



LABORATORIES, INC.

Research and Development in Communications

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COMMUNICATIONS

Ms. Magalie Salas, Esq.
Secretary
Federal Communications Commission
1919 M Street N.W.
Room 222
Washington, DC 20554

RE: WT Docket 96-1 98

Dear Ms. Salas:

Enclosed please find an original and nine (9) copies of Redcom Laboratories' reply comments for filing in the above referenced proceeding. Also, enclosed is a copy to be stamped and returned for our files.

Sincerely,

Jerome S. Caplan
Director of Compliance and System Certification

JSC/jlw

Enclosures

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August 6, 1998

Ms. Magalie Salas, Esq.
Secretary
Federal Communications Commission
1919 M Street N.W.
Room 222
Washington, DC 20554

RE: WT Docket 96-1 98

Dear Ms. Salas:

Enclosed please find an original and nine (9) copies of Redcom Laboratories' reply comments for filing in the above referenced proceeding. Also, enclosed is a copy to be stamped and returned for our files.

Sincerely,

A handwritten signature in cursive script, reading "Jerome S. Caplan".

Jerome S. Caplan
Director of Compliance and System Certification

JSC/jlw

Enclosures

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the matter of:

Implementation of Section 255 of the
Telecommunications Act of 1996

Access to Telecommunications Services,
Telecommunications Equipment, and
Customer Premise Equipment by
Persons with Disabilities

WT Docket No. 96-198

To: The Commission

**REPLY COMMENTS OF
REDCOM LABORATORIES INCORPORATED**

Introduction

Redcom Laboratories Incorporated ("Redcom") respectfully submits these reply comments on the above-captioned proceeding.¹

The initial set of comments received by the Commission seem to fall into two distinct categories. Comments from telecommunication manufacturers, telecommunication service providers and telecommunication trade organizations seem to generally agree with one another; comments from disabled individuals and organizations representing various disabilities also seem to agree with one another. However these two groups do not agree with each other on several important issues. Having read comments from both groups, Redcom concluded that comments made by the telecommunications camp, perhaps best represented

¹ *Implementation of Section 255 of the Telecommunications Act of 1996: Access to Telecommunications Services, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities, Notice of Proposed Rule Making*, WT Docket No. 96-198, FCC 98-55 (rel. April 20, 1998) (hereafter "NPRM").

by comments from the Telecommunications Industry of America ("TIA")², present a reasonable and rational response to the Commission's NPRM.

Issues

One of the issues that received a great deal of attention is the issue of "readily achievable" as applied to the implementation of Section 255 of the Telecommunication Act of 1996.³ In its discussion of the Commission's proposal to add telecommunication-specific factors⁴ to the Americans with Disabilities Act definition of "readily achievable",⁵ the National Council on Disability ("NCD") in order to illustrate their position on cost recovery gives as a hypothetical example a restaurant that must remove physical barriers to meet accessibility requirements.⁶ While Redcom agrees with NCD that cost recovery is not necessarily telecommunication specific, Redcom believes it is "relevant".

In the hypothetical example cited by NCD, the restaurant would incur a one time cost for removing physical barriers that impede accessibility. This cost factored over the number of meals the restaurant served during the course of a year or two would amount to a tiny fraction of the cost of each meal. In addition the restaurant's customer base would theoretically increase (because of

² Comments by the Telecommunication Industry Association (hereafter "TIA") dated June 30, 1998.

³ NPRM ¶¶ 94 - 122.

⁴ NPRM ¶100.

⁵ 42 U.S.C. § 12181(9).

⁶ Comments by National Council on Disability (hereafter "NCD") dated June 30, 1998; "COMMENT 13, SUBCOMMENT (b).

increased accessibility) thereby bringing in additional revenue. The net effect on the restaurants profitability would be small.

For a telecommunication manufacturer, the one time charge of the restaurant could be equated to the initial incremental increase in design cost for adding accessibility features. For some accessibility features the increased design cost would undoubtedly be reasonable and would not have a significant impact on equipment cost (for other accessibility features the design costs could be prohibitive). However a telecommunication manufacturer also incurs an incremental cost in ~~each unit sold~~ argued that large manufacturers may be able to partially offset this by spreading the added cost over many product lines and large numbers of units such that their profit margins are not eroded. Small manufactures such as Redcom do not have this luxury. For Redcom, cost and cost recovery are relevant and must be factored into "reasonably achievable". Not allowing these factors could force small manufacturers to raise prices to cover their costs to the point where they would no longer be competitive. This would be exactly opposite to the intent of the Telecommunications Act of 1996. The Act as passed by the 104th Congress states in part: "To promote competition and reduce regulation in order to secure lower prices . . .".⁷

A second issue which received a great deal of attention is the complaint process in general and specifically the "Fast-Track" complaint process as described in the NPRM.⁸ While Redcom agrees with the Commission's goal of resolving complaints informally if possible and as quickly as possible, Redcom also agrees with the many respondents who concluded that 5 days is insufficient time for a telecommunication manufacturer to respond to a consumer complaint.

⁷ Telecommunications Act of 1996, Public Law No. 104-104, 110 Stat. 56 (1996).

⁸ NPRM ¶¶ 124-143.

Both Lucent Technologies and GTE Service Corporation state that at least 30 days is needed to adequately respond to fast-track complaints.⁹ Even the NCD suggests 20 business days (which would be close to 30 days with weekends) would be more appropriate.¹⁰ Redcom agrees with all the reasons given by the respondents for the longer Fast-Track response time but suggest to the Commission that there would be an additional burden on very small companies such as Redcom which would make even a 30 day response time difficult. Small companies have limited resources. Diversion of a sufficient amount of those resources to effectively deal with a Section 255 complaint in a short time frame could negatively impact product development schedules. For that reason as well as the other excellent reasons given by the TIA, Redcom supports the TIA Dispute Resolution Process requiring "...the parties to engage in a mandatory 60 day dispute resolution process . . .".¹¹

Redcom is also quite concerned that the Commission has proposed not to impose a standing requirement for complaints filed under Section 255.¹² Both Lucent and the TIA point out the potential problem of frivolous complaints being filed.¹³ While certainly a problem for large manufacturers, it would be devastating to small manufacturers. Again the diversion of resources necessary to handle a flood of frivolous Section 255 complaints could have a severe negative impact on development and other business schedules. In addition since the

⁹ Comments of Lucent Technologies dated June 30, 1998, Page 11; comments of GTE Service Corporation dated June 30, 1998, page 14.

¹⁰ Comments of NCD, COMMENT 14, SUBCOMMENT (d).

¹¹ Comments of TIA, pages 68-72.

¹² NPRM ¶ 148.

¹³ Lucent page 11; TIA page 80.

burden of proof in defending against a complaint seems to rest with the (accused) manufacturer, internal documents that would otherwise be kept confidential would have to be presented by a manufacturer in defending itself. As the TIA points out, with no standing requirement this could be used by an unscrupulous competitor to "...try and discover a company's internal equipment design and/or product development process ...".¹⁴ The fishing expedition could even extend to a privately held company's financial picture since development cost would play a role in determining "readily achievable". The Commission, in its final ruling, must find a way to protect the legitimate business interests and confidential information of manufacturers.

Redcom disagrees with the Commission, and other respondents such as NCD that agree with the Commission, that no time limit should be placed on the filing of Section 255 complaints.¹⁵ No complaint time limit would allow complaints to be brought ten, twenty, even thirty years after a product was marketed thus exposing manufacturers to an unreasonable burden. The TIA has suggested that one reasonable limitation should be that complaints could not be brought more than 6 months after the purchase of equipment covered by Section 255.¹⁶ Redcom agrees with this limitation but suggest that two other additional limitations should also be considered. Redcom suggests that once a company has successfully defended against a particular type of complaint associated with a particular piece of equipment, the company should receive safe harbor from having to continually defend against similar complaints. There should also be a maximum time limit, from the time equipment subject to Section 255 is placed on

¹⁴ Comments by TIA, page 81

¹⁵ NPRM ¶ 149; comments by NCD, COMMENT 14, SUBCOMMENT (I).

¹⁶ Comments by TIA, page 90.

the market, beyond which no complaints could be brought. Redcom leaves the time limit to the Commission but suggest that typical product life-cycles be the governing factor.

The Architectural and Transportation Barriers Compliance Board ("Access Board") and the NCD have both commented that the application of the Access Board guidelines as proposed by the Commission in the NPRM is inconsistent.¹⁷ Section 255(e) is entitled "Guidelines" and states in part: "...the Architectural and Transportation Barriers Compliance Board shall develop guidelines for . . . in conjunction with the Commission."¹⁸ The NCD has stated that "Much hinges upon interpretation of the words "in conjunction with""¹⁹ Redcom disagrees with the NCD; Redcom believes the interpretation is very straight forward. The key word is "guidelines" which is also the title of section 255(e). A guideline simply means to guide, not to constrain. Congress did not intend the Access Board's guidelines to be a mandate. We believe the Commission must provide a measure of reasonableness and common sense in applying the guidelines in order to equitably meet the needs of the disabled community as well as the business concerns of the telecommunication industry.

Summary

While Redcom supports the goals of Section 255 of the Telecommunications Act of 1996, Redcom is very concerned that the full impact of the NPRM on small businesses has not been adequately addressed. Omnipoint

¹⁷ Comments of the Architectural and Transportation Barriers Compliance Board (hereafter "Access Board") dated June 30, 1998, Page 3; comments by NCD, COMMENT 2.

¹⁸ 47 U.S.C. § 255(e).

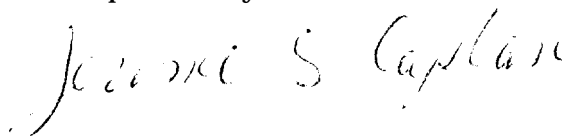
¹⁹ Comments by NCD, COMMENT 2.

Corporation goes so far as to suggest "...that the commission should forbear from enforcing Section 255 requirements against small business manufacturers and service providers, . . .".²⁰ because of the potential impact. Only a few of the issues of concern to Redcom have been put forward in our reply comments.

Everyone agrees that telecommunication accessibility for the disabled community needs to be increased. However, legislation to achieve that goal should not infringe on the ability of companies to compete in the marketplace. This would be totally contrary to the goals of the Telecommunication Act of 1996. The Commission must find a way to strike a balance between the needs of the disabled community and the rights of companies, especially small companies, to compete.

On the "History and Mission of the FCC Disabilities Issues Task Force" internet web page, the heading states: "Going Where No Task Force Has Gone Before..".²¹ We agree - but urge the Commission to proceed with the utmost caution.

Respectfully submitted, .



Jerome S. Caplan
Director of Compliance
and System Certification

August 6, 1998

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²⁰ Comments in response to FCC Notice of Inquiry by Omnipoint Corporation dated October 28, 1996, section II C, page 7.

²¹ Internet address - <http://www.fcc.gov/dtf/dtfmiss.html>.