams. Please proceed, Mr. Williams.

>> NORMAN WILLIAMS: (through Interpreter) Hi. I'm Norman Williams. I'm with the Rehab Engineering Research Center for Technical Communication and Access at Gallaudet University. Thank you for giving me the opportunity to come here and give you my comments. My comments will focus on Internet access on the interim basis for accessibility.

We feel that we need to establish a 911 number for all contacts with deaf callers. Using the local technology like GPS, many users already have smart phones. A quick solution could be made by an Internet change in the carrier. By using the Internet, we could avoid possible changes that need to be made.

There could be fraudulent calls, which I know is a concern. I think that we could address that issue easily as well. One national wide 911 center could also use SMS and texting. It doesn't allow the regional numbers, one area uses one number, another area uses a different number. That wouldn't be appropriate. For travelers, we want to keep it consistent on a nationwide basis.

Like we do 911 nationwide voice calls, it should be the same for people who are deaf and hard-of-hearing. In the short term, we need to have some type of 911 basis, a 911 number for deaf people to use. Just in the interim right now, so that we can have one number and use that number all over the United States. We should have one center. And we should be flexible, where the media can make these calls, or we can call to them. And right now, we have a hard time making any kind of calls to the PSAPs.

I'd like to talk about the Next Generation 911, NG 911, and the calls that deaf people can make to them. It's very important that NG 911 actually comes to fruition. We look forward to this technology and the development and application and use of this, because it might be expensive, or it might be complex developing these systems, but we need to forget that and really focus on the system and the benefit of that for the deaf community.

We should be able to make calls, voice calls, data calls, real time text, and we should support all that. Between the deaf person making the call and also the PSAP receiving the call so that we can have a clear line of communication. We can use the VRI, the video remote interpreting, but we have to make sure that the caller who is deaf and the interpreter become in one video so we can use that split screen technology, and the PSAP could see both people.

The FCC partnership should happen. Department of Justice and FCC should work hand in hand and come up with a short-term solution so that we can have direct access and use text messaging. Thank you.

>> JOHN L. WODATCH: Thank you very much. We appreciate you coming today, especially in the snow. Next, we'll hear from Janet Kreitman. Please proceed.

>> JANET KREITMAN: I'm Janet Kreitman, Program Coordinator at the American Association on Health and Disability, AAHD, a national nonprofit association in Rockville, Maryland. Our mission is to advance health promotion and wellness initiatives for people with all types of disabilities through education, research, public awareness, and advocacy.

I'll focus today on the challenges women with mobility disabilities face regarding accessibility to medical equipment, when receiving mammograms. AAHD has received three grants from Susan G. Komen For the Cure to perform on-site mammography accessibility assessments in the greater D.C. area, in order to educate mammography staff about facility and equipment accessibility. Through our grant work, we found that women with disabilities encounter challenges in getting mammograms regarding physical design of the facility, non-accessible mammography machines, and accessibility of dressing rooms, bathrooms and the mammography room.

We found that some facilities lacked wheelchair-turning space that was adequate in the mammography suite, and some lack machines with a plate lowering to an adequate height. Breast cancer is a major public health concern for all women, including women with disabilities. Women with disabilities are as likely as women without disabilities to have received a mammogram but are significantly less likely to have been screened within recommended guidelines.

These disparities often stem from environmental, attitudinal, and/or communication barriers. This testimony is a brief synopsis of testimony provided to the U.S. Access Board in a public forum on access to medical diagnostic equipment held in July, 2010.Please see the Access Board website for more accessibility requirements, specific to designing medical equipment.

Women with disabilities are entitled to a safe and accessible setting when receiving their mammogram. The following are two examples of medical equipment that need to be designed to meet the needs of women with disabilities and chronic health conditions. DOJ's 2010 Access To Medical Care For Individuals With Mobility Disabilities states that people needing to have an exam while staying in their wheelchairs, for these people, quote, "the mammography machine will need to adjust to their height and accommodate the space of the wheelchair," end quote.

One possible barrier to mammography equipment might be how low the plate on the mammography machine can go. Three other recommendations made in a 2009 study by Kales and Lee suggests that the needs of women using wheelchairs be considered by makers of mammography machines, and that there is enough distance from plate to tower to accommodate a wheelchair. The angle of the plate makes it easy for someone seated to position her breasts on the machine. And if there is a platform on the floor protruding from the tower, that it does not interfere with wheelchair positioning.

Both technologists and women with disabilities should be involved in the design stages of new equipment to offer suggestions which would increase accessibility. Training technologists on how to use newly designed accessible machines properly is also crucial.

The Federal Register asked what types of ancillary equipment are most effective in different medical examination settings. DOJ's Access document states that, "People who walk with a mobility device or who cannot stand for prolonged periods of time may need to sit in a chair with adequate support, locking wheels, and adjustable back, and like people who use wheelchairs, need the machine to adjust to their height once seated." End quote.

There should be some auxiliary chair available to provide support and stability to patients using wheelchairs without detachable arms and to patients unable to stand who do not use wheelchairs. Some mammography staff mention during site visits that instead of using a secure positioning chair, they sometimes use a chair with wheels and no brakes, which could be dangerous.

Creating a safe environment for a woman with a mobility disability during the mammography exam is beneficial. Not only does this help provide an accurate test on that day, but creating a positive experience helps ensure that the woman will return for future exams, which is crucial to prevent breast cancer.

Around 20 percent of the population reports having a disability. A significant percentage are women who should follow recommended universal health screenings. Women with disabilities cannot be overlooked. And one of the first steps in increasing screening is to ensure the facility and medical equipment are accessible.

Thank you very much.

>> JOHN L. WODATCH: Thank you. We appreciate especially the detailed nature of your testimony. It's been very helpful. Next we will hear from Jonathan Lazar. Sir, please proceed.

>> JONATHAN LAZAR: Hi. Good afternoon. My name is Jonathan Lazar. I'm a professor of computer and information sciences at Towson University in Towson, Maryland where I do research on accessible Web interfaces, as well as the societal impacts of inaccessible Web interfaces. As such, my comments will be limited to the ANPRM about accessibility of Web information.

I'm sure companies will state that it's either technically impossible, or it's cost prohibitive, to make their online services accessible for people with disabilities. Both of those statements would be flat out wrong. I've been working on Web accessibility research for a decade, and I can tell you Web accessibility is possible.

Even some of the more technical challenges mentioned in the ANPRM such as captchas. Captchas are those security features that usually show up as either twisted visual text or garbled audio text. So, we've built accessible captchas. It's possible. We've run multiple studies that document, for instance, blind users who use screen readers, if they're using accessible websites, they are just as effective, they are just as quick as visual users. Really, it's very important to have those accessible websites because it relates to productivity of users. They become equal in terms of their speed of performance.

We must demand that each website have of a public accommodation, is accessible for people with disabilities without providing multiple additional exceptions. When companies say that they will not make their main website accessible, but instead they will offer some type of accommodation, such as calling on the phone or alternative method, often these accommodations wind up being unequal. Please don't believe them, don't believe the companies when they say they are equal.

When they say that calling on the phone will be the same thing, don't believe them. When they say that the full website is not accessible, but if they just use the mobile version of our website, that's accessible, don't believe them. Why? Because usually the mobile versions do not offer full functionality that the website itself offers. You get basically a limited version.

I'm against providing alternative accommodations which wind up being separate but inherently unequal. The main website itself must be accessible. Here is an example of why. Working with my research team, we investigated the accessibility of ten airline websites. Of the ten airline websites that we looked at, four of them were inaccessible. There is a Department of Transportation rule that says that you don't have to have an accessible airline website. But if your website for an airline is inaccessible, then an individual with a disability has the right to call the airline and say, "I have a disability, and I want to book a flight."

We identified those four airlines with inaccessible websites, of the top ten largest airlines. And what we did then is we called the airlines, identified ourselves as being blind, and saying we would like to make a reservation. What we found is that for two of the four airlines with inaccessible websites, in over a third of the time, the prices quoted were higher than they were online.

If they say, you know, "If you just call us, we will give you the same deal online, over the phone," it doesn't often work that way. Even after we identified the Department of Transportation rule, and again noted that, for instance, the call center fee may not legally be charged for an inaccessible website. If you call the airline, they want to charge you the call center fee. We even identified the regulation and said it's a D.O.T. regulation, and the airlines still refused to actually acknowledge it. And they refused to waive their call center fee.

This is what happens when you tell people, "The website doesn't need to be accessible. Just tell them to call us. We'll provide an accommodation for them." It's really a big problem. Working with my students we just looked at e-commerce websites. Examined 50 e-commerce websites and looked at the ten largest websites that had both the physical component, physical store as well as an online version, and had online only deals, meaning that there was a deal you can only get online that you couldn't get at the store. None of those ten large e-commerce websites were fully accessible.

There is a lot of potential there for discriminatory pricing. It is not just in shopping. We've looked at museum websites, we've looked at travel aggregator websites, employment websites, we've looked at state government websites. Most of the websites we looked at had major accessibility violations. It is not just a minor inconvenience; it is a major problem. Inaccessible websites lead to pricing discrimination, job discrimination and limited access to state government information.

Again, let me repeat. My research shows people with disabilities can be just as effective at their work as people without disabilities, if the applications, if the websites, if the Web applications, are accessible.

Separate accommodations which avoid making the core website accessible really are a major problem. They wind up being discriminatory. Developers need clear guidelines from the Justice Department, but enforcement also plays a role. So, I look forward not only to the guidelines coming from the Justice Department for the ADA, but also I look forward to seeing enforcement coming from the Justice Department. Thank you for the opportunity to be a part of this process.

>> JOHN L. WODATCH: Thank you, Dr. Lazar. We appreciate your being here. I apologize for mispronouncing your name earlier. Our next commenter will be on the phone, and is Dr. William Bruno. Dr. Bruno?

>> WILLIAM J. BRUNO, PH.D: Can you hear me? Yes, my name is William Bruno. I hold a PhD in physics from UC Berkeley. I'm a professional theoretical biophysicist, member of the Biophysical Society. My research papers have been cited over a thousand times, including in prominent textbooks and then a paper by one of President Obama's science advisors. I have served on a panel of the World Health Organization. I wish to comment on the proposed rules for furniture and equipment.

Furniture and equipment must accommodate people who have become functionally impaired by many types of environmental electromagnetic fields, or EMFs. This includes people with medical implants. It probably includes many people with neurological conditions, most convincingly, epilepsy. And it certainly includes at least some portion of the people who have identified themselves as electromagnetic hypersensitivity or EHS.

This last group includes myself. Every scientist knows you can't prove a negative, yet several papers have claimed to do just that. Claims have proven that EHS symptoms are not caused by EMFs. I won't dwell on the scientific issues in this testimony, but I will mention that there are papers that give compelling evidence that EHS symptoms are caused by EMFs.

There are papers by Dr. William Rea of Dallas, Professor Norbert Leitgeb of Austria, Dr. Steven Jeong Wi of Canada, and a paper by Kwan et al., from Sweden, as well as one Barn et al., of the Netherlands.

I will call attention especially to the Kwan et al. paper I mentioned from 2007. Two subjects were able to tell whether a cell phone was transmitting microwaves or not more than 95 times out of 100 trials. The odds of them doing this by chance are less than one in a billion, billion, billion, billion. Even if the study were repeated on the entire population of the world for 100 years -- and no one could do better than chance -- the data from these two subjects would still be statistically significant. The effect is statistically proven once and for all.

I want to give an example of someone I know who is functionally impaired by EMFs. He is seven years old. Most of his childhood he's seldom slept through the night. He often complained of headaches. At my suggestion, a couple years ago his parents tried replacing their Wi-Fi network at home with ethernet cables.

The boy instantly began sleeping through the night and seldom had headaches. One night with the boy asleep, the parents turned the Wi-Fi back on to add another computer to the network. The boy awoke screaming. This is a very serious situation, both for children and old people. And I'm 47 years old, and I'm affected by it.

Accessibility means no wireless networks, especially pulse modulated digital microwave networks like Wi-Fi. No fluorescent lights, especially with electronic ballasts like compact fluorescent bulbs. No large alternating current magnetic fields that are found in anti-theft systems. Also, touch screens should not be required because of the EMF issues.

I would recommend that the EPA be brought into this discussion. The EPA is the one agency that had an active research program in biological effects of electromagnetic fields. Carl Blackman is a scientist who is still there who signed something called the Benevento Initiative that was trying to raise these issues for the world. A number of scientists signed it; I've also signed it. The Benevento Resolution. There was also a Venice Resolution after that, calling for more research, among other things, but also more precaution in the way these technologies are implemented. Not for just disabled people, but also the population in general. I'll end there.

>> JOHN L. WODATCH: Thank you very much. We appreciate your taking the time to testify today. We are going right now to take a five-minute break, and then we will reconvene.

(Break/Music) (01:03:35 - 01:12:38)

>> JOHN L. WODATCH: Welcome back, everyone. We're going to reconvene. We've had a change in our panel. We've been joined by two attorneys from the Disability Rights Section, Christina Galindo- Walsh and Kathy Devine. Both of them have been working very diligently on the regulations that we are seeking comment on today.

We are going to continue now with a videophone call from Arthur Roehrig. Sir, you may proceed.

>> ARTHUR ROEHRIG: (through Interpreter) Hi, my name is Art Roehrig. I'm a deaf/blind gentleman, and I'm representing the deaf/blind community. I'd like to share my opinion with you about the Web. And I really appreciate your time and the

opportunity here to talk. It's very important to have Web access, especially for people who are deaf and blind. Many, many times we encounter frustrations when we want to use the Internet.

There's all kinds of pictures and images and icons all over the screen. It would be nice if we just had one line at a time, so that we could use that. We could use possibly a Braille keyboard that would let us know what line we are on so that we can read it line by line throughout the screen in a low, slow progression. Maybe not too much -- at this point it is too slow for us, and it consumes quite a bit of our time, and it's very frustrating and difficult.

Sometimes I feel like I can't see just a portion of something, and I try to magnify it, and then something else gets blown off of the screen, and the different modules and icons. And it just can be so frustrating for a person who is deaf/blind like myself. There's a lot of problems, and the World Wide Web, the design has to include in mind for people who are deaf and blind, people who have visual impairments. People who already can see don't have these frustrations.

Often we just look at it, and we can't see anything and we feel ignored. I've learned quite a bit on how I can navigate throughout the screen. And I can look for various icons or topics that I might need, and I can magnify them so that I can read them, and see them.

But, again, this is extremely time-consuming. There should be some consideration in the design, specifically for people who are deaf and blind.

There are many issues that should be considered. I know that the cost should be a factor. We should have some more research for full access, for people who are deaf and blind. And secondly, there is a large concern for training. We need more training. I know this is difficult. It's hard to find people who are trained in issues relating to deaf/blindness and access. But we need to get some training out there for people who can accommodate us and help us on the Web.

People who have experience working with deaf/blind people might be perfect people to be involved in the training, people who are familiar with Braille, large print, because often people don't understand these topics. And sometimes they don't include people who are themselves deaf/blind, and this would be a smart approach, that we would maybe even have to hire two people. Maybe a person who knows the topics, and the issues. And also an interpreter often is needed for these situations.

We need to have a person who is familiar with all of these issues. I could go down a list, a very long list, and we would rather just be able to have one person. There is four or five deaf/blind people that have been trained, and there are more deaf/blind people out there that could be used as well.

Those are my biggest concerns that I have, is the design of the Web, including people who are deaf and blind, and there are issues. And also, training. Making sure that people have the training that areis needed, so that we can address the issues for deaf/blind consumers. And establish a model, a model for others that can learn, for people who use Braille or who have low vision. These are the concerns that I have. And that's all I have. Thank you so much for the time.

>> JOHN L. WODATCH: Thank you very much. We appreciate your testimony. I'd also like to take this opportunity to thank our contractor X-Factor, who is making a lot of the technological advances possible here today. And including the thrill for us of being able to have someone who is deaf/blind testify by videophone at our hearing today.

We are going to proceed now with another telephone call from Dan Harper. Mr. Harper, you may proceed.

>> DAN HARPER: Hi, this is Dr. Dan Harper, it's a pleasure to meet you. I'm board certified in family medicine and board eligible in environmental medicine. And I see a lot of clients who are environmentally sensitive, be it mold, chemical sensitivities, electromagnetic fields. And with the smart meters that have been put onto many of the homes around here, my clients are beginning to feel like they are being attacked.

I've had four people in this week that say since the meters were attached to their home, they cannot sleep. When they walk by the area where it is, there are certain times of the day when there is a higher frequency that is coming. It causes their skin to burn or they become tachycardic, or they lose the ability to focus, cognitive dysfunction.

I've been reading the medical literature and scientific literature concerning these. The report by Dr. Sears given to the Canadian government talks about how that all the people that have environmental sensitivities have the same weaknesses on their single nucleotide polymorphism panels. Genovations does one that's called the Detoxification panel, and they look at a number of cytochrome systems and also the phase 2 detoxification systems involving the COMT, NAT2, glutathione synthetase and superoxide dismutase 2. And the people that have these environmental sensitivities, all of them in common have at least three out of the eight that she mentions as being commonalities of people who are extra sensitive.

Oxford has been doing research on the cell membrane. And they have been following the glycoproteins for quite some time. All of my people that have these sensitivities, they are kind of an intuitive people. They can feel the energy of people or know things. It is almost like their radar picks up things at 500 yards instead of everyone else's that picks it up at 100. They smell perfumes two blocks before; they can smell a natural gas leak earlier. I'm finding many of my clients have these sensitivities, and the World Health Organization has already recognized mold as being a problem. They are beginning to recognize the weaknesses of the chemicals sensitivities.

We now honor fibromyalgia, but these electrical sensitivities are also in that same class. They are part of the invisibility invisible disabilities that were described in 1990 and 2008 disability acts, and in that they cause neurocognitive dysfunction. It will seem crazy. I have two clients that are being treated right now for schizophrenia, that when I removed them from the electrical fields, they got off all their medications.

I am trying to protect these people and write letters to their employers, to get them away from Wi-Fis and keep away from the cell phones and cordless phones. And they have been very compliant in most cases. But I'm running into a problem with San Diego SDG&E. They will not remove the meters from my clients' homes that are being assaulted by these things.

In San Diego today, in my office, we have 100 million times the background radiation today than we did in 1970. They keep adding more and more cell phone towers and Wi-Fi stations and telecommunications things. The glycoprotein membranes on the outside of the cells are just getting overwhelmed. When they shut down, nutrients can't get in and toxins can't get out. The mitochondria become dysfunctional. All these things are described by Dr. Havis in her reports, and Dr. Sage and Dr. Carpenter in the Public Health Implications of Wireless Technology. They have described it. I've looked at hundreds, even thousands of abstracts. And the majority of them are saying, these Wi-Fis, even though it doesn't create a heat field that we check for and that's our only technology boundary is how hot does it get from the radio fields, that's not what we need to be looking at. It is causing damage. I guess that beep was for me to stop?

>> JOHN L. WODATCH: Another minute.

>> DAN HARPER: I'm pleading that the Department of Justice work with people who have the electromagnetic field sensitivities. It has been honored in Canada; it's been honored through most of Europe, New Zealand, Australia. They have much lower levels. You can see in Dr. Havis's report that she gave to San Francisco, when she was talking to them, the City Council. On her page 5 of the 51, you can see ours is the most tolerated. We let people get radiated all the time, and it's well above the documented levels of safety, and the levels that would create symptoms.

So, I'm urging you to let these people that know that they are electrosensitive to have some type of protection to pull off the smart meters or put up some type of shielding to help them, just like you would somebody that was in a wheelchair or someone that was blind. They cannot help this, but it is a physiological, documented problem.

>> JOHN L. WODATCH: Thank you very much. We appreciate you taking the time to speak with us today.

>> DAN HARPER: Would you like me to send you some articles?

>> JOHN L. WODATCH: We would appreciate to have those, we will supplement the public record with them, if you can send them to us.

>> DAN HARPER: I'll try to get them to you. I've been trying to decipher your what e-mail is but I can't pull it off. I'll get them up to you as quick as I can.

>> JOHN L. WODATCH: We will have someone talk to you about that.

>> DAN HARPER: Thank to very much, sir. God bless you. Happy holidays.

>> JOHN L. WODATCH: We are going to have another telephone commenter now. This one is Preety Kumar. We are establishing the call now. (Pause) Ok, Preety Kumar, you may go ahead.

>> PREETY KUMAR: Good afternoon, everybody. Thank you for the opportunity to testify before the Department of Justice today. I am the CEO of Deque systems. Deque has been for the last ten years and does today provide products and services for making websites accessible.

I wanted to make two points today. Point number one relates to question number 13, which is, what is the annual cost generally associated with creating, maintaining, operating and updating a website?

As I tried to answer this question, I believe I have resulted in another question. And I have a question back to the Department of Justice today.

How did the Department of Justice go about determining the cost for physical access as you were going about assessing that? I dug into some data, and I believe you used public data sources, supplemented by and verified by expeort cost and benefit panels.

I would encourage a similar approach for website accessibility as well. And the cost for retrofitting versus sustaining are two different issues. Deque will be providing a detailed response for the sustainability. Retrofitting, I think, I would encourage looking at the data that was gathered and the method that was used for physical access.

The second point I want to make today is that in terms of the question number 15, I was very, very encouraged to see the inclusion of potential unintended consequences. I believe there are many positive consequences of website access. And if you follow the guidelines, and implement Web accessibility, and if a screen reader user was never to visit your website, despite that, you still would get huge benefits from ancillary benefits, such as search engine optimization.

So we were very pleased to see that question, and I look forward to providing a detailed response to that as well.

>> JOHN L. WODATCH: Thank you very much for your comments. I should point out to you that in the near future, the Department will be publishing, issuing on our website ADA.gov our final regulatory impact analysis that does provide final documentation on the cost benefit analyses that were done for our Title II and III rules that were published in September.

Our next testifier will be Tom Houston. Sir. Welcome.

>> TOM HOUSTON: Good afternoon, thank you. My name is Tom Houston. I am here as an advocate for golfers with disabilities. I'd like to give you a brief background on what got me to this point. In 1980 I was injured in a construction accident. In 1984, I started a company called Falcon Rehabilitation Products, to create specialized seating and positioning devices that offered pressure relief for people in wheelchairs so they

can spend longer in their wheel chair by doing their own pressure relief. Along the way I developed a wheelchair I'm sitting in -- or standing in -- which was called the high rider. It was the very first thing of its kind in the world that we know of that allowed people to move about either in a sitting or standing position, paralyzed people.

1989, I found my way to a golf course. And that began to change everything. I got hooked on golf and began to think that everybody like me should be out on a golf course. In 1989 and '90 I was here in D.C. testifying at public hearings regarding the ADA. 1989 I received an award from President George H.W. Bush, a Distinguished Disabled American Award. Then after the ADA was first established, one of the things that said needed to be accessible in the ADA was a golf course.

Although we had guidelines for buildings to be accessible, we had no guidelines for a golf course. In 1991, I put together a group of people, made up of a golf course architect, a LPGA pro, a golf course superintendent, and various other people involved in the golf industry, to figure out what an accessible golf course would look like, create guidelines if you will. We did that for a year, and kind of ran into the dead end. It then became the National Forum For Accessible Golf, which went on for 1993 until about 2004. At that point the guidelines got here, went through the Access Board, did all of that.

I was one of the founding members then of the National Alliance For Accessible Golf, which is where we moved after the Forum For Accessible Golf. The outstanding issue at this point is, single rider or accessible golf coursecars. And although we keep meeting about this and talking about it, we don't seem to be getting any closer.

There are several reasons why that is not happening. First reason is, and I would certainly encourage the DOJ to really think about the safety aspect of these devices. The key issue for me is that a single rider golf car, primarily they are for people who can't walk to play golf. People that can stand up and swing a golf club are going to stand up and swing the golf club. They don't need a single rider golf car. They can use a two-rider golf car. So, we are really talking about paralyzed people or extremely high-level amputee people using these devices.

After being 25 years in the industry of building mobility devices for disabled people and those devices being regulated by the FDA or some government agency, I find it remarkable that these devices have been out there for ten years with absolutely no oversight, no regulatory agency looking at them. Yet they are being developed for disabled people.

In 2005, I put together -- and I left this in a written document for you guys -- a document trying to create some ANSI safety standards, so we had some recognized board looking at this and saying, yes. That didn't happen in 2005 or 6 or 7 or 8. And, so, still here we are trying to develop those things.

I'm sorry. The real problem is the safety issue, and the fact that there is not enough people out there to use these devices. For the DOJ to mandate this at this point in time would be ill advised in my opinion, for several reasons. A, there is not enough use. The documented use of these things is very small. The people aren't there to use them.

The second thing is that they're just not safe. And the cost to the industry, if you mandated this, that every golf course would have one of these, the cost would be something like about $160 million.

Each one of these devices costs from eight to twenty thousand dollars. Let’s say an average of ten thousand. Now we are going to compel an industry to spend $160 million to accommodate a very small portion of people. All my experience of playing golf around this country, and I've done -- I'm sorry.

>> JOHN L. WODATCH: Go ahead. You can fFinish your thought.

>> TOM HOUSTON: I've done this for about 20 years, played golf with all the disabled golf groups around the country. I can't give you 25 names of people like me that absolutely need a single rider golf car to play golf. I've been involved in every disabled golf program out there; I've helped start most of the disabled golf programs that now exist in this country. I still couldn't give you 25 names of people that absolutely need this. And all the information that we can extract from the industry at this point bears that out. It says that of the golf courses that have these devices, none of them are being used. Maybe one percent of the golf courses that have these devices have people showing up to use them. That to me is certainly a problem. But we've got to get the horse back before the cart here. The cart got in front of the horse when we let people manufacture these things and put them out there with absolutely no safety standards.

The FDA has been approached about this, and doesn't want to get involved. The consumer protection agency has been involved about this, doesn't want to get involved. Nobody wants to get involved in providing some oversight for these devices. Yet we continue to manufacture them and expect the golf course to purchase these and accept the liability that goes along with that, when there are absolutely no safety standards there.

>> JOHN L. WODATCH: Okay. Thank you very much. We appreciate your coming and taking the time to discuss this with us.

>> TOM HOUSTON: Thank you for letting me be here to comment.

>> JOHN L. WODATCH: Next, we will hear from Mike Tinkey.

>> MIKE TINKEY: Thank you for allowing me to testify. Congratulations on the 20th anniversary of ADA. Thank you for continuing to work diligently to get it right relative to accessibility inclusion standards for individuals with disabilities.

I'm the deputy CEO of the National Golf Course Owners Association, an international trade association of golf course owners and operators. The NGCOA reaches all courses in the United States from nine hole facilities to Pebble Beach and most of which are small businesses.

I support the statements of Steve Jubb of the PGA of America and the statement that one size doesn't fit all from Richard Dolesh of the NRPA relative to mobility devices for golf courses. I especially endorse Tom Houston as a much-admired golf industry advocate for golfers with disabilities.

I've been involved in advocacy for individuals with disabilities since Greg Jones, the founder of the Association Of Disabled American Golfers, helped me to prepare my facilities on Hilton Head in the early '90s to better serve individuals with disabilities. His advice to use common sense and focus on staff training still works today.

I've been involved with the forums on accessible golf since the 1990s and most recently with the National Alliance For Accessible Golf and in efforts to develop safety standards for accessible golf, Play Golf America, so all of us are on the same page.

The golf industry actively promotes golf for individuals with disabilities through instruction, inclusive programs, grants, communications, tournaments, education, best practices and more. Play Golf America and accessgolf.org are excellent resources for these industry wide efforts.

My comments today relate to questions 12, 15, 23 and 24. I'll provide written responses after this. Regarding question 14, the education staff training and programming and facility modifications are the best ways to effectively and proactively address the needs of golfers with mobility disabilities. Research done by The National Alliance For Accessible Golf on owners of single rider golf cars and our experience with golf courses and golf programs for individuals with disabilities demonstrates the percentage of golfers who can't walk to play golf and require significant adaptation of golf cars is very, very small.

Most of those who require accommodations for mobility can play, as long as the golf course provides a traditional golf car with access to tees and greens. The two-seat golf cars manufactured by overwhelming majority of golf car manufacturers in use today on the golf courses are designed and originally were intended as early in the 1940s to help people with walking disabilities ride on the golf course and not have to walk the 18 holes.

These traditional golf cars are accessible to all but a very few individuals with disabilities, and if manufactured by trusted and established golf car manufacturers comply with safety design and performance standards set forth in ANSI/NGCMA Z130.

One size doesn't fit all for individuals with disabilities. When an accommodation is needed, it varies from golfer to golfer. But where the golf disability is related to mobility, traditional golf cars with access to tees and greens in accessible routes serve all but very few golfers, even at our member courses where there is the most proactive programs for disabilities.

Hand controls for traditional golf cars are readily available. There are three companies that provide them. They provide them through 550 NBEDA mobility equipment dealers. Necessity is the mother of invention. One manufacturer, Sure Grip, was started by

Keith Howell, a quadriplegic. We have helped him promote this in the last couple years. Regrettably, even with heavy promotion of this, there is really little or no demand.

Accessible golf cars and equipment such as single rider golf cars vary widely in technology from three wheeled vehicles to very sophisticated equipment, such as the Paragolfer, so they vary in stability, weight and price from $8,000 to $20,000. Again, no safety standards exist today. If the need were there for a single solution for mobility impaired -- in other words a single rider golf car -- we would be fully supportive. But this is not case.

Relative to 15, accessible golf cars include traditional golf cars, traditional golf cars with chauffeur. In the case of sight-impaired, with limited leg movement, traditional golf cars with hand controls, with one or two swivel seats, traditional golf cars with one or two swivel seats. Single rider golf cars with single seats, single rider golf cars with swivel and tilt seats, and very sophisticated golf cars.

Given the multitude of options and needs, it would be difficult to develop scoping requirements other than perhaps further promoting the use of traditional golf cars with access to tees and greens and simultaneously hand controls, pooling and other options. Most importantly, our association is very concerned because there are many types of disabilities, and mandating one type of device would be difficult. We have done research in 2005, we are doing research today. Pooling has met the demand of virtually every single time we have done this research in taking care of people that need this type of car.

Given the limited demand, mandating purchase of these cars would pose a significant economic and liability burden for small business owners of golf facilities at an already challenging economic time, would fail to address the need that is not currently being met by other means. More than ever golf course owners and operators are reaching out to individuals with disabilities through education, staff training, inclusive programming, facility modifications, and sharing best practices.

On behalf of the golf course owners and operators, I applaud your efforts to get it right, relative to accessibility inclusion for individuals with disabilities, and we look forward to working together with you on solutions to accomplish your goal.

Two quick things. The National Alliance ForOf Accessibleility Golf has run a tournament for two years. And it has been mandated that there be individuals with disabilities in every foursome. They have never had a request for a single rider golf car. One owner in Massachusetts has been running a tournament for disabled veterans for ten years. Never had a request for this type of car.

So, we are all for doing the right things for individuals with disabilities and the golf industry embraces it. We just ask you to be mindful of the testimony I just gave.

>> JOHN L. WODATCH: Thank you, sir. We appreciate your testimony. We'll look forward to your written comments as well. Our next caller is also going to be a videophone call, and it's from Ms. Suzy Rosen Singleton. Ms. Singleton?

>> SUZY ROSEN SINGLETON: Am I on line now?

>> JOHN L. WODATCH: Yes, you are.

>> SUZY ROSEN SINGLETON: (through Interpreter) Hi, my name is Suzy Rosen Singleton, and I'm here on behalf of the National Association for the Deaf, NAD. On the position for movie theater captioning. NAD commends the Department for modifying the regulations. (Pause) Shall I start all over again?

>> JOHN L. WODATCH: Please do.

>> SUZY ROSEN SINGLETON: Okay. Hello again. The National Association for the Deaf commends the Department for its alterations and its addressing technology issues, and we request that the Department also look at the provision for movie captioning. Right now I think we need 100 percent of the time, 100 of the movies as opposed to 50 percent of the movies, 50 percent of the movie theaters providing the captioning, within five years. That is just unacceptable.

It’s is like legalizing discrimination for people who are deaf and hard-of-hearing. We want to be able to go to any movie theater, see any show, at any time, at any movie theater, with our friends and with our family. And have equal access, and high quality captioning that is consistent and reliable. Theaters do have ample time, have had ample time to comply with that law. It is clear that captioning must be provided, unless it's an undue burden, which means a significant difficulty or expense.

So with that said, that is just not an excuse for the law. We should not provide that excuse. Congress should not allow that to happen. In legislative history, the movie theaters have not been open captioned. However, we have recognized that there is new technology, and this new technologyies is compatible and can be used for accessibility for the movie theaters.

There was one technology that was available in film, and the Department made some revisions there. Section 36.303 of the ADA recognized that there was limits on captioning, and the technology from the 1990s. But now there is no comparison. The technology is new. There is new terminology I am respectfully submitting to the ADA, that the Department should adopt.

There are three terminologies I'd like to introduce. Open captioning is captioning that you can't turn off. Closed captioning is captioning that can be turned on and then again turned off. Then there's inside captioning which would be a projection captioning, which is used by ancillary equipment. It is the selection made by the person who is using, and that is the individual captioning.

Using ancillary equipment, you can use Rrear Vview captioning. You can use Ccaptive Vview, and there is emerging technologies. But that was from the 1990s. And there is so much more out there now. I think the theaters should be transitioning, because everybody is switching to the digital cinema technology. And I think that we should be ready as well.

We should consider that this is no longer a burden. There are millions and millions of people who look at the subtitles currently now in the movie theaters. And there's high quality definition, high quality screens available, everything is available, the projection is available, the captioning could be from one area to another. I think everything could be very effective.

The challenge with the ancillary equipment is that the individual captioning many times is just not effective for us. They have difficulty in use, frequently the equipment is malfunctioning. The hard wire, the physical discomfort for people using it. And it's like a mobility disability. It's inaccessible for us. I'm an individual, I have a personal story I'd like to share with you. One time in my life I actually had three children that were age three and under. We all went to the movie theater together. Somebody came to help me set up this Rrear Vview captioning device. The lights went out for the movie to start.

I didn't realize that the captioning wasn't turned on on this apparatus. I was like, what should I do? Should I go find people to help me figure this out? But what about my children not being supervised at such a young age? The movie was so exciting. I didn't want to pull them out of the movie. So I sat through that whole movie not understanding anything.

I felt just useless. I felt segregated and excluded, and degraded. It's sort of like sitting in the back of the bus with nothing, and no communication. I think it's time for the ADA to provide, to make it a mandate that the movie theaters have their captioning 100 percent of the time.

It is not an undue burden. It’s has been available. It is available. I don't think we should delay any longer. I think the new releases should be made available and captioning at all times. We should prohibit segregation for people who are deaf and hard-of-hearing. And show that it is very important that movies at any time include everything in the ADA, and now the ANPRMs. And require movie theaters to get the advancement and use the advanced technology that we have available to us today.

Any theater, any movie theater, any movie, any time should not be an undue burden. We should make everything accessible, and I encourage you to be creative and active in your research, in your development, and ensure that the systems are effective. That the Department also should require that these theaters make sure that the policies and procedures include the training of the employees there at the movie theaters to make sure that the maintenance of the equipment is up to date and maintained 100 percent of the time, that all the movies that are captioned. That also the advertisements for these movies should have some sort of notification or captioning in their promotions.

>> JOHN L. WODATCH: We have run over a little. Would you just finish your last thought for us, please?

>> SUZY ROSEN SINGLETON: Yes, thank you. I just want to thank you for the opportunity to make the comments on behalf of the National Association for the Deaf. We will submit a detailed comment for you before January 24th. Thank you.

>> JOHN L. WODATCH: Thank you very much. We look forward to your detailed comments. Next, we are going to hear from Robin Powell. Ms. Powell, please go ahead.

>> ROBIN POWELL: Thank you. Good afternoon, my name is Robin Powell, and I am the Disability Rights Program Manager at the Equal Rights Center. Thank you very much for the opportunity to testify today.

Originally formed in 1983, the Equal Rights Center, ERC, is a national nonprofit civil rights organization based in Washington, D.C. With members located in 40 states, as well as the District, the ERC works nationally to promote equal opportunity in housing, employment, disability rights, immigrant rights, and access to public accommodations and government services for all protected classes under federal, state and local laws.

Each of the four areas the proposed changes would affect is critical to the lives of people with disabilities. Imagine not being able to enjoy the same movies as your family or friends, not being able to get help in an emergency because you are not able to contact 911. Not receiving the appropriate medication dosages because your doctor cannot weigh you. Or not being able to engage in common everyday tasks such as online shopping or banking. For people with disabilities, we do not have to imagine these situations, as they are our realities. Each day we continue to be excluded from these and many other facets of society, because of inaccessibility.

While the ERC generally believes that all of the proposed changes will greatly improve the lives of people with disabilities, today I am here to comment in particular on one of the proposed areas of regulatory change, equipment and furniture. However, the ERC will be submitting comprehensive written comments addressing all four areas of proposed regulatory change at a later date.

The ERC has received numerous complaints from people with disabilities about receiving inadequate healthcare because of a lack of inaccessible medical equipment. In 2006, the ERC brought an action against the Washington Hospital Center for various violations of the ADA. One plaintiff was never provided accessible exam tables for post op exams at the hospital. The doctor had to examine her while she was in her wheelchair, as the exam table could not be adjusted to the height necessary to transfer her. Such a situation is, without serious question, improper.

A second plaintiff who also used a wheelchair for mobility was referred to the Washington Hospital Center radiology department for sonograms and x-rays. The exam table again was not accessible, therefore the nurse had to perform the sonogram on this individual in her wheelchair, which was not only uncomfortable and humiliating but also posed a risk of producing inaccurate sonograms.

Personally, I experienced similar instances nearly every time I visit a health care facility. I cannot remember the last time I was afforded even the most preliminary medical data gathering such as being weighed. There are, of course, many dangers from not being weighed. In October of 2007, I underwent a surgical procedure where I was administered anesthesia despite the hospital never weighing me. The amount of anesthesia one is given is directly proportionate to their weight. Although everything worked out for me this time, I worry I may not be lucky the next time.

Furthermore, my primary care physician does not have an accessible exam table, so all exams are done for me in my wheelchair. The results are very incomplete exams, and I often worry my doctor will miss something. Another place where I personally experience poor healthcare is my gynecologist's office where all exams and tests are again done from my wheelchair. Lastly, as a person with a family history of breast cancer, I often worry how I will get adequate mammograms when the time comes.

As these examples demonstrate, people with disabilities need to be able to ensure that medical providers provide them with the appropriate accessible exam tables and other equipment necessary to provide appropriate medical care. It is not only in medical situations, however, that there needs to be clear guidance.

There are countless situations in which covered entities as well as those protected by the ADA would benefit from such guidance. The ERC has recently received many complaints related to the inaccessibility of retail transaction devices, which only offer touch screen input. Blind customers using such devices for debit transactions are often forced to disclose their pin to their store's cashiers. Places of public accommodation need a clear mandate that such equipment must be accessible to all customers. The ERC has brought ADA actions against several restaurant chains for inaccessibility. In each case complainants experience a similar problem, inaccessible tables.

Hotels are equally of concern. As you know, the hotel beds are often problematic for people with disabilities. Not only the height, but the underneath clearance for mechanical lifts.

In closing, I want to thank you again for allowing me to testify today. Title II and Title III of the ADA and their regulations are critical to the lives of us people with disabilities. We are hopeful that these proposed regulations will clarify the requirements under the ADA and will help the DOJ, the ERC and the disability community to continue to work towards an end to discrimination against people with disabilities.

>> JOHN L. WODATCH: Thank you very much, Ms. Powell. We appreciate your coming down today and testifying. Next we are going to hear from Becky Ogle.

>> BECKY OGLE: Thank you for hosting this very important hearing. I risked life and limb to get here. Not really limb since I only have two. But life. It's very snowy outside. But I wanted to come here to talk about three of the proposed areas where you all are going to make rule changes.

One is Web accessibility. That is critically important. I see that as my eyes -- I age, and my eyes are diminishing in their ability to focus as well. And there are plenty of people out there that need it right now. We are a day late and a dollar short. Movies captioning. A friend will remain anonymous, but we go to the movies quite a bit. And I find myself reading the subtitles when they accidentally pop up. You are not going to have a subtitle, and people get angry when we are talking in the theater, but I'm trying to explain what is going on.

And I agree with Suzy. This is video captioning. It shouldn't be an undue burden for these guys. I mean, this should be so simple. They’ve got have got -- 3D, movies are getting more and more expensive. We need to be able to provide video captioning, not just for deaf and hard-of-hearing, but for people with vision impairments. They would like to go to the movies too.

I don't know anything about Next Generation 911. So I'll leave that alone. (Laughter)

Medical equipment. Found something I don't know about. If it's going to be harder to call, I call 'em frequently. Medical equipment. I have run the gamut of medical equipment being inaccessible. I have also avoided some tests that I really needed to have, because the equipment was inaccessible, as mammograms. Sonogram tables are never accessible. And I would like to be able to get on the tables without the assistance of nurses and everybody else, because sometimes they can be very brutal in their help to assist you.

Also, I don't know if you all ever noticed, but in medical doctors' offices, there is no accessibility in their chairs. There's all chairs, there's no room for wheelchairs. None of my doctors' offices have pulled away chairs for a wheelchair to actually fit. So, you are either in the way, or you are stuck out in the middle. But none of my doctors' offices, and I've got pretty good doctors, but they don't make accommodations for people in wheelchairs.

Sometimes, the waiting areas are very, very small. It's very difficult to be sitting out there for any amount of time.

When I go to have x-rays, I risk overexposure in some instances to the x-rays, because it takes so long for them to adapt it, because they are not accessible, that I'm left in the room. I'm exposed. They're coming in with the lead outfit on, and I'm sitting in there with an x-ray behind my back because I can't get on the table. Or they try to prop me up. I have a prosthetic leg. Prop me up, hold me on, and I'm teetering like that while they try to get a picture. They have to take multiple pictures because they can't get a good picture because I'm teetering on the brink of the top of the x-ray machine. That’s is just not acceptable.

I can't tell you how many times I've had to go back because the picture has not been adequate enough. That's x-rays, that's mammograms, runs the gamut.

I'm fortunate, my doctor, my internal doctor, has an accessible table. But she doesn't have an accessible waiting room. She does not have an accessible weighing machine. She has me sit on it, pull my body up, and weigh me like that. If that is not the most degrading, humiliating, in this day and age, that technology being what it is, that’s is how we are still being weighed? It's incredible. It's just incredible.

The beds in the hospitals. Not all hospital beds are equal. You can go from one hospital to another and some don't lower low enough. Some, you come from the gurney down. There needs to be a lot of oversight into the medical equipment, the furniture, how they transport you, what they transport you in, the whole nine yards. The medical field needs a lot of looking at.

>> JOHN L. WODATCH: Thank you, Becky. We appreciate you coming forward both in the snow, and we also appreciate your willingness to share your personal experiences with us. Thanks very much.

>> BECKY OGLE: You're welcome.

>> JOHN L. WODATCH: Next, we are going to have a comment via the videophone. And we are going to hear from Shane Feldman.

>> SHANE H. FELDMAN: (through Interpreter) I'm the chief operating officer of the National Association for the Deaf. My testimony today is about the ANPRM on accessibility of Web information and services of state and local government entities and public accommodations.

More and more business and government activities are conducted through the Web. More importantly, the Web is often the only option for obtaining certain information, goods and services, various technologies, and is already an indispensable part of all aspects of our lives. We go from providing healthcare information, education, shopping opportunities, employment opportunities, people renewing their driver's license, registering to vote, and researching online libraries.

The Web provides people with the ability to receive educational services, apply for employment and engage in civic participation. But only if the information communication services provided through the Web are accessible. It is essential we ensure Web accessibility for people with disabilities including people who are deaf. We must do this now.

>> JOHN L. WODATCH: We lost the call. Why don't we make an effort to... Our next commenter is going to be a voice call. We will take that call, and then we'll come back to the videophone call. Why don't we proceed with Janet Newton. Ms. Newton, are you there?

>> JANET NEWTON: Yes I am. I'm speaking on behalf of the EMR Policy Institute; we're a national advocacy organization established in 2003. We educate policymakers on the need for sound policy that protects public health regarding electromagnetic radiation, EMR. Since 1997 we continue to challenge U.S. safety policy on EMR and radio frequency, RF, radiation exposures, by submitting official comment to key federal agencies, such as the NAS, FCC, FDA, GAO, NIOSH and now the DOJ.

We have taken three cases to the U.S. Supreme Court challenging the FCC's RF safety policy as inadequate to protect all the members of the public. In each case the court denied cert. Since 1997 the FCC has resisted all calls to address these inadequacies. Our comment today addresses Web information services and equipment and furniture.

Hopefully giving background information, so that for the regulatory assessment needed if DOJ revises its regulations.

DOJ must ensure not only that equipment and furniture used in programs and services provided by public entities and public accommodations are accessible to individuals with vision, hearing and speech disabilities. It must also ensure that individuals with implanted medical devices, IMDs, or with the EMR functional impairments of electro hypersensitivity and radio frequency sickness are not injured in their daily living. And that they continue to have access to Web information and services through hard wired communications equipment.

Currently there are three federal mandates to promote wireless technologies that can injure people with IMDs or with EMR functional impairments. These are wireless broadband, wireless smart grid and smart meters, and unlicensed commercial use of TV white spaces spectrum.

The 2008 NAS report, "Identification of Research Needs Relating to Adverse Health Effects of Wireless Communication," explicitly identifies the holes in the RF research record. These are lacks of models of several heights of men, women and children of various ages for exposure to various wireless communications devices such as cell phones, wireless PCs and bay stations.

The need to characterize complex radiation from bay station antennas for the highest reradiated power conditions conducted during peak hours of the day at locations close to the antennas as well as at ground. And the recognition of population subgroups with specific sensitivities, in order to quantify the radiation absorption close to metal and glasses and various medical prostheses such as hearing aids, cochlear implants and cardiac pacemakers.

The FCC focus on interference in safety continues to protect devices rather than people, as noted in the 2009 announcement of its TV white spaces initiative. It says to build on a proven concept, the safe employment of new intelligent devices in the unused spectrum that exists between TV channels without causing undue interference to adjacent users. FCC's adjacent users refers to commercial communications devices, not to IMDs or individuals with EMR functional impairments.

The IEEE developed the existing FCC safety limits in 1992. They do not sufficiently protect the able-bodied, let alone the disabled. EPA's 19-3 comment on FCC's RF safety regulations emphasizes that the IEEE's 1992 standard is based on a thermal effect of RF radiation and by extension is protective of effects arising from a thermal mechanism. Therefore, the generalization that 1992 IEEE guidelines protect human beings from harm by any mechanism is not justified.

IEEE standard does not recognize any population subgroup, variation, and sensitivity to RF radiation such as infants, aged, ill and disabled, persons dependent on medication, persons in adverse environmental conditions, all those that are more at risk than others.

FCC's RF limits certainly do not protect those with IMDs or who require critical care equipment that can malfunction in the presence of wireless signals from outside sources. Such malfunctions can be fatal. They do not protect individuals with EMR functional impairment. No federal agency keeps track of cumulative wireless radiation levels, nor identifies critical levels in locations where individuals with IMDs may be at risk. Nor require signage to identify wireless environments so that individuals with EMR functional impairment can avoid these locations.

The most seriously threatened are the NIH estimated 20 million Americans with IMDs. This is eight to 10 percent of Americans. Smart meters and wireless broadband present the most serious threat because of their ubiquitous deployment throughout the public's living and working environments.

We request that a result of this proceeding will be DOJ recognition of wireless exposure as an accessibility and civil rights issue for individuals with IMDs or with the EMR functional impairment. We request that ADA divisions take action on universal design measures in relation to that recognition, such as to require hard wired rather than wireless Internet connections in public buildings such as schools and libraries.

To require smart grids, smart meter options that employ land line data transmission rather than wireless transmitting meters. And to require signage in public accommodations such as hospitals, stores, hotels, restaurants, airports, and public transportation facilities alerting the public to the presence of wireless communication systems. Thank you.

>> JOHN L. WODATCH: Thank you very much. We appreciate your testimony today. Are we able to go back to Shane Feldman? Thanks for hanging in there. Please go ahead.

>> SHANE FELDMAN: (through Interpreter) Truly, truly. I think this was a wonderful example of the problems that are evident in terms of when you are making an E911 call. What happens when there is a disconnection that occurs? There needs to be a protocol set up for that. Anyway, let's continue on with the forum.

Back in the day, in the Web and Internet technology, you had a lot of audio and audiovisual material that existed. Now there is more and more available on the Web today that is not accessible to people who are deaf and hard-of-hearing.

To make it accessible, transcripts of audio materials must be provided and captions must be provided for that audiovisual material. Our experience leads us to an unavoidable conclusion that says we must be mandated and enforced, or it will not happen. This is particularly true for entities engaged in commerce and providing covered services or public accommodations. If we do not require accessibility, the deaf and hard-of-hearing community gets left behind, often generations at a time. We do not want to see this history repeated.

As an initial matter, the NAD strongly encourages the DOJ to explicitly and unequivocally state that a place of a public accommodation does not require a physical presence, location or facility where the public can physically go to retrieve information, goods and services. The Web has made it possible for public accommodations to engage in commerce and provide covered services without these things. The public accommodations are businesses in themselves. Legal persons that exist in a legal and physical world, that engage in commerce and provide coverage services, they must be covered, or people with disabilities will be excluded and denied equal opportunities. Just as if we had shut and locked the doors.

If an entity is covered when it engages in commerce, and provides a covered service at a physical location or facility, any entity then must be covered when it engages in commerce, and provides covered services on the Web. Cyberspace is a place where public accommodations are engaged in and commerce is provided.

That is physically or virtually or exclusively or within any combination. Website information, communication, services, programs and activities of government entities and public accommodations must be accessible. This includes entities such as Netflix that provide entertainment services, Kaplan and Phoenix Universities that provide educational services, and Zappo's which provides retail services.

I went to a movie with my daughter once. She was asking a question, and I couldn't answer it because it was not captioned. These entities such as Phoenix and Kaplan Universities and Netflix and Zappo's need to provide those services.

The accessibility requirements of the ADA, with respect to the captioning of other auxiliary aids and services, must be met unless it results in an undue burden or financial altercation. In this respect, the Department should clarify that converting audio information to visual format such as transcripts of audio material, and captions for audiovisual material does not result in a fundamental alteration.

The NAD urges that the standards adopted by the Department ensure individuals who are deaf and hard-of-hearing have full access, visual access, to any and all orally delivered materials, on the Web, that is provided by covered entity. Such standards must allow for flexibility, to adapt to new technology and systems, yet provide functional performance objectives that must be met to ensure accessibility for individuals with disabilities.

These standards the NAD urges must provide access in all forms on Web-based content, including, but not limited to, webinars, online tutorials, video clips, online courses, original Web-based entertainment such as webisodes. Both prerecorded and live audio material must also be included. Although a phase-in period may be appropriate for other types of regulations such as ADA construction standards, it does not make sense in the context of Web design.

Accessibility can often be achieved without any significant delay, or expense. Thus, a two-year waiting period following publication of the final regulations, especially in light of the publicity this matter will receive through the ANPRM and NPRM processes is simply unwarranted. Thank you for this opportunity to present these comments to you today.

>> JOHN L. WODATCH: Thank you very much. We appreciate your comments, and

we appreciate your hanging in there while we got the call reconnected. Next, we are going to hear from Brian Fontes. Sir?

>> BRIAN FONTES: I believe I'm your last speaker this afternoon. I'm what is standing between you and the concluding comments of this hearing. My name is Brian Fontes; I'm the CEO of the National Emergency Number Association or the 911 Association. Today I'd like to focus my comments on Next Generation 911, and I'd certainly like to applaud the Department of Justice for their work in issuing the Advanced Notice of Proposed Rulemaking, looking at Next Generation 911.

Let's take a brief moment and reflect on what is happening in the world today, because that plays such a key role in the whole issue of Next Generation 911.

Today there is roughly 297 million wireless customers out there, far more than there are wire line. Most of these customers now are migrating to smart devices, your iPhones, your droids or other type of devices that allows you to have applications and also allows you to play in the world of voice, video, and data.

That is what consumers, all consumers in America expect. When we marry what's happening in terms of consumer expectations about communication when they dial 911, with the reality of where we are in 911, we have a substantial -- no pun intended -- disconnect.

In the world of 911, we have a situation where it's primarily voice centric, 1960-esque technology. The efforts of Next Generation 911 is to move our nation's 911 call centers into the world that the consumers, you and I and many others, currently experience. The ability to utilize voice, video and data.

Within NENA, we have been working for the last few years on all of the technical standards that relate to the 911 system itself, as we developed Next Generation 911. And we are in partners with all of those other entities that's necessary to ensure that the 911 call or text message or video that is originating in a broadband environment, can be transported and utilized inside that call center, in the context of voice, video, text or data.

And that ultimately, we will partner with those who respond to incidences so that they too have the ability to look at texting, voice, video and other data that will allow them to better respond to the individuals who are in need. Within our development of standards, we have an access committee to ensure that access to 911 is available for all Americans, regardless of your ability.

What is critically important in the context of 911 in the Next Generation environment is to ensure that that 911 call center mirrors the way people communicate today. And in the communication world, as you know, texting is a prominent way of communicating. I think the average teenager texts about 3,400 text messages a month. I know you are thinking whether your teenager is average, above average or below average. But that's for the teenagers.

There are many individuals in this country of ours that are incapable of voice communication. And they rely on text messaging as their only form of communications, in a telecommunication environment.

There are also situations where voice communication is just simply not warranted, for your own safety. Spousal abuse environments, the situations, the unfortunate situations of Virginia Tech where students were texting one another and their friends regarding the incidences that were occurring. So, texting is critically important for a wide array of segments of our society. And particularly, to those individuals with disabilities, the ability to text becomes critically important to interface with 911.

We just saw in a video relay-like environment, a presentation. And it's important to be able to have video inside the 911 call center to enable this form of communication to allow response to those individuals who are in need. And that is what Next Generation 911 is all about. Thank you very much.

>> JOHN L. WODATCH: Thank you, sir. We appreciate you coming forward and testifying. But you are not the last commenter today.

>> JOHN L. WODATCH: I believe we have another videophone call, I believe, and this one is from Debra Patkin. Please proceed.

>> DEBRA PATKIN: Good afternoon. My name is Debra Patkin. I'm a staff attorney at the National Association for the Deaf.

>> JOHN L. WODATCH: We are going to replace the call. I think we are seeing the limits on modern technology. While we are doing that, we have one other call. We will go to Caroline Shenk. Is this a video call? Phone call.

>> CAROLINE SHENK: Hi, can you hear me? Okay. I wasn't really ready. But I'll speak anyway here.

I'm a qualified disabled individual, and since I've been disabled, I've run into great discrimination in all areas of my state here. I'm in New York State. I feel that all the proposed regulations are excellent and should be enforced as soon as possible. But the main crux is that they enforce the guidelines of the current regulations in 2010 also, and maybe reeducate, because from the courts to movie theaters here, not only do they not understand that they have to do it or know about it at all, I even had a judge ask me to fax to the defendants the information on the ADA, because she wasn't even aware of some of it.

So it's a little bit disheartening, when every day struggles just to communicate and have access to the simple things are not there.

Yesterday on the news, there was a girl who just wanted to go see a movie. And I know the closed captioning is really imperative, but she wasn't even able to go in to see the movie. They just told her to leave, and even on their website, it's accessible. So, I think that the whole crux of the ADA is great, and it's broad, and it's really intelligent. But as far as the people understanding it, and maybe there are people that want to help, and understand it, and give access and accommodate. But then the whole entity has their own methods and policies that they don't want to change, because it's just too much time. But actually, the time spent on fighting it, I think, is triple than just actually providing the access, which would be so much easier.

And with the movie captioning, I used to work in film and TV, so I think it's really crucial that all of those go in, especially that, because the person has to understand, and it affects the Cconstitution, if the person can't, you know, hear, but they could see it, at least they have communication and can understand the outside world. And it's really imperative that all of it go through, especially implementing the old stuff that's just not being accessed at all. And they say, "We don't do that here, and we don't understand that, we don't know what the ADA is." And I have to explain it.

Then they still, you know, want to fight about it. And I'm really getting zero accommodations here in, and discrimination is huge. I hope that, you know, one day, things are going to change, and all the regulations you have proposed I'm in favor for 100 percent. Thank you.

>> JOHN L. WODATCH: Thank you very much. We appreciate your comments today.

>> CAROLINE SHENK: Thank you.

>> JOHN L. WODATCH: Now we will see if we can reestablish contact with Debra Patkin.

>> DEBRA PATKIN: (through Interpreter) Hi, everyone, again. I hope that we get to have a continual connection this time. I'm from the National Association for the Deaf, and also I'm the staff attorney for them. I'm here to talk about Next Generation 911.

NG 911 has a potential when implemented to improve access to emergency service throughout the nation, especially for deaf and hard-of-hearing people. The Americans with Disabilities Act has improved access to 911 emergency services in two ways.

First, the ADA has required public safety answering points, PSAPs, also referred to as 911 emergency call centers that enable direct communication with deaf and hard-of-hearing people who use TTYs, which are teletypewriters that send, receive, and display text transmitted by the telephone system.

For the first time, they set up these centers for telephone connections for direct access to 911 emergency call centers, and secondly, the ADA requires the establishment of a nationwide system of relay services that connected telephone users to TTY users. The relay service, now called communication assistance, converts spoken communication to text and vice versa. We lost the call.

>> JOHN L. WODATCH: Since this is the last comment of the day, I think we should at least make an effort to try and finish this call. That was the Internet that time. (Pause) Can we try to reestablish? (Pause)

While we are trying to reestablish the connection, I'd like to point out that, in the rules that we have just published that become effective on March 15th, we have standards on the use of video relay service, and the use of . . . (laughs) I think this is a good example of all of us taking a look at those, and ensuring -- it appears to me that even with those, we are going to have difficulties in the future. But I think that these means of communication, as they are being developed are very important, and we are going to have to keep working at them to make them equally effective for people who rely on these forms of communication. (Pause) We're making one last effort to see if we can get this connection reestablished.

Ms. Patkin, we will try again.

>> DEBRA PATKIN: (through Interpreter) Okay. I just saw the comment about the video, having problems. So yes, we do need to improve in that area.

That is the second time it's happened. So, anyway, I was saying that a lot has changed since 1990. Among other things, telephones, video has been revolutionized, mobile, cellular, wireless, relay service, Internet connections, captioning capabilities. And they both have really elevated in terms of their technology, and there are so many ways now to connect with 911.

The TTY usage has plummeted, has gone way down. And we noticed that even though technology has improved all these years, the ADA has not changed to keep up with the technology, specifically with regard to TTYs. The TTY is big, it's not mobile, it's unwieldy, and people can't carry it with them, you know, not like mobile devices, cell phones, all those things that we have now that we can carry with us.

There are many stories of deaf and hard-of-hearing people who are very, very frustrated. They are very smart, and they have top of the line smart phones and everything else, and they cannot get in touch with 911. It's not working.

And more and more people do not have TTYs at home, and you know, they can't make those calls. They can't connect with 911. So, we now have to make sure that they then use relay services, but what happens with that, they have to go through an interpreter, so that adds a third person and another step that they have to complete, when they are dialing their 911 call. So we want to have a direct way to contact 911 quickly.

The same as other hearing people are able to use smart phones or any other kind of phones to call 911, we want to have that ability, and that is what happens with NG 911. That would definitely allow us to do them and the technology is there, and permits us to do that. We can do it through videophone, through text, through real time, the capability is there. We need to have the call centers also use the text and all the capabilities that are currently available.

So, the 911 call center -- PSAPs, we call them -–– they have identified systems, and we are confident that with NG 911, at the call centers, that they can receive videophone calls and use the qualified sign language interpreters, and the videophones can be set up there. And the FCC and Congress and other federal agencies and industries are looking into transferring NG 911 technology and getting them ready to follow the requirements of the law.

And they have special considerations for those people who are disabled, particularly those who are deaf and hard-of-hearing. The FCC recently set up emergency access advisory committee to follow the law, at the FCC, and for communication videotape and real time.

Also, the deaf have to have access to emergency services. And the DOJ has asked us to comment on the ANPRMs. That will be an invaluable asset as the Department moves forward with the regulatory process. We really encourage the Department to require that direct accessibility to 911. Let me give you an example of that, something you need to really seriously consider.

I want to discuss the use of text, and how you can text a 911 center immediately. It doesn't have to be SMS. We can just use the current technology that's available through text message, where it would recognize where that person is texting from. And also we would also set up a national text communication center, where they would get the message, they would know where it came from, and they would be able to communicate appropriately at the 911 center with that individual.

So thank you so much for the opportunity to speak today, and definitely, I will be sending in more comments to you. Thank you very much.

>> JOHN L. WODATCH: Thank you very much, we look forward to the written comments you are going to be sending us, and we thank you for your perseverance as well, in terms of getting your testimony to us today. That concludes the individuals who have signed up to testify. It's been a very rich and invigorating day. I'd like to turn the hearing over now to our colleague Mazen Basrawi for some concluding remarks.

>> MAZEN BASRAWI: Thank you, John. Today, we have had a full and fair hearing. We had over 50 commenters from a variety of backgrounds, people with disabilities, organizations of people with disabilities, regulated entities represented by business owners, professionals, addressing all of our ANPRMs as well as bringing to our attention some very novel and important issues.

I want to thank the Access Board for hosting us today. Once again, congratulations to their new space, and we appreciate their letting us use it for this purpose. Certainly, our relationship with the Access Board is robust, and we appreciate the favor.

Finally, I'd like to remind everyone that we have our third and final hearing on our Advance Notices of Proposed Rulemaking on January 10, 2011 in San Francisco. The deadline for submitting written comments is January 24, 2011.

Please, if you have comments that you are interested in participating either in person or by phone at the January hearing in San Francisco, let us know. And please do provide us with your written comments. It's a very important part for us, as Assistant Attorney General Tom Perez said this morning, and is critical not only for us to fulfill our obligations to produce regulations, but it's important in creating good public policy in being able to listen to those affected by our regulations.

So thank you, once again. And finally, thank you to Zeta Johnson Betts, BrRandy Wagstaff, and all the rest from DRS, who helped put this together and to all the volunteers. Happy holidays, everyone.

(Meeting ends at 3:14 p.m. CST.)

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