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BY ELECTRONIC MAIL (oit_rules@state.co.us)

OIT Rulemaking Administrator
Governor's Office of Information Technology
1575 Sherman Street
Denver, CO 80203

Re: OIT March 31, 2025 Proposed Amendments
Technology Accessibility Rules, 8 CCR 1501-11

Dear OIT Rulemaking Administrator,

These comments are submitted by Converge Accessibility LLC, a consulting firm specializing in digital accessibility. They reflect the expertise of Ken Nakata, a former DOJ attorney who worked extensively with digital accessibility and Title II of the ADA, and Laura Ruby, former Director of Accessibility Policy at Microsoft. Laura played a key role in global procurement policy through the World Economic Forum and G20 and led the development of the VPAT while chairing the ITI Accessibility Committee in collaboration with GSA.

We support the March 31 proposed rule by the Governor's Office of Information Technology (OIT). As written, it is a step forward for both local governments and people with disabilities in Colorado. However, we have a few comments that we believe can further strengthen the rule.

NEED FOR AN INFORMAL COMPLAINT PROCESS

We support the City of Centennial's suggestion for OIT to develop a complaint resolution process. HB 21-1110 introduces Colorado state and local governments to new liability because it incentivizes private plaintiffs to sue covered entities to recover actual monetary damages or \$3,500 per violation. [Colo. Rev Stat § 24-34-802 \(2022\)](#). These financial incentives will unfairly disadvantage Colorado local governments because, from our experience working with local governments, most of the significant barriers in their IT systems are created by their vendors. Until now, it has been impossible to avoid these barriers because most vendors have been unwilling to commit resources to make their products accessible.

The financial remedies built into HB 21-1110 are not available under the ADA against state and local governments, absent a showing of intentional discrimination. *Hans v. Bd. Of Shawnee County Comm'rs*, 775 Fed. Appx. 953 (10th Cir. 2019). Nonetheless, even the Title II regulations require state and local governments to develop grievance procedures for processing ADA Title II complaints, including ADA web accessibility complaints. [28 C.F.R. § 35.107](#).

Because of the heightened risk that Colorado state and local governments face under HB 21-1110, it makes sense for OIT to create an informal complaint process framework. This could help offset the financial risk many local governments face while giving people with disabilities access to information and services faster. A useful model may be the Federal Communication Commission's informal complaint process for the Advanced Communications section of the 21st Century Communications and Video Accessibility Act (CVAA). [47 C.F.R. §§ 14.34-.37 \(2025\)](#).

11.4 DEFINITIONS – “CONVENTIONAL ELECTRONIC DOCUMENTS”

The term “conventional electronic document” only appears in the new exceptions in Section 11.7 of the proposed regulation that aligns the OIT's rule with the U.S. Department of Justice's new ADA Title II web accessibility regulation. OIT introduces confusion by adding non-conventional file formats like computer-aided design files (CWG, DXF) and geospatial files (KML, KMZ, SHP). Simply put, there is nothing “conventional” about these file formats.

This definition is made even more confusing by excluding web-based files. For instance, preexisting conventional electronic documents are not required to be accessible under Section 11.7(D). If there is a link to such a document on a covered entity's website, however, it appears to be a “web-based file or content contained therein.” This would no longer be a “conventional document” and not fall under the exception. This distinction does not make sense.

This confusion is unnecessary and leaves Colorado entities with potential unforeseen gaps. Instead, OIT should follow the Department of Justice's lead and use the simple definition, “*Conventional electronic documents* means web content or content in mobile apps that is in the following electronic file formats: portable document formats (“PDF”), word processor file formats, presentation file formats, and spreadsheet file formats.” [28 C.F.R. § 35.103](#).

11.4 DEFINITIONS – “SELF-CONTAINED, CLOSED PRODUCTS”

The newest OIT draft rule introduced “self-contained, closed products.” This term is deprecated in favor of the term “closed functionality.” In developing the revised Section 508 standards, the Telecommunications and Electronic and Information Technology Advisory Committee (TEITAC) noted that,

Changes to the concepts of “self-contained,” “closed” products. This category had been established to require accessible functionality where users could not be expected to install AT accommodations. However, more and more products are software-defined, and have added some openness to modifications of the user interface. At the same time digital rights management (DRM) has closed some functionality of otherwise open products. The Committee had difficulty in finding a structure and a terminology to reflect the changes to both personal and public/shared products; we recognize that there are now “closed product functionality” rather than fully-closed products.

[TEITAC Report to Access Board \(April 2008\)](#). Subsequently, the Access Board adopted the term “closed functionality” and dropped the term “self-contained, closed products” from its [updated Section 508 regulations](#). Also, the European Union adopted the term “closed functionality” in [EN 301 549](#)—the digital accessibility standard used by all EU governments, Australia, and Canada. Following a standard that has not been followed or recognized by

other governments for over a dozen years will make Colorado an outlier, potentially disadvantaging both its local governments and its people with disabilities.

OIT should exercise great caution before entering new standards at this late juncture. Technologies such as non-web software and hardware design introduce new challenges, such as application programming interfaces (APIs) and reach measurements, that national governments have worked on for decades. For closed functionality products—and all these other areas—OIT, Colorado governments, and people with disabilities would all be better served by OIT harmonizing its accessibility rule with the Section 508 and EN 301 549 standards.

11.7 EXCEPTIONS—ARCHIVED WEB CONTENT

OIT's draft standards include a new definition for "archived web content" that aligns with the Department of Justice's web accessibility rule. While "archived web content" is exempted from the coverage of OIT's rule, it does not appear in the list of exceptions in 11.7. Adding this term to the list of exceptions in 11.7 would clarify that Colorado follows the same exceptions as the DOJ rule.

CONCLUSION

As written, the March 31 OIT regulation is a remarkable achievement, especially given the short timeframe in which it was developed. It strikes a fair balance between the needs of local governments and people with disabilities. We believe that several clarifications can further help Colorado local governments succeed in achieving digital accessibility.

Respectfully submitted,



Ken Nakata
Principal



Laura Ruby
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