

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

REPLY COMMENTS OF GTE

Dated: August 14, 1998

GTE Service Corporation and its affiliated
domestic telephone, wireless and long
distance companies

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SUMMARY

GTE continues to support the Commission's general approach to the implementation of Section 255. However, GTE urges the Commission to refine certain aspects of its proposals to implement the accessibility mandate.

In its initial Comments, GTE urged the Commission to apply Section 255 requirements to carriers only to the extent that they provide telecommunications services; to further define the factors used in determining whether ensuring access to telecommunications services is readily achievable; and to modify its proposal for resolving Section 255 complaints. In this Reply, GTE also supports those Commenters who ask the Commission to adopt standing rights and time limitations; to establish an advisory panel to foster cooperation and communication; and to allow for ample time to establish administrative procedures to comply with any requirements adopted in response to this Notice.

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REPLY COMMENTS OF GTE

GTE Service Corporation and its affiliated domestic telephone, wireless and long distance companies' (collectively, "GTE") respectfully submits its reply comments in response to the Federal Communications Commission's ("FCC" or "Commission") *Notice of Proposed Rulemaking*, FCC 98-55 ("*Notice*") regarding the implementation of Section 255 of the Communications Act ("the Act").²

¹ These comments are filed on behalf of GTE's affiliated domestic telephone operating companies, GTE Wireless Incorporated, and GTE Communications Corporation, Long Distance Division. GTE's domestic telephone operating companies are: GTE Alaska Incorporated, GTE Arkansas Incorporated, GTE California Incorporated, GTE Florida Incorporated, GTE Hawaiian Telephone Company Incorporated, The Micronesian Telecommunications Corporation, GTE Midwest Incorporated, GTE North Incorporated, GTE Northwest Incorporated, GTE South Incorporated, GTE Southwest Incorporated, Contel of Minnesota, Inc., and Contel of the South, Inc.

² 47 U.S.C. § 255.

I. DISCUSSION

As explained in its initial Comments, GTE fully supports the goal of Section 255 to increase access to telecommunications equipment and services and customer premises equipment ("CPE") by persons with disabilities. In the *Notice*, the Commission seeks to promote accessibility for the 54 million Americans with disabilities by implementing Section 255 in a "practical, commonsense manner."³ The Commission sets forth broad guidelines that are intended to accomplish the objectives of Section 255, yet afford the telecommunications industry with ample flexibility to innovate and handle complaints in an effective customer-friendly manner.

Although GTE supports the general approach of the Commission in the *Notice*, GTE believes that the Commission must make several modifications to its rules to assure that the goals of Section 255 are met. In its initial Comments, GTE urged the Commission to apply Section 255 requirements to carriers only to the extent that they provide telecommunications services; to further define the factors used in determining whether ensuring access to telecommunications services is readily achievable; and to modify its proposal for resolving Section 255 complaints. In this Reply, GTE also supports those Commenters who ask the Commission to adopt standing rights and time limitations; to establish an advisory panel to foster cooperation and communication; and to allow for ample time to establish administrative procedures to comply with any requirements adopted in response to this Notice.

³ *Notice* at 5 (¶ 3).

A. Section 255 is applicable only to the manufacturers and providers of telecommunications services.

The *Notice* expressed concern that limiting application of Section 255 to providers of telecommunications service may exclude a number of desirable consumer services classified as "information services." GTE explained in its Comments that Congress clearly did not, by the plain language of the statute, provide that Section 255 would apply to information services. The Communications Act defines both "telecommunications service"⁴ and "information service."⁵ It must be presumed, therefore, as a rule of statutory construction, that by specifying that the provisions of Section 255 would apply to "telecommunications service," Congress intended to assure access only to those services meeting the definition of "telecommunications service" adopted in the same piece of legislation. If Congress wanted to include information services, it would have done so.

Numerous parties support this view.⁶ The Business Software Alliance ("BSA") further points out that "any effort to broaden the category of services covered by the

⁴ "[T]he offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available to the public, regardless of the facilities used." 47 U.S.C. §153(46).

⁵ "[T]he offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunication system or the management of a telecommunications service." 47 U.S.C. §153(20).

⁶ See, e.g., Comments of SBC Communications, at 2; United States Telephone Association comments at 6; Telecommunications Industry Association comments at 53.

Commission's rules would be wholly impracticable and contrary to the public interest."

GTE agrees with BSA that any expansion of the definition of telecommunication services would unlawfully expand the Commission's regulatory authority.⁷

B. Readily achievable access solutions must be technically and economically viable.

In its initial Comments, GTE urged the Commission to better clarify its definition of "readily achievable." In this regard, GTE submitted a number of factors that should enter into the Commission's calculation of feasibility. These included technical feasibility, expense consideration, and resource availability.

The Cellular Telecommunications Industry Association ("CTIA") states that technical feasibility is a "key determinate" and that the "laws of physics may limit accessibility." Numerous other parties agree with the FCC's conclusion that technical feasibility is an important consideration in the practical application of achievability.⁹ For example, Motorola commends the FCC "for modifying the Access Board's guidelines so that feasibility is recognized as a distinct, express factor used in determining what is accessible."¹⁰

In its NPRM, the Commission tentatively proposed that a cost of a feature be viewed in a "net" approach, including both the cost of the feature as well as the

⁷ Comments of BSA at 7.

^a Comments of CTIA at 6.

⁹ See, e.g., Comments of Motorola at 35; Telecommunications Industry Association at 42.

¹⁰ Comments of Motorola at 34.

additional income received." Numerous parties, including GTE, concur with the Commission's "net" approach to cost.¹² Nonetheless, GTE believes that expense factors include multiple dimensions. These dimensions include marketability and demand for a product, the total costs and expenses required to produce a product and the expected economic return over the life of the product.

While the Commission noted that cost was a factor in the "readily achievable" test, the Commission also raised the question of what corporate resources are reasonably available to meet the achievability test.¹³ GTE in its Comments cautioned the Commission not to overestimate the resources available to fund accessibility solutions by failing to account for the legitimate corporate divisions, legal reporting structures and financial separations used in organizations today. Lucent Technologies also highlighted the potential inequities: "Consideration of corporate resources will impose more stringent accessibility standards on products offered by large firms than are imposed on small firms, to the detriment of large firms and consumers."¹⁴

BSA correctly points out that "the size of a corporation often does not provide a good proxy for measuring a corporation's ability to afford the development and provision of particular accessibility features."¹⁵ GTE urges the Commission to take

¹¹ NPRM at ¶103.

¹² Ameritech at 8; PCIA at 10

¹³ NPRM at ¶ 109.

¹⁴ Lucent at 8.

¹⁵ Business Software Alliance at 10.

notice of the legal entities that are subject of a complaint and to permit rebuttal of the presumption only in cases of evasive practices. Resources from other affiliates should not be considered when evaluating the economic feasibility of accessibility features.

C. The Commission should modify its proposal for resolving Section 255 complaints

In the NPRM, the FCC outlined a new "Fast Track" complaint procedure, which would provide five business days for a manufacturer or service provider to respond to a complaint.¹⁶ Commenters express a widespread concern with the feasibility of the five-day turnaround in the "Fast Track" resolution process." Many parties agree that it is unrealistic to satisfactorily complete the entire complaint process in five business days. The issues raised in the complaint process will be complex and, especially for companies with large numbers of products or services, the process could take time." Clearly, the Commission should modify its proposal to allow more time to address the resolution of complaints.

Several commenters suggest that the process should not be adversarial in order to promote cooperation.¹⁹ As Bell Atlantic suggests: "The complaint process should be

¹⁶ NPRM at ¶¶135-137.

¹⁷ See, e.g., Comments of ATT at 12; Bell Atlantic at 8; National Council on Disability 29; Nextel at 9; SBC at 17; Telecommunications Industry Association at 72, 73; Lucent at 10. National Association of the Deaf at 35; Personal Communications Industry Association at 13.

¹⁸ See, e.g., Comments of Telecommunication Industry Association at 75.

¹⁹ See, e.g., Comments of United States Telephone Association at 12; Bell Atlantic at 3.

modified to establish a nonadversarial arrangement, during which the parties would attempt to resolve issues."²⁰ The National Council on Disability ("NCD") advocates a more "person-oriented" description of the complaint process.* Other comments suggest alternative plans or modifications to the complaint process.** The Telecommunication Industry Association proposed the Commission adopt a totally new complaint process.²³ In arguing against the adoption of fast-track procedures, Bell South cautions that the "Fast track" proposal is rife with procedural rules that will themselves tend to become the compliance objective, thus not serving the consumer's interest."** .

Given the concerns raised with the various aspects of the proposed fast track process, the Commission should re-assess its proposal. GTE believes the most efficient means of resolving Section 255 complaints would be to use the Commission's current informal complaint process. As GTE stated in its Comments, the fast-track process, in many ways, appears similar to the Commission's informal complaint process. Under both processes, the respondent is served with notice of a complaint and must respond to the Commission within a set period of time. Based upon the

²⁰ See Comments of Bell Atlantic at 3.

²¹ See Comments of NCD at 29.

²² See, e.g., Comments of Telecommunication Industry Association at 83; Motorola at 49; SWB at 14.

²³ Comments of TIA at 83.

²⁴ Bell South at 10.

report filed in both instances, the Commission can either close the matter, assist the parties in negotiating a settlement of the claims, or invoke a more formal complaint process.

The current informal complaint process is a working system, already in use. Many parties are familiar with the informal complaint procedures. GTE believes the current informal complaint process has been effective in encouraging the resolution of problems and providing for a documented flow of information between parties. Nonetheless, if the Commission believes the informal complaint process is inadequate in some respect, GTE recommends that the FCC adapt the current informal complaint rules to work in the Section 255 context. The current procedures could readily accommodate the Section 255 needs and be used to encourage parties to communicate in an effort to resolve Section 255 disputes.

D. The Commission should establish standing rights and time limitations.

GTE agrees with the many parties urging the Commission to reconsider its proposal not to impose a standing requirement for complaints under Section 255.²⁵ Congress established section 255 with concern for "individuals with disabilities." Clearly the complainant should be a customer of the service or equipment provider of the desired product.²⁶ Motorola suggests that standing should be limited to an "interested

²⁵ See, e.g., Comments of Bell Atlantic at 9; Bell South at 11; Business Software Alliance at 12; Lucent 11; Motorola at 50; SBC Corporation at 20; USTA at 14.

²⁶ See Comments of Bell South at 11.

party".²⁷ The Commission's rationale for not requiring a showing of standing in order to avoid burdening the complaint process with standing related disputes completely misses the point.²⁸ Standing assures that only legitimate complaints are brought for resolution. GTE believes that not having a standing requirement will waste limited resources of all involved. Resources wasted on frivolous complaints take away from the legitimate complaints by individuals with true accessibility issues.

GTE also is concerned that the FCC has not established any time limitations for the filing of complaints. Many commenters expressed this view.²⁹ Given the complexity of the networks and systems, time is very important. A long delay in bringing the complaint may make the research and investigation into the complaint more difficult. The Commission must establish a standing requirement and impose reasonable time limitations for the lodging of complaints.

E. The Commission should establish an advisory panel to foster cooperation and communication.

The implementation of Section 255 to assure telecommunications access is a complex issue that affects many people with diverse interests.³⁰ In many instances

²⁷ Motorola suggests that "interested parties be defined to mean; (1) a person with a disability, or someone filing a complaint on behalf of a specific, identifiable individual with a disability (such as an organization that represents persons with disabilities, or a parent or legal guardian); and (2) who has purchased or used or has attempted to purchase or use a specific, identifiable piece of telecommunications equipment or CPE." (Motorola at 51)

²⁸ NPRM at 67 (¶148).

²⁹ Ameritech at 9; Nextel at 10; PCIA at 15.

³⁰ Comments of Bell Atlantic at 10.

accessibility issues can be readily resolved between the manufacturer or service provider and consumer. However, some issues will present a complex problem that may be wide-reaching in its impact and resolution.³¹ GTE's experience demonstrates that, when done properly, significant benefits can be achieved through using inter-industry education and cooperation in addressing access and use issues. In the Reply Comments to the NOI, GTE urged the Commission to implement Section 255 in a manner that recognizes, and builds upon, a cooperative approach.³²

This advisory group should be a balanced group composed of manufacturers, service providers and representatives of the disabled community. Even though this group should only be advisory, it can be an important part of solving industry-wide issues. An important role of the group would be to disseminate information and to foster the understanding among diverse groups. While this group would provide valuable information, GTE does not see it assuming any responsibility in the complaint resolution process. It is extremely important that all participants, the manufacturer, service provider and consumer, maintain their rights and due process with the FCC with regard to particular complaints.

F. Allow for ample time to establish administrative procedures in compliance with Commission guidelines

If the Commission adopts a new complaint procedure, GTE believes the Commission needs to allow a reasonable amount of time for service providers and

³¹ Comments of SWB Communications Inc. at 14.

³² GTE (Reply comments, WT Docket No. 96-198 page 1).

manufacturers to establish new administrative complaint and process flows. Given the number of comments and the interest expressed in this NPRM, it is apparent that proper complaint response systems and tracking mechanisms will be extremely important. GTE acknowledges that Section 255 became the law in 1996, and GTE has been actively working to provide access when readily achievable. However, GTE cannot anticipate the final administrative complaint procedures the Commission may adopt. Given the possible outcomes of the Commission's final order, it may take some time to adapt the companies' complaint processes to meet the FCC's requirements. This process becomes extremely critical for companies with large product bases or many locations across the world to develop procedures that meet the Commission's requirements. It is important the Commission grant time for manufacturers and service providers to establish the new complaint procedures.

II. CONCLUSION

Accordingly, GTE supports the Commission's effort to implement Section 255 in a manner that will enhance the development of solutions that will allow persons with disabilities increased access to telecommunications services, and urges the Commission to adopt the modifications suggested in GTE's initial Comments and this Reply.

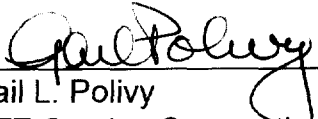
Dated: August 14, 1998

Respectfully submitted,

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Certificate of Service

I, Ann D. Berkowitz, hereby certify that copies of the foregoing "Reply Comments of GTE" have been mailed by first class United States mail, postage prepaid, on August 14, 1998 to all parties of record.



Ann D. Berkowitz