United States Senate Special Committee on Aging
Unlocking the Virtual Front Door: Ensuring Accessible Government Technology for People with Disabilities, Older Adults, and Veterans
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I would like to thank Chairperson Casey, Ranking Member Braun, and all of the other members of the Special Committee on Aging for this opportunity to offer testimony on accessible technology in the Federal, state, and local government. My name is Ronza Othman, and by day I'm an employee of an executive-branch Federal agency, where I am an attorney and manage equal employment opportunity and civil rights programs. However, I'm testifying before you in my personal capacity, as in my spare time I serve as a leader in the National Federation of the Blind, the transformative membership and advocacy organization of the nation's blind. My roles include serving as the President of the National Association of Blind Government Employees (NABGE), where I engage with current, retired, and prospective employees of Federal, state, local, and pseudo-government agencies across the nation. I'm also the President of the National Federation of the Blind of Maryland (NFBMD), representing blind and low-vision Marylanders who work for government but who also, like most Americans, engage with local and state government for a variety of reasons. Both NABGE and NFBMD are affiliates of the National Federation of the Blind.

When I use the word "blind," I am referring to the millions of Americans who are legally blind. Some have no usable vision, but most have some usable vision; there is a broad spectrum of blindness, but I use the word "blind" inclusively of the entire spectrum.

The National Federation of the Blind recognizes that access to information and communication technology (ICT), including hardware, software, web and mobile applications, and other platforms and information, is a critical civil right for the blind and other Americans with disabilities. Moreover, the tools and strategies that are used to provide access to information and services to people with disabilities also have a mutually beneficial impact on the quality of life for all Americans, including the ever-growing population of older Americans.

Technology has been a true equalizer for blind and low-vision Americans, as well as many others with disabilities. So much of the information we receive on a daily basis is communicated visually, and the proliferation of technology has enabled our community to not only gain access to that information at the same time as our non-disabled counterparts, but technology advancements enable us to engage with that information and act on it. Most of us carry a phone in our pocket, many of us have a computer at home, and many of us interact with other technology devices like smart speakers, home security systems, home appliances, medical devices, and so much more. Today, I can use the phone in my pocket to operate my Ring Doorbell, operate my vacuum, set

my thermostat, reheat my leftovers, and half a dozen other tasks in my house when I'm not even at home. These are all mainstream technologies, not adaptations made for people with disabilities. In essence, when a manufacturer or developer chooses to build a product and includes accessibility at the beginning, virtually everyone can use it.

But when it comes to engaging with our government, these technologies are woefully behind. Often, government-procured, maintained, or developed ICT is not accessible to those of us with a variety of disabilities, including the blind, low vision, and print disabled. Technologies and systems that Federal, state, and local governments operate to engage with the public and provide services that include: agency service listings, data, and contact information; benefits and services portals and forms; utility and tax payment systems; parking and other citation systems; court record systems; and thousands of other services. Individuals with disabilities need to access these systems just like other Americans do.

Many of us with disabilities use assistive technology such as screen readers that audibly read what is visually on the screen. Some use magnification software that enlarges what is on the screen or enhances color contrast so it is easier to read. Others use voice dictation software that allows the individual to verbally direct the technology. Many assistive technology users cannot use a mouse to control technology, and instead use keyboard commands. Many cannot independently operate dynamic touch screens – think of a touch screen that has the "OK" or "Submit" button in different places depending on what screen you are on. In all cases, there is no reason the individual couldn't operate the technology except that it didn't incorporate accessibility principles at the start. As a result, we find ourselves at the mercy of others to help us access these technology platforms.

For example, why should a Social Security beneficiary with a disability have to give up their right to privacy by having to tell a security guard or other bystander their social security number to check in for an appointment when anyone else can independently check in? Why does a blind veteran have to share their health information with a staff member—and anyone else in earshot—to complete intake paperwork at a VA facility when no one else has to suffer this indignity? Why does a blind or low-vision college student have to have a friend or colleague tell them their grade on an assignment at a state college or university when others can fail or pass in private? Why is it that people with disabilities have to give up their privacy to engage with their government when their non-disabled counterparts get to engage with their government with dignity and respect? The answer is simple: Government isn't doing enough to make their systems, technology, and services accessible to individuals with disabilities.

Across the nation, the disability community experienced obstacles when attempting to obtain information and resources during the COVID-19 public health emergency. COVID-19 transmission data was posted on government websites, but, more often than not, it was inaccessible to assistive technology. In the early months of the pandemic and before at-home tests were available, the public relied on the government to communicate, and often to schedule, COVID-19 tests. More often than not, the government either directly posted inaccessible testing information or linked to inaccessible testing information third parties operated. The same thing happened when COVID-19 vaccines became available as well. This was not isolated to one single government entity—it was by and large the norm across the Federal government, for many state

health department websites, and for many local jurisdiction websites. Though this information was aimed at the public, it affected the employment space in significant ways because many employers required tests and/or vaccines.

It is neither difficult nor costly to make electronic information and communication technology accessible for individuals with disabilities. If accessibility is baked into the system at the development stage, it's simply coding in a way that ensures information is tagged properly and navigable by assistive technology. Most coding is very simple and easy, and it doesn't alter the visual appearance of the platform or entity. For example, ensuring proper tags and labels on website buttons requires a short line of script. Ensuring that keyboard commands work in the same way a mouse click does is usually very simple and straightforward. And yet, those of us with disabilities experience technology accessibility barriers every day for routine tasks.

Imagine making a pizza and adding the pizza sauce. Now imagine making a pizza and omitting the pizza sauce prior to baking it. Then, imagine trying to put the sauce on after the pizza has been baked, sliced, and some of it served. It's a difficult but not an impossible task to "fix" the pizza, but it'd have been a lot easier to have just added the sauce from the beginning.

In addition, some systems that are supposedly accessible require a significantly higher level of effort and more time to complete the task if the operator is using assistive technology. For example, a commonly used cross-agency Federal database requires three mouse clicks to conduct a search. However, if using keyboard commands with assistive technology, there were over forty keystrokes to get to the same results page. While it took four to five seconds to run the search using the mouse, it took four to five minutes to run that same search with keyboard commands. There is no innate difficulty or a higher level of effort to use a keyboard instead of a mouse unless the developers create that difficulty and higher level of effort when building the platform.

For those of us who work for Federal, state, and local government, the problem of technology inaccessibility is compounded by the fact that inaccessible technology is everywhere, but we are at its mercy to do our jobs. If we don't do our jobs well, then we don't keep those jobs. If we don't keep those jobs, then we're out on the street trying to find new jobs and dependent on government services and benefits we can't access due to the same inaccessibility issues we had when we were working. It's a vicious cycle. More than 50 percent of Americans with disabilities are unemployed or under employed, and more than 70 percent of Americans who are blind or low vision are unemployed or under employed. The CDC says that 25 percent of the population of the United States has a disability, and of those, the United States Census Bureau reports that 7.5 million have a visual disability. Those are a lot of Americans who aren't working, and many of them are caught up in this vicious cycle.

In the last few months alone, a number of our members have reported that they've encountered inaccessible technology in their jobs in Federal, state, and local government. For example, a substitute teacher in one county school district was told that she could no longer be assigned to the district's middle schools because their attendance reporting system was no longer accessible with her screen reader. A state employee newly hired to work at a call center for a state comptroller's office had her job offer rescinded after the state determined its tax information

database was not accessible with a screen reader. A Federal employee was not able to renew her contracting management certification because the training platform the agency—and most of the Federal Government uses—is not compatible with assistive technology. A Department of Defense employee was kicked out of a training program in which she had been enrolled for five years, and nearly completed, when her agency determined that its testing systems were not accessible to assistive technology users. Dozens of state employees in a number of states could no longer enter their time and attendance in their states' timekeeping systems due to updates that broke accessibility. These are just a handful of examples, but there are hundreds, if not thousands, of others.

One other particular situation sticks out in my mind due to the implications to the safety of our communities that the lack of accessibility has created. Law enforcement entities use certain databases across the country to enter information about law enforcement officers that are under investigation, which would render their testimony potentially problematic. Prosecutors have to check those databases and disclose in discovery that any officers are under investigation. However, if they fail to do so, the entire case is likely to be thrown out, and potential criminals are set free. In the last few weeks, I've heard from two different blind prosecutors, from different sides of the country, who have had near-misses in terms of disclosing this information to opposing counsel in discovery. The reason: the system is not accessible to assistive technology. Imagine a scenario when it wasn't a near miss, and because the prosecutor did not have effective and accessible tools, they unknowingly failed to disclose such important information, which then resulted in a case being thrown out and a potentially violent criminal being released to commit another crime. Had the technology been accessible, this wouldn't be a concern.

As a hiring manager, I enjoy when I can hire individuals with disabilities, not simply because I am one myself. People with disabilities solve a hundred problems even before they start their workday, and so my experience is that they tend to think more critically, be more creative, and work harder. When they encounter inaccessible technology, they work to find creative solutions and workarounds. In my experience, and having talked with thousands of individuals with disabilities in the workforce, I can tell you that the vast majority of individuals with disabilities under-report their experience with inaccessible technology; they don't want to appear vulnerable or incapable to their bosses, and so when they raise the alarm, it's as a last resort after they've tried unsuccessfully, usually for quite some time and with significant effort, to fix the issue or work around it themselves. And thus, the challenges we know about, I suspect, are just the tip of the iceberg.

Section 508 of the Rehabilitation Act has, for decades, set a minimum standard for technology accessibility at the Federal level. The investigation this Committee conducted, and the resultant report, demonstrates how unsuccessful Federal agencies have been at self-managing, self-enforcing, and self-implementing Section 508. The Department of Justice's Report from earlier this year on Federal website compliance with Section 508 also demonstrates the utter failure of the United States Government to fulfill its promise to ensure that Federal information and communication technology will be equally accessible to people with disabilities as it is to their non-disabled counterparts.

Nonetheless, much of the raw material is there in Section 508. The application of the Web Content and Accessibility Guidelines (WCAG) 2.1 standards—in fact adopting a single web content accessibility standard—means that those governed by Section 508 all operate from the same playbook. The recommendations of this committee in its report from last winter, if implemented, will improve accountability to the benefit of employees and the public alike. But the United States Access Board is insufficiently staffed to do the work that needs to be done. There is no agency with the power to enforce Section 508, and there are virtually no consequences for agencies that violate it. The General Services Administration (GSA) is supposed to regulate procurement and acquisition, and the Federal government is supposed to buy accessible, but there are no consequences when it doesn't. To add insult to injury, GSA actually claims—in public meetings of the Access Board and other public appearances—that it is doing a good job leading in the 508 compliance space when any disabled employee encountering inaccessible technology in the Federal space will tell you the exact opposite. And so, we find ourselves in that vicious cycle I mentioned earlier that harkens back to the unemployment rates upwards of 50 and 70 percent.

In terms of state and local governments, again, the raw material is there for some of the more thoughtful and forward-thinking jurisdictions. For example, the Maryland General Assembly passed two laws in recent years—one applicable to the Executive Branch[1] and the other to all public school districts[2]—requiring the procurement of only accessible technology and establishing a technology standard that is modeled after the Section 508 standards, implementing a one-year remediation period when procured technology is not accessible, and implementing a monetary penalty for those vendors who fail to cure by the deadline. Though these laws are fairly new, we've experienced some success as a result, for example when the Maryland Department of Transportation rescinded, revised, and reposted a solicitation for new kiosks for the State Motor Vehicle Administration.

The State of Colorado adopted a law that requires the development and use of nonvisual access standards that are applicable to all state procurement, use, and development of technology.[3] The State of California adopted a similar law, which also requires any State contractor to address complaints of non-compliance.[4] Other states with laws that address the development, maintenance, procurement, and/or use of information and communication technology include: Alabama; Arizona; Connecticut; Illinois; Indiana; Kansas; Louisiana; Massachusetts; Minnesota; Missouri; New York; Oklahoma; and Virginia.[5]

However, there is no uniform approach among these laws. Some of them apply to local government entities within a state, and most do not. Some apply to what the government procures, and some laws only apply to what the government develops itself. Some laws apply to colleges and universities, some apply to K-12 institutions, and some apply to neither. Some apply to the Executive Branch of the state, and some apply to all branches of government. Some follow the 508 minimum standard, some direct the state Chief Information Officer or someone else to develop a standard, and some specify a particular version of WCAG. Because there is no uniform

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[1] MD. State Finance and Procurement Code § 3A-311 (2022)
[2] MD. Education Code Ann. § 7-910 (2021)
[3] CO Code § 24-85-103 (2022)
[4] CA Govt Code § 7405 (2022)
[5] See: https://www.section508.gov/manage/laws-and-policies/state/

technology standard, no uniform scope, and no uniform accountability or enforcement standard, regulations are necessary for proper implementation of Title II of the Americans with Disabilities Act (ADA), which should set those minimum standards.

In August of 2023, after a delay of more than a decade, the Department of Justice finally released a Notice of Proposed Rule Making for regulations on Title II of the ADA pertaining to websites and mobile apps. This rulemaking addresses the requirement that state and local governments must make technology, mobile applications, and digital experiences related to their programs, services, and activities accessible to individuals with disabilities. In the Arabic culture, we have an expression, and it translates to "It's like fasting for a long time and breaking your fast on a raw, spoiled onion." Devastatingly, it appears DOJ is poised to implement regulations that add seven unnecessary and frankly insulting exceptions to the requirement that state and local government entities make their technologies accessible. Previously, there were two exceptions—undue burden and fundamental alteration—and they are sufficient to ensure that the ADA does not create an impossible, or even a difficult, standard for those to whom it applies. These seven new exceptions include:

- archived content (such as minutes of public meetings that are at the heart of civic engagement);
- pre-existing conventional electronic documents (like water quality reports, crime statistics, education scorecards, and other information posted in pdf, Word, excel, or similar platforms that provide vital information about a community);
- content posted by third parties on a public entity's website (such as public comments, reviews and government contractor deliverables);
- third-party web content linked from a public entity's website (such as COVID-19 testing and vaccine locations, government contractor-produced materials and information, and anything the Government outsources to a third-party);
- course content on a public entity's password-protected or otherwise secured website for admitted students enrolled in a specific course offered by a public postsecondary institution (literally any course content using a learning management system such as Canvas or Blackboard which is basically the norm, shutting disabled students out of post-secondary education);
- class or course content on a public entity's password-protected or otherwise secured website for students enrolled, or parents of students enrolled, in a specific class or course at a public elementary or secondary school (literally any course content using a learning management system such as Canvas or Blackboard which is basically the norm, shutting disabled students and their families out of elementary and secondary education); and
- conventional electronic documents that are about a specific individual, their property, or their account and that are password-protected or otherwise secured (such as property tax bills, vital records, and court documents).

These exceptions are problematic in so many ways, not the least of which is that they undercut decades of work disability advocates have done to improve access to information, and that these exceptions will have the effect of shutting students out of their own education when education is the strongest tool in the arsenal of an individual with disability given the unemployment and under-employment crisis in America for our population. These exceptions will set not only employees

with disabilities back into the technology stone age, but will also force those who are engaging with government to return to a time we thought we'd left behind.

I believe that Federal, state, and local governments can and must do better. In the Federal space, adopting the recommendations from this committee's report will make a significant difference. In addition, I am suggesting some additional actions that will help solve this problem.

- Congress should strengthen Section 508 by implementing a uniform and centralized complaint process administered by a single Federal agency such as the Access Board similar to that operated by the United States Equal Employment Opportunity Commission for Section 501 of the Rehabilitation Act.
- The Department of Justice must receive and publish data and statistics annually on accessibility for not only websites but all Federal ICT.
- GSA should implement a uniform procurement process for all Federal agencies that requires 508 compliance testing prior to installation on agency systems and removes those procured technologies from agency enterprises if they are found to be non-compliant or become non-compliant.
- Congress should appropriately and sufficiently resource the Access Board in terms of staffing and empower it to hold Federal agencies accountable.
- Congress should request that all Federal agencies report to Congress on which ICT have received 508 exceptions, which exceptions were applied, the date of the expiration of the exceptions, and the plan for removing the ICT should the ICT not be 508 compliant at the expiration of the exceptions.
- All Senior Executives should have a critical element in their performance plans that includes 508 compliance metrics.
- Federal agencies should apply the same heightened scrutiny for Section 508 compliance that they apply to IT security compliance.
- Congress should withhold funding to those Federal agencies who fail to meet 508 compliance standards.

In terms of applicability to state and local government entities, I suggest the following:

- DOJ should not implement the seven new exceptions in its final ADA Title II regulations.
- State CIOs should come together to develop a model policy that follows the Section 508 technology standards and adopts the current WCAG standard, and these standards should be applicable to all local jurisdictions as well.
- State legislatures should enact laws that require accessibility, apply the same standard as the Federal government, and impose monetary penalties on entities that willfully fail to comply with accessibility standards when selling to government or fail to cure in a timely manner.

Employers—Federal, state, and local—should ensure that their systems, software, hardware, and other ICT is accessible to those with disabilities when they build, develop, or procure it. The pool of individuals with disabilities who are seeking employment is large, those individuals in that pool are capable of doing good work if they have the tools they need, and those individuals will strengthen the workforce.

I am a blind government employee. The people who are members of the organizations I lead are blind, low-vision, and otherwise disabled individuals. We work in government because we care about this country and the people who live in it. Though our eyes don't work in the typical way, we are capable of serving the public and doing so well—provided the technology is built, procured, maintained, and developed with non-visual and other basic accessibility in mind. We are not limited by our disabilities—we are limited by a government that fails to include our needs in its technology infrastructure in a day and age where technology advances at the speed of light. This is not a capability problem—this is a willingness problem. Does Federal, state, and local government have the willingness to be different? Time will tell!