



STATE OF CONNECTICUT

OFFICE OF PROTECTION AND ADVOCACY FOR
PERSONS WITH DISABILITIES
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June 12, 1998

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Federal Communications Commission
Office of the Secretary
Room 222
Washington, D.C. 20554

RE: WT DOCKET NO. 96498, FC 98-550

Dear Sir or Madam:

I am writing in response to the Notice of Proposed Rulemaking (NPRM) announced by the FCC on May 22, 1998, in WT Docket No. 96-1 98; FCC 96-55. Please consider this letter as this agency's public comments on certain provisions of the proposed rules. This agency is writing pursuant to its federal and state law authority to educate policy makers on matters which affect the rights of people with disabilities.

Section I. 8 - The FCC suggests that a civil action for damage under section 255 is foreclosed, for the reasons set forth therein. Nevertheless, the FCC is requesting comments on this interpretation. A Civil action for damages might arguably be a correct interpretation, notwithstanding Court v. Ash 422 U.S. 66 (1975), but a civil action for injunctive or other equitable remedies nevertheless remains an available remedy. The NPRM suggests that no civil action is permissible. This may be incorrect and the NPRM should clarify this point.

Section II. B. (1) The FCC should not limit the definition of "common disabilities" to those found on the Access Board's categories. Instead, it should be clear that the Access Board's list is merely illustrative and not an exclusive list. The NPRM should be clarified to require that the ADA's definition of disability shall be the primary definition of disability, with the Access Board's list to be consulted for illustration purposes only.

Section II. B. (2) The FCC should conclude, without prevarication that "accessibility" in the broadest sense of that term, was the correct interpretation for Section 255.

Section II. B. (4) The FCC should conclude, without prevarication, that "readily achievable", as defined by the ADA, constitutes a broad definition of this term, as set forth within the NPRM.

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Section II. B. (b) (37) The FCC should be clear that expense referred to in this section of the NPRM should not become a ~~de facto~~ surcharge for providing access. ~~o u t~~ the ADA, the imposition of any surcharge, to remove barriers or to accommodate a person with a disability, is ~~per se illegal~~. These expenses incurred for telecommunication, access should be amortized with a larger customer or product base, rather than only the customers with disabilities and the products specifically designed to remove barriers to access. Further, the practical application of determining whether the expense is "practical", seems to ignore the ADA formula set out in Section 35, for determining whether accessibility is "readily achievable". In other words, the expense of practicality should be governed by the ADA's 'readily achievable' provisions.

Section II. B. (b) (42) For the reasons set forth in the previous paragraph, the FCC should be clear that cost recovery cannot be a disguised surcharge for the elimination of a telecommunications barrier or to provide telecommunications access.

Sections III. 44 - 77 Assuming arguendo that the FCC is correct with its interpretation of its exclusive jurisdiction over the resolution of complaints, the entire section entitled implementation process is much too cumbersome and without any realistic timeliness for enforcement activities. For example, the FCC's NPRM assumes that the customer and manufacturers/service providers have not conferred prior to the consumer filing a complaint with the federal agency. After being unable to resolve access issues with the manufacturer/service provider, the consumer is required to go back to the manufacturer/service provider "... who will have a short period of time to solve the complainant's access problem. ..." This process would not be required if the consumer provides satisfactory evidence that efforts to resolve the access issues with the manufacturer/service providers were instituted prior to filing the complaint. For those complainants who do not provide such evidence, the NPRM should define "a short period of time." (e.g. ten, fifteen or thirty days). These sections should be revised.

The Fast Track Problem Solving Phase, Section III. 46 is merely a repetition of Sections III, Nos. 44 and 45. The FCC should take an active role as technical assistance adviser and/or mediator once the complainant establishes that individual efforts to resolve access issues with the manufacturer/service provider were not successful. Instead, the NPRM forces the complainant back to the manufacturer/service provider forum, with the FCC's role limited to providing, upon request, informal assistance or information. The redundancy in this process hardly comports with the notion of "fast track" resolution and the procedures should be revised.

The lack of any effective time line to resolve complaints at the preliminary stages before the FCC assumes jurisdiction over a formal complaint is troublesome. For example, Title IV of the ADA utilizes a 180 day timeline for the resolution of TRS complaints. 47 U.S.C. §225 (e) (2). A similar time line should be considered by the FCC for the final resolution of informal and formal complaints.

The FCC should disseminate widely, in an accessible format, the availability of its final rules for the formal and informal dispute or problem solving procedures. Section III. A. 50 authorizes people with disabilities to submit complaints by "accessible means," however, there is no corresponding or reciprocal obligation placed upon the FCC. This should be revised.

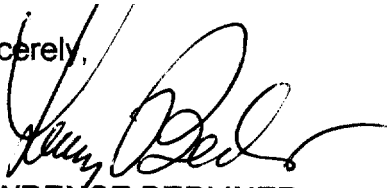
Section III. B. (4). 73 The section should be revised to eliminate "good faith" defenses. Unless a manufacturer or service provider can demonstrate either a lack of FCC jurisdiction, the product is already accessible or that accessibility is not readily achievable, the manufacturer or service provider must comply with the ADA Title IV and Section 255's mandates. The defense of "good faith" appears to be inconsistent with the access and telecommunications barrier removal provisions, and this provision should be revised.

Section III. C. 75 The penalties for non compliance are adequate and should be retained as proposed for Section 255 violations found by the Commission. These revisions should be available for informal, as well as the formal dispute resolution procedures.

The Commission should order the retrofiting of any products which were designed or manufactured after the effective date of Section 255, (02/08/96), if readily achievable. Equipment manufacturers were placed upon notice as of that date of the accessibility provisions. Since the concept of readily achievable is defined as something which is easily accomplished and able to be accomplished without much difficulty or expense, the FCC should order manufacturers to undertake those reasonable measures.

Thank you in advance for considering these comments on the FCC's proposed regulations/]

Sincerely,



LAWRENCE BERLINER
GENERAL COUNSEL

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