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In the Matter of)
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Implementation of Section 255 of the)
Telecommunications Act of 1996)
)
Access to Telecommunications Services,)
Telecommunications Equipment, and)
Customer Premises Equipment)
by Persons with Disabilities)

WT Docket No. 96-198

COMMENTS OF

Architectural and Transportation Barriers Compliance Board
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The Architectural and Transportation Barriers Compliance Board (Access Board) files these comments on June 30, 1998, in the FCC's Notice of Proposed Rulemaking for the Implementation of Section 255 of the Telecommunications Act of 1996, Access to Telecommunications Services, Telecommunications Equipment, and Customer Premises Equipment by Persons with Disabilities, WT Docket No. 96-198.

Summary

Section 255 (e) of the Telecommunications Act requires the Access Board to develop accessibility guidelines for telecommunications equipment and customer premises equipment in conjunction with the Federal Communications Commission (FCC). The Board is also required to review and periodically update its guidelines. To develop the guidelines with the broadest public input, the Board convened a 33-member Telecommunications Access Advisory Committee. After receiving the committee's recommendations, the Board published a Notice of Proposed Rulemaking (NPRM) and then a final rule in February 1998. The Access Board's guidelines do not address telecommunications service. FCC staff was thoroughly involved in the advisory committee and attended each meeting. The Access Board also closely coordinated with the FCC in drafting the Board's NPRM and final rule. FCC staff received each draft of the NPRM and final rule and provided the Board with valuable input.

The FCC should incorporate the Board's equipment guidelines without change in the FCC's final rule. Since the Board has the responsibility to develop, review, and periodically update accessibility guidelines in conjunction with the FCC, any concerns the FCC identifies with the Board's guidelines should be addressed in future revisions to the guidelines. Having one set of equipment requirements will provide clear guidance to the public in meeting the requirements of section 255. The FCC has maximum flexibility to depart from the Board's guidelines in the area of telecommunications service.

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Congress anticipated that there would be some costs associated with section 255 implementation and provided a "readily achievable" standard as a way to limit those costs. Including factors such as the potential market for an accessible product or service and the degree to which the incremental cost of accessibility features could be recovered are inappropriate and unnecessary in determining what is "readily achievable". "Readily achievable" is already a low standard. Adding factors such as the potential market for a product or service and cost recovery would serve to make this standard even lower.

I. Rulemaking History.

Section 255 (e) of the Telecommunications Act requires the Access Board to develop accessibility guidelines for telecommunications equipment and customer premises equipment in conjunction with the FCC. The Board is also required to review and periodically update its guidelines. To develop the guidelines with the broadest public input, the Board convened a 33-member Telecommunications Access Advisory Committee.

The Committee was composed of representatives of manufacturers of telecommunications equipment and customer premises equipment; manufacturers of specialized customer premises equipment and peripheral devices; manufacturers of software; organizations representing the access needs of individuals with disabilities; telecommunications providers and carriers; and other persons affected by the guidelines. The Committee met six times from June 1996 to January 1997.

After receiving the committee's recommendations, the Board published a Notice of Proposed Rulemaking (NPRM) in April 1997 and received 159 comments in response to the NPRM. The Board then published a final rule in February 1998. The Access Board's guidelines do not address telecommunications service. FCC staff was thoroughly involved in the advisory committee and attended each meeting. The Access Board also closely coordinated with the FCC in drafting the Board's NPRM and final rule. FCC staff received each draft of the NPRM and final rule and provided the Board with valuable input.

II. The FCC Should Incorporate the Board's Equipment Guidelines Without Change in the FCC's Final Rule.

The FCC should incorporate the Board's equipment guidelines without change in the FCC's final rule. Since the Board has the responsibility to develop, review, and periodically update accessibility guidelines in conjunction with the FCC, any concerns the FCC has with the Board's guidelines should be addressed in future revisions to the guidelines. Having one set of equipment requirements will provide clear guidance to the public in meeting the provisions of section 255. The FCC has maximum flexibility to depart from the Board's guidelines in the area of telecommunications service.

The legislative history of section 255 requirements supports the conclusion that any FCC regulations in this area should, at a minimum be "consistent" with the Board's guidelines. The Senate bill, S. 652, provided the framework for the current accessibility requirements in the Telecommunications Act. Section 262 (e) of the Senate bill provided that:

"[w]ithin 18 months after the date of enactment of the Telecommunications Act of 1995, the Architectural and Transportation Barriers Compliance Board shall develop guidelines for accessibility of telecommunications equipment and customer premises equipment in conjunction with the Commission, the National Telecommunications and Information Administration and the National Institute of Standards and Technology. The Board shall review and update the guidelines periodically."

Section 262 (g) of the Senate bill provided that: "[t]he Commission shall, not later than 24 months after the date of enactment of the Telecommunications Act of 1995, prescribe regulations to implement this section. The regulations shall be consistent with the guidelines developed by the Architectural and Transportation Barriers Compliance Board in accordance with subsection (e)."

The legislation that emerged from conference committee dropped the reference to the National Telecommunications and Information Administration and the National Institute of Standards and Technology along with section 262 (g). Although section 262 (g) was dropped in the final legislation, the Board believes that it would be contrary to Congressional intent if the FCC were to use its discretionary rulemaking authority to develop regulations for section 255 which are inconsistent with the Board's guidelines. In the FCC's NPRM for section 255 there are several provisions of the Board's guidelines that the FCC indicates it may depart from in its final regulation. These include: the apparent disagreement over distinguishing between the requirements for accessibility and usability (§73), information pass through (§75), differences between specialized customer premises equipment and peripheral devices (§84), and the net reduction of accessibility (§ 112). Any departures from the Board's guidelines which provide less accessibility would result in FCC regulations that are inconsistent.

Also, section 251 (a) of the Telecommunications Act provides further evidence that the Board's guidelines cannot be ignored. This section provides that:

"[e]ach telecommunications carrier has the duty (1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers; and (2) not to install network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to section 255 or 256."

The plain reading of this section is that a telecommunications carrier must install network features, functions, or capabilities that comply with the guidelines under section 255. No further regulatory action beyond the Board's guidelines is necessary to implement section 251 (a)(2). If

the Board's guidelines apply under section 25 1 (a)(2) to telecommunications carriers, sound public policy considerations would support the conclusion that manufacturers of telecommunications equipment and customer premises equipment should comply with the same guidelines.

III. Adding Factors Such as the Potential Market for a Product or Service and Cost Recovery Would Serve to Make the Already Low "Readily Achievable" Standard Even Lower.

The FCC proposes that the following factors should be considered in making determinations about whether particular accessibility or compatibility features are readily achievable for purposes of compliance with section 255. These factors include:

(1) Is the feature feasible? (2) What would be the expense of providing the feature? (3) Given its expense, is the feature practical? (Practical includes: (a) the resources available to the provider to meet the expenses associated with accessibility; (b) the potential market for the product or service, taking into account the manner and extent to which the product or service is altered or changed in connection with making it accessible; (c) the degree to which the provider would recover the incremental cost of the accessibility feature; (d) and issues regarding product life cycles).

The Board's appendix to its final rule lists the following factors as being applicable to a determination of whether an action is readily achievable:

(1) the nature and cost of the action needed to provide accessibility or compatibility; (2) the overall resources of the manufacturer, including financial resources, technical expertise, component supply sources, equipment, or personnel; (3) the overall financial resources of any parent corporation or entity, only to the extent such resources are available to the manufacturer; and (4) whether the accessibility solution results in a fundamental alteration of the product.

Congress anticipated that there would be some costs associated with section 255 implementation and provided a "readily achievable" standard as a way to limit those costs. Including factors such as the potential market for an accessible product or service and the degree to which the incremental cost of accessibility features could be recovered are inappropriate and unnecessary in determining what is "readily achievable". The Board specifically recommends that the FCC not include the potential market for an accessible product or service and the degree to which the incremental cost of accessibility features could be recovered as readily achievable factors in the final regulation. Since the term "readily achievable" has its origins in the Americans with Disabilities Act (ADA), the Board is especially concerned that including cost recovery considerations in the FCC's regulation may have negative consequences for determining what is readily achievable in the context of the ADA.

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The Board's experience in working on accessibility issues for over 20 years is that the potential market for an accessibility feature is generally underestimated before its use and cost estimates exceed actual costs. "Readily achievable" is already a low standard. Adding factors such as the potential market for a product or service and cost recovery would serve to make this standard even lower.

The Board is committed to working cooperatively with the FCC in any future revisions to the guidelines and stands ready to assist the FCC in the development of its final rule.

Submitted by:

A handwritten signature in black ink, appearing to read "Lawrence W. Roffee". The signature is fluid and cursive, with the first name being the most prominent.

Lawrence W. Roffee
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June 30, 1998