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

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In the Matter of	)	
	)	
Implementation of Section 255 of the Telecommunications Act of 1996	)	WT Docket No. 96-198
	)	
Access to Telecommunications Services, Telecommunications Equipment, and Customer Premise Equipment by Persons with Disabilities	)	

COMMENTS OF GTE

Dated: June 30, 1998

GTE Service Corporation and its affiliated domestic telephone operating, wireless, and long distance companies

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SUMMARY

Although GTE supports the general approach to Section 255 implementation that the Commission takes in the *Notice*, GTE believes that the Commission must refine certain of its proposals to implement the accessibility mandate.

First, the Commission must apply regulations based on Section 255 to carriers only to the extent that they provide telecommunications services. The FCC lacks authority to apply Section 255 to information services and doing so would interfere with information services competition.

Second, GTE believes the FCC should better define how it will determine whether accessibility was "readily achievable." In that regard, GTE submits a number of factors that should enter into the Commission's calculus of the feasibility, expense, and practicality of making equipment or services accessible to individuals with disabilities.

Third, GTE believes the FCC should amend its proposed methods for resolving Section 255 complaints. In that regard, the Commission should abandon the proposed fast-track complaint system in favor of the current informal complaint system. Should the Commission adopt the fast-track proposal, however, the FCC must give respondent parties at least thirty days to work out a solution to the access problem with the complainant customer.

Fourth, the Commission must take steps to protect confidential information on a number of levels. The Commission must take steps to protect sensitive information

submitted by individual complainants as well as proprietary information received from carriers and equipment manufacturers.

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COMMENTS OF GTE

GTE Service Corporation and its affiliated domestic telephone operating, wireless, and long distance companies[1] (collectively, "GTE") respectfully respond to the Federal Communications Commission's ("FCC" or Commission") *Notice of Proposed Rulemaking*, FCC 98-55 ("*Notice*") regarding the implementation of Section 255 of the Communications Act ("the Act").[2]

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1 These comments are filed on behalf of GTE's affiliated domestic telephone operating companies, GTE Wireless Incorporated, and GTE Communications Corporation, Long Distance Division. GTE's domestic telephone operating companies are: GTE Alaska Incorporated, GTE Arkansas Incorporated, GTE California Incorporated, GTE Florida Incorporated, GTE Hawaiian Telephone Company Incorporated, The Micronesian Telecommunications Corporation, GTE Midwest Incorporated, GTE North Incorporated, GTE Northwest Incorporated, GTE South Incorporated, GTE Southwest Incorporated, Contel of Minnesota, Inc., and Contel of the South, Inc.

2 47 U.S.C. § 255.

I. DISCUSSION

Section 255 of the Act requires telecommunications service providers and manufacturers to ensure that telecommunications equipment and services are accessible to individuals with disabilities. In the event that accessibility is not "readily achievable," the Act requires telecommunications equipment and services to be compatible with peripheral devices and other specialized customer premises equipment ("CPE") commonly used by individuals with disabilities.

In the *Notice*, the Commission seeks to promote accessibility for the 54 million Americans with disabilities by implementing Section 255 in a "practical, commonsense manner."[3] The Commission sets forth broad guidelines that are intended to accomplish the objectives of Section 255 yet afford the telecommunications industry with ample flexibility to innovate and handle complaints in a customer-friendly manner. The Commission (1) proposes definitions of key terms used in the statute, including the term "readily achievable;" (2) sets forth proposals to implement the requirements of Section 255; and (3) proposes a method of enforcing the requirements of Section 255.

Although GTE supports the general approach that the Commission takes in the *Notice*, GTE believes that the Commission must refine certain of its proposals to implement the accessibility mandate. Rules that are overly complex to persons unfamiliar with the Commission's processes or that impose unrealistic time constraints on the resolution of challenging accessibility problems will foster only frustration for persons with disabilities and the telecommunications industry.

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[3] *Notice* at 5 (¶ 3).

As the Telecommunications Access Advisory Committee ("TAAC") has aptly stated, no single interface design will accommodate all disabilities.[4] With many complex issues and no single solution, the Commission should adopt rules that encourage cooperation and communication between manufacturers, service providers, and persons with disabilities. In particular, GTE believes that the Commission should (1) apply Section 255 requirements to carriers only to the extent that they provide telecommunications services; (2) further define the factors used in determining whether ensuring access to telecommunications services and equipment is readily achievable; (3) abandon its "fast-track" complaint resolution proposal in favor of using the informal complaint process; and (4) establish procedures to ensure that sensitive or proprietary information submitted to the Commission in the complaint process is properly protected.

A. Section 255 is applicable only to manufacturers and providers of telecommunications services.

In the *Notice*, the Commission notes that Section 255, applies *inter alia* to providers of telecommunications service. The Commission notes further that the Communications Act defines "telecommunications service" as

> the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.[5]

The Commission expresses concern that limiting application of Section 255 to providers of telecommunications service may exclude a number of desirable consumer services

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[4] *Id.*, at 10 (¶ 15).

[5] 47 U.S.C. § 153(46).

classified as "information services."[6] Accordingly, the Commission seeks comment on whether Congress intended Section 255 to apply to a broader range of services.[7]

GTE believes that the Commission must strictly adhere to the language in the statute. In particular, GTE does not believe that the Commission has the authority to apply Section 255 to services other than those falling within the statutory definition of telecommunications service.

Congress adopted section 255 as part of the Telecommunications Act of 1996.[8] Also added as part of the 1996 Act were the definitions of "telecommunications service" and "information service." It must be presumed, therefore, as a rule of statutory construction, that in stating that the provisions of Section 255 apply to providers of "telecommunications service," Congress intended to ensure access only to those services meeting the definition of "telecommunications service" adopted in the same piece of legislation. It must also be presumed that had Congress intended for Section 255 to reach information services, it would have so stated in the plain language of the legislation.

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6 The Act defines "information service" as: "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunication system or the management of a telecommunications service." 47 U.S.C. § 153(20).

7 *Notice* at 19-24.

8 Pub. L. 104-104, 110 Stat. 56 (1996) ("1996 Act").

Even if the FCC did have authority to apply Section 255 to information services, doing so would not make sense from a public policy perspective. Both Congress and the Commission have stated that the purpose of the 1996 Act is to remove unnecessary barriers to competition.[9] GTE is concerned, however, that if the Commission imposes Section 255-based regulations only on information services provided by telecommunications service providers, it will impede competition in the information services market.

As the Commission well knows, the market for information services is highly competitive. Information services are provided not only by telecommunications service providers, but also by entities that have no capacity to transmit information between points specified by the user of the service. Allowing some providers of information services to do so free of Section 255 accessibility requirements, while requiring other competitors to comply with potentially costly FCC regulation would inhibit the competition that currently exists. Indeed, such regulation would artificially and needlessly discriminate in favor of information services provided by entities not affiliated with a provider of telecommunications services.

Given the plain language of Section 255 and Congress' mandate to the Commission to remove unnecessary barriers to competition, the FCC cannot and should not apply the Section 255 requirements to information services. Rather, the FCC should state that Section 255 only applies to providers of telecommunications

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[9] *See, e.g., Notice* at 4 (¶ 1).

services and only to the extent that such entities are providing telecommunications services.

B. GTE believes that for an accessibility solution to be readily achievable, it must be technically and economically viable.

Section 255 requires accessibility to the extent that it is "readily achievable." Section 255(a)(2) provides that "'readily achievable' has the meaning given to it by section 301(9) of the [ADA]." The ADA defines readily achievable as "easily accomplishable or able to be carried out without much difficulty or expense" and provides four factors for the application of the readily achievable standard.[10]

Recognizing that the ADA was designed for the significantly different purpose of remedying accessibility to buildings and other facilities, the Commission proposes to adopt the ADA definition of readily achievable and to use the four ADA factors as guidelines but not constraints.[11] In place of the four factors, the Commission proposes to consider feasibility, expense, and practicality to determine whether accessibility is readily achievable.[12]

1. Feasibility must include technical considerations.

Although the Architectural and Transportation Barriers Compliance Board ("Access Board") believed that technical feasibility was inherent in the readily

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[10] 42 U.S.C. § 12181(9).

[11] *Notice* at 46 (¶ 98).

[12] Importantly, the Commission proposes to apply the readily achievable standard on a case-by-case basis. *Id.*, at 47 (¶ 99).

achievable standard and did not therefore state it in the *Access Board Order*,[13] technical barriers to accessibility will obviously present some of the most significant challenges to service providers and manufacturers. For this reason, GTE believes that the Commission should explicitly recognize technical considerations as important factors in determining whether accessibility is "readily achievable."

Because technical feasibility has many aspects, GTE believes that the Commission should adopt a flexible set of criteria to serve as an analytical tool to evaluate technical feasibility. First, the feature must be compatible with other devices with which it may interact or interface. Second, the feature must be compatible with the telecommunications network and meet network standards. Third, the feature must meet safety requirements. Finally, if a feature causes inaccessibility for other individuals, service providers and manufacturers should be permitted to account for those ramifications as part of the trade-offs that will be inherent in accessibility decisions. Thus, if a feature provides access to telecommunications products or services for one group of individuals, it is important that it does not prevent access by others who may use different equipment or services.

2. Expense factors contain multiple dimensions.

The Commission properly characterizes expense as a factor that can be assessed on a "net" basis, such that service providers and manufacturers may weigh

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[13] *Access Board Order*, 63 Fed. Reg. 5608, 5615 (1998).

the various costs of accessibility with the additional income that the feature will provide.[14] GTE proposes a three-factor standard to support this cost-benefit analysis.

First, to be economically feasible, a service provider or manufacturer must determine that a feature will be sufficiently marketable to sustain a demand for the feature. Marketability is determined by whether a target segment exists for the product, what price the segment would be willing to pay for the feature, and the demand for the product over its entire life cycle. Marketability must be based on the total demand for a given product and not just the demand by disabled consumers. For example, it is possible that in some cases individuals who are not disabled will find the product useful.

Second, the total costs and expenses required to roll out the feature must be considered. Product cost should include research and development, engineering, material costs, production costs, technical support costs, transportation, marketing and customer support costs. GTE believes these cost factors are uniform and should not to be applied on an individual case basis. As the Commission suggests, consideration should also be given to opportunity costs.[15] When scarce resources are diverted to accessibility issues, opportunity for other market developments and product modifications may be lost.

Finally, to complete the expense equation, the expected economic return over the life of the product must be considered. The expected economic return estimates the income benefits that service providers or manufacturers can plan to realize for a

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[14] *Notice* at 48 (¶ 103).

[15] *Id.*, at 49 (¶ 104).

product or service over its entire life cycle. Certain features that assist in accessibility could either lengthen or shorten a life cycle depending upon the application, the product, and market conditions. For products with long life cycles, the cost of money should also be a factor.

3. Accessibility is only practical when not constrained by the resources of specific business units and on a going-forward basis.

The Commission states in the *Notice* that the most difficult aspect of determining whether a particular feature is readily achievable is whether it is practical given the expenses involved.[16] The Commission proposes four specific criteria for evaluating whether accessibility is practical: resources, market considerations, cost recovery, and timing.

With respect to resources, GTE shares the concerns of previous commenters in this proceeding that the Commission should not overestimate resources available to fund accessibility solutions by failing to account for the various corporate divisions, legal reporting structures, and financial separation used in organizations today. GTE supports the presumption recommended in the *Notice* that economic feasibility should be determined based on the resources of the legal entity offering the equipment or service.[17] While the Commission has proposed to determine what resources are reasonably available on a case-by-case basis in the context of complaint proceedings,[18]

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[16] *Id.*, at 49 (¶ 106).

[17] *Id.*, at 51 (¶ 109).

[18] *Id.*, at 51 (¶ 110).

GTE urges the Commission to take notice of the legal entities that are the subject of a complaint and to permit rebuttal of the presumption only in cases of evasive practices. Resources from other economic groups or resources should not be considered when evaluating the economic feasibility of accessibility features.

Another important facet of practicality is timing. GTE believes that it is axiomatic that technological features available at the beginning of a product cycle can be incorporated more easily than those that become available at the end of the development cycle.[19] GTE therefore strongly urges the Commission to adopt its conclusion that once a product is introduced in the market without accessibility features that were not readily achievable at the time, Section 255 does not require that the product be modified to accommodate subsequent features. GTE believes that once the design and development phases of product development are complete, any retrofitting or modification of that designed product should not be required.

C. The FCC should amend its proposed methods for resolving Section 255 complaints.

1. The Commission should abandon the proposed fast-track complaint system in favor of the current informal complaint system.

The FCC proposes in the *Notice* to adopt specific procedures for enforcing Section 255. The Commission's goals for handling Section 255 complaints are (1) to be responsive to customers; and (2) to allocate resources efficiently. In an effort to meet

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[19] *Id.*, at 56 (¶ 120).

these goals, the FCC proposes to adopt an informal "fast-track process" aimed at resolving complaints before they escalate into either informal or formal FCC complaints.

The fast-track proposal contemplates that complaints received by the Commission will promptly be forwarded to the manufacturer, service provider, or both. Respondents would then be allowed five days from the receipt of the complaint to gather relevant information, identify possible accessibility solutions, and work with the complainant to resolve the problem. By the fifth day, the respondent would be required to report to the Commission regarding whether the complainant has been provided the access requested, and if not, why such access has not been provided.[20] Once the respondent has reported back to the Commission, the FCC would review the complaint and the action, if any, taken to resolve the alleged access problem. Based on that review, the FCC would close the matter or initiate the second phase dispute resolution process.[21] If the second phase is invoked, the Commission proposes primarily to use informal investigative procedures closely paralleling the FCC's informal compliant process, with an option to invoke a formal complaint process or alternative dispute resolution.[22]

GTE concurs with the Commission that, whenever possible, complaints alleging Section 255 violations should be solved quickly and efficiently. GTE believes, however,

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[20] *Id.*, at 58-64.

[21] *Id.,* at 65. The FCC also proposes to allow a complainant not satisfied with the FCC's action at the end of the fast-track process could choose to invoke the second phase dispute resolution process. *Id.* (¶ 143).

[22] *Id.,* at 66-75.

that the fast-track process proposed by the Commission may be contrary to the Commission's goal of efficient resource allocation. GTE believes that the most efficient means of resolving Section 255 complaints would be to use the informal complaint process from the outset.

First, GTE notes that the fast-track process appears very similar to the Commission's informal complaint process. Indeed, under both processes, the respondent is served with notice of a complaint and must respond to the Commission within a set period of time. Based on the report filed in both instances, the Commission can either close the matter, assist the parties in negotiating a settlement of the claims, or invoke more formal complaint processes. Given that the informal complaint and "fast-track" processes are so similar, having both processes available to complainants, including the very real possibility that both processes will be invoked in the same complaint, would likely result in a duplication of effort and a waste of resources.[23]

Second, the informal complaint process is preferable to a new fast-track process because most service providers and many complainants are already familiar with the informal complaint procedure. Moreover, the informal complaint process has been effective at encouraging resolution of problems and providing for a documented flow of information between parties.

Third, GTE understands that in designing the informal "fast-track process," the FCC is attempting to foster complainant/respondent cooperation. GTE agrees that the

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[23] GTE also notes that creating an informal "fast-track process" in addition to the informal complaint process may cause confusion among complainants.

best way to resolve customer accessibility issues involving Section 255 is for customers to work directly with the equipment manufacturer or service provider. GTE notes, however, that a new FCC procedure is not needed to ensure this cooperative effort to resolve disputes. As a service provider in a service industry, GTE understands that making customers happy is the only way to ensure success. Accordingly, whenever a customer contacts GTE with any kind of service issue, GTE has every incentive to resolve that complaint without ever having to invoke FCC or other agency processes.

Nevertheless, should the Commission believe that the informal complaint process is inadequate at fostering cooperative dispute resolution, GTE recommends that the FCC amend the current informal complaint rules in the Section 255 context to encourage parties to communicate in an effort to resolve Section 255 complaints.

2. The FCC should allow respondents more than five days to respond to a Section 255 complaint.

Should the FCC adopt the proposed fast track process, the FCC must realize that it is unrealistic to expect that parties will be able to resolve access disputes in five days. The FCC proposes that the respondent report deadline should provide "sufficient time for respondents to study the complaint, gather relevant information, identify possible accessibility solutions, and, most importantly, work with the complainant to solve the access problem if possible."[24] Five days, however, in the vast majority of cases is nowhere near enough time for respondents to perform the required tasks.

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[24] *Notice* at 63 (¶ 136).

In most cases, evaluating and resolving an accessibility request will be quite complicated. Before a complaint can be resolved, respondents will need to understand a consumer complaint, research the issue, possibly contact vendors and interested outside parties, locate and test solutions, and convey the information to the consumer. To resolve a complaint, a manufacturer or service provider may also need to discuss and evaluate several alternative access solutions with the customer(s).

GTE believes that while the FCC's rules should encourage quick complaint resolution, it is better to allow parties sufficient time to evaluate the possible solutions to the problem and to implement the solution that makes the most sense for the complainant as well other individuals with disabilities. In most cases, GTE believes that Section 255 complaints will be able to be resolved within thirty days. GTE believes that requiring carriers to resolve the dispute or respond to the Commission in five days or any period shorter than thirty days is both unrealistic and counter-productive.

D. GTE believes that certain data collected in the complaint process will be proprietary and confidential and should be treated as such.

As stated earlier, cooperation and communication between parties is an important aspect of implementing Section 255. GTE believes strongly that all parties should use care in the use of confidential or proprietary information. During the investigation of an access issue, for example, service providers and manufacturers may obtain certain confidential medical information from a customer. It is important that this information be kept confidential.

Likewise, the Commission should maintain the confidentiality of information collected by the Commission that might be proprietary in nature. Certain features or

designs may contain proprietary information. Such information may indicate future market plans, market data, and projections. The Commission should ensure that measures are taken to protect intellectual property rights.

Finally, the Commission should allow service providers and manufacturers the opportunity to review data compiled for complaints to ensure their completeness and accuracy before any information is used in any manner. The Commission must also safeguard the confidentiality of benchmarking data. In particular, the FCC should recognize that benchmarking might be inappropriate in some circumstances.

II. CONCLUSION

Subject to the foregoing, GTE supports the Commission's effort to implement Section 255 in a manner that will enhance the development of solutions that will allow persons with disabilities increased access to telecommunications services.

Dated: June 30, 1998

Respectfully submitted,

GTE Service Corporation and its affiliated domestic telephone operating companies

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