PACIFIC TELESIS
Group Washington

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March 26, 1997

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EX PARTE
William F. Caton
Acting Secretary
Federal Communications Commission
Mail Stop 1170
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Dear Mr. Caton:

Re: WT Docket No. 96-198, Access by Persons with Disabilities

Yesterday, Joe N. Carrisalez, Director, Regulatory Services, Marcia L. Straehley, Director, Marketing, Deaf & Disabled Services, Susan K. Palmer, Market Manager, Deaf & Disabled Services, all of Pacific Bell, Peter Filon, intern, Catholic University Law School, and I met with Karen Brinkmann, Associate Bureau Chief, and Elizabeth Lyle, Senior Legal Advisor to the Bureau Chief, Wireless Telecommunications Bureau, to discuss issues summarized in the attachment. Mr. Carrisalez, Ms. Straehley and I discussed these same issues with Commissioner Chong and Suzanne Toller, Legal Advisor to the Commissioner. We are submitting two copies of this notice and attached materials, in accordance with Section 1.206(a)(1) of the Commission's rules.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions.

Sincerely yours,

Attachment

cc: Commissioner Chong
K. Brinkmann
E. Lyle
S. Toller

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PACIFIC TELESIS'

PRESENTATION ON THE IMPLEMENTATION OF

SECTION 255 OF THE TELECOMMUNICATIONS ACT OF 1996:

ACCESS BY PERSONS WITH DISABILITIES

March 25, 1997

- **OVERVIEW**

  - The Commission should implement Section 255 of the 1996 Act through the issuance of two NPRMs.

  - The first of these NPRMs should be issued in May or June of this year, and should address the following issues: (1) overlapping equipment and service issues; (2) how the Commission will measure compliance efforts by manufacturers and service providers; (3) the definition of key terms, such as "readily achievable"; and (4) the Commission's timeline for further action.

  - The second of these NPRMs should be issued in August or September of this year and should address the following issues: (1) manufacturer guidelines and how the FCC plans to use the ATBCB equipment guidelines in measuring compliance; (2) service provider guidelines; and (3) any other outstanding issues that relate to parity between manufacturer and service provider requirements.

- **BACKGROUND**

  - Section 255 of the 1996 Act requires that, if "readily achievable": (1) manufacturers of telecommunications equipment or CPE must ensure that the equipment is "designed, developed, and fabricated to be accessible to and usable by individuals with disabilities"; (2) providers of telecommunications services must ensure that their services are "accessible to, and usable by, individuals with disabilities"; and (3) if it is not "readily achievable" to make products and services accessible, then they must be made compatible with "existing peripheral devices or specialized [CPE] commonly used by individuals with disabilities to achieve access."

  - In implementing Section 255, Pacific Telesis believes that the Commission should proceed by a two-step rulemaking process rather than case-by-case adjudications because:

    - Guidelines allow the telecommunications industry and advocates for those with disabilities to make a more efficient and cooperative transition to the new accessibility requirements by avoiding the confrontational and defensive atmosphere brought on by complaints.

    - Guidelines allow both service providers and manufacturers to conform their business plans, product development, and procurement processes to meet these new requirements, and provide clear safe harbors for service providers and manufacturers.

    - Guidelines better conserve the Commission's resources.

- **EQUIPMENT AND SERVICE ISSUES MUST BE RESOLVED IN A MANNER THAT BEST SERVES THE TELECOMMUNICATIONS USER**

  - The Commission's final rules should not force carriers to modify their networks to make them compatible with CPE and telecommunications equipment. Rather, manufacturers should be generally required to conform their equipment to the technical parameters of the PSTN.

  - All manufacturers and service providers should work together through standards bodies to develop mutually acceptable network and equipment standards that take into account the needs of people with disabilities. Clear Commission guidelines will facilitate the development of these standards.

  - If carriers are required to modify their networks to accommodate each new piece of adaptive equipment, the costs to the average network user will be excessive, and network technical standards will be extremely unstable.

  - Resources should be focused on innovative accessibility solutions rather than retrofitting the network to accommodate outmoded access technologies.

  - Ensuring that network standards remain constant minimizes the costs for all users of the PSTN, while still allowing Americans with disabilities to choose from a wide variety of accessible equipment that they know will be network compatible.

- **THE COMMISSION SHOULD DEVELOP FLEXIBLE COMPLAINT PROCEDURES MODELED ON SECTIONS 207 AND 208 TO EFFECTUATE THE INTENT OF SECTION 255**

  - While Sections 207 and 208 provide a suitable framework for addressing violations of Section 255, the Commission's authority under the existing complaint procedures is limited to carriers and does not include manufacturers. Based upon the Commission's authority under Section 255 and 4(i), it can and should develop a complaint resolution process for both service providers and manufacturers modeled on Sections 207 and 208.

  - The complaint procedures developed under Section 255 should, like the existing formal and informal complaint rules, encourage informal resolution of complaints.

  - Pacific Telesis also believes specific complaint procedures under Section 255 should encourage complainants and manufacturers or service providers to seek the guidance of an inter-industry and consumer access forum. Such an access forum would have more flexibility to address systemic issues by recommending the issuance of an industry alert, the formation of a technical task force, or the use of a mediator.

- **IF COOPERATIVE PROCESS FAIL TO RESOLVE A SECTION 255 COMPLAINT, THE FCC'S ADJUDICATIVE PROCESSES SHOULD BE BROAD ENOUGH TO CONSIDER THE SERVICE PROVIDER OR MANUFACTURER'S OVERALL GOOD FAITH IN COMPLIANCE WITH SECTION 255:**

  - Does the manufacturer or provider make it a practice to include people with disabilities in market research, product development, and product testing?

  - Would implementation of the requested accessibility feature have detrimental effects on access by individuals with different disabilities?

  - Does the manufacturer or provider offer other products or services that provide the requested accessibility features and comparable functionality?

  - Does the manufacturer or provider test its products for accessibility?

  - Consistent with business realities, does the manufacturer or provider ensure that its vendors address the needs of individuals with disabilities?

  - Does the manufacturer or provider offer a wide variety of accessible products, and does it make a list of these products available to the public (*e.g.,* over the Internet, at retail outlets)?

  - Has the manufacturer or provider instituted a program that educates its employees about accessibility?

- **DEFINITIONS ADOPTED BY THE COMMISSION SHOULD TAKE INTO ACCOUNT THE CRITICAL DIFFERENCES BETWEEN ACCESSIBILITY TO PUBLIC FACILITIES, AS CONTEMPLATED BY THE ADA, AND ACCESSIBILITY TO TELECOMMUNICATIONS EQUIPMENT AND SERVICES, AS INTENDED BY SECTION 255**

  - The ADA is a far reaching statute intended to: (1) prevent workplace discrimination against Americans with disabilities; (2) provide Americans with disabilities access to places of public accommodation, such as restaurants, retail stores, and theaters; (3) ensure that state and local governmental programs are accessible to Americans with disabilities; and (4) provide functionally equivalent telephone service through Telecommunications Relay Service.

  - Section 255 is more narrowly focused on providing Americans with disabilities access to telecommunications equipment and services.

  - Physical access to buildings under the ADA entails adaptations that are likely to remain unchanged for the foreseeable future. Such adaptations include elevators, ramps, wider doorways and lowered fixtures.

  - On the other hand, access to telecommunications networks is a dynamic field in which new technological developments are constantly changing the way those with disabilities can access the network. For example, computers in general, and voice recognition technology in particular, have given many people access to the telecommunications network with no required changes to the network itself. Indeed, computers are one of the most popular forms of CPE for gaining access to e-mail and the Internet, two forms of communication widely used by those with hearing disabilities.

  - Therefore, the Commission's definitions should be dynamic enough to help — rather than hinder — access to the telecommunications network as new technologies come into being.

- **THE DEFINITION OF "READILY ACHIEVABLE" SHOULD TAKE INTO ACCOUNT THE EFFECT OF ACCESSIBILITY SOLUTIONS ON THE MARKETABILITY AND AFFORDABILITY OF THE PRODUCT AS WELL AS CONFLICTS WITH EXISTING ACCESSIBILITY FEATURES**

  - If the features that provide access make the product less marketable to the general population, significantly slow the provider's ability to bring the product to market, or make the product unaffordable, then accessibility is not readily achievable.

  - If accessibility features conflict with or negate that product's already existing accessibility features, then adding the additional features is not readily achievable.

- **THE DEFINITION OF "USABLE BY" SHOULD NOT BE OVERLY PRESCRIPTIVE, BUT SHOULD CLEARLY DEFINE OR DELINEATE RESPONSIBILITIES BETWEEN MANUFACTURERS AND SERVICE PROVIDERS**

  - Product information and instructional material should be provided, upon request, in some type of alternative media such as an 800 number for information, large print, or an electronic format.

  - The Commission, however, should not set forth overly detailed guidelines describing how this material is to be provided.

  - If a product requires the use of CPE and network services provided by multiple entities (*e.g.,* Caller ID), each CPE manufacturer and service provider should be responsible for providing product information relevant to their part of the product, rather than making one or more of the entities responsible for providing information on the integrated product as a whole.

- **THE FCC SHOULD COMPILE AND MAINTAIN AN UPDATED LIST OF EXISTING PERIPHERAL DEVICES AND CPE COMMONLY USED BY PEOPLE WITH DISABILITIES TO ACHIEVE ACCESS**

  - The list should be dynamic and frequently updated in order to keep pace with changes in technology and consumer preferences.

- **THE DEFINITION OF "COMPATIBLE WITH" EXISTING PERIPHERAL DEVICES SHOULD TAKE INTO ACCOUNT THE FACT THAT ACCESSIBILITY FEATURES FOR DIFFERENT DISABILITIES CAN CONFLICT WITH EACH OTHER**

  - The Commission should not require the addition of accessibility features to a product or service that conflict with or negate that product's or service's already existing accessibility features.

  - If one access solution or set of access solutions conflicts with the integration of additional access solutions in a particular product or service, the manufacturer or provider should be permitted to evaluate the needs of the customers in its service area and choose which product or service will be brought to market.

- **THE SECOND NPRM SHOULD ENCOURAGE EQUIPMENT MANUFACTURERS AND SERVICE PROVIDERS TO DEVELOP ACCESSIBILITY SOLUTIONS IN A COORDINATED FASHION BY:**

  - Clearly delineating service provider and manufacturer coordination responsibilities.

  - Describing how the FCC plans to codify the ATBCB equipment guidelines.

  - Resolving any other outstanding issues that relate to parity between manufacturer and service provider requirements.

- **SUMMARY**

  - The Commission should proceed by a two-step rulemaking process rather than adjudication in order to foster cooperation between the telecommunications industry and advocates for those with disabilities, provide carriers and manufacturers with the certainty they need to formulate their business plans, and conserve Commission resources.

  - Equipment and service issues must be resolved in a manner that best serves the telecommunications user.

  - The Commission should develop flexible complaint procedures modeled on Sections 207 and 208 to effectuate the intent of Section 255.

  - If cooperative process fail to resolve a Section 255 complaint, the FCC's adjudicative processes should be broad enough to consider the service provider or manufacturer's overall good faith in compliance with Section 255.

  - Definitions adopted by the Commission should take into account the critical differences between accessibility to public facilities, as contemplated by the ADA, and accessibility to telecommunications equipment and services, as intended by Section 255.

  - The definition of "readily achievable" should take into account the effect of accessibility solutions on the marketability and affordability of the product as well as conflicts with existing accessibility features.

  - The definition of "usable by" should not be overly prescriptive, but should clearly define or delineate responsibilities between manufacturers and service providers.

  - The FCC should compile and maintain an updated list of existing peripheral devices and CPE commonly used by people with disabilities to achieve access.

  - The definition of "compatible with" existing peripheral devices should take into account the fact that accessibility features for different disabilities can conflict with each other..

  - The Second NPRM should encourage equipment manufacturers and service providers to develop accessibility solutions in a coordinated fashion.