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NATIONAL ASSOCIATION OF THE DEAF

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December 19, 1996

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DEC 1 8 1996
Federal Communications Commission
Office of Secretary

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: In the Matter of Federal-State Joint Board on Universal Service, CC Dkt. 96-45

Dear Mr. Caton:

Enclosed please find an original and four copies of the Comments of the National Association of the Deaf in the above captioned proceeding.

I would appreciate your referring all correspondence regarding this matter to my attention.

Sincerely,

Karen Peltz Strauss

Karen Peltz Strauss
Legal Counsel for Telecommunications Policy

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
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COMMENTS OF

THE NATIONAL ASSOCIATION OF THE DEAF

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COMMENTS OF

THE NATIONAL ASSOCIATION OF THE DEAF

I. Introduction

The National Association of the Deaf (NAD) submits these comments in response to the Recommended Decision of the Federal-State Joint Board on Universal Service, CC Docket No. 97-45 (released November 8, 1996) (Recommended Decision).

The NAD is the nation's largest organization safeguarding the accessibility and civil rights of 28 million deaf and hard of hearing Americans in education, employment, health care, and telecommunications. The NAD is a private, non-profit federation of 51 state association affiliates including the District of Columbia, organizational affiliates, and direct members. The NAD seeks to assure a comprehensive, coordinated system of services that is accessible to Americans who are deaf and hard of hearing, enabling them to achieve their maximum potential through increased independence, productivity, and integration.

The Joint Board's Recommended Decision acknowledges Congress' intent to ensure that individuals with disabilities have access to telecommunications services. Recommended Decision

¶24. Nevertheless, the Joint Board has rejected virtually every proposal that would assist in carrying out this intent. The Board bases its recommendation not to adopt specific universal service principles related to telecommunications users with disabilities primarily on its assumption that another section of the Telecommunications Act, Section 255, addresses all disability access issues. Id. Specifically, the Board explains that it need not address these matters under this Section 254 docket because "they will be addressed in a separate proceeding to implement section 255." Recommended Decision ¶392. Finally, the Board refers to interstate telecommunications relay services as providing a means by which individuals with hearing or speech disabilities can communicate by telephone, and suggests these services are already funded through universal service mechanisms.

In making the above statements, the Board seems to suggest that the requirements under Section 255 and interstate relay services will be enough to achieve universal service for individuals with disabilities. Among other things, these comments explain why those requirements will not achieve the goal of universal service.

II. Universal Support Mechanisms are Needed to Fund Specialized Customer Premises Equipment

The Joint Board recommends that service to the initial primary residence connection be fully supported by universal service support mechanisms. Recommended Decision ¶4. Yet, as we noted in our earlier comments, even basic access from the primary residence sometimes comes at a very high price for consumers with disabilities -- a price which many of these consumers cannot afford. Reply Comments of the National Association of the Deaf and the Consumer Action Network at 11 (NAD). We explained that deaf and hard of hearing consumers typically must purchase costly specialized customer premises equipment (SCPE) such as TTYs, telephone

signaling devices, telebraille machines, and volume control telephones for access to basic telecommunications services. The hundreds and sometimes thousands of dollars needed to purchase such equipment create a barrier which precludes many individuals with disabilities from subscribing to these services. Although a few states do distribute SCPE to consumers with disabilities, limited funding in most states restrict both the populations eligible to receive such equipment and the type of equipment distributed. Moreover, more than half the states do not have any equipment distribution programs at all.

The Joint Board has rejected the proposal to use universal service funds to support the provision of special needs equipment for people with disabilities. On this matter, the Board has stated:

> We note . . . that the 1996 Act specifically addresses access to telecommunications services and equipment by individuals with disabilities outside the context of section 254. We therefore conclude that these matters need not be addressed by this Joint Board because they will be addressed in a separate proceeding to implement section 255.

Recommended Decision ¶392. The Board's reliance on Section 255 to ensure basic access to the public switched network by individuals with disabilities who need to purchase SCPE is entirely misplaced. Although Section 255 does require access to telecommunications devices and services, nothing in that section requires the establishment of SCPE distribution programs, or the development of funding sources for that purpose.

The Architectural and Transportation Barriers Compliance Board, charged with developing guidelines for equipment access under Section 255, has created a Telecommunications Access Advisory Committee (TAAC) for this purpose. The TAAC is currently finalizing its recommendations for the equipment guidelines. Nothing in those guidelines even remotely discusses a federal requirement for equipment distribution programs. Rather, the guidelines are

focused on ensuring that mainstream equipment - both equipment within the network and customer premises equipment - are accessible to and usable by individuals with disabilities. Given Section 255's limitations (i.e. only readily achievable access is mandated), and the diverse needs of individuals with disabilities, even with access requirements in place, the need for specialized equipment will continue to exist. It is simply incorrect for the Board to suggest that Section 255 will in any way ensure that consumers who need SCPE will be sure to get such devices.[1]

III. The Principles of Universal Service Dictate the Need for Parity in TTY Toll Charges.

The Joint Board also has recommended that states monitor subscribership rates, to ensure affordability of telephone service. Recommended Decision ¶5 The Board bases this recommendation on its finding that there is a relationship between affordability and subscribership to telephone services.

We noted in our earlier comments that subscriber penetration rates among individuals who are deaf or hard of hearing historically has been low. NAD at 10. One reason for this is the high cost of completing toll calls made with TTYs and relay services - these calls take three or more times to complete than do calls using conventional telephone services. Because of this disparity, we requested that universal service support mechanisms be available to ensure that TTY users pay no more for end user access to telecommunications services than is required by the general public.[2] We drew an analogy between the Commission's proposed reduction in service deposits to eliminate obstacles to initiating telephone service and the discounting of TTY toll rates to

[1] Moreover, at present, it is not even clear what action the FCC intends to take with respect to Section 255's requirements for access to telecommunications equipment, including whether it will initiate a rulemaking on this issue at all.

[2] Although some telephone companies already offer such discounts, these discounts are not uniformly available across telephone companies or across the fifty states.

ensure the provision of telephone services at just, reasonable, and affordable rates. We now renew our request to use universal service support mechanisms to bring toll charges for TTY and relay users in line with other toll charges. We again note that the other programs and support mechanisms suggested by the Joint Board to resolve this issue - most notably Section 255 and TRS - will not provide the needed funding to create parity in toll charges for TTY users.[3] Rather, a universal service principle ensuring such parity is needed to ensure universal long distance telephone service for TTY users.

IV. Universal Support Mechanisms Must Be Available to Ensure Access by Children with Disabilities in Schools and Libraries.

The Joint Board has recommended extensive universal service support for telecommunications services in schools and libraries. Yet nowhere in the Recommended Decision does the Board acknowledge the need to ensure that these services are accessible to children with disabilities. In its Notice of Proposed Rulemaking on universal service, the Commission had noted the importance of providing telecommunications access to children: "[e]xposure to telecommunications services for our nation's school children will provide them with skills needed for jobs in a technologically advanced society." Notice of Proposed Rulemaking and Order Establishing Joint Board, FCC 96-93 (released Mar. 8, 1996) ¶72.

[3] In one part of its recommendation, the Joint Board suggests that universal service support mechanisms already are used to fund relay services. This is incorrect, as these services have a separate and distinct funding mechanism which is administered by the National Exchange Carriers Association. Indeed, in a separate section of its Recommended Decision, the Joint Board itself acknowledges that these services are supported through a separate fund. ¶70. The Board also suggests that individuals with disabilities who qualify under the low-income provisions of section 254(b)(3) will benefit from the universal service support provided by those provisions. Recommended Decision ¶24. But none of those provisions on access by persons with low incomes address the disparity in toll charges for TTY users.

Our initial comments to the universal service rulemaking agreed with this statement, and we noted that for all too long, inaccessible technologies have prevented children with disabilities from receiving the full benefits of information available through new and advanced telecommunications services. This is particularly true for deaf and hard of hearing children, for whom access to the full range of telecommunications services has remained elusive.

Although other federal laws address the needs of children with disabilities, none of these laws will ensure telecommunications access for students with disabilities. At a minimum, the FCC should ensure that where Federal support mechanisms are established for classrooms and libraries, such support should include provision for telecommunications services which are accessible to individuals with disabilities.[4]

V. Conclusion

Historically, deaf and hard of hearing people have been unable to access the broad range of our nation's telecommunications services. While telecommunications relay services took a major step toward closing this telecommunications gap, at most, TRS provides only indirect access to basic telephone services. There is no access to enhanced services via relay services; for example, interactive telephone services that require responses to prompts are not accessible via TRS. Thus, these and other advanced telecommunications services that are referenced in Section 254 are not available to TTY users to this day.

Section 254 of the Telecommunications Act provides a very specific mandate to the Commission to ensure that access to advanced telecommunications and information services is

[4] In our earlier comments, we gave the example of needing a high speed link to enable two way interactive conferencing in sign language for deaf and hard of hearing students.

available to all Americans in schools, libraries, health care providers, and in all regions of the country. Section 254((b)(2) and (6). The Commission's implementation of this section will directly and profoundly impact the ability of these new services to reach Americans with disabilities. And increased access to telecommunications services increasingly is becoming critical to expanding employment, economic, educational, and recreational opportunities for deaf and hard of hearing individuals.

In the past, the Commission adopted numerous rules demonstrating its commitment to ensuring access to telecommunications services by individuals with disabilities.[5] The Commission's response to the Telecommunications Act's mandate for telecommunications access, however, has been confusing, at best. Time and again - in the Commission's various proceedings implementing the Telecommunications Act - the Commission has acknowledged Congress' intent to ensure telecommunications access by individuals with disabilities. Repeatedly, the need for ensuring disability access has been brought to the attention of the Commission by consumers and industry alike. Yet the Commission's response in virtually every one of these proceedings has been to reject the proposed disability safeguards, pending a Commission proceeding on Section 255.[6] Even more perplexing is that in its recent Notice of Inquiry, the Commission questioned

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[5] For example, the Commission's regulations on telecommunications relay services, hearing aid compatibility, and decoder-equipped televisions have resulted in significant strides toward achieving universal telecommunications access.

[6] In addition to the Recommended Decision to postpone such action in the instant proceeding, the Commission similarly declined to promulgate rules ensuring access in its Section 251 interconnection proceeding ("[w]e intend to issue a further notice of proposed rulemaking seeking comment on what accessibility and compatibility requirements apply to telecommunications carriers who install network features, functions, and capabilities." Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Dkt. No. 96-98, First Report and Order ¶998 (Aug. 8, 1996)) and in its proceeding on enhanced 911 services by wireless carriers ("we expect to initiate in the near future a proceeding to implement the provisions of Section 255 . . . which will provide further guidance and

Footnote cont'd on next page

whether it will even initiate any rulemaking at all under Section 255. In the Matter of Implementation of Section 255 of the Telecommunications Act of 1996, Notice of Inquiry, WT Dkt. No. 96-198 (Sept. 19, 1996) ¶7.

We urge the Commission to renew its commitment to ensuring access to telecommunications services for deaf and hard of hearing consumers and other individuals with disabilities in this and other proceedings to implement the new Telecommunications Act. Further, we urge the Commission to recognize that while Section 255 will require access to new telecommunications products and services, this section is limited in its scope; it will not resolve every issue concerning telecommunications access. Thus, the need to address telecommunications access by persons with disabilities should be addressed in the universal service docket and other Commission actions, as needed.

We thank the Commission for the opportunity to submit these comments, and welcome the opportunity to assist the Commission in securing comprehensive telecommunications access by all deaf and hard of hearing Americans.

Respectfully submitted,

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direction regarding accessibility standards and requirements." Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Dkt. No. 94-102, Report and Order and Further Notice of Proposed Rulemaking ¶53 (July 26, 1996)).