June 30, 1998

The Federal Communications Commission
Office of the Secretary
Room 222, 1919 M Street NW
Washington, DC 20554

In The Matter of Implementation of Section 255 of the Telecommunications Act of 1998

Dear Commissioners:

On behalf of the President's Committee on Employment of People With Disabilities, enclosed are comments addressing a Final Rule for Section 255 of the Telecommunications Act of 1996 (Docket
No. 96-198).

The Section 255 provision has its roots in passage of the Americans With Disabilities Act in 1990, sharing definitions, terms and concepts found in that historic civil rights act which I authored in the
U.S. House of Representatives. Implementation of Sec. 255 by the Commission will go a long way
to address some of the lack of access to telecommunications experienced by persons with disabilities
who seek, or try to maintain, employment.

As you may know persons with disabilities experience higher levels of unemployment than persons
without disabilities. Persons who have hearing, speech and vision disabilities are at a particular disadvantage in the workplace as the rapid pace of technological development often means they cannot use or must play catch-up to what everyone else is already using.

We include facts about disability and employment and some information about the changing U.S. economy and workforce that are relevant to any discussion about electronic communications. Detailed comments are attached also that address:

- Adoption of Access Board Guidelines;
- Universal Design;
- Enhanced Services;

- Readily Achievable Determinations;
- Complaint process.

We enclose one original and five copies of our comments, and an ASCII version on disk.

Sincerely,

Tony Coelho
Chairman

Enclosure

cc: (1) Judy Boley, Federal Communications Commission, Room 234, 1919 M St NW, Wash DC 20554
(2) Timothy Fain, OMB Desk Officer, 10236 New Executive Office Building, 725 17th Street NW, Washington, DC 20503

FEDERAL COMMUNICATIONS COMMISSION

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Implementation of Section 255 of the Telecommunications Act of 1996	) W.T. Docket No. 96-198)

COMMENTS OF THE PRESIDENT'S COMMITTEE ON EMPLOYMENT OF PEOPLE WITH DISABILITIES

I. Introduction

The President's Committee on the Employment of People With Disabilities (PCEPD) submits these comments to the Federal Communications Commission (FCC or Commission) on its proposed Section 255 rules.

The President's Committee on Employment of People With Disabilities is a small federal agency whose mission is to communicate, coordinate and promote public and private efforts to enhance the employment of people with disabilities. The Committee provides information, training and technical assistance to America's business leaders, organized labor, rehabilitation and service providers, advocacy organizations, families and individuals with disabilities. The President's Committee reports to the President on the progress and problems of maximizing employment opportunities for people with disabilities.

To achieve its goals, the Committee, through its 300 volunteer members and 37-member agency staff, works closely with Governor's Committees in the states, in the District of Columbia, Puerto Rico, Guam and the Virgin Islands; with more than 600 Mayor's Committees on Employment of People and Disabilities; and with disability community leaders throughout the country

PCEPD applauds the FCC for issuing proposed rules to implement Section 255 of the Telecommunications Act of 1996. Increased access to telecommunications equipment and services is fundamental to expanding employment opportunities for individuals with speech, hearing, vision, cognition, motor and other disabilities. We urge the FCC to adopt the suggestions contained in these comments so that the needs of America's citizens with disabilities are fully considered by manufacturers of telecommunications equipment and providers of telecommunications services.

PCEPD emphases two arenas why this rulemaking is important. (1) The significant numbers of persons with disabilities and their lack of employment parity with persons who do not have disabilities; and (2) the changing U.S. economy where jobs more and more

involve the skills and abilities to utilize the tools of electronic communications. The Section 255 provision must be considered in the changing context of the American workplace and the need for tools that can be accessed by a broad range of workers.

(1) Facts About Disability and Employment

Access to telecommunications equipment and services must be seen from the viewpoint of basic facts about people with disabilities and their employment circumstances. The most recent statistics on employment of persons with disabilities reveal that there are significant differences between working-age Americans with disabilities and those without disabilities.

While 82.1 percent of the general working age population is employed (ages 21-64), only 52.3 percent of all people with disabilities are employed. This includes persons who have difficulty performing functional activities such as hearing, seeing, having one's speech understood, lifting and carrying, climbing stairs and walking, or difficulty with activities of daily living. PCEPD notes that this group includes many who have difficulty accessing the products and services provided by vendors of telecommunications and information technology where human interface with such products and services depends on functional ability to hear, to see and to have one's speech understood, and the ability to appropriately manage the information content such products and services provide.

And, among those with severe disabilities, only 26.1 percent are employed. Severe disability is defined by the U.S. Census survey to mean someone who is unable to perform one or more activities of daily living, or has one or more specific impairments, or is a long term user of assistive devices such as wheelchairs, crutches and walkers. PCEPD notes that this group also includes persons with one or more specific impairments' such as inability to speak, hear, or see or combinations of these limitations with other limitations. PCEPD similarly notes that this group includes many who would have difficulty physically accessing the products and services provided by vendors of telecommunications and information technology where human interface with these products and services depends on functional ability to hear, to see, to have one's speech understood, to be able to operate controls and switches, and to understand how such devices and services work.

Other population data indicate the extent of the problems faced by persons with limitations that impact use of the products and services of the information age. According to U.S. Census Bureau 1992 SIPP data, 10.9 million have a functional limitation in Hearing what is said in a normal conversation'; 9.7 million have a functional limitation in Seeing words of letters in ordinary newsprint, even when wearing glasses'. And 2.3 million have a functional limitation in Having one's speech understood.'

Additionally, according to this same source, more than half the population over age 65 has a disability and, with this age group growing rapidly, there will be ever increasing numbers of persons with functional limitations in the areas that impact ability to use information age products and services. Current policy changes to raise the retirement age and trends to continue working later in life place emphasis on this significant demographic

shift and its importance in being able to access and use telecommunications products and services.

Furthermore, there is an estimated 2.5 million persons, or one percent of the population, who experience mental retardation and about 5 million people, or 2.8 percent of the adult population, who experience a severe mental disability. A survey of use of assistive technology by adults with mental retardation which included use of personal computers and communication devices, stated that "the complexity of the device" was one of the most frequently cited barriers to computer use. 399 adults with mental retardation, of the 1,218 survey respondents (or 31 percent), indicated they used a computer for purposes such as communication, for educational activities, for household finances or budgeting, for leisure activities and for work-related activities. Although cost of the computer was the primary barrier to use, lack of training and the complexity of computers were both frequently identified by survey respondents as barriers. The study stated:

> "Even when software is available, existing operating systems create a barrier for individuals with mental retardation. Accommodations for such persons to use computers will include the development of software with simple displays, provision of information in non-text-based formats (e.g., graphics, video, audio), minimization of the number and complexity of decision-making points, presentation of information sequentially, and little reliance on memory."

As computers link to other technologies, including telecommunications modalities, its becomes more important than ever before to address this population's functional limitations if there is to be congruence with other federal policies to move Supplemental Security Income (SSI) recipients off income support rolls and onto payrolls (see discussion below).

Our nation also has 4.0 million children and adolescents, or 6.1 percent of the population under 18 years of age, who have disabilities. These young people will be a part of the workforce of tomorrow and while they face significant challenges in their classrooms today due to their disabilities, it is incumbent on our society to work to ensure that they do not also have to face the same significant challenges in operating the fruits of the information age when they enter the workforce.

The implications of these statistics for manufacturers and providers of telecommunications products and services are clear. There are significant, and growing, numbers of persons who cannot with ease:

- hear voice menus and instructions;
- see what is written on screens and other read-out devices;
- voice back to a human or other operator or have great difficulty in doing so;
- have difficulty manipulating controls and buttons and switches; and
- understand, or who are likely to become confused, when using or operating such devices and services.

(2) A Changing U.S. Economy and Workforce

Of significance for people with disabilities is how the economy and the workforce are changing. The economic impact of information technology and its ability to transform the creation, processing, storage, communication and use of information in all aspects of our lives is rapidly underway. Significantly, the emergence and expansion of digital technologies, as the basis of information appliances (computers, televisions, telephones, etc.), along with communications networks and content, is impacting education, entertainment and employment. Where the jobs are and how people with disabilities can enter these fields is of paramount importance if the unemployment level of persons with disabilities is to be addressed.

Experts note that information technology industries have been growing at more than double the rate of the overall economy, and now represent an estimated 8.2 percent of the Gross Domestic Product, or almost double that of 1985. These industries are credited with having driven over one-quarter of total real economic growth over the past five years, including lowering the inflation rate. In 1985, 557,000 persons worked in this industry but by 1996, the figure had doubled to 1.2 million workers.

Significant build-out of the Internet and associated industries is occurring. Consumer electronics companies, media producers, phone companies, computer companies, software firms, satellite builders, cell phone business, Internet service providers, and television cable companies are aggressively investing to build out the Internet according to the U.S. Department of Commerce. They state also that among the fastest growing business is commercial activity on the Internet. "Businesses use the Internet to lower purchasing costs, reduce inventories and cycle times, provide more efficient and effective customer service, lower sales and marketing costs, and realize new sales opportunities." Apparently, three-quarters of the equipment investment for some industries, such as communications, insurance and investment brokerages, is in information technology.

As stated eloquently by Microsoft Corporation in April this year:

> "In many ways, the potential of the PC and the Internet is unlimited as it can be the ultimate equalizer. The real value is a person's idea. The digital market is how they create and share that idea with others. That idea could be poetry, a business plan, the next big software product or a community support program. The technical challenge for us and our industry is to ensure that everyone has access to participate in this world."

The implications for persons with functional limitations are enormous when companies, and others, use the Internet for ideas, for poetry, for community support programs, for procurement, to sell products, to track and organize resources globally, and to communicate with customers. If the workplace devices that access these processes of business cannot be operated by a person with a vision, hearing, speech or other disability,

they will not be able to carry out the function of the device as expected as part of the job function.

Also, greater workforce flexibility is resulting from information technology's impact on the workplace. Such workplace flexibility is reflected in the ability to now work without being tied to a desk or an office or particular geographic site. The tools that permit this personnel liberation include personal computers, fax machines, modems, phones, cell phones, palmtop or other handheld devices, or other wireless and wireline devices that transmit information. In conjunction with these tools are new methods of work organization and arrangements of computer networks and software. For instance, there are estimated to be up to 15 million workers telecommuting in the next decade according to the U.S. Department of Transportation. It may be nearly impossible for workers with disabilities in vision, hearing, speech, cognition and in fine motor skills to become a part of this new world of work, where incidentally the high-paying and high-status jobs are found, if the technological access needs are not addressed at the outset.

Additionally, as policy trends move toward reducing income support programs, addressing the workplace technology access needs of people with disabilities on Supplemental Security Income (SSI) as they move onto payrolls, becomes even more important. There are more than 3.8 million people of working age (18-64 years) with disabilities on SSI with a benefit averaging $383 per month, or a cost of $1.455 billion for one month (in addition to the Medicaid benefit. The current federal policy trend is to move to develop more work incentives and to reduce the work disincentives. About half of SSI beneficiaries currently benefitting from existing work incentives programs, such as the Impairment Related Work Expenses (IRWE) and PASS income exclusion programs, and the 1619 (a) and (b) Medicaid incentive programs, are working age adults with mental retardation disabilities. It is likely that more and more individuals with this disability, and from other disability categories, will take advantage of such policy changes and enter the workforce as these changes are implemented. However, whether they can access the electronic communication tools and information appliances of the workplace remains an open question.

The requirements of Title I of the Americans With Disabilities Act address many employer responsibilities in making workplaces accessible. However, when the devices and services are designed, developed and fabricated without regard to end using workers who may have disabilities, there is little the employer can do but not hire or not promote an individual with a disability. When the essential job functions require the abilities to use and operate the devices and services, or the information appliances to access work-related content, people with disabilities are at a disadvantage in both competitive and non-competitive work situations when these products and services have not been designed with disability in mind.

While these statistics are not encompassing of the situation of all workers, and some would-be workers with disabilities, it is important for the Commission to consider the Section 255 provision in the context of the changing American workplace and the need for electronic communication tools that can be accessed by a broad range of workers. Regulations cannot narrowly target certain manufacturers or providers to exclude the

reality of the workplace or which do not acknowledge other federal policy or initiatives addressing the workplace such as Title I of the ADA and pending changes in the income support programs. PCEPD recommends the Commission coordinate and consult with other relevant federal agencies in this regard so as to not create policy dissonance.

II. Adoption of Access Board Guidelines

Foremost, PCEPD urges the Commission to adopt the Section 255 guidelines which were issued by the U.S. Architectural and Transportation Barriers Compliance Board (Access Board) on February 3, 1998. Congress passed to the Access Board the primary authority to draft those guidelines, which should now be enforced by the FCC. Although the Access Board guidelines apply to equipment manufacturers, we recommend that the FCC apply these as well to service providers. The guidelines are comprehensive, and were the product of the Access Board's Telecommunications Access Advisory Committee, which consisted of representatives from both consumer and industry organizations.

In addition to the guidelines on achieving accessibility developed by the Access Board, PCEPD urges the FCC to adopt and enforce the following guidelines for both service providers and equipment manufacturers:

· Where market research on products or services is performed, individuals with disabilities should be included in the populations researched;

· Where product design trials and pilot demonstrations are conducted, individuals with disabilities should be included in these activities;

· Reasonable efforts should be made to validate access solutions though testing with individuals with disabilities or related organizations;

· Manufacturers and service providers should be required to provide access to product and service information and documentation on products and services, and their accessibility features, including information contained in user and installation guides. To the extent that such information is made available to the general public, it should be made available in accessible formats or modes upon request, at no extra charge. Manufacturers should also include the name and contact means for obtaining information about (1) accessibility features and (2) how to obtain documents in alternate formats, in general product information. Additionally, customer and technical support provided at call and service centers should be accessible by people with disabilities.

· The Access Board guidelines make clear that in addition to covering new products, Section 255 covers existing products that "undergo substantial change or upgrade, or for which new releases are distributed." The changes to which this statement refers are those that affect the functionality of the product, rather than cosmetic changes. It is critical for both manufacturers and service providers to consider disability access as they make

substantial changes or upgrades to their public offerings;

· The Access Board's guidelines do not permit manufacturers to make changes that reduce access to products. This is intended to ensure that individuals with disabilities are not forgotten, as improvements and upgrades to products and services are performed. It is critical for the FCC to adopt this guideline so that individuals with disabilities are not treated as second class consumers. While innovation is important, it is important to ensure that where improvements are made to products and services, the access function will be maintained. This may involve changing the manner of achieving access, but there must be some assurance that some means of effective access continues to be available;

· The Access Board's guidelines set forth certain technical standards for compatibility with specialized customer premises equipment. These should be adopted in the FCC's final rules.

· The FCC's proposed rules say that software will be covered only if the software is included with a telecommunications product. If it is marketed separately, the FCC has proposed that it not be covered by Section 255. PCEPD opposes this interpretation of Section 255. When software has functions that are integral to the provision of telecommunications, it should be covered under the FCC's new rules. This would be consistent with the Access Board guidelines which cover software, hardware, or firmware that are integral to telecommunications and CPE equipment, as well as functions and features built into the product and those provided from a remote server over a network.

The importance of the role of software in providing accessibility has already been established in another federal statute, the Rehabilitation Act, Section 508 (P.L.99-506) . Section 508, entitled Electronic Equipment Accessibility, mandates the adoption of guidelines for accessibility in federal and state procurement practices in terms of electronic office equipment and includes software (according to the 1992 amendments). According to the U.S. General Services Administration, the intent of Sec. 508 is to:

> Ensure that people with disabilities can access and use the same data bases and application programs as other people;
> Ensure that people with disabilities shall be supported in manipulating data and related information resources to attain equivalent end results as other people;
> Ensure that when electronic office equipment is part of a telecommunications system, that people with disability-related needs are provided the capacity to communicate with other users of the system.

Microsoft Corporation noted in its statement to the U.S. Senate:

> " ... there are tens of thousands of companies creating computer applications, equipment and content. ...Microsoft feels that full adherence to Section 508 of the Rehabilitation Act is an important step. Once commercial enterprises see that major agency purchases are based on

accessibility, as well as on the rest of the feature set of a particular product, we will see great innovation in this area."

The feature set' of particular products is more and more likely in this day and age to be a linkage to capacities via a connection that may or may not be wireline or wireless or both, and, which may be a bundling of services which, from the perspective of the workplace end user, is seamless and transparent. For example, workplace access to the Internet may be via a telephone line in order to reach the information necessary to perform essential job functions.

PCEPD reiterates here that rules for Section 255 should not create policy that does not harmonize with other established federal policies such as found in Section 508 of the Rehabilitation Act and urges the Commission to consult with the relevant federal agencies in this matter of software accessibility so as to not create policy dissonance.

III. Universal Design

PCEPD supports the FCC's decision to require an assessment of accessibility and compatibility for each product. This is what Section 255 requires, and as stated in the Access Board guidelines, the assessment as to whether access can be achieved "cannot be bypassed simply because another product is already accessible." Rather, the goal of Section 255 is to achieve, where readily achievable, universal design for as many disabilities as possible. Only if that is not achievable, then is it reasonable to view the overall accessibility of the provider's products or services to determine how other functionally similar products and services can be made accessible.

IV. Enhanced Services

PCEPD is very concerned that enhanced services may not be covered under the FCC's new rules. The Telecommunications Act of 1996 emphasized the need to bring all the citizens of our country the benefits of advanced telecommunications technologies. The purpose of Section 255 was to ensure that this objective would be achieved for individuals with disabilities. Our comments above with regard to how information technology is transforming the workplace address some of our concerns in this area. Additionally, our comments in regard to Section 508 above address also this concern.

We add that voice mail, interactive telephone prompt systems, and Internet telephony are becoming available as mainstream services and are becoming critical to successful participation and competition in our society. These services must be required to be made accessible if the true intent of Section 255 -- to achieve universal telecommunications access -- is to be realized.

PCEPD notes too the critical relationship here of Section 255 to Section 251(a)(2) of the Act which imposes a duty on telecommunications carriers "not to install network features, functions, or capabilities" that do not comply with standards established pursuant to

Section 255. If Congress had intended only basic voice service, dial tones and touch tones, this linkage to network capacities would not have been established in the statute. There is clear recognition here of the interconnection of providers of services and manufacturers of equipment, and in the context of advancing technologies, the intent to ensure that people with disabilities have access, is very apparent.

PCEPD notes the significant of AT&T's comments in the Notice of Inquiry (NOI) on Section 255:

> "It is thus especially critical that manufacturers of network equipment, as an industry, closely coordinate their design and development processes with the needs of telecommunications service providers to satisfy Section 255 requirements."

From the consumer or end user perspective, network features, functions and capabilities are part of the "overlap and convergence" between telecommunications equipment and services that the Commission noted in its original NOI. The distinction between Adjunct services and Enhanced services puzzles the end user with a disability who may rely on Email to communicate to colleagues daily in the workplace when he or she cannot operate aTTY or may not have physical access to a fax machine, and who may not be able to secure appropriate and timely relay services, or who chooses not to utilize that form of communication service.

It is clear that there are many Enhanced services, such as Email, which have brought high levels of benefit to the public through incorporation into the network and are now essentially basic in purpose' to achieve communication between two (or more individuals). Email operates either in close-to-real-time, such as "chat mode" which can have less lag time' compared to use of relay services. Email operates also as a send-respond-send-back mode, involving text sending for later pick-up, sharing a feature of human voice message recordings via voice telephony for later pick-up by the call receiver.

PCEPD requests the Commission to visit anew these distinctions in light of actual usage by people with disabilities and in particular, how useful, necessary and of great benefit to the public some of these Enhanced services have become to workplace productivity and economic outcomes.

V. Readily Achievable Determinations

Under Section 255, manufacturers must make their products accessible or compatible if it is readily achievable to do so. The "readily achievable" language is from the Americans with Disabilities Act (ADA) and involves a balancing of the nature and costs of including an access feature with the overall financial resources of the covered entity (and the resources of its parent corporation, where applicable). We accept the FCC's suggestion that technical feasibility also may be considered in determining whether access to a product or service can be achieved. However, PCEPD opposes considering the extent to which

an accessible product can be marketed (when compared to inaccessible products), and the extent to which the costs of providing access will be recovered, in readily achievable determinations. These have not been permissible factors under the ADA, and should not be included in a readily achievable analysis under Section 255. PCEPD suggests that the Commission continue to contact experts within the federal system to develop broader understanding of the principles underlying the concept of readily achievable' as found in the ADA.

VI. Complaint Process

PCEPD is confused by the FCC's proposed complaint process, such as when an individual has the right to move from the "fast track" to the "informal" or "formal" complaint processes, or when a complaint would be moved to an alternative dispute resolution process. This needs clarification in the final rules, so that consumers may fully understand the means available to seek redress under Section 255.

We are opposed to a rule that would require consumers to first receive approval from the FCC before being permitted to bring a formal FCC complaint. This is not a requirement for other formal complaints brought before the Commission and appears to be discriminatory against individuals with disabilities.

However, we do support the following FCC proposals concerning consumer complaints:

· There should be no filing fees for informal or formal complaints, and fees that currently exist for filing complaints against common carriers should be waived for complaints brought under Section 255. Waiving these fees would be in the public interest.

· There should not be any time limit for filing complaints, because one never knows when he or she will discover that a product or service is inaccessible.

· Consumers with disabilities should be able to submit complaints by any accessible means available.

· Manufacturers and service providers should be required to establish contact points in their companies that are accessible to consumers with disabilities.

VII. Conclusion

PCEPD thanks the FCC for the opportunity to submit these comments, and urges the FCC to act promptly in issuing rules that will fully ensure telecommunications access by individuals with disabilities.

Respectfully submitted,

President's Committee on Employment of People With Disabilities
1331 F Street NW
Washington, DC 20004