

In the Matter of )  
 )  
Implementation of Section 255 of the )  
Telecommunications Act of 1996 )  
 ) WT Docket No. 96-198  
Access to Telecommunications Service, )  
Telecommunications Equipment, and )  
Customer Premises Equipment )  
by Persons with Disabilities )

COMMENTS OF MISSOURI ASSISTIVE TECHNOLOGY  
COUNCIL AND PROJECT

On behalf of the Missouri Assistive Technology Council and Project, we file these comments in regard to the FCC's Notice of Proposed Rulemaking for implementation of Section 255 of the Telecommunications Act of 1996, WT Docket No. 96-198. The mission of the Missouri Assistive Technology Council and Project is to advocate for increased access to assistive technology for Missourians of all ages with all types of disabilities. Accessibility of telecommunications products and services, directly or through compatibility with peripheral assistive technology, is critical to the productivity and independence of people with disabilities in Missouri and throughout the country. In an attempt to assure accessibility of telecommunications products and services as required by Section 255, we provide comments including recommendations that the FCC should:

- 1) adopt the Access Board Guidelines -- in full -- including their treatment of "timing" and their prohibition against a decrease in accessibility;
- 2) revise the distinction between "telecommunications" and "information services" to include those technologies, such as voice mail and voice menu systems, critical to full access and participation of people with disabilities,
- 3) revise the definition of "commonly used" and "readily achievable" to be less complicated and more aligned with existing use of such terminology, and
- 4) revise the compliance and enforcement process and add a proactive methodology, specifically the "declaration of conformity", to the process.

Access Board Guidelines (30)

The Access Board's guidelines regarding equipment accessibility were based on the

work of a broad array of industry and consumer stakeholders during months of intense discussion and negotiation. The FCC asserts that because the guidelines only address equipment, and not services, that the guidelines must be adapted to "develop a coordinated approach to accessibility for both services and equipment." While we recognize the differences between telecommunications equipment and services, we are unable to understand why the Access Board's guidelines can not be adopted in full for equipment. If the Access Board's guidelines for equipment accessibility were adopted, the FCC would be free to adapt or develop appropriate accessibility requirements for services in addition to those for equipment. Adopting parts of the Access Board's guidelines, modifying some, and rejecting yet others, will escalate confusion for consumers. (The standards are difficult enough to understand since they are very technical and detailed.) We strongly recommend that the FCC adopt in full the Access Board's guidelines regarding equipment accessibility and adapt them to the extent necessary to appropriately address telecommunications service accessibility.

#### Telecommunications and Information Services (42)

As the FCC proposes to operationalize the definitions of telecommunications versus information services, services such as voice mail and electronic mail would not be subject to the accessibility requirements of Section 255. With the rapid pace of technological advances in telecommunications, we urge the FCC to reconsider its approach to operationalizing these definitions to more closely examine what is "basic" telecommunication for individuals with disabilities. Voice menu-driven services are quickly becoming standard fare in business and government. Almost any large bureaucracy now has an automated system that requires many selections from a menu before you can ever reach a "live" individual. (In many cases you never reach such a person and the entire communication event is done via menu selection) Some systems provide only the option of leaving a message for someone to call you back. Excluding these services from the accessibility requirements of Section 255 will again place individuals with disabilities outside the circle of mainstream America. Overall, we are concerned that the proposed distinction between "basic", "adjunct-to-basic", and "enhanced" services will require regulation review and revision every few months given the pace of changes in telecommunications technology. What is enhanced today will surely be basic in the near future or will be replaced by a better enhanced service. We do not believe that using this framework for the distinction between what is covered and not covered by Section 255 will achieve what Congress intended in accessibility for people with disabilities. We recommend that the FCC re-examine its distinction between "telecommunications" and "information service" with a focus on the communication purpose of telecommunications as compared to the information processing purpose of information services.

#### Commonly Used Peripherals (90)

The FCC proposes that "commonly used" peripherals or access devices be "affordable and widely available". The FCC further suggests a presumption be established that if a device is part of a state telecommunications equipment distribution program then it

should be considered "commonly used." We have serious concerns about both of these suggestions. Limiting the requirements for compatibility with devices that are "affordable" and "widely used" could literally mean that compatibility is only required for inexpensive items such as "in-line" amplifiers costing less than \$50 dollars or for items that are used by "high incidence" disabilities. However, many devices necessary for individuals with disabilities to have access to telecommunications are not "affordable" (at least for those who need them) and are not widely used because of lack of information and/or cost. Using state equipment distribution programs as the litmus test for "common usage" is flawed because these programs are so diverse in their scope and purpose. Some are simply TTY distribution programs, others may provide an additional piece of equipment or two, but are limited to devices that are related to the relay service. Very few programs provide equipment across all disabilities for all types of telecommunications access. Some of the programs that do have a broad scope are voucher programs that do not per se have a set list of approved equipment. We recommend that the FCC not use the terms "affordable and widely used" to clarify "commonly used" and not use the equipment provided by state distribution programs as an indicator of commonly used. We instead recommend that the FCC identify and describe the functions of peripherals that are commonly used by individuals with disabilities (e.g. convert text to speech; receive, transmit, and display text instead of speech, etc.) and if appropriate provide a list of examples of peripherals that provide that function. As Trace suggested, perhaps their internet listing could be adapted to meet this need so long as it is updated regularly.

#### Readily Achievable (104)

The FCC points out that "readily achievable" as applied to accessibility of telecommunications under Section 255 is somewhat different from readily achievable as applied to accessibility of facilities under the ADA. The FCC provides an expansive discussion of the factors they suggest be used to determine if a telecommunication accessibility feature is readily achievable for a particular product. These factors include the technical feasibility of the feature, the expense of providing the feature, and the practicality. We concur that telecommunication access, unlike most facility access, can be significantly influenced by what is technically feasible. Thus a consideration of technical feasibility and the impact of an accessibility feature on the overall design and function of a product or service is an appropriate part of the determination of readily achievable. However, the expense of providing such access feature and determination of when that expense is unreasonable given the resources of the entity seem no different from the expense and resource analysis of readily achievable under the ADA. We are concerned about the addition of factors such as "opportunity costs", the potential market for the access-added product or service, and the degree to which the provider would recover the cost of providing the accessibility feature. These factors, quite simply, are some the reasons the telecommunications industry has used to justify not providing accessibility in their products and services. If these considerations are factored into the expense analysis of readily achievable, Section 255 will do very little to assure accessibility beyond that currently available.

We recommend that the FCC add the consideration of "technically feasible" to those currently used by the ADA for readily achievable and eliminate considerations such as opportunity costs and potential market. This would allow the usage of ADA case law on readily achievable with the addition of one other factor, technical feasibility.

#### Decrease in Accessibility (114)

We strongly support the Access Board's guideline providing for no decrease in net accessibility when products change. As the FCC points out, the fact that accessibility was present, illustrates that it is readily achievable. We are very concerned about the FCC's desire to allow for "legitimate feature trade-offs" in the name of technological advances. The whole reason we must legally require accessibility is because market forces drive technology changes without specific regard for individuals with disabilities. What would be a legitimate feature trade-off that would justify excluding people with disabilities? If it is a minor feature change, then why would it be considered necessary in terms of market impact? If it is a major feature change with massive market and sales implications, then how could you justify excluding individuals with disabilities from this new innovation?? We recommend that the FCC adopt the Access Board's guideline on this issue.

#### Timing (118)

The Access Board suggests that accessibility requirements should apply to new products introduced on the market and that there should not be a requirement to retrofit existing equipment. We agree in general with this position regarding the timing of accessibility requirements with some further explanation. New products should meet the accessibility standards established, if readily achievable, during the design of the new product. A readily achievable determination and any associated technical feasibility and cost analysis should not be applied after a product has been manufactured. (It is usually less technically feasible and more costly to retrofit a product than to build the access into the product design. As a result, applying the readily achievable standard after production might provide a way to avoid building access into a product in the design phase.) After products are on the market, we recommend that the inclusion of accessibility be re-considered when the product undergoes an upgrade since significant upgrades would again involve product design. We are concerned that if only limited to new products, some manufacturers may opt to significantly upgrade an existing product, rather than call it a new product, to avoid meeting accessibility standards.

#### Compliance and Enforcement

The FCC proposes a complaint driven system for compliance with the accessibility requirements of Section 255. While complaint management and response to complaints are important, we are concerned about this methodology as the only approach to compliance. Consumers and manufacturers alike need an more proactive

approach to compliance if we agree that cost-effective accessibility must be built into the design of products and services. The declaration of conformity as recommended by the TAAC is one option for a more proactive approach to assuring compliance. If manufacturers are required to produce a declaration of conformity, there is a public record that:

- They are aware of the accessibility standards their products should meet.
- They believe their products meet those standards.
- They should have data to substantiate their belief that their products are accessible.

Without a declaration of conformity or some other proactive methodology for assuring access, the FCC has accepted the fact that inaccessible products and services will reach the market. After an inaccessible product or service has reached the market, it is much more difficult, if not impossible, to completely correct the access barriers "after the fact". It may be technologically infeasible to retrofit the product or service. A cease and desist order to quit selling the inaccessible product or service merely takes one product off the market; it does not necessarily result in an replacement accessible product becoming quickly available. The Access Board indicated that they could not adopt the recommendation for the declaration of conformity because enforcement of Section 255 is under the exclusive jurisdiction of the FCC. Thus, we recommend that the FCC adopt the requirement for a declaration of conformity as recommended by the TAAC to provide a proactive compliance approach in addition to the reactive complaint response approach.