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BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Implementation of Section 255 of)
the Telecommunications Act of 1996)
) WT Docket 96-198
Access to Telecommunications Services,)
Telecommunications Equipment, and)
Customer Premises Equipment)
By Persons With Disabilities)

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COMMENTS OF THE
CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

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**COMMENTS OF THE
CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION**

The Cellular Telecommunications Industry Association,¹ by its attorneys, submits its Comments in the above-captioned proceeding.²

INTRODUCTION AND SUMMARY

CTIA and its members are committed to ensuring that all Americans have access to wireless services. They are committed to providing the necessary resources, energy, and ingenuity -- in

¹ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers, including 48 of the 50 largest cellular, broadband personal communications service ("PCS"), enhanced specialized mobile radio, and mobile satellite service providers. CTIA represents more broadband PCS carriers, and more cellular carriers, than any other trade association.

² 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 Inquiry in WT Docket 96-198, FCC 96-382 (released September 19, 1996) ("Notice").

the marketplace, through scientific and technological research, and in industry policy councils³ -- to secure the goals set forth in Section 255 of the Communications Act⁴ and in the Americans With Disabilities Act of 1990.⁵

In an ideal world, the tangible, diverse, and special telecommunications needs of the 40 million individuals with disabilities in the United States today should be adequately addressed without government intervention. In the absence of these utopian circumstances, it is necessary to determine: (1) to what extent is regulatory intervention and/or oversight necessary to ensure that telecommunications services and

³ CTIA and its members have taken the initiative to provide a number of services to persons with disabilities, including CTIA's Access Wireless World Wide Web page and a customer brochure distributed to all members to help consumers with hearing impairments use wireless technology.

In addition, CTIA through its members, is sponsoring ongoing research by the University of Oklahoma's Center for the Study of Wireless Electromagnetic Compatibility on hearing aids and digital wireless devices compatibility. Moreover, BellSouth Mobility, in partnership with CTIA Foundation for Wireless Telecommunications and Digital Corp., has brought instant cellular communications to The Center for Exceptional Children in Alabama, through the ClassLink system. The Center provides services to over 130 students with severe physical, mental and emotional disabilities. ClassLink helps on-site therapists, speech and language pathologists, teachers, and guidance counselors meet the students' special needs with increased safety and efficiency. Further examples of industry initiatives and ongoing efforts are detailed in Section II of these comments.

⁴ 47 U.S.C. § 255.

⁵ 42 U.S.C. § 12101 et seq.

equipment are accessible to all; and (2) what is the most effective form of any regulatory oversight or intervention.

At first blush, it may appear that intensive government oversight is desirable or even necessary to ensure accessibility. But, in fact, such intervention can be very costly, and inevitably will be borne by consumers. As a result, direct intervention should be limited to those cases of actual market failure.

The numerous, thoughtful questions raised in the Commission's Notice illustrate the complexities and the drawbacks associated with the Federal government setting formal rules or rigid guidelines for either manufacturers or carriers to meet the needs of persons with disabilities. Congress recognized these realities by imposing fluid, generalized obligations on telecommunications carriers and equipment manufacturers in Section 255 of the Communications Act, but leaving implementation to the carriers and manufacturers.⁶

For these reasons, CTIA recommends that the Commission in fulfilling its obligations under Section 255, also take a

⁶ Congress' specific direction for the creation of guidelines contrasts with other provisions of the 1996 Act -- for example, Section 251 requires the Commission to "establish regulations to implement the requirements of this section" and Section 704 requires the Commission to "complete action . . . to prescribe and make effective rules regarding the environmental effects of radio frequency emissions." 47 U.S.C. § 251; § 704 of the Telecommunications Act of 1996; see also S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 134-135 (1996).

general, fluid approach to ensuring accessibility. The Commission should:

- Adopt a non-binding policy statement or set of voluntary guidelines to clarify the obligations of service providers under Section 255; and
- Provide maximum flexibility to equipment and service providers in deploying technologies that are capable of providing the highest degree of access and use by persons with disabilities.

In essence, the Commission should follow the example set by the U.S. Department of Justice. In discharging its obligation to promulgate rules implementing the Americans With Disabilities Act, the Department provides general guidance with respect to when removal of barriers are "readily achievable," but has declined to establish a "numerical formula." Instead, its final rule implemented the "flexible case-by-case approach chosen by Congress."⁷

A policy statement or a set of voluntary guidelines which provides carriers and manufacturers with maximum flexibility to meet their access obligations carries several distinct policy advantages over the Commission's adoption in a later rulemaking proceeding of an unguided case-by-case complaint process or a set of rigid rules or standards. Furthermore, such an approach is dictated by Section 255, which clearly contemplates continuing cost-benefit assessments; flexible and alternative approaches to securing accessibility; "guidelines" that are adjusted as

⁷ 28 C.F.R. Pt. 36, App. B, § 36.104.

circumstances change; and the exclusion of private litigation from the process.

In favoring flexible, voluntary solutions, CTIA in no way intends to trivialize or dismiss the needs of individuals with disabilities. CTIA and its members are committed to ensuring that the needs of all Americans, including those consumers who are disabled, have access to CMRS service offerings and equipment. That commitment is well grounded in the statutory obligations under Section 255, but more generally, makes good business sense. As a fundamental matter, it is entirely reasonable to assume that competitive forces in the CMRS marketplace, independent of government mandate, will ensure that "readily achievable" steps are taken to ensure accessibility of wireless telecommunications to the 40 million Americans with disabilities. Simply ignoring the needs of this large (albeit diverse and varying) market segment, especially in an era of increasing competition and rapid technology advances, is tantamount to inviting early industrial extinction.

I. THE TELECOMMUNICATIONS ACT OF 1996 GENERALLY AND SECTION 255 SPECIFICALLY REQUIRE A FLEXIBLE APPROACH TO MEETING THE TELECOMMUNICATIONS NEEDS OF PERSONS WITH DISABILITIES

The Telecommunications Act of 1996 ("1996 Act") is premised upon the view that competition, consumer demand, and advancing technological development will better secure consumer welfare in communications than traditional regulation and close governmental control of commercial activities.

Congress' preference for marketplace resolutions is reflected throughout Part II of the 1996 Act, perhaps most

strongly in Section 253 requiring open entry into telecommunications service markets. Although Part II contains many provisions requiring or enabling the Commission to deal with instances of market failure, ultimately (sometimes after transitions with explicit sunset provisions) it evinces substantial faith in competition rather than regulation to meet the needs of individual consumers and of the larger economy. Beyond the more specific provisions of Part II, Section 161, enacted as part of the 1996 Act, obligates the Commission to review on a continuing basis whether competition has obviated the need for regulation.

The 1996 Act deals with the telecommunications needs of individuals with disabilities in a way consistent with this deregulatory philosophy. Section 255 emphasizes flexibility, by first allowing the marketplace to provide solutions, and only last resort to government fiat. There are significant statutory limitations attached to government fiat. Section 255 clearly contemplates continuing cost-benefit assessments, Section 255(b), (c);⁸ flexible, alternative approaches to securing accessibility, Section 255(d);⁹ "guidelines" that are to be adjusted as

⁸ This is created by conditioning the strict legal requirement for both manufacturing and telecommunications service access by disabled persons. The legal obligation arises only if access is "readily achievable." 47 U.S.C. § 255(b), (c). And see Pinnock v. Int'l House of Pancakes, 844 F. Supp. 574, 581-583 (S.D. Cal. 1993).

⁹ That is, when access to equipment, CPE or services is not readily achievable, then the requirement for compatibility with existing peripheral devices or specialized CPE is required, once again subject to the condition of being "readily achievable." 47 U.S.C. § 255(d).

circumstances change, Section 255(e);¹⁰ and reservation of government policy formulation to the Commission and other expert agencies in lieu of the inevitably ad hoc determinations flowing from private litigation, Section 255(f).¹¹

Apart from intellectual consistency, Congress favored a flexible regulatory approach for economic reasons. From a supply-side perspective, the communications manufacturing and service industries are enveloped in extraordinarily rapid technological change. This is particularly true for CMRS providers and equipment manufacturers, that, among other things, today are adopting digital technology, employing new frequency bands, implementing new system architectures, and devising and marketing new vertical features. This dynamism and the wide variety of service suppliers--wireline and wireless, narrowband and broadband, fixed and mobile--make obvious the inadvisability of attempting to prescribe the manner in which telecommunications firms meet the diverse needs of persons with disabilities.

The same thing is true from a demand-side perspective. The needs of persons with disabilities obviously vary dramatically

¹⁰ The Architectural and Transportation Barriers Compliance Board ("Access Board") is specifically required to "review and update the [telecommunications equipment and CPE access] guidelines periodically." 47 U.S.C. § 255(e).

¹¹ As expressly provided in Section 255(f), "[n]othing in this section shall be construed to authorize any private right of action to enforce any requirement of this section or any regulation thereunder." 47 U.S.C. § 255(f) (emphasis added). The Commission's "exclusive jurisdiction with respect to" Section 255 complaints, id., refers to government, and not private, rights of action.

from person-to-person. Persons with hearing impairments may have different requirements or needs than persons with limitations on mobility. This reality, in addition to the broader free market philosophy of the 1996 Act, provides the logic underlying Section 255. While Congress clearly sets forth the goal of accessibility, it also recognized that cost and financial resources are relevant considerations, i.e., "readily achievable," and that alternative approaches to reaching the goal, i.e., "compatible with existing peripheral devices or specialized customer premises equipment," are acceptable.

Section 255 thus reflects both the general philosophy of the 1996 Act and the clear objective of providing greater access to telecommunications services to persons with disabilities. It emphasizes goals, not means. It balances benefits and costs. It encourages alternatives. It entrusts the policy making process to experts. It protects these arrangements from the inconsistencies and incongruities that would arise from litigation-rooted decisions by barring new private rights of action.

II. FROM A POLICY PERSPECTIVE, FLEXIBLE AND NONBINDING GUIDELINES YIELD THE MOST DESIRABLE RESULTS

The Commission's activities, of course, must comply with Section 255. But the myriad of practical and policy reasons also favors adoption of a nonbinding policy or voluntary guidelines. As a practical matter, flexible guidelines will offer the greatest benefits with the least accompanying costs. That is, voluntary guidelines or policy statements maximize flexibility to CMRS providers, equipment manufacturers, and consumers while

providing useful articulations and constant reminders of society's expectations for access.

By contrast, the Commission's prosecution of suspected violations or resolution of Section 255 complaints brought by other government agencies on a case-by-case basis offers little or no guidance and only perpetuates uncertainty for telecommunications suppliers and customers, unless and until a significant body of caselaw develops. This is hardly the ideal approach to ensuring expeditious, comprehensive accomplishment of the statute's goals. Moreover, an exclusively adjudicatory approach will generally entail significant costs to prosecute and to defend, costs that will be especially burdensome to smaller carriers. Similarly, rules by nature tend to be rigid and inflexible; and the waiver process can be a costly, time-consuming and uncertain. As with adjudications, the cost of securing waivers will be disproportionate for small carriers.

Given the diverse, varying needs of individuals with disabilities, a one-size-fits-all solution to accessibility is unavailable and, more important, impractical. For example, a handset with large numbers may assist those persons with arthritis or certain visual disabilities, while at the same time hampering other individuals with disabilities who need or may desire more compact, lightweight communications capabilities. Without a tangible, obvious, and comprehensive solution in hand, government intervention necessarily will become a detailed, costly proposition for regulators, regulatees and consumers. Rules in this area carry dangers of additional unintended

consequences in the form of favoring one technology or service at the expense of another, or creating unintentional entry barriers.

With respect to the CMRS industry, there is substantial reason to believe that Congress' goals under Section 255 are met. In the CMRS marketplace, manufacturers and service providers are working in partnership with the disabled community and their representatives to address accessibility and availability of wireless services and products.

For example, Bell Atlantic NYNEX Mobile launched a "Cellular Accessibility" program this year which offers low rates, (25% discount up to \$30; no service activation fee) discounted equipment, and custom installations to people with disabilities in the New York metropolitan area. Similarly, AT&T Wireless Services offers to most markets: individualized customer needs assessments; customer support materials in large print or other alternative formats, upon request; individualized orientation to cellular/messaging equipment (e.g., assistance to blind persons who need tactile orientation to a raised dot keypad); customized installation of phones on wheelchairs and in accessible cars and vans; and direct TTY or TRS (telephone relay services) access to customer service for people who are deaf, hard of hearing or speech impaired.

United States Cellular Corporation prefers to "address the needs of each and every customer with disabilities on an

individual basis," rather than a one-size-fits-all approach.¹² To date, their "efforts on behalf of individual customers with disabilities include adapting a voice activated phone and headset to a wheelchair for one of [its] customers who is a quadriplegic, testing TDD compatibility with cellular phones for customers on an individual basis and instructing and encouraging [its] sales representatives to take the time to design custom solutions for disabled persons to suit their individual needs."¹³ Century Cellunet provides special training to its employees on the special needs of individuals with hearing impairments.¹⁴

Manufacturers are also voluntarily meeting their obligations to provide access to persons with disabilities. For example, Ericsson, in conjunction with Pacific Bell, is working on interim solutions that will enable individuals with hearing aids to use new wireless digital phones without experiencing interference.¹⁵ Ericsson and Pacific Bell are developing and testing solutions in cooperation with Self Help for Hard of Hearing People, Inc., which has recently awarded the two companies for their work in bringing GSM-based phone services to the hard of hearing. As

¹² See Letter from Eva-Maries Wohn, Director-Regulatory of United States Cellular Corporation, to Katherine Harris, Research Associate-CTIA (dated June 10, 1996).

¹³ Id.

¹⁴ Letter from Liz Craft, Public Relations, Century Cellunet, to Katherine Harris-CTIA (dated June 12, 1996).

¹⁵ Pacific Bell and Ericsson Announce Prototype Solutions Enabling Hearing Aid Wearers to Use Digital Phones, Ericsson News Release (dated February 21, 1996).

Ericsson notes, "[it] is committed to working in cooperation with Pacific Bell and the cellular and PCS industries to ensure that the benefits of wireless communications are available to all consumers in the United States."¹⁶

Maximum flexibility to carriers and manufacturers permits them to tailor their accessibility solutions in response to consumer demand rather than government fiat. This ensures that CMRS providers, with their wireless and mobile capabilities, remain positioned to meet the diverse needs of individuals with disabilities.

Flexible guidelines should also benefit smaller wireless carriers, including the broadband PCS C and F block entrepreneur carriers. As noted above, the requirement for "readily achievable" solutions is largely tied to carrier size, financial resources, and implementation costs. For smaller carriers, some forms of accessibility may be too costly as a matter of course. For example, at this stage in the development of broadband PCS C block licensing, most carriers have recently expended significant costs in an auction. Given the diversity of the telecommunications market, the growing number of factors in the wireless business, and the varying and expanding functions and capabilities technology offers communications companies and consumers, it is very likely that most needs will be met without resort to government fiat.

¹⁶ Id.

As a practical matter, the government's ability to apportion responsibility for accessibility between the design and the manufacturing level is limited. Manufacturers increasingly operate in a worldwide telecommunications market. This subjects them to numerous standards and government requirements at home and abroad. Flexibility with respect to accessibility is one accommodation useful in ensuring the competitive viability of manufacturers with multinational market presence.

Finally, rules in this area connote standards, and standards can carry the ability to freeze technology and innovation,¹⁷ creating a static service and equipment market for the disabled community. Accessibility is an area where the government should be particularly cautious to avoid impediments to variety, continuing research, and the introduction of superior techniques and technologies.

As the above discussion demonstrates, of maximum import to telecommunications carriers in fulfilling their Section 255 obligations is flexibility. The Commission's adoption of nonbinding policy statements or voluntary guidelines in this proceeding, and not remitting these issues to a later rulemaking proceeding, best preserves this needed flexibility.

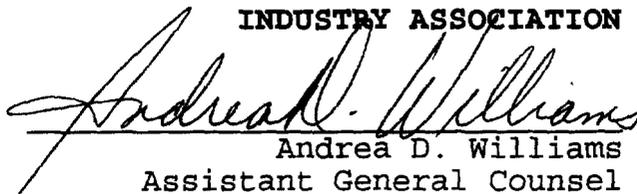
¹⁷ Anton and Yao, "Standard-Setting Consortia, Antitrust and High-Technology Industries," 64 Antitrust L.J. 247, 249-251 (1995).

CONCLUSION

For these reasons, CTIA respectfully requests that the Commission develop, with the assistance of the Access Board where applicable, a nonbinding policy statement or set of voluntary guidelines which provide maximum flexibility to equipment and service providers to meet the needs of persons with disabilities.

Respectfully submitted,

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