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Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C.

In the Matter of	)	
	)	
Implementation of Section 255 of the Telecommunications Act of 1996	)	
	)	WT Docket No. 96-198
Access to Telecommunications Services, Telecommunications Equipment, and Customer Premises Equipment By Persons with Disabilities	)	

NOTICE OF INQUIRY

Adopted: September 17, 1996 Released: September 19, 1996

Comment Date: October 28, 1996
Reply Comment Date: November 27, 1996

By the Commission: Chairman Hundt issuing a statement.

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I. INTRODUCTION AND EXECUTIVE SUMMARY

1. In passing the Telecommunications Act of 1996 (*1996 Act*),[1] Congress set forth a dual mandate: to promote competition and consumer choice, and to ensure that all Americans share the benefits of this increased choice. Section 255 of the Communications Act, as added by the *1996 Act*, furthers this objective by providing for greater access and availability of telecommunications to Americans with disabilities. The statute makes clear that the 40 million Americans with disabilities are entitled to share fully in the benefits of the telecommunications services and equipment that play such a prominent role in our national life. Various physical and mental limitations hinder the ability of persons with disabilities to use telecommunications equipment and services, ranging from traditional voice telephony to more recently developed wireless and data services. Inability to use such equipment and services can be life-threatening in emergency situations, can severely limit educational and employment opportunities for persons with disabilities, and can otherwise interfere with their ability to participate fully in business, social, recreational, and other activities.

[1] Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996)(*1996 Act*).

2. Section 255(b) requires that a manufacturer of telecommunications equipment or customer premises equipment (CPE) ensure that the equipment is designed, developed, and fabricated to be accessible to and usable by individuals with disabilities, if readily achievable. Section 255(c) requires that a provider of telecommunications service shall ensure that the service is accessible to and usable by individuals with disabilities, if readily achievable. If the accessibility requirements of subsections (b) and (c) of Section 255 are not readily achievable, Section 255(d) requires compatibility. Specifically, the manufacturer or telecommunications provider shall ensure that the equipment or service is compatible with existing peripheral devices or specialized CPE commonly used by individuals with disabilities to achieve access, if readily achievable. These requirements became effective February 8, 1996.

3. Section 255(a) adopts the definitions of the terms "disability" and "readily achievable" that are contained in the Americans with Disabilities Act of 1990.[2] Section 255(d) further requires that guidelines for the accessibility of equipment, including CPE, are to be developed within 18 months after enactment of the *1996 Act* by the Architectural and Transportation Barriers Compliance Board ("Access Board") in conjunction with this Commission. The Access Board is to review and update the guidelines periodically. Section 255(f) provides that the Federal Communications Commission shall have exclusive jurisdiction with respect to any complaint filed under this Section.

4. The Access Board has requested that the Commission initiate a proceeding in order to facilitate the Access Board's statutory responsibilities in meeting its statutory deadline.[3] Therefore, our principal objective in this Notice of Inquiry (NOI) is to develop a record to assist the Access Board in the development of accessibility guidelines for equipment and CPE. We also seek comment on how we can best work in conjunction with the Access Board on equipment issues, and on issues involving services and equipment aspects that overlap and converge. In addition, we seek comment on how we should carry out our exclusive enforcement authority under Section 255(f).

5. In this NOI, we consider the following: (1) threshold jurisdictional issues, involving our authority over telecommunications services and equipment manufacturers; (2) statutory definitions, principally focusing on terms incorporated from the Americans with Disabilities Act and terms defined by the *1996 Act*; and (3) implementation and enforcement issues, including the relationship between Access Board guidelines and the Commission's enforcement authority.

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[2] Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12102(2)(A) and 12181(9).

[3] Joint letter from Lawrence Roffee, Executive Director, Access Board, and Roberta Breden, Chair, Telecommunications Access Advisory Committee, to individual Commissioners, Aug. 30, 1996.

II. THRESHOLD JURISDICTIONAL ISSUES

6. Section 255(f) provides that the Commission has exclusive jurisdiction with respect to any complaint under Section 255. Therefore, as a matter of law, Section 255 grants the Commission authority to enforce the provisions of that Section. Section 255(e) provides the Commission authority to work in conjunction with the Access Board to develop guidelines for accessibility of telecommunications equipment and CPE.

7. The Commission has general authority to select among a variety of approaches to enforcing Section 255. For example, we could rely on case-by-case determinations in the context of complaints. We could also issue guidelines, or a policy statement, or we could promulgate rules, pursuant to existing provisions in the Communications Act. First, Section 4(i) of the Communications Act provides that the Commission may "perform any and all acts, make such rules and regulations, . . . , not inconsistent with this Act, as may be necessary in the execution of its functions."[4] Second, with respect to common carriers, Section 201 of the Act authorizes the Commission to "prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this Act."[5] Third, with respect to radio services, Section 303(b) provides, as a general power of the Commission, that it shall, as public convenience, interest, or necessity requires, "[p]rescribe the nature of the service to be rendered by each class of licensed stations and each station within any class;"[6] and Section 303(r) provides that the Commission may "[m]ake such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this Act . . . ."[7] In this NOI, we seek comment on policy reasons for the Commission to exercise various aspects of our authority in order to best effectuate the requirements of Section 255.

[4] 47 U.S.C. § 154.

[5] 47 U.S.C. § 201.

[6] 47 U.S.C. §§ 303, 303(b).

[7] 47 U.S.C. § 303(r).

III. STATUTORY REQUIREMENTS

A. *Coverage*

1. Definition of "Telecommunications Service Provider"

8. Section 255(c) provides that "[a] provider of telecommunications service shall ensure that the service is accessible to and usable by individuals with disabilities, if readily achievable."[8] The *1996 Act* defines "telecommunications service" as the "offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used."[9] "Telecommunications" is defined as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."[10] We note that the term "provider of telecommunications services" is not defined. However, the term "telecommunications carrier" is defined as "any provider of telecommunications services."[11] We seek comment on whether the term "provider of telecommunications service" requires further clarification or definition in the context of Section 255.

2. Definition of "Telecommunications Equipment" and CPE

9. The *1996 Act* defines "telecommunications equipment" as that "equipment, other than CPE, used by a carrier to provide telecommunications services, and includes software integral to such equipment."[12] The term customer premises equipment in the Communications Act means "equipment employed on the premises of a person (other than a carrier), to originate, route, or terminate telecommunications," and so does not appear limited to equipment used in conjunction with "telecommunications services."[13] We seek comment regarding the treatment of equipment that can be used with telecommunications services and

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[8] 47 U.S.C. § 255(c).

[9] 47 U.S.C. § 153(46).

[10] 47 U.S.C. § 153(43).

[11] 47 U.S.C. § 153(44).

[12] 47 U.S.C. § 153(45).

[13] 47 U.S.C. § 153(14). CPE may also include wireless sets. *See* Declaratory Ruling, DA 93-122 , 8 FCC Rcd 6171, 6174 (Com. Car. Bur. 1993) (*TOCSIA Declaratory Ruling*), *recon. pending* (finding that definition of "premises" includes "locations" such as airplanes, trains and rental cars, despite the fact that they are mobile).

which also can be used with other services that do not fall within the statutory definition of telecommunications services.

10. Telecommunications equipment and CPE are distinct and may play different roles in the provision of, and access to, telecommunications services. For instance, consumers (including individuals with disabilities) often have the ability to choose between various CPE options, while having comparatively constrained options regarding network or infrastructure hardware. Should the treatment of these two categories of equipment be different? How would the carrier's duty under Section 251(a)(2) of the Act, not to install on its network "features, functions, or capabilities" that compromise accessibility standards, affect these options? We seek comment on these and any other issues concerning the scope of CPE and other equipment used in conjunction with telecommunications services, and the corresponding accessibility obligations of manufacturers of such equipment.

3. Manufacturers Subject to Section 255

11. Section 255(b) provides that "[a] manufacturer of telecommunications equipment or customer premises equipment shall ensure that equipment is designed, developed, and fabricated to be accessible to and usable by persons with disabilities, if readily achievable."[14] Manufacturers of telecommunications and customer premises equipment to be used to provide or access telecommunications services in the United States, regardless of their national affiliation or location, must comply with Section 255 if they market or sell such equipment in the United States. We note that all equipment marketed or sold in the United States must meet all applicable technical and operational requirements,[15] but we question whether the same approach should be adopted for accessibility standards, especially in light of different accommodations that may be necessary for specific disabilities. We also ask commenters to consider the effect of differing national equipment accessibility standards on how manufacturers' ability to design, develop, and fabricate accessible equipment should be weighed when evaluating complaints. When considering what accessibility measures are readily achievable, should the Commission give weight to the different standards confronted by a manufacturer with markets in other nations?

12. Both from a domestic and international standpoint, there are a number of levels involved in manufacturing that need to be considered. Telecommunications equipment and customer premises equipment quite often consist of components manufactured by several different and possibly unrelated companies. If several companies are involved in the design

[14] 47 U.S.C. § 255(b).

[15] *See* Part 2 of the Commission's Rules, Subpart K-Importation of Devices Capable of Causing Harmful Interference, Sections 2.1201-.1207. 47 C.F.R. §§ 2.1201-.1207.

and manufacture of a single piece of equipment, how should responsibility be apportioned? To the extent that some manufacturers design, develop, and fabricate equipment but then license their equipment design to other manufacturers for production, how should Section 255 apply to the secondary manufacturers or resellers? We seek comment on these questions, and also invite interested parties to raise and address other related issues.

B. *Requirements*

1. Definition of "Disability"

13. Section 255(a)(1) of the Communications Act, as added by the *1996 Act*, incorporates by reference the definition of "disability" under the Americans with Disabilities Act (ADA).[16] "Disability" is defined under the ADA as:[17]

- A physical or mental impairment that substantially limits one or more of the major life activities of such individual;
- A record of such an impairment; or
- Being regarded as having such an impairment.

It also appears that, while adopting the ADA definition, Congress contemplated that Section 255 would cover certain disabilities. Specifically, the Senate Report states that the Committee intends the definition of disability to principally cover individuals with functional limitations of hearing, vision, movement, manipulation, speech, or interpretation of information.[18] The definitional provision of the Senate Bill was adopted at conference.[19] The House Bill did not contain a definition of disability, but covered individuals with disabilities, including individuals with functional limitations of hearing, vision, movement, manipulation, speech, and interpretation of information.[20]

14. We seek comment on the application of this definition in the context of access to telecommunications services and equipment. It is clear that, under the first element of the

[16] 42 U.S.C. § 12102(a)(2).

[17] *Id.*

[18] S.Rep. No. 23, 104th Cong., 1st Sess. 52 (1995).

[19] H.R. Conf. Rep. No. 458, 104th Cong. 2d Sess. 135 (1996).

[20] H.Rep. No. 204, 104th Cong., 1st Sess. 14 (1995).

definition, many individuals with a physical or mental impairment are limited in their access to telecommunications equipment and services. For example, hearing and vision disabilities may impede use of traditional voice telephone service, the latter by obstructing dialing and the use of visually displayed information. We seek comment on how the latter two elements of the ADA definition concerning a record of an impairment or being regarded as having an impairment should be applied in the Section 255 context. We seek comment on the possible differences in the application of disability between the ADA and Section 255.

2. Definition of "Readily Achievable"

a. ADA Definition

15. Section 255(a)(2) also incorporates by reference the ADA definition of "readily achievable." The ADA defines the term as follows:[21]

> [E]asily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable, factors to be considered include--
>
> (A) the nature and cost of the action needed under [the ADA];
>
> (B) the overall financial resources of the facility or facilities involved in the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility;
>
> (C) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and
>
> (D) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity.

16. We seek comment on the factors we should consider in attempting to apply the components of the ADA definition of "readily achievable" to telecommunications equipment and services. We also note that the rapid pace of market and technological developments

[21] 42 U.S.C. § 12181(9).

means that what is "readily achievable" is an ever-changing dynamic: an accessibility solution which is difficult or impossible to implement at one point may become an established, cost-effective technology a short time later. We seek comment regarding how to apply the "readily achievable" standard in a way that will take advantage of market and technological developments, without constraining competitive innovation. For example, when a service provider or manufacturer of equipment or CPE establishes its accessibility with respect to a specific disability, should that demonstration relieve it of the obligation to adopt subsequent, improved accessibility measures for some period or should the service provider's accessibility obligation be continually adjusted to recognize the most recently developed technology that is "readily achievable?"

b. ***Costs; Financial Resources***

17. It is our tentative view that, consistent with the ADA's definition of "readily achievable," the issue of cost is an important area of inquiry for our consideration and establishment of accessibility and compatibility standards for telecommunications equipment and services. We ask commenters to supply pertinent information regarding:

- The types and levels of costs that have been incurred to achieve or improve accessibility of existing offerings, and the extent to which they may serve as a basis for anticipating costs associated with accessibility standards to be developed.

- Cost savings when accessibility is achieved at the design stage.

We ask that commenters separately address the estimation and determination of costs incurred to comply with a specific technical or performance standard, as well as the different types of costs and estimation processes that may be considered to determine compliance with more process-oriented standards.

18. Assessing the financial resources of telecommunications service and equipment providers is also an important aspect of our application of the Section 255 requirements. How can or should the financial resources of firms of widely varying characteristics be considered in a way that does not distort competitive incentives, but at the same time ensures accessibility?

19. We also seek comment regarding whether the references in the definition to "overall financial resources of the facility or facilities involved in the action" and the "overall financial resources of the covered entity" in paragraph 15 require that the entire

operations and resources of a parent corporation and its subsidiaries must be taken into consideration.[22]

20. In addition, some firms may design and develop services or equipment for both foreign and domestic markets, and regulatory requirements may differ between these markets. We seek comment regarding how our application of Section 255 should recognize both the resources and regulatory requirements involved for specific "covered entities" and in determining what is readily achievable in light of their circumstances.

3. Definition of "Accessible To" and "Usable By"

21. The terms "accessible to" and "usable by" are taken from the ADA statute, where the latter term refers to the ability of persons with disabilities to *utilize* the covered services or programs once they gain *physical access* to them. This usage presents interpretive difficulties in the context of Section 255. We recognize that physical access to telecommunications equipment and services is a *bona fide* issue. Section 255, by its terms, is not limited to physical access, but requires that equipment manufacturers and service providers make their offerings accessible to and usable by persons with disabilities. We believe that Section 255 only reaches those aspects of accessibility to telecommunications that equipment manufacturers and service providers subject to the Commission's authority have direct control over, such as the design of equipment or the manner in which a telecommunications service is delivered to users. Thus, in the equipment context, manufacturers of pay telephones have no control over the height at which these instruments are mounted, and this physical aspect of accessibility is properly subject to regulations adopted by the Department of Justice to implement the ADA. We seek comment on these issues.

22. We seek comment on whether a manufacturer or service provider must ensure that each of its telecommunications equipment, CPE, or service offerings is accessible to persons with various types of disabilities. As one alternative, could a manufacturer or equipment provider, or service provider, show that some of its equipment or service offerings are accessible to persons with specific disabilities, while other offerings are accessible to persons with different disabilities? For example, would it meet the statutory mandate for a manufacturer to develop some products that are accessible to persons with visual impairments, and different products (or variation of a modular product) that are accessible to persons with hearing disabilities? How should such alternative or modular-design approaches be regarded under the "readily achievable" standard if, for example, design changes to accommodate one disability make accommodation of other disabilities by the same offering more difficult, or if changes to accommodate multiple disabilities would make the offering technically or economically impracticable? We also seek comment generally on whether these issues present

[22] *See generally* 28 C.F.R. Part 36, App. A (DOJ Commentary to Title III).

different considerations for telecommunications service providers and for manufacturers of telecommunications equipment and CPE.

23. We request commenters to provide an assessment of the extent to which accessible telecommunications services, telecommunications equipment, and CPE are currently available. Specifically, we request commenters to address the kinds of services and equipment that are currently on the market, and in the design and development stages and the trial or testing phase as well.

4. Compatibility

24. Section 255(d) of the Communications Act provides that "[w]henever the requirements of subsections (b) and (c) are not readily achievable, [the] manufacturer or provider shall ensure that the equipment or service is compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access, if readily achievable."[23] Section 255(d) establishes compatibility as the alternative to accessibility for both equipment and services, but only in cases in which accessibility is not readily achievable.

25. We ask commenters to address the issue of defining "existing peripheral devices" and "specialized CPE," including specific examples of devices and equipment that could be considered to fall within the scope of the definition. Section 255(d) also specifies that the prescribed devices and CPE consist of those that are "commonly used" by individuals with disabilities in order to achieve access.[24] We request comment with regard to when such devices and CPE are considered to be "commonly used," as described in the statute.

C. *Network Features, Functions, and Capabilities*

26. We ask commenters to address the relationship of Section 251(a)(2) of the Communications Act, as added by the *1996 Act*, to Section 255. Section 251(a)(2) imposes a requirement that telecommunications carriers are "not to install network features, functions or capabilities that do not comply with the guidelines and standards established pursuant to Section 255 or 256."[25]

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[23] 47 U.S.C. § 255(d).

[24] 47 U.S.C. § 255(d).

[25] 47 U.S.C. § 251(a)(2). The relationship between Section 251(a)(2) and Section 255 was recently raised in the interconnection proceedings. *See* Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, FCC 96-325, released Aug. 8, 1996, at para. 998 (finding that it would be premature to attempt to delineate specific requirements or definitions

27. We seek comment on the nature and extent of this requirement imposed on telecommunications carriers, and how it relates to obligations under Section 255. Commenters are invited to identify and address the relation between the carrier's duty under Section 251(a)(2), and an equipment manufacturer or service provider's duty under Section 255(c).

IV. IMPLEMENTATION AND ENFORCEMENT

28. We seek comment on several different approaches to the implementation and enforcement of the requirements of Section 255. In the Jurisdiction section, supra, we asserted, as a matter of law, that the Commission has the authority to implement and enforce Section 255. Specifically, we stated that, on its face, Section 255 provides the Commission with exclusive jurisdiction with respect to any complaint filed under Section 255 and the authority to work in conjunction with the Access Board to develop guidelines for accessibility of telecommunications equipment and customer premises equipment. We also asserted that Sections 4(i), 201, 303(b), and 303(r) of the Communications Act provide the Commission with general authority to issue guidelines, rules and regulations to implement and enforce the provisions of the Act. Here we seek comment on how, as a matter of policy, we should implement and enforce the provisions of Section 255.

A. *Resolution of Complaints*

29. First, we seek comment on how the Commission should carry out its duty to resolve complaints filed under Section 255. One approach would be for the Commission to enforce Section 255 on a complaint-by-complaint basis, without promulgating any rules or other guidance, beyond the guidelines issued by the Access Board. Is such an approach preferable as a policy matter, in light of the fact that Congress did not specify that we should promulgate guidelines or rules to implement or enforce Section 255, and the statute as adopted omitted language contained in the Senate bill requiring the Commission to develop regulations?[26] What are the advantages and disadvantages of such an approach? Would it be problematic for the Commission to resolve service complaints if there were equipment guidelines in place but no service guidelines? Should the Access Board, working in conjunction with the Commission, issue guidelines concerning the allocation of responsibility in instances when equipment and services overlap or converge?

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of terms to implement Section 251(a)(2), because the Commission and Access Board had not developed standards or guidelines under Section 255). We believe, however, that it is advisable to address the issue in the context of this proceeding as well.

[26] *Compare* S. 652, 104th Cong. 1st Sess. §262(g).

30. A second approach would be for the Commission to issue voluntary guidelines or a policy statement to help service providers understand what their obligations are under Section 255. Such guidelines could clarify the meaning of statutory terms and address issues of particular interest to service providers, such as what services and what providers are covered under the statute. These guidelines might also discuss how terms adopted from the ADA, such as "disability" and "readily achievable," should be applied in the context of accessibility to telecommunications services. The guidelines might also suggest what "accessible to and usable by" and "compatible" mean with regard to services.

31. The guidelines or policy statement could also provide guidance on the relationship between the obligations of service providers and equipment manufacturers under Section 255. We could, for example, suggest how responsibilities should be allocated between service providers and equipment manufacturers when the accessibility of the service is inextricably linked to the accessibility of the equipment (and vice-versa).

32. We could also provide guidance as to what showings defendants could make which the Commission would view favorably in the complaint process. Should we specify certain processes that service providers could undertake? For example, should we state that we would view favorably consultation with the disability community in the design and development stage? Should we state that we would view favorably documentation showing that the service provider assessed whether making its services accessible or compatible was readily achievable? We seek comment on how a service provider might assess whether making its services accessible or compatible is readily achievable. We also seek comment on the advantages and disadvantages of the general approach of issuing guidelines or a policy statement.

33. A third approach would be to promulgate rules to assist in resolving complaints brought under Section 255. Should we adopt as rules any requirements -- such as outreach procedures or accessibility assessments? Should such rules allow for trade associations to undertake these procedures or assessments on behalf of individual service providers? Should these rules exempt small businesses or any other entities?

34. We could also promulgate rules to resolve complaints by setting forth certain accessibility requirements on a service-by-service basis. Should we, for example, specify that service providers need to make a part of their mainstream product offerings accessible to persons with one type of disability, and a part accessible to persons with another type of disability? We seek comment on whether it is practical for the Commission to establish service-specific rules, given the rapid pace of technological change.

B. *Developing Equipment and CPE Guidelines in Conjunction With the Access Board*

35. Next, we seek comment on how the Commission should work in conjunction with the Access Board to develop equipment and CPE guidelines. Should we simply provide the Access Board with a record from this proceeding and comment on the guidelines it proposes? Should we adopt the Board's guidelines, either as adopted by the Board or with revisions, as Commission rules after the appropriate Commission proceedings? If we adopt separate guidelines, policy statements or rules with regard to complaints, should they apply to equipment manufacturers as well as service providers? Should we adopt such guidance or rules before, after, or in conjunction with the Access Board's guidelines? What is the most appropriate way to provide guidance regarding overlapping and inter-related service and equipment issues?

C. *Complaint Procedures*

36. Section 255(f) provides that "[t]he Commission shall have exclusive jurisdiction with respect to any complaint under this section."[27] Because Section 255(f), in granting the Commission exclusive jurisdiction over complaints, refers to complaints filed "*under* this section[,]"[28] we believe that Congress has established *in Section 255* the right of aggrieved parties to file complaints against any person who has allegedly violated Section 255. We also view this right as independent of, and in addition to, the right of aggrieved parties to file complaints against common carriers under Section 208. In support of this view, we note that the Conference Report indicates that Sections 207 and 208 are available to enforce compliance with the provisions of Section 255 without, however, appearing to limit the scope of the Commission's enforcement authority to Sections 207 and 208.[29] Thus, in the case of a complaint against a common carrier that alleges that the common carrier has violated the requirements of Section 255, the complainant may elect to file the complaint under Section 208 or under Section 255. Moreover, if we subscribed to the view that violations of Section 255 are subject *only* to complaints brought under Section 208, we would be forced to conclude that no complaints could be brought against equipment manufacturers for alleged violations of Section 255(b), because Section 208 only authorizes complaints against common

[27] 47 U.S.C. § 255(f).

[28] 47 U.S.C. § 255(f) (emphasis added).

[29] The Conference Report states that "[t]he remedies available under the Communications Act, including the provisions of sections 207 and 208, are available to enforce compliance with the provisions of section 255." Telecommunications Act of 1996, Conference Report, Report 104-230, 104th Congress, 2d Session, Feb. 1, 1996, at 135.

carriers. We seek comment on this view. In light of the prohibition of private rights of action in Section 255(f), we also seek comment on the Congressional intent evidenced by the Conference Report reference to Section 207, which grants individuals the right to file suit in Federal court.

37. We seek comment on whether the Commission should establish procedural rules for Section 255 complaints. With respect to both services and equipment, we seek comment on whether we should adopt the existing Section 208 informal and formal complaint provisions of Subpart E of Part 1 of the Commission's Rules,[30] or whether we should establish special rules.[31] We seek comment on whether the Commission should adopt any new mechanisms, and, if so, what they should be.

38. We also seek comment on whether to adopt interim procedural rules for the filing of complaints under Section 255, while the Access Board is developing equipment guidelines, and we are reviewing comments in this proceeding. If so, should we simply use our existing rules in the interim? If interim procedural rules are advisable, we ask commenters to suggest interim rules. We also seek comment on whether it would be advisable for the Commission to provide additional interim guidance regarding complaint proceedings under Section 255.

39. We seek comment on whether subjecting both service providers and equipment manufacturers jointly to enforcement actions under Section 255, in cases in which the specific circumstances warrant such joint responsibility, will encourage a substantial, shared commitment to making telecommunications services and equipment accessible to and usable by individuals with disabilities. Commenters should specifically address how the responsibility for satisfying the statutory criteria should be apportioned between underlying manufacturers of network equipment or CPE, and service providers using the equipment. Commenters should also consider how joint action may affect determinations of what is readily achievable, compared to separate review of the effect of the entities' conduct. We seek comment upon such matters as the apportionment of responsibility or liability, and how specific determinations of accountability should be made when both a service provider and equipment or CPE manufacturer are found to be contributing to the inaccessibility. In

[30] 47 C.F.R. §§ 1.701-1.825. The rules pertinent to complaint proceedings are found at Section 1.711 through Section 1.735 of the Commission's Rules, 47 C.F.R. §§ 1.711-1.735. The Commission will shortly initiate a separate rulemaking proceeding concerning the process for formal complaints, to consider the effect of the *1996 Act* on this process, and as part of that proceeding will consider general measures intended to expedite determination of complaints. We do not anticipate that the rulemaking generally considering the formal complaint process will examine the suitability of that process in the accessibility context.

[31] *See, e.g.*, 47 C.F.R. § 64.604(c)(5) for distinct complaint procedures specifically adopted by this Commission for the enforcement of the Telecommunications Relay Service (TRS) program under Title IV of the Americans with Disabilities Act.

particular, we seek comment regarding whether, to what extent, and in what manner service providers and equipment manufacturers may both be held responsible for implementing remedial steps to make services or equipment accessible or compatible, and for fines, damages, or other penalties.

40. We also seek comment on the related issue of whether, and in what circumstances, a defense to a complaint against a provider of telecommunications services is that accessibility could be, or could have been, achieved through the design of equipment. Similarly, we seek comment whether, and in what circumstances, an equipment manufacturer could offer the corresponding defense respecting potential accommodation by a service provider.

V. PROCEDURAL MATTERS

41. Pursuant to applicable procedures set forth in Section 1.415 and 1.419 of the Commission's Rules,[32] interested parties may file comments on or before October 28, 1996 and reply comments on or before November 27, 1996. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Reference Center of the Federal Communications Commission, 1919 M Street, N.W., Room 239, Washington, D.C. 20054. Additionally, to facilitate posting comments in this proceeding on the Commission's Internet site, parties are requested, but not required, also to submit comments in diskette form. Diskettes should be addressed to Ms. Rita McDonald, Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission, Washington, D.C. 20554.

42. This Notice can be ordered in large print, audio cassette or on disk, through the FCC's copy contractor, ITS at (202) 857-3800. An unofficial version of the item is available on the FCC's Internet home page at http://www.fcc.gov.

43. There are no *ex parte* or disclosure requirements applicable to this proceeding pursuant to 47 C.F.R. § 1.1204(a)(4).

[32] 47 C.F.R. §§ 1.415, 1.419.

VI. CONCLUSION; ORDERING CLAUSES

44. We believe that our action today constitutes a significant first step toward implementing the provisions of Section 255 and related sections of the *1996 Act* regarding the accessibility of telecommunications equipment and services to persons with disabilities. In seeking comment from a broad spectrum of affected parties, we hope to ensure that persons with disabilities, as well as all other Americans, are given the opportunity to participate fully in, and to enjoy and utilize the benefits of, the telecommunications infrastructure that has come to play such a prominent role in the Nation's cultural, educational, social, political, and economic life. We believe that the record that will be established in this proceeding in response to the issues initially raised today will aid the Access Board and the Commission in implementation decisions.

45. Accordingly, IT IS ORDERED that pursuant to Sections 1, 4, 201-205, 251(a)(2), 255, 303, and 403 of the Communications Act of 1934, 47 U.S.C. §§ 151, 154, 201-205, 215, 251(a)(2), 255, 303, and 403, a Notice of Inquiry IS HEREBY ADOPTED.

46. IT IS FURTHER ORDERED that NOTICE IS HEREBY GIVEN of the inquiry described above, and that COMMENT IS SOUGHT on the questions raised in the inquiry.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton

William F. Caton
Acting Secretary

STATEMENT OF CHAIRMAN REED E. HUNDT

Today, the Commission takes an important first step in fulfilling our congressional mandate to ensure that persons with disabilities enjoy the full benefits of the telecommunications revolution. This *Notice of Inquiry* begins our implementation, in conjunction with the Architectural and Transportation Barriers Compliance Board ("Access Board"), of Section 255 of the *Telecommunications Act of 1996.*

In adopting Section 255, Congress expressed its clear intent that telecommunications services and equipment be made accessible to all persons with disabilities to the extent such access is readily achievable. The statute makes clear that the 40 million Americans with disabilities are entitled to share fully in the benefits of the telecommunications services and equipment that are becoming such an essential element of our educational, social, political and economic future. I enthusiastically applaud Congress for its leadership in adopting this landmark provision.

Through this *Notice of Inquiry* we seek to develop a comprehensive record that will help us, working with the Access Board , to achieve Congress' mandate to adopt accessibility guidelines for telecommunications equipment no later than August 1997. The Commission is also accorded exclusive jurisdiction over complaints arising under Section 255. And in this regard, we have responsibility for ensuring that telecommunications services as well as equipment are fully accessible to persons with disabilities. Given the convergence between telecommunications services and equipment (and the fact that technical capabilities increasingly may be implemented either in the context of service offerings or included in equipment and CPE functions), I believe that a coordinated approach to service and equipment accessibility will benefit both the Access Board and the Commission and will facilitate an integrated and comprehensive framework for implementation of Section 255.

Among other issues, we seek comment in this Notice of Inquiry on whether the Commission should limit its implementation of Section 255 to case-by-case consideration of complaints. I strongly believe that in order to effectively implement this landmark disability access section, the Commission together with the Access Board, must take a more active role in developing an implementation framework for accessible telecommunications equipment and services in the Information Age. Such a framework should provide telecommunications service providers and equipment manufacturers with clear guidelines for Section 255 compliance. We should seek to establish appropriate incentives to encourage service providers and equipment manufacturers to integrate accessibility considerations in the early design and development stages of new service and equipment offerings. The framework we implement should stimulate consultation, cooperation and voluntary, proactive efforts among the industry and consumers with disabilities to develop "readily achievable" solutions that will bring the benefits of telecommunications technologies to the broadest base of persons with disabilities. Without such a framework, I am concerned that we risk providing the telecommunications industry with a vague and cumbersome mandate that will result in costly and complex complaint proceedings rather than cooperative and innovative solutions. I do not believe Congress intended such a result.

Many threshold issues must be addressed, however, before we can determine the most effective and efficient compliance mechanisms to ensure the development of readily achievable solutions, while continuing to foster competition and technical innovation.. For example:

- How should the Section 255 accessibility requirements applicable to services and equipment interrelate? In addition to assisting the Access Board in developing accessibility guidelines for equipment and CPE, should the Commission also develop compliance guidelines to facilitate accessibility of telecommunications services?

- How should we adapt and interpret the terms "accessible" and "readily achievable" contained in the ADA, and incorporated by Congress in Section 255, so that these terms are meaningful in the context of telecommunications services and equipment?

- How should accessibility and compatibility standards be applied in the context of Section 255 to service providers and equipment manufacturers with product lines featuring different types of equipment and services? Does Section 255 require that manufacturers and service providers ensure that *each* of their equipment and service offerings be made accessible to persons with *all* types of disabilities? Alternatively, should compliance with Section 255 be evaluated by examining the offerings of a particular manufacturer, all manufactures of a particular type of equipment or of the relevant industry as a whole?

- Given the convergence of services and equipment and the segmentation of development, design, manufacturing and assembly functions, which entities should bear responsibility for ensuring compliance with Section 255?

- How should costs be considered in connection with determinations regarding what steps are "readily achievable'' for purposes of complying with Section 255? How should the varying financial resources of different firms be weighed so that accessibility can be ensured without distorting competitive incentives?

- How should we implement the "readily achievable'' standard in a way that takes advantage of market and technological developments, but does not interfere with competitive innovation? In this regard, if neither accessibility or compatibility is readily achievable, what ongoing efforts should be undertaken to achieve accessibility or compatibility?

- How can we most effectively facilitate anticipatory compliance at the design, development, and fabrication stages of an offering in order to avoid costly and cumbersome complaint proceedings?

Issuance of this *Notice of Inquiry* should expedite Access Board consideration of equipment accessibility guidelines, and provide a framework for Commission consideration of service accessibility guidelines. The record responding to this Notice of Inquiry will provide the Commission and the Access Board valuable guidance in addressing the many complex issues necessary to develop a framework to implement Section 255 to ensure that the millions of Americans with disabilities will reap the benefits of this provision of the Act.