

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

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**NOV 27 1996**

In the Matter of )  
)  
Implementation of Section 255 )  
of the Telecommunications Act of 1996 )  
)  
Access to Telecommunications Services, )  
Telecommunications Equipment, and )  
Customer Premises Equipment by )  
Persons with Disabilities )

Federal Communications Commission  
Office of Secretary

**WT Docket No. 96-198**

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**REPLY COMMENTS OF THE  
TELECOMMUNICATIONS INDUSTRY  
ASSOCIATION**

**Matthew J. Flanigan  
President**

**Grant E. Seiffert, Director  
Government Relations  
1201 Pennsylvania Ave., N.W.  
Suite 315  
Washington, D.C. 20044**

**James R. Hobson  
Donelan, Cleary, Wood & Maser, P.C.  
1100 New York Ave., N.W., #750  
Washington, D.C. 20554  
(202) 371-9500**

**November 27, 1996**

**ITS ATTORNEY**

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## SUMMARY

The strong endorsement of policy statements or guidelines over rules as a means of implementing Section 255 is good law as well as sound practice. Unlike the Americans with Disabilities Act of 1990, the 1996 legislation does not require the FCC to incorporate into agency regulations the guidelines to be issued by the Architectural and Transportation Barriers Compliance Board ("Access Board"). Past usage testifies to the wisdom of employing policy statements when experience is lacking to fix rules.

The record is replete with good suggestions for inducing and maintaining consumer-industry cooperation. Examples of successful outcomes long pre-date Section 255.

The FCC's task is not over when this Inquiry's record is transmitted to the Access Board. Instead, Section 255 gives the agency co-equal responsibility for the promulgation of guidelines. After these are issued, the FCC must create and sustain a workable environment for dispute resolution in which formal complaints at the agency are seen as the last resort.

As a matter of semantics and by reference to ADA usage, "ready" achievability of accessible equipment ought to be measured by immediate facts, including costs, and should not assume that high startup burdens can be absorbed over the potentially short lives of specialized products. Moreover, the availability of accessible and usable products for persons with disabilities should be measured across the marketplace and not product by product.

The approach to dispute resolution should be preventive and informal rather than litigious and formal. This is more likely to occur if consumers can give manufacturers some ideas of priorities, both among and within categories of disability. Also important to the equation of compatibility are

**makers and suppliers of assistive devices, whether or not their products come under accessibility guidelines for telecommunications equipment.**

**The guidelines should take account of variable production cycles for different types of equipment within different industries, and whether the products are novel or iterative. However, there should be no generalized exemption for small businesses, only waiver for particular cases of hardship. For the sake of simplicity and for convenience in dispute resolution, responsibility should be taken by the party introducing accessible or compatible equipment to the marketplace in final form. That party has means of protecting itself against other makers or distributors, and distributing liability appropriately.**

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**REPLY COMMENTS OF THE  
TELECOMMUNICATIONS INDUSTRY  
ASSOCIATION**

The Telecommunications Industry Association ("TIA") hereby replies to comments of others in the captioned proceeding. In Comments dated October 28, 1996, TIA recommended:

- Policy statements or guidelines rather than rules, so long as they offer sufficient clarity to resolve disputes.
- Principal reliance, in the words of FCC Chairman Hundt, on "consultation, cooperation, and voluntary, proactive efforts among the industry and consumers with disabilities."
- Continuing FCC involvement in analyzing the record here, assisting the Architectural and Transportation Barriers Compliance Board ("Access Board") in fashioning Section 255 guidelines, and post-adoption review of those guidelines for any additional Commission action needed.

- Appropriate distinctions between the Americans with Disabilities Act ("ADA") and new Section 255 of the Communications Act.
- A range of dispute resolution methods that begins with informal discussion between consumer and manufacturer or supplier and involves the FCC only as a last resort.

We take up first the comments in these topical areas.

*The policy statement/guideline alternative is broadly favored; if adopted, it must be employed with discretion.*

By a wide margin, commenters favor the flexibility of a policy statement or guidelines<sup>1</sup> over the greater specificity and rigidity characteristic of rules. Of the minority of parties favoring rules, a few appear to urge the FCC to go beyond the guidelines Congress required the Access Board to issue.<sup>2</sup> Others believe that the Commission should simply adopt the Access Board's guidelines as rules.<sup>3</sup> Those advocating rules do so, for the most part, because they (1) fear that any lesser statement of manufacturer/service provider obligations will be too easily avoided

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<sup>1</sup> The Commission appears to treat "guidelines" as something less than rules for it refers to them as alternatives to regulations. (NOI, ¶7). This is consistent with the ADA, where the ultimate enforcement responsibilities of the Equal Employment Opportunity Commission ("EEOC"), the Department of Justice ("DOJ"), the Department of Transportation ("DOT") and the FCC -- for titles I-IV respectively -- are required to be spelled out in regulations promulgated by those agencies. The ADA specifies that agency rules take cognizance of the Access Board's "minimum guidelines" but it does not make these guidelines independently enforceable by the Board, except on an interim basis if the agencies fail to issue rules in a timely manner. *Compare, e.g.*, 42 U.S.C. §§12116-117, 12133-34, 12149, 12163-64, 12186-88 with §§12150 and 12165.

<sup>2</sup> Consumer Action Network ("CAN"), 16; Consortium for Citizens with Disabilities ("CCD"), 4.

<sup>3</sup> American Foundation for the Blind ("AFB"), 16; Massachusetts Assistive Technology Partnership Center ("MATPC"), 6.

or (2) believe that only specific regulations will provide the clarity required for both sellers and purchasers of accessible technology.

TIA reaffirms its support of a more general and flexible approach than rules at this time would permit. We endorse Lucent's suggestion (Comments, 3-7) that a policy statement be issued for guidance in the resolution of those disputes that cannot be settled informally short of the FCC. As we view the precedents on policy statements versus rules, the issue has not been avoidance, but evolution, of obligation. Policy statements frequently have been used where experience was lacking and where general guidance served -- sometimes transitionally -- until more specific direction could be given.<sup>4</sup>

We submit that just such an uncertain environment has been created by Section 255. While the Commission and the industry have limited experience with a few particular cases of access to telecommunications equipment by persons with disabilities,<sup>5</sup> none of the interested parties today can claim detailed knowledge, or ability to predict the course of development, of access to both services and equipment by users having the range of impairments apparently covered by Section 255.

However, to simply pronounce the terms "policy statement" or "guidelines" may not be enough. The manner of carrying out the pronouncement is also important. By issuing a policy statement, the agency declares itself not formally

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<sup>4</sup> *Telecommunications Research and Action v. F.C.C.*, 800 F.2d 1181, 1186 (D.C. Cir. 1986) ["A general statement of policy is the outcome of neither a rulemaking nor an adjudication . . . but is merely an announcement to the public of the policy which the agency hopes to implement in future rulemakings or adjudications," citing *Pacific Gas & Electric Co. v. F.P.C.*, 506 F.2d 33, (D.C. Cir. 1974)]; *Stereo Broadcasters, Inc. v. F.C.C.*, 652 F.2d 1026, 1028, n.2 (D.C. Cir. 1981) ("The parties agree that this [Policy Statement] was the appropriate means of announcing the new policy, which the Commission intended to implement on a case-by-case basis.")

<sup>5</sup> See, e.g. Section 225 of the Communications Act and implementing FCC rules for Telecommunications Relay Services, and 47 U.S.C. §610 and implementing rules for hearing aid-compatible telephones.

bound and therefore free to exercise discretion -- albeit not arbitrarily -- from case to case.<sup>6</sup> In TIA's view, a discretionary approach under a policy statement or guidelines should not be mistrusted as breeding evasion or causing confusion. Instead, it is exactly the flexible treatment needed at this early stage.

*The record provides many good suggestions for encouraging and structuring consumer-industry cooperation.*

Corollary to the broad support for policy statements or guidelines is the manifold endorsement of consumer-industry forums for sharing information, discussion and establishing access or compatibility priorities.<sup>7</sup> The Telecommunications Access Advisory Committee ("TAAC") naturally serves such a purpose, in the course of developing guidelines recommendations for the Access Board. Some commenters suggest particular methods of information-sharing that would support the collaborative work of forums.<sup>8</sup> Others believe that some sort of joint body could take referral of complaints that have not progressed toward resolution, prior to any formal consideration at the FCC.<sup>9</sup>

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<sup>6</sup> *Telecommunications Research and Action, supra*, at 1186 (FCC conceded Policy Statement not a "binding norm."). The agency must then behave accordingly. *U.S. Telephone Ass'n v. F.C.C.*, 28 F.3d 1232 (D.C. Cir. 1994) (FCC Policy Statement concerning forfeitures for rule violations overturned because Commission appeared to apply Statement as if it were binding rule.) *See also, Stinson v. United States*, 508 U.S.36 (1993), and *Day v. Sullivan*, 794 F.Supp. 801 (S.D. Ohio 1991) ("Guidelines" having legal effect of "rules" despite terminology.)

<sup>7</sup> Personal Communications Industry Association ("PCIA"), 8; Information Technology Industry Council ("ITI"), 8; AT&T, 7-9; Siemens, 6.

<sup>8</sup> Consumer Electronics Manufacturers Association ("CEMA"), 14; Microsoft, 32; Inclusive Technologies, 7-8.

<sup>9</sup> PCIA, 10; Pacific Telesis, 27.

These are all useful suggestions. TIA's only concern is that they not produce a kind of "hyper-coordination" in which consumers and industry parties spend too much time in multiple and overlapping forums and not enough time in individual attention to specific problems. The first line of effort, we believe, belongs to relationships between manufacturers and suppliers and their customers.<sup>10</sup> The present reality is that all manufacturers strive to identify, at the start of product development, the design and performance criteria applicable to the end product. If there is no consensus on measurement and testing, as will often be the case for truly innovative products and services, the makers and providers must determine for themselves -- sometimes with help from trade manuals and bulletins not formulated as "standards" -- the best methods of evaluation.<sup>11</sup> Accessibility and usability for persons with disabilities represent additional criteria to be entered into this well-established design, development and production process.

However, TIA is constrained to repeat emphatically its belief that consumer participation in the process should be voluntary and collaborative rather than mandatory and adversarial. We cannot support CAN's proposal for regulating industry "outreach procedures" or for adoption of "rules that mandate universal design." (Comments, 13, 16) Nor can we accept CCD's insistence that the FCC

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<sup>10</sup> In this regard, we note CEMA's reference to a Joint Committee on Product Accessibility (Comments, 15) and the respective mentions by NYNEX, (Comments, 4, 8), Pactel (Comments, 25) and Siemens (Comments, 35) of Universal Design Principles and Annual Accessibility Assessments, Consumer Accessibility Impact Reports and Disability Access Plans.

<sup>11</sup> A case in point is Section 68.200(d) of the Commission's rules for equipment registration, which requires a "statement that the terminal equipment or protective circuitry complies" with pertinent regulations, but leaves open the means of demonstrating compliance. Complementing this flexible approach is TIA TSB-31-A, "Part 68 Measurement Rationale and Measurement Guidelines," covering test procedures, test equipment and suggestions on metrics. *See also, Guidelines for Evaluating the Environmental Effects of Radiofrequency Evaluation*, 61 Fed.Reg.41006, August 7, 1996, where the FCC allowed a variety of acceptable testing methods and permitted "technical information showing the basis for" compliance to be held and submitted only upon request.

*"issue regulations that require companies to consider and meet access needs at the earliest stages of their product and service development."* (Comments, 4, emphasis added) Again, voluntary, proactive efforts are a better framework than compulsory rules for this kind of consumer-industry interaction.

The scope and variety of existing cooperative efforts, most of them long pre-dating the adoption of Section 255, are worth noting. In the public sector, federal agencies have been instructed by Congress to "consult with voluntary, private sector, consensus standards bodies" in carrying out their "policy objectives or activities."<sup>12</sup> The work of these private bodies is multifarious.

The American National Standards Institute ("ANSI") sponsors the Information Infrastructure Standards Panel ("IISP") addressing the standards needs for National and Global Information Infrastructures ("NII/GII") and Working Group 4 of IISP addresses User Needs. Further, ANSI maintains a Consumer Interest Council ("CIC") to reflect all consumer issues into the voluntary standards process and to provide linkage to international standards groups and activities who have activities targeted to consumer needs such as the International Organization for Standardization's ("ISO") Consumer Policy Council.

Additionally, ANSI-accredited Standards Development Organizations ("SDOs") have programs in their technical competency areas directed to satisfying standards needs for equipment or services to provide improved accessibility to communications for persons with disabilities. For example, TIA produced the standard that is used by the FCC to determine HAC compliance for corded and cordless and Integrated Services Digital Network ("ISDN") telephones in Part 68 of the FCC's rules. (See 47 C.F.R. Section 68.316) TIA and Institute for Electrical and Electronics Engineers ("IEEE") standards were

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<sup>12</sup> National Technology and Transfer Act of 1996, P.L.104-113, Section 12(d).

used by the FCC in its Order in CC Docket No. 87-124 to specify volume control requirements for new telephones.

Since technical needs of persons with disabilities do not have geopolitical boundaries, liaison by ANSI SDOs with other SDOs worldwide provides additional input for the voluntary standards process. Recently, TIA's Engineering Committee TR-30 worked very closely with the International Telecommunication Union ("ITU") to produce ITU Recommendation V.18, "Operational and interworking requirements for DCEs operating in the text telephone mode." This international standard provides technical requirements for Text Telephone compatibility.

*Faithful execution of the FCC's statutory responsibilities requires continuing agency involvement.*

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The record is mixed on the extent and duration of the Commission's oversight of or participation in Section 255 implementation following the conclusion of this Inquiry. In TIA's reading of the phrase "in conjunction with," the FCC's responsibility for subsection (e) guidelines is coequal to that of the Access Board. And the FCC's exclusive jurisdiction over complaints in subsection (f) suggests the Commission should know policies and guidelines from the inside, so to speak, in the event disputes arise.<sup>13</sup> In short, the FCC's continuing involvement is required as a matter of law.

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<sup>13</sup> It is significant, in our view, that Section 255, unlike the ADA, does not specify that the FCC, in the exercise of its singular jurisdiction over complaints, must issue regulations for the purpose. And that, since regulations are not expressly required, there is no statutory command to incorporate the Access Board's guidelines into agency rules. Compare, 42 U.S.C. §§12116, 12134, 12149, 12164 and 12186; also, 47 U.S.C. §225(d). See also, 36 C.F.R. Pt. 1191, App. A, stating that the Access Board's accessibility guidelines under the ADA "are to be applied . . . to the extent required by regulations issued by Federal agencies, including the Department of Justice and the Department of Transportation." (emphasis added)

*There is no support in ADA law, and therefore no warrant in Section 255, for discounting the often high startup costs of product design and development.*

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In its Comments, TIA cautioned against measuring the "readily achievable" trigger for accessibility by looking to the overall financial resources of a parent company for which the products at issue may be a risky and small-margin enterprise. Instead, we urged a comparison of the cost of adding or integrating the accessibility feature to the cost or price of the product or service as a whole. Regrettably, several commenters appear to avoid the reality of high startup costs by advocating their measurement at some "steady state"<sup>14</sup> in the mature life of the product or service, or by assuming that all specialized customer premises equipment ("CPE") and peripheral equipment will exhibit steeply declining costs of production, which therefore ought to be factored at those later, lower levels. (AFB Comments, 9-10)

DOJ's extended discussion of the meaning of "readily achievable" in the public accommodations context under the ADA appears to favor immediate facts over future estimates.

[T]he Department has declined to establish in the final rule any kind of numerical formula for determining whether an action is readily achievable. It would be difficult to devise a specific ceiling on compliance costs that would take into account the vast diversity of enterprises . . . and the economic situation that any particular entity would find itself *in at any moment*. The final rule, therefore, implements

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<sup>14</sup> Gregg Vanderheiden, Trace R&D Center ("Trace"), unpagged, commenting on NOI ¶ 17.

the flexible case-by-case approach chosen by Congress.  
(emphasis added)<sup>15</sup>

There is, of course, no guarantee that a given accessible product will achieve profitability, much less reach steady-state costs, before relentless technological change forces the design, development and commercialization of some improved version. Nor is every piece of independent or peripheral equipment likely to follow the cost histories cited by AFB.

Even more troublesome to TIA are suggestions that ready achievability ought to consider (1) the value of accessible products to consumers without disabilities and (2) credits on some larger societal balance sheet, such as the increased opportunities for gainful employment of persons with disabilities potentially attributable to new accessible telecommunications devices.<sup>16</sup> The first of these is almost impossible to predict at the time when the go-no go decisions for design and development are made. The second might be valid if the manufacture of specialized CPE and peripherals were, as a matter of social policy, subsidized by public funds. That is not the case here. For better or worse, Congress has placed Section 255 in the context of legislative amendments that rely on the competitive marketplace to supply the telecommunications needs of all consumers.

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<sup>15</sup> 28 C.F.R. Part 36, App.B, 607 (July 1, 1996) Using present facts makes sense when one considers the meanings of "ready" as "fit for immediate use" or "prompt in performance." *Webster Reference Dictionary of the English Language* (Baltimore, Maryland: Publishers United Guild, 1981), 796. It is also congruent with the ADA reading of courts -- that what may be unduly burdensome as a retrofit may become readily achievable in new or altered construction. *Kinney v. Yerusalim*, 812 F. Supp. 547, 552 (E.D. Pa. 1993) ("Congress and the DOJ made the determination that when a public entity decides to engage in *new* construction or to *make alterations*, it is not an undue burden to require it to provide for accessibility at that time.") (emphasis added). *See also*, 28 C.F.R. Part 36 (App. B), DOJ discussion of "readily achievable" as converse of "undue burden." If the concept of readily achievable did not contain this implication of relative promptness, it might be more acceptable to distribute cost burdens over time, or to deem them amortizable.

<sup>16</sup> CCD, 10-12; MATPC, 3.

*It is unrealistic to expect that a single manufacturer, product line or piece of equipment can be all things to all persons with disabilities.*

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To satisfy the objectives of Section 255, many large-volume manufacturers and suppliers of conventional CPE may choose to expand the scope of their product lines to include more specialized equipment. We believe the policies and guidelines implementing the statute should encourage this kind of "market-level" solution to the need for accessible equipment. This is not to say that smaller-volume companies, or those already producing specialized CPE, are to be given a free ride; rather, that the sufficiency of their efforts should be measured, to some extent, by the marketplace as a whole.

Section 255(b) focuses on particular products by referring to "the equipment." The product is to be accessible to and usable by "individuals with disabilities." Congress could have mandated universal access by speaking of "all individuals with disabilities," but declined to do so. TIA believes the better reading of the statute is to allow a particular device to be produced to meet a particular requirement for access and use. This was the meaning given to "readily achievable" under the ADA when, for example, Access Board guidelines declined to require theaters to make every seat accessible to persons in wheelchairs. 28 C.F.R., Part 36, App. A at 56.

It follows that product lines or families of products from a manufacturer or supplier should be examined in the aggregate in judging whether they provide meaningful choices for access and use by persons with disabilities. Market trends toward miniaturization in personal communications devices simply will not accommodate the implementation of per-product universal design in many cases. Where direct access is not readily achievable, compatibility becomes critical.

As products shrink in size, technologies that interface specialized and conventional CPE and telecommunications equipment must be free to evolve in an environment as free as possible from regulatory constraint. This can happen if consumer-industry forums are willing and patient enough to consider not only the achievability of direct access but also the sufficiency of indirect access through interface compatibility.

Assistive devices must "marry" with equipment that is not directly accessible in order to achieve compatibility. As in a mathematical equation, both sides contribute to the eventual balance. In simple terms, plugs must fit with jacks. This places obligations on the makers and suppliers of assistive devices, not just on CPE and telecommunications equipment manufacturers. And consumers must be forthcoming and attentive to both.<sup>17</sup>

*Views of dispute resolution are colored  
by attitudes toward voluntary  
versus mandatory approaches to compliance.*

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It seems almost self-evident that an FCC faced with implementing the expansive 1996 rewrite of the Communications Act would prefer not to be bogged down in the enforcement of one section of the statute. Virtually unanimously, the industry commenters look first to their own efforts -- or to joint consumer-manufacturer forums -- to air and resolve disputes in the expectation that

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<sup>17</sup> The Notice of Inquiry ("NOI") in this proceeding asks generally about the definitions of CPE and telecommunications equipment (§19) and specialized CPE and peripheral devices. (§25) Footnote 13 and the accompanying text posit an expansive view of CPE through a liberal definition of "premises." Implicit is the issue of a boundary between equipment subject to the guidelines and assistive devices that might not be covered. TIA is not prepared to say where that boundary lies in all cases, and we doubt that it will ever become a "bright line." It would be better for equipment and assistive device makers and their customers to work together on compatibility through interface standards than to wrangle endlessly over whose products are covered by Section 255 guidelines.

complaints need not be litigated at the Commission. At the other extreme are the comments of CAN:

The rights of individuals with disabilities to information should not have to depend on the good will of the telecommunications industry. The history of civil rights for individuals with disabilities shows that in most cases, leaving protection of important rights to the voluntary actions of others has not worked.

Indeed, this commenter is so mistrustful of industry motivations that it even wants rules to govern "outreach procedures." (CAN, 13)

While most other groups advocating for persons with disabilities don't go quite so far in their comments, the insistence of many of them on explicit rules to implement Section 255 implies a suspicion that manufacturers, suppliers and service providers are not prepared to engage in consultation, cooperation, and voluntary proactive efforts with consumers. These suspicions misread Congressional intent. The statute speaks of non-binding "guidelines." Contrary to the legal setting for many civil rights laws (including the ADA<sup>18</sup>) alluded to by CAN, Section 255 expressly bars any "private right of action," and instead provides a singular FCC recourse for resolution of complaints. The contingent language of "readily achievable" accessibility, and the alternative of "compatibility," are better read in Section 255 not as commands but as anticipations of cooperation.

In that spirit of cooperation between and among manufacturers, suppliers and consumers, informal settlement of disputes ought to be given every chance to work before litigation is undertaken at the FCC. Even better than settlement would be prevention. We believe that fewer disputes are likely to arise, in the first place,

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<sup>18</sup> 42 U.S.C. §§ 12117, 12133, 12188(a).

if consumer groups would provide to industry a degree of consensus on the areas where the burdens of inaccessibility and incompatibility are the greatest and solutions most urgently needed.<sup>19</sup> While the ranking of one disability group's requirements against another's is not easy, this need not be the focus of the whole exercise. Priorities could also be established within general areas of disability.

*TIA agrees that guidelines should contain  
grace periods congruent with production cycles,  
but cannot support a small-business exemption.*

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CEMA urges (Comments, 10-11) that "any accessibility guidelines promulgated by the Access Board recognize the need of manufacturers to complete production runs prior to making design changes," and that the same production-cycle grace period (averaging three years for consumer electronics products) apply to retooling for new or updated guidelines. Similarly concerned with lead times is Lucent's suggestion that guidelines should not apply -- and therefore complaints should not be entertained -- unless, for the equipment at issue, "design activities began at least six months after the publication" of the guidelines. (Comments, 5-6)

TIA agrees that guidelines should contain grace periods commensurate with the variable production cycles for different types of equipment produced by different industries. Because these vary widely, we are not prepared to fix lead times for every circumstance. Here are at least some of the considerations:

- Type of equipment: consumer electronics, telephone CPE, network equipment (switches, for example).

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<sup>19</sup> Siemens, for example, believes that the FCC should identify "those areas where real harm is being done" and address them case-by-case. (Comments, 2) This is an undertaking where the agency and the Access Board would need help from those who know best -- persons with disabilities and their advocacy organizations.

- **Degree of innovation: Is the product entirely new, or is it an improved version of a prior device?**
- **How much training, or assimilation of novel information, must take place before design activity can even begin?<sup>20</sup>**

Omnipoint urges (Comments, 10-11) a small-business exemption from Section 255. TIA reiterates its belief that overall financial resources are of limited relevance here, for which the corollary should be uniform application of policy statements or guidelines in the absence of grounds for excuse in specific cases. Far better than exemption would be the assurance that the requirements of the statute, as implemented, are tolerable even for small businesses.

*Satisfactory methods of fixing  
accountability are already in place.*

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Consumer organizations, for the most part, urge joint and several liability for inaccessible or incompatible products or services, to be imposed on all makers, suppliers or providers in the chain of delivery. However, CEMA (Comments, 17) wishes to place responsibility for answer only on the "companies responsible for the violation." Lucent, on the other hand, believes that compliance responsibility lies with the party introducing equipment to the marketplace in final form, and that any sharing of this burden by others in the chain of manufacture or delivery should be worked out contractually. (Comments, 9-10) TIA agrees with CEMA and Lucent on the need to limit the number of potential respondents, and believes the Lucent proposal has the virtue of greater certainty. There should be no requirement for a consumer to interplead all possible sources of defect. Any FCC proceedings will be simpler for such an approach.

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<sup>20</sup> We think this question is especially relevant to the uncharted terrain that must be explored under Section 255.

On a related issue, MCI (Comments, 4) suggests that no manufacturer should be able to defend against non-accessibility or non-compatibility complaints by alleging faulty design of telecommunications service. On the other hand, TRACE notes the software-blurred line between equipment and service (Comments, 2-4), while Inclusive Technologies recommends (Comments, 3) that the absence of accessible network equipment could arise as a service provider defense. For the reasons of simplicity mentioned above, it would be far better for consumers, manufacturers and service providers alike if relative attribution of defects to service or equipment were made long before any grievance reaches the complaint stage.

### CONCLUSION

For the reasons discussed, the Commission should choose policy statements or guidelines for the implementation of Section 255. And, with the Access Board, help to insure that the guidance springs from consumer-industry cooperation. The FCC's task, as specified in the statute, requires the agency's continuing involvement during and after the Access Board consideration of guidelines. ADA precedent evaluates ready achievability on the basis of immediate facts and not speculative revenues or larger societal benefits. Common sense and past practice suggest the wisdom of assuring consumer choice in the marketplace rather than focusing on the unattainable ideal of universal access for every piece of equipment. Dispute resolution should begin with the manufacturer or supplier and the customer, with complaints at the FCC a last resort.

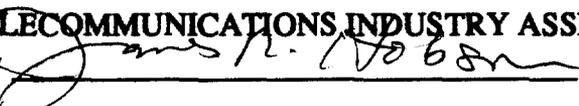
Policies and guidelines should acknowledge variable production cycles for distinctive kinds of equipment in different industries. Rather than exempting small businesses from guidelines, the Commission and the Access Board should make the guidelines tolerable to all sorts of manufacturers and suppliers and effective for

all classes of persons with disabilities. The equipment marketplaces already are experienced in assigning commercial responsibility for defective or non-compliant products.

Respectfully submitted,

**Matthew J. Flanigan**  
President

**Grant E. Seiffert, Director**  
Government Relations  
1201 Pennsylvania Ave.,  
N.W., Suite 315  
Washington, D.C. 20044

TELECOMMUNICATIONS INDUSTRY ASSN.  
By 

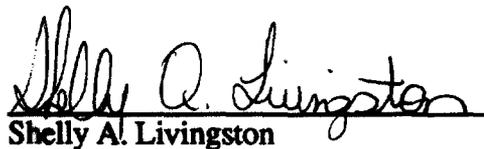
**James R. Hobson**  
Donelan, Cleary, Wood & Maser, P.C.  
1100 New York Avenue, N.W., Suite 750  
Washington, D.C. 20005-3934  
(202) 371-9500

November 27, 1996

ITS ATTORNEY

**CERTIFICATE OF SERVICE**

I hereby certify that on this 27th day of November, 1996 a copy of the foregoing REPLY COMMENTS OF THE TELECOMMUNICATIONS INDUSTRY ASSOCIATION was served upon the following recipients:

  
Shelly A. Livingston

**Ms. Judy Brewer**  
Mass. Assistive Tech. Partnership Center  
Children's Hospital  
1295 Boylston Street, Suite 310  
Boston, MA 02215

**Ms. Fiona J. Branton**  
Information Technology Industry Council  
1250 Eye Street, N.W.  
Suite 200  
Washington, D.C. 20005

**Mr. Gerard G. Nelson**  
Lucent Technologies, Inc.  
5 Wood Hollow Road  
Parsippany, NJ 07054

**Ms. Mary McDermott**  
U.S. Telephone Ass'n.  
1401 H Street, N.W.  
Suite 600  
Washington, D.C. 20005

**Mr. Jim Tobias**  
Inclusive Technologies  
334 Main Street  
Suite 141  
Matawan, NJ 07747

**Mr. Stephen L. Goodman**  
Halprin, Temple, Goodman & Sugrue  
1100 New York Avenue, N.W.  
Suite 850, East Tower  
Washington, D.C. 20005

**Mr. Peter H. Jacoby**  
AT&T Corporation  
295 North Maple Avenue  
Room 3245-H-1  
Basking Ridge, NJ 07920

**Ms. Mary E. Brooner**  
Motorola, Inc.  
Suite 400  
1350 Eye Street, N.W.  
Washington, D.C. 20005

**Mr. Campbell L. Ayling**  
NYNEX Telephone Companies  
1111 Westchester Avenue  
White Plains, NY 10604

**Mr. R. Michael Senkowski**  
Wiley, Rein & Fielding  
1776 K Street, N.W.  
Washington, D.C. 20006

**Mr. Joseph R. Cooney**  
University Legal Services, Inc.  
300 Eye Street, N.E.  
Suite 202  
Washington, D.C. 20002

**Ms. Donna M. Roberts**  
MCI Telecommunications  
1801 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006

**Mr. Randolph J. May**  
Sutherland, Asbill & Brennan, L.L.P.  
1275 Pennsylvania Avenue, N.W.  
Suite 800  
Washington, D.C. 20004

**Mr. Stanley M. Gorinson**  
Preston Gates Ellis & Rouvelas Meeds  
Suite 500  
1735 New York Avenue, N.W.  
Washington, D.C. 20006

**Mr. Jack Krumholtz**  
Microsoft Corporation  
Suite 600  
5335 Wisconsin Avenue, N.W.  
Washington, D.C. 20015

**Ms. Kathryn Marie Krause**  
U S West, Inc.  
1020 -- 19th Street, N.W.  
Suite 700  
Washington, D.C. 20036

**Mr. Philip L. Verveer**  
Willkie, Farr & Gallagher  
1155 -- 21st Street, N.W., Suite 600  
Three Lafayette Centre  
Washington, D.C. 20036

**Mr. Mark J. Tauber**  
Piper & Marbury, L.L.P.  
1200 -- 19th Street, N.W.  
Seventh Floor  
Washington, D.C. 20036

**Mr. Thomas C. Collier, Jr.**  
Stephoe & Johnson, L.L.P.  
1330 Connecticut Avenue, N.W.  
Washington, D.C. 20036

**Ms. Andrea D. Williams**  
Cellular Telecomm. Industry Ass'n.  
1250 Connecticut Avenue, N.W.  
Suite 200  
Washington, D.C. 20036

**Mr. Leon M. Kestenbaum**  
Sprint Corporation  
1850 M Street, N.W.  
11th Floor  
Washington, D.C. 20036

**Mr. David C. Jatlow**  
Young & Jatlow  
Suite 600  
2300 N Street, N.W.  
Washington, D.C. 20037

**Ms. Colleen Boothby**  
Levine, Blaszak, Block & Boothby  
1300 Connecticut Avenue, N.W.  
Suite 500  
Washington, D.C. 20036

**Mr. David A. Nall**  
Squire, Sanders & Dempsey  
1201 Pennsylvania Avenue, N.W.  
Suite 400  
Washington, D.C. 20044

**Mr. Scott Marshall**  
American Foundation for the Blind  
1615 M Street, N.W.  
Suite 250  
Washington, D.C. 20036

BY HAND  
**Ms. Rita McDonald (w/diskette)**  
Policy Div. -- Wireless Telecomm. Bureau  
FCC  
2025 M Street, N.W., 5th Floor  
Washington, D.C. 20554

**Ms. Jenifer Simpson**  
United Cerebral Palsy Ass'n.  
1660 L Street, N.W.  
Suite 700  
Washington, D.C. 20036

BY HAND  
**Mr. Stan Wiggins/Mr. David Siehl**  
Policy Div. -- Wireless Telecomm. Bureau  
FCC  
2025 M Street, N.W., 5th Floor  
Washington, D.C. 20554

**Ms. Donna Sorkin**  
SHHH  
7910 Woodmont Avenue  
Suite 1200  
Bethesda, MD 20814

**Mr. Mark J. Golden**  
Personal Communications  
Industry Association  
500 Montgomery Street, Suite 700  
Alexandria, VA 22314

**Ms. Arnie Amiot**  
American Speech-Language Hearing Ass'n.  
10801 Rockville Pike  
Rockville, MD 20852

**Mr. M. Robert Sutherland**  
Bellsouth Corporation  
Suite 1700  
1155 Peachtree Street, N.E.  
Atlanta, GA 30309

**Mr. Al Sonnenstrahl**  
Consumer Action Network  
8719 Colesville Road  
Suite 300  
Silver Spring, MD 20910

**Mr. Alfred R. Lucas**  
MOTOROLA, Inc.  
3301 Quantum Boulevard  
Boynton Beach, FL 33426

**Ms. Karen Peltz Strauss**  
National Association of the Deaf  
814 Thayer Avenue  
Silver Spring, MD 20910

**Mr. Gregg C. Vanderheiden**  
Trace Research and Development Center  
S-151 Waisman Center  
1500 Highland Avenue  
Madison, WI 53705

**Mr. Lawrence W. Katz**  
Bell Atlantic Telephone  
1320 North Courthouse Road  
Eighth Floor  
Arlington, VA 22201

**Ms. Brenda A. McNabb**  
GTE Ralffone Incorporated  
2809 Butterfield Road  
Oak Brook, IL 60522

**Mr. George A. Hanover**  
Consumer Electronics Manu. Ass'n.  
2500 Wilson Boulevard  
Arlington, VA 22201

**Mr. Robert M. Lynch**  
Southwestern Bell Mobile Systems, Inc.  
One Bell Center  
Room 3520  
St. Louis, MO 63101

**Ms. Barbara Raimondo**  
Consumer Action Network  
128 North Abingdon Street  
Arlington, VA 22203

**Ms. Joan Morton**  
Tulsa Community College  
6111 East Skelly Drive  
Tulsa, OK 74135

**Mr. Jim Stovall**  
Narrative Television Network  
5840 South Memorial Drive  
Suite 312  
Tulsa, OK 74145

**Mr. Michael J. Barkley**  
161 North Sheridan Avenue, #1  
Manteca, CA 95336

**Mr. John G. Lamb, Jr.**  
Northern Telecom, Inc.  
2100 Lakeside Boulevard  
Richardson, TX 75081

**David A. Bolnick, Ph.D**  
Microsoft Corporation  
One Microsoft Way  
Redmond, WA 98052

**Ms. Jo Waldron**  
5195 Fontaine Boulevard  
Fountain, CO 80817

**Mr. James R. Fruchterman**  
President  
Arkenstone, Inc.  
555 Oakmead Parkway  
Sunnyvale, CA 94086

**Mr. Martin D. Ard**  
Pacific Telesis Group  
140 New Montgomery Street  
Room 1526  
San Francisco, CA 94105

**Ms. Dana Mulvany**  
350 Budd Avenue, #A-1  
Campbell, CA 95008

**Mr. Scott E. Wollaston**  
Siemens Business Comm. Systems, Inc.  
4900 Old Ironsides Drive  
P.O. Box 58075, M/S 103  
Santa Clara, CA 95052