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August 15, 1997

EX PARTE NOTICE FILED

**EX PARTE**

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

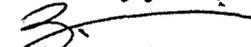
Dear Mr. Caton:

Re: WT Docket No. 96-198, Section 255 Implementation

Today, Joe N. Carrisalez, Director, Regulatory Services, Pacific Bell, Michael Patrick, Director, Industry Affairs, Pacific Bell Mobile Services, Chris Jines, Director, Federal Regulatory Affairs, SBC Communications, Pam Ransom of Common Ground Solutions, and I met with Meryl S. Icove, Legal Advisor to the Chief, Cable Services Bureau, and Director, Disabilities Issues Task Force, Nancy Boocker, Deputy Chief, and Stanley P. Wiggins, John M. Spencer, Susan Kimmel of the Policy Division, Wireless Telecommunications concerning the issues summarized in the attachment. We are submitting two copies of this notice in accordance with 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,

  
Gina Harrison

cc: Nancy Boocker  
Meryl S. Icove  
Susan Kimmel  
John Spencer  
Steve Weingarten

Attachment

No. of Copies rec'd  
List ABCDE

021

PRESENTATION OF SBC  
ON THE IMPLEMENTATION OF  
SECTION 255 OF THE TELECOMMUNICATIONS ACT OF 1996:  
ACCESS BY PERSONS WITH DISABILITIES

AUGUST 15, 1997

## MANUFACTURER AND SERVICE PROVIDER PARITY

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**The FCC rules for Section 255 should ensure parity between manufacturer and service provider requirements, in particular:**

- Issue comparably weighted substantive requirements for manufacturer and service providers
  - Incorporate both manufacturer and service provider requirements in one NPRM
- Set comparable effective dates for manufacturer and service provider requirements.
- Develop the same FCC complaint procedures and penalties for manufacturers and service providers.

## **FCC DEFINITION OF “READILY ACHIEVABLE”**

**It is critical that the FCC define “readily achievable” on an expedited basis through the Notice of Proposed Rulemaking process.**

- We anticipate that the Access Board guidelines to be published in September 1997, will provide limited direction concerning the definition of “readily achievable” - an FCC definition is critical for compliance.
- The “readily achievable” test is the linchpin for Section 255 implementation and compliance.
- As of February 1996, complaints can be filed under Section 255. The industry needs a clear definition of “readily achievable” in order to effectively plan and implement Section 255.
- Both consumer advocates and industry agree that the ADA definition of “readily achievable” needs to be adapted to better address the telecommunications industry and Section 255.

## **“READILY ACHIEVABLE”**

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**The definition of “readily achievable” should take into account the effect of accessibility solutions on the marketability of the product.**

- If the features that provide access make the product less marketable to the general population then accessibility is not “readily achievable ”- Elements which should be used to measure the “marketability” factor include:
  - Availability of the product to the general market
  - General market appeal
  - Commercial Viability
  - Channels of distribution/retailing

# Marketability Elements:

## Availability of the Product to the General Market

Will the time it takes to design and fabricate access features slow the product's entry to the market?

Do the incremental costs of including a specific access feature significantly increase the cost to the general market? Will the additional cost reduce the marketability of the product?

## Market Appeal

Do the access features modify the “look” of a product so that it is less marketable?

Do the access features make the product more difficult to operate, carry, etc.? Will training or supplemental collateral be required? Will this decrease the appeal of the product in the general market?

## Commercial Viability

Will the added costs to produce and market the product be greater than profits due to additional demand for an accessible product?

## Channels of Distribution/Retailing

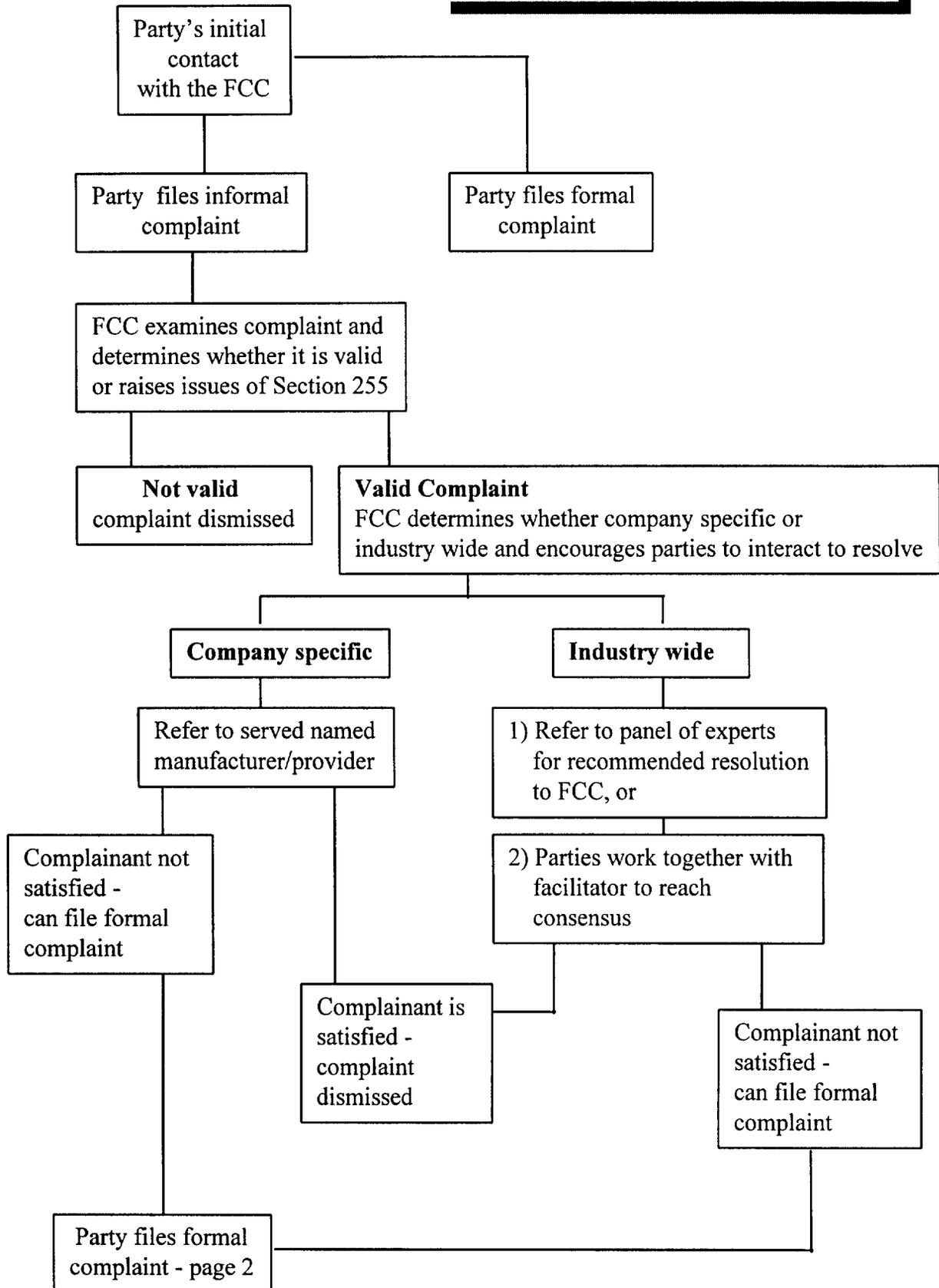
If devices not commonly seen in the marketplace are required to use access features, what are the additional costs incurred to distribute these devices?

Will additional distribution outlets be required, e.g., sell in stores versus sell by phone? Are these channels established across all the geographies that the product is marketed?

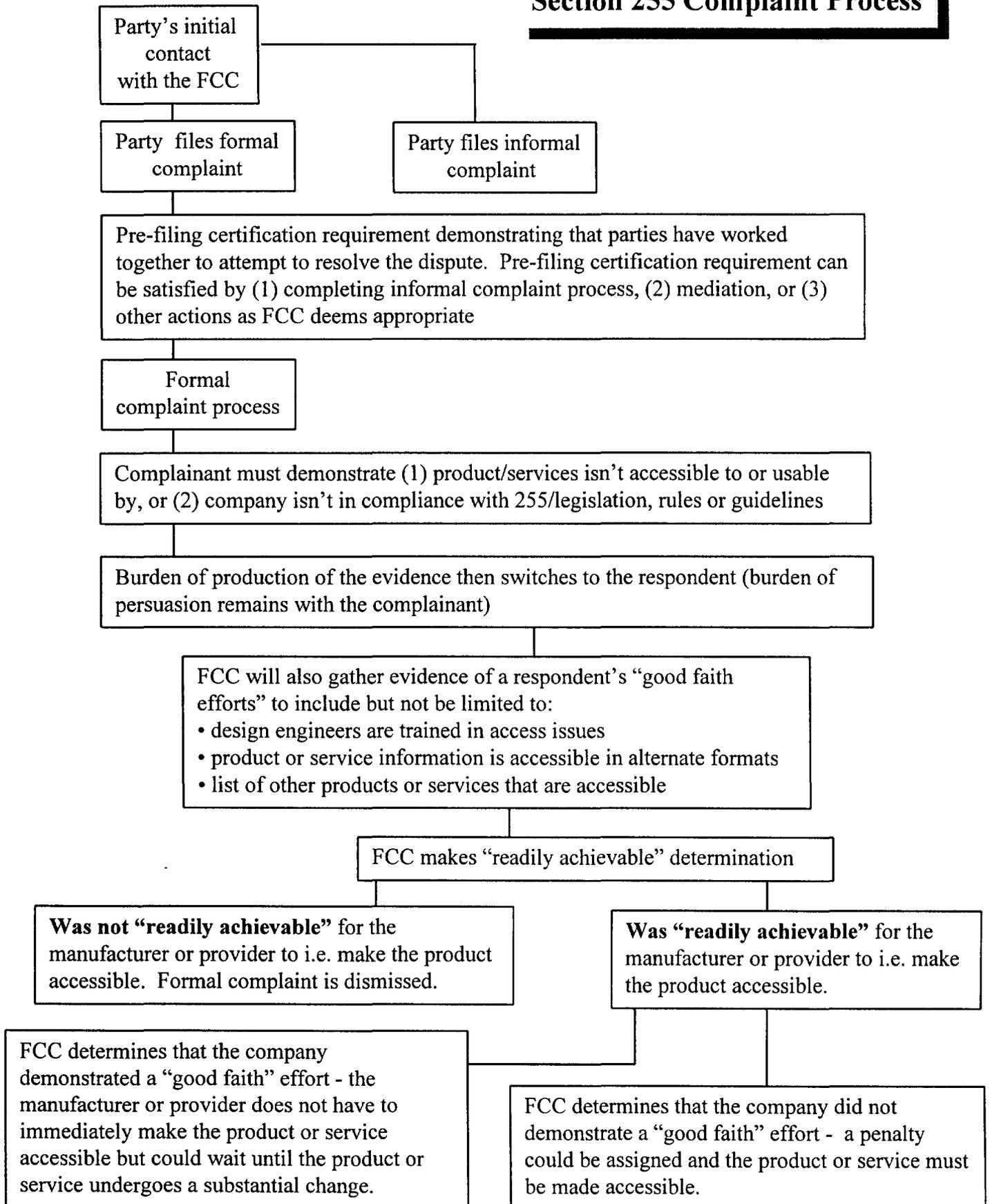
Will these customers require different handling from other customers, e.g., "Try before you buy"? If specialists in the disability are required to distribute the product, how will this impact the cost to the customer? Will the commission costs significantly impact the demand for the product in the disability market? In effect, will the added costs make the product no longer marketable?

What are the overall costs incurred, including training for employees, to support these specialized channels?

## Section 255 Complaint Process



## Section 255 Complaint Process



SBC Communications Inc.  
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Suite 1100  
Washington, DC 20005



DUPLICATE

(202) 383-6423

May 23, 1997

FEDERAL COMMUNICATIONS  
COMMISSION  
OFFICE OF SECRETARY

RECEIVED  
MAY 23 '97

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

Re: *Ex Parte* Submission  
Implementation of Section 255 of the Telecommunications Act of 1996  
WT Docket No. 96-198

Dear Mr. Caton:

Enclosed for filing, on behalf of SBC Communications Inc. and Pacific Telesis Corporation, is an original and one copy of an *ex parte* communication in the above-referenced docket. This submission responds to a question raised during recent meetings with the Commission and provides a proposed language defining "readily achievable" for purposes of Section 255 of the Communications Act, as amended. Please date stamp and return the enclosed duplicate copy.

Should there be any questions about this matter, please contact the undersigned.

Sincerely,

Gina Harrison

Encl.

- cc: Jackie Chorney, Office of Chairman Hundt
- Suzanne Toller, Office of Commissioner Chong
- Dan Phythyon, Chief, Wireless Telecommunications Bureau
- Elizabeth Lyle, Senior Legal Advisor, WTB
- Stanley P. Wiggins, WTB
- John M. Spencer, WTB
- Steve Weingarten, WTB

**Defining "Readily Achievable" Under Section 255***May 23, 1997*

Section 255 mandates that manufacturers and service providers take certain actions to improve access to and usability of telecommunications products and services by individuals with disabilities, "if readily achievable." Although Section 255 does not define "readily achievable," the legislative history of the section indicates that Congress intended for the terminology to be defined as it is in Section II of the Americans with Disabilities Act ("ADA"). Under Section 301(9) of the ADA (42 U.S.C. §12181(9)), "readily achievable" is defined as "easily accomplishable and able to be carried out without much difficulty or expense." While we believe that this definition is appropriate to utilize under for telecommunications-related access proceedings, Section 301(9) also provides a list of factors to be used in assessing whether actions are "readily achievable" that must be modified for use with Section 255.

Section 255 and Section II of the ADA were designed to address access and use barriers in very different contexts. Section II of the ADA was crafted specifically for resolving architectural barrier problems where solutions are typically "one time only," consumer acceptance is not typically an issue, and the entity responsible for implementing a fixed solution is generally easily identified. Section 255, in contrast, attempts to resolve access issues by affecting an ongoing process where technological change is rapid, solutions can be implemented in many different ways and through different mediums, marketability can be dramatically affected by certain types of modifications, and numerous entities within the stream of commerce can impact access and use. In this different context, as discussed below, the factors used for assessing compliance with the "readily achievable" standard need to be rethought if Congress' policy objective are to be met.

Specifically, Section 301(9) of the ADA further provides that "[i]n determining whether an action is readily achievable," factors to be considered include:

- (A) the nature and cost of the action needed under this chapter;
- (B) the overall financial resources of the facility or facilities involved in the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility;
- (C) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type and location of its facilities; and
- (D) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity.

Below, we have provided the text of a proposed FCC rule crafted to track the intent of the ADA factors listed in Section 301(9), but revised as appropriate for use in the telecommunications context. We would propose that the FCC's rules state:

**Section XX.XX - Determination of Whether Actions Are "Readily Achievable."** In determining whether specific actions are readily achievable for purposes of this section, the factors to be assessed include:

- (a) the nature and cost of the action needed under this section, including (i) the cost and nature of a range of alternatives, including modifications to CPE, telecommunications equipment, services, or equipment used by individuals with disabilities; (ii) whether the access problem is better addressed by equipment manufacturers or service providers; (iii) whether the access or use problem can be solved on an individual basis or should be addressed by solutions that are more generic and that may need to be resolved by creating industry standards; and, (iv) whether the pace of technological change will render the action obsolete or of limited effectiveness given the replacement of products and services over time.

- (b) the overall cost of the product or service involved in the action; including (i) whether the cost of a particular action is disproportionate in terms of the cost, revenues, and utility of a service or piece of equipment; (ii) the impact of implementing the modification on compatibility with related local, national, and international services and equipment; (iii) whether other, external modifications are needed to equipment or services not under the control of the manufacturer or service provider to achieve improved access or use; (iv) whether the modification would cause compatibility or other technical problems with the use of the equipment or service by individuals without a particular disability or aggravate access and use problems by individuals with other types of disabilities; and, (v) the impact otherwise of such action upon the marketability or operation of the service or product.
- (c) the overall financial resources of the manufacturer or service provider involved in the action in comparison to: (i) the number and type of customers of the company overall; and (ii) the geographic nature and extent of the company's operations.
- (d) For purposes of resource assessments under this paragraph, a subsidiary and a parent company should only be treated as a single entity if the subsidiary has access to the facilities and technical, marketing, and other resources of the parent without being required by law to compensate the parent at fair market value.

As discussed in our comments on the Commission's NOI, we believe that this proposed rule appropriately reflects the factors set forth in Section 301(9) of the ADA, adapted for the telecommunications context. The factors in subsection (a), for example, fulfill the intent of Section 301(9)(A) while recognizing that changes in the telecommunications area are not one time only modifications, but rather alterations to continually evolving universe of products and services where no single entity is responsible for the final integrated solution provided to consumers. Subsection (b), like its counterpart in Section 301(9), attempts to address the impact costs and benefits of proposed changes on object being changed, but the revision addresses factors such as compatibility, marketability, and compliance with standards that do not arise in the architectural context. Subsection (c) of the proposed rule blends subsections (C) and (D) of Section 301(9), assessing the costs and benefits of a proposed change on the entity responsible for making the change, appropriately modified for the telecommunications context. Finally, the

new Subsection (d) recognizes that, in cases where subsidiaries have separate cost accounting, which is common in telecommunications but less relevant in building contexts, "financial resources" calculations under Section 255 should be modified.

Thus, we believe that the proposed rule fully preserves the intent of Congressional policy goals embodied in Section 301(9). In order to effectuate these goals within the context of telecommunications, however, the factors in Section 301(9) require some modifications, as shown in the proposed rule. We therefore urge the FCC to adopt the proposed rule to govern assessments of whether certain actions are "readily achievable" under Section 255 of the Communications Act.