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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

JUL 7 1998

COMMENTS OF OKLAHOMA ASSISTIVE TECHNOLOGY PROJECT

On behalf of the Oklahoma Assistive Technology 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 Oklahoma Assistive Technology Project is to advocate for increased access to assistive technology for Oklahomans 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 Oklahoma. Therefore, in an effort to assure accessibility of telecommunications products and services as required by Section 255, we are providing the following comments and/or recommendations:

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 which is critical to full access and participation for people with disabilities;
3. revise the definition of 'commonly used' and 'readily achievable' in order that it simplified and more in keeping with existing use of such terminology; and
4. revise the compliance and enforcement process .

Access Board Guidelines (30)

The Access Board Guidelines regarding equipment accessibility was the result of work accomplished by both consumers and industry stakeholders alike which took months of discussion and negotiation. The FCC asserts that the guidelines must be adapted to "develop a coordinated approach to accessibility for both services and equipment." We recognize the differences between telecommunications equipment and services; however, we are unable to understand why the Access Board's guidelines can not be adopted in full for equipment. If the guidelines for equipment accessibility were adopted, the FCC would be able to adapt or develop appropriate accessibility requirements for services in addition to those for equipment. Adopting only part of the guidelines, may result in confusion for people with disabilities. Therefore, we strongly recommend that the FCC adopt in full the Access Board's guidelines regarding equipment accessibility and

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subsequently adapt them to appropriately address telecommunications service accessibility.

Telecommunications and Information Services (42)

Under the current FCC proposal to implement the definitions of telecommunications vs. Information services, services such as voice mail and electronic mail would not be subject to the accessibility requirements of Section 255. Realizing the rapidity with which technological advances are occurring in the telecommunications industry, we strongly encourage the FCC to reexamine its approach in the implementation of these definitions in order to recognize what is considered 'basic' telecommunication for individuals with disabilities. Excluding these services from the accessibility requirements of Section 255 will give individuals with disabilities an unfair disadvantage. Given the pace of changes in telecommunications technology, we are concerned that a distinction between 'basic', 'adjunct-to-basic', and 'enhanced' services will necessitate review and revision far too frequently. What may be enhanced today will more than likely be basic in the near future or possibly replaced by a better enhanced service. Utilization of this process to determine what is covered and not covered by Section 255 surely will not achieve what Congress intended regarding accessibility for people with disabilities. We would like to recommend that the re-examine its distinction between 'telecommunications' and 'information service' with a focus on the communication purpose of telecommunication.

Commonly Used Peripherals (90)

The FCC proposes that 'commonly used' peripherals or access devices be 'affordable and widely available'. Furthermore, the FCC presumes that devices distributed by the state telecommunication equipment program should be considered 'commonly used'. Both of these suggestions pose concern. First, limiting the requirements for compatibility with devices that are 'affordable' and 'widely used' could result in compatibility only being required for inexpensive items or items used by 'high incidence' disabilities. Many devices which are necessary for individuals with disabilities to access telecommunications are not 'affordable' and not widely used because of a lack of knowledge and/or money. The idea of using state equipment distribution programs as the measurement for 'common usage' is not necessarily the best because these programs are quite diverse in their scope and purpose. While some programs may provide equipment across all disabilities for all types of telecommunications access, many are simply TTY distribution or are limited to devices that are strictly related to the relay service. Some of the programs that have a broad scope are voucher programs without a set list of approved equipment. With so many differences, 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 the 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 and if appropriate provide a list of examples of peripherals which provide that function.

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 utilizes a number of factors in determining 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. Certainly, telecommunication access, unlike most facility access, can be significantly influenced by what is technically feasible. Therefore, it is understandable that a consideration of technical feasibility be an appropriate part of the determination of readily achievable. However, the expense of providing such access feature and the determination of when that expense is unreasonable given the resources of the entity, seems really no different from how one determines the expense and resource analysis of readily achievable under the ADA. Furthermore, 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, are of concern. Should these considerations be factored into the expense analysis of readily achievable, Section 255 will do very little toward assuring accessibility beyond that which is currently available. We would like to 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 for the clear advantage of ADA case law on readily achievable with the additional factor of technical feasibility.

Timing (118)

The Access Board suggests that accessibility requirements apply to new products introduced on the market and there should be no requirement to retrofit existing equipment. It would seem that new products should meet the accessibility standards established, if readily achievable, during design of such new product. Hence, a readily achievable determination and any associated technical feasibility and cost analysis should not be applied following the manufacture of a product. Application of the readily achievable standard after production could result in avoidance for building access in during product design. Once products are on the market, it would be better to re-examine the inclusion of accessibility when the product undergoes an upgrade, especially since significant product upgrade automatically should involve some degree of product design. Should accessibility requirements only apply to new products, manufacturers could opt to simply upgrade an existing product in an effort 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 a complaint driven system for accessibility requirements of Section 255 is important, there needs to be more than one viable method to pursue toward compliance. Both consumers and manufacturers will need a method which allows for a proactive approach to compliance. TAAC recommends a declaration of conformity which could be utilized as an option for a more proactive approach to

assuring compliance. If manufacturers are required to produce a declaration of conformity, there would be a public record of the following:

- Awareness of accessibility standards their products should meet,
- Belief that their products meet those standards,
- 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 are likely to reach the market. Once this has occurred, it is much more difficult to completely correct the access barriers. 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.

O K L A H O M A S T A T E U N I V E R S I T Y

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