

FEDERAL COMMUNICATIONS COMMISSION

In the Matter of
Implementation of Section 255 of the
Telecommunications Act of 1996

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) WT Dkt. No. 96-198
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Reply Comments Of
The World Institute on Disability
Submitted August 14, 1998

1. Scope of Covered Services

In light of the many comments submitted on the Commission’s proposal to cover only “basic” and “adjunct-to-basic” services, the World Institute on Disability feels it necessary to reiterate its position that this question must be considered in the broader context of federal disability policy. If Congress had wanted to modify existing law that applies to access to basic services for people with disabilities, it would have amended Title IV of the Americans with Disabilities Act. Section 255 defines new policy, and in doing so, recognizes a level of access to telecommunications technology that goes beyond what is stated in the ADA. We believe that the Commission’s rulemaking process must acknowledge this and that the services covered under Section 255 must include enhanced services.

Although the Commission has made a distinction between “basic,” “adjunct-to-basic,” and “enhanced” services, these somewhat arbitrary classifications blur when considered from the perspective of disability access. What constitutes an “enhanced” service for a customer without a disability may indeed be a “basic” service for someone with a disability. Consider the use of the fax machine to accomplish “basic” communications when used by people who are deaf, hard of hearing, or those with speech disabilities. While the fax machine was not originally intended as a basic form of communication, enterprising consumers with disabilities have applied it to meet their basic communications needs. The Commission’s narrow definition of “basic” services would clearly eliminate from consideration under Section 255 a whole host of current and future technologies that may well play a role in “basic” communications for end users with disabilities. Many of these technologies provide the essential link for people with disabilities to participate in work, education and recreation. WID finds it hard to believe that the Commission would interpret Section 255 so narrowly that

the end result would be to exclude many of the very consumers Section 255 was enacted to benefit.

2. Product by Product vs. Product Line

Many commenters have recommended that the Commission consider a “product line” approach to compliance with Section 255 as opposed to a “product by product” approach. WID strenuously disagrees with this recommendation. WID believes the “product line” proposal would result in minimal accessibility to the broad range of telecommunications products and services, and only in exceptional circumstances.

A “product line” approach negates the very underpinning of Section 255 -- that is to stimulate product development from the perspective of universal design. By singling out one model of a technology from a product line -- for example, one pager, one wireless telephone or one answering device -- that will offer particular accessibility features, manufacturers are concentrating their access efforts on the exceptional piece of technology as opposed to integrating their access efforts into broad product development design. Under this scenario, the manufacturers themselves are likely to miss opportunities to enhance the usability of their products across the board by integrating access features broadly into their products.

Furthermore, in pursuing a “product line” approach, manufacturers will essentially be making a choice for their customers with disabilities about which product is right for them. Certainly, manufacturers would not presume to do this for the general consumer market, in fact they understand all too well that the key to business growth is to offer more choices, greater options and a wider range of services. That is the intent of the Telecommunications Act of 1996 as well. WID has difficulty understanding why, in a piece of legislation which aims at stimulating competition and encouraging the development of new products and services, the Commission would allow sections of that legislation to limit choice of products and services for customers with disabilities.

3. Readily Achievable Determinations

WID is pleased to see that many commenters largely agreed that “Readily Achievable” as defined in the Americans with Disabilities Act should prevail in this rulemaking. However, there seems to be some confusion on the issue broached by the Commission regarding “cost recovery.” WID unequivocally believes that under no circumstances should the concept of “cost recovery” be introduced into the definition of readily achievable. There is no precedent for

doing so in the ADA and it is not appropriate to introduce this concept under Section 255.

Reiterating our earlier comments, the need for Section 255 grew from the recognition that a reliance on free market incentives alone is not sufficient to result in accessibility of telecommunications. If manufacturers are exempted from compliance with Section 255 by arguing that they cannot recover their costs for providing access, then Section 255 will accomplish precious little in terms of creating a strong incentive for manufacturers to pursue accessibility. Furthermore, WID believes that developing a workable cost model for this proposal would be extremely difficult to do.

4. Accessibility Analysis

Many commenters have said that the accessibility analysis provisions of Section 255 are too burdensome. WID disagrees. We believe that the accessibility analysis of products can be easily streamlined into other product evaluation protocols and integrated into standard manufacturing procedure.

Conducting an accessibility analysis provides multiple benefits, not the least being a solid document that the manufacturer can refer to as evidence of having tried to achieve access, especially in cases where disability access was not “readily achievable.” Without some kind of analytical instrument, consumers are left with only the manufacturers word that they tried and were unsuccessful in pursuing access. If, as many commenters have suggested, the first line of dispute reconciliation under Section 255 should happen directly between the consumer and the manufacturer, then consumers will need to have solid documentation that the manufacturer made a good faith effort to pursue accessibility. And, for the Commission to successfully determine and decide complaints brought under Section 255, it will need sufficient evidence of a manufacturers efforts toward accessibility. An accessibility analysis would be part of the documentation to provide that proof.

5. Conclusion

WID wishes to reiterate our view that the Commission should adopt the guidelines proposed by the U.S. Access Board. These guidelines were developed on a consensus basis with input from consumers, researchers, industry representatives and disability advocacy organizations. The effort to reach consensus among the TAAC representatives was a long and difficult process, but ultimately a successful one. The TAAC worked through and resolved many contentious issues regarding how to implement Section 255. WID therefore encourages the FCC to take advantage of the work that has already been done by the TAAC and adopt the guidelines that it developed.

WID thanks the Commission for this opportunity to submit reply comments in this rulemaking procedure. We are gratified by the Commission's decision to move forward on this issue. We agree with the assessment of Chairman Kennard that Section 255 is the most important legislation for people with disabilities since the passage of the Americans With Disabilities Act. We urge the Commission to vigorously enforce Section 255 so that the goals of the legislation as originally intended by Congress can be pursued on behalf of all people with disabilities.

Respectfully Submitted

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