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July 1, 1998

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Office of the Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: Implementation of Section 255 of the Telecommunications Act of 1996 Access to Telecommunications Services, Telecommunications Equipment, and Customer Premises Equipment by Persons with Disabilities, WT Docket No. 96-198

Dear Sir or Madam:

Enclosed please find an original and nine copies of the comments of the Campaign for Telecommunications Access in the reference proceeding. These comments were also filed electronically yesterday pursuant to the procedures specified in paragraph 185 of the subject NPRM.

Please file the same and distribute copies to the members of the Commission. Please also return a file stamped copy to me.

Very truly yours,

David J. Newburger

DJN:id.360

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Federal Communications Commission

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Campaign for Telecommunications Access

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updated 03/25/98

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

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 Premises Equipment by Persons with Disabilities	)	

TO: The Commission

COMMENTS OF CAMPAIGN FOR TELECOMMUNICATIONS ACCESS

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June 30, 1998

Summary

The Campaign for Telecommunications Access (the Campaign) works to assure that new telecommunications technologies will be available to, usable by, and affordable for all citizens, regardless of where they live and regardless of what disability or other condition they may have that is a barrier to their using some kinds of equipment. The participants in the Campaign are leaders and organizations that are substantially run, respectively, by older adults and people with disabilities and devoted to ensuring that older adults and people with disabilities--and all citizens for that matter--have the opportunity to live independent, productive lives and have the accommodations that allow them to be as fully integrated into the community as possible.

New telecommunications technology, when fully distributed to the citizenry and usable by and affordable for all, promises numerous new ways for older adults and people with disabilities--and all other citizens--to maintain their independence and lead productive lives. In order to ensure that all consumers have a chance to fully use existing and future telecommunications, the Campaign's foremost concern in the telecommunications re-regulation that has gone on over the past several years is this: Does each proposal guarantee that advanced technologies will reach, and current technologies will continue to reach, our constituents--geographically, technologically, and affordably--even though our constituents are spread all over America?

In this proceeding, that question translates into whether the proposed rulemaking advances the interests of universal design for people with disabilities and older adults. In the Campaign's opinion, the Commission, and Access Board before it, have designed rules

that will advance the interests of universal design, but that leave several opportunities for improvement.

Full accessibility of telecommunications services requires both universal design and universal service. New technologies, such as the roll out of broadband networks to the home, are as important for consumers as is insuring the accessibility of equipment at the end of those networks and the services across them.

The Commission should adopt the Access Board Guidelines.

Effective Universal design cannot be accomplished without consultation with individuals with disabilities and older adults.

The Commission should broadly define telecommunications services as used in § 255 to include adjunct-to-basic services, to enhanced services, to information services.

The readily achievable standard should not be used as an escape hatch from doing what is right. Most products and services should be fully accessible for individuals with disabilities and older adults.

The complaint process should facilitate consumer access to the Commission. It should be easy and nonconfrontational. All individuals with disabilities and older adults should be able to access the complaint system, about all barriers to access, if any barrier affects them personally. Fees should be waived or minimized. All complainants should be answered on the merits with full and understandable reasoning.

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I. Introduction and Identification

The Campaign works to assure that new telecommunications technologies will be available to, usable by, and affordable for all citizens, regardless of where they live and regardless of what disability or other condition they may have that is a barrier to their using some kinds of equipment. The Campaign is composed of Missouri Alliance of Area Agencies on Aging, Missouri Association for the Deaf, Missouri Council of the Blind, National Silver Haired Congress, Presidents' Club for Telecommunications Justice, and Paraquad, the latter being the independent living center located in St. Louis, Missouri, that assists people with all kinds of disabilities to integrate fully into society. The Campaign has filed comments in other proceedings of the Commission and participated in other telecommunications regulatory proceedings.

The participants in the Campaign are leaders and organizations that are substantially run, respectively, by older adults and people with disabilities and devoted to ensuring that older adults and people with disabilities--and all citizens for that matter--have the opportunity to live independent, productive lives and have the accommodations that allow them to be as fully integrated into the community as possible. In working to see that new and existing telecommunications technologies will be available to, usable by, and affordable for all citizens, the Campaign is an extension of that mission in the area of telecommunications.

II. The Source of the Campaign's Interest

New telecommunications technology, when fully distributed to the citizenry and usable by and affordable for all, promises numerous new ways for older adults and people

with disabilities--and all other citizens--to maintain their independence and lead productive lives. The issue of what telecommunications services will be available, usable, and affordable affect a considerable portion of the Nation.

In other comments the Campaign has filed with the Commission, the Campaign has believed it appropriate to outline the reasons why the community of older adults and persons with disabilities deserve the Commission's attention as it works through arcane telecommunications issues and nearly hysterical voices of competing industry spokes-people. Here, we respond to § 255 of the Telecommunications Act in which Congress directed the Commission to address its attention to the issue of barriers to access for telecommunications equipment and services. The relevance of our groups is self-evident.

Still, the Campaign is concerned that one issue is missing in the rhetoric surrounding universal design policy. Much attention is given here to people clearly identified as people with disabilities--people who are blind, people who are deaf or hard of hearing, people with mobility disabilities, people with cognition disabilities. The vision of a young vigorous adult with one or another of those disabilities comes easily to mind.

The Campaign would point out, however, that, as people go through the aging process (a fate to which we all aspire), they develop in varying degrees aspects of all these disabilities. There is a merging of a need for universal design for both the millions of Americans who have disabilities today and the present and future older adults who already have or will develop the need as time passes. One of the essential processes for determining whether services or equipment are accessible is to verify it both with individuals with disabilities and with older adults.

Congress was correct in recognizing the needs of people with disabilities and older adults in enacting the Telecommunications Act of 1996. The promise of present and future telecommunications very much affects the lives and independence of people with disabilities and older adults. Consider, for example, today's telecommunications technologies. Such things as Caller ID screens allow a deaf person to know who is calling even if the caller does not have the sense or knowledge to use a TDD or the Relay Service to call the deaf person. The deaf person can view the screen, return the call via the Relay Service if he[1] wants, and complete a communication that would have been impossible before the introduction of that technology. Meanwhile, other even newer technology voices the contents of the Caller ID screen, thereby letting in people who are blind--and others who just have their hands full--on the benefits of Caller ID.

Consider also the health and safety we entrust to the telecommunications systems. We assume a 911 call, or burglar alarm call to a monitor, or call to a medical care monitor will virtually always go through and go through the first time. Older adults live in their homes longer today, rather than moving into nursing homes, because they can rely on the telephone to call for help when they need it. The same is true of many people with disabilities.

This proceeding, however, must also weigh tomorrow's telecommunications technologies. And they foretell even greater promise for the Campaign's constituents. Many of the problems people with disabilities and older adults face with obtaining

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[1]Occasionally, in these comments, a male pronoun is used to reference a hypothetical individual. In such occasions, that pronoun is used in a generic sense to refer to a hypothetical individual of either gender.

education, transportation, jobs, health care, and other services will be assuaged or eliminated by the advanced telecommunications technologies that Congress encouraged in enacting the Act. Consider a few. Telecommuting will allow people with transportation problems to stay in their homes and neighborhoods and work anywhere in the world. Tele-medicine will allow people to remain home and independent even if they live some distance from their doctors. Distance learning will allow students to attend the university from their living rooms. People who lack the physical strength to pick up a book will be able to read books located around the world with the punch of a button.

Videoconferencing will allow deaf people to sign to one another. It will allow deaf students to attend any class and obtain deaf interpretation through a screen in the classroom and a remote interpreter located miles away. It will allow grandparents to watch their grandchildren grow even though they may live a continent or more apart.

The examples are inexhaustible. Two fundamental facts emerge. Advanced telecommunications technology will overcome serious transportation and communications barriers that today keep some people from being educated, trained, cared for, employed, out of nursing homes, and integrated into their communities. But, these advanced technologies are only interesting for people with disabilities and older adults to the extent they can use them.

III. The Core Issue

The advances envisioned here will only work, however, if that advanced technology comes to all people with disabilities, older adults, and all Americans. Therefore, the Campaign's foremost concern in the telecommunications re-regulation that has gone on

over the past several years is this: Does each proposal guarantee that advanced technologies will reach, and current technologies will continue to reach, our constituents--geographically, technologically, and affordably--even though our constituents are spread all over America?

In this proceeding, that question translates into whether the proposed rulemaking advances the interests of universal design for people with disabilities and older adults. In the Campaign's opinion, the Commission, and Access Board before it, have designed rules that will advance the interests of universal design, but that leave several opportunities for improvement. Rather than attempting to be encyclopedic, the Campaign has selected a series of comments it believes are most important to draw to the Commission's attention, but believes that many comments of other spokespeople for the disabled community are fully valid and deserve the Commission's careful attention.

IV. Full Accessibility of Telecommunications Services Requires Both Universal Design And Universal Service

To accomplish accessible telecommunications for people with disabilities and older adults, the Commission must "think outside the box." A universally designed product or service may be essential for a person who is deaf, for example, to accomplish a full motion videoconference call. (The equipment must, for example, have visual as well as auditory signals to guide its operation.) But, even if the consumer has, at his home, all the fully accessible equipment needed, the call cannot be accomplished today unless that consumer has ISDN, ADSL, switched cable modem, or other broadband communications capacity delivered to his doorstep.

Meanwhile, we must recognize that a deaf person who uses American Sign Language as his primary mode of communication will never have full access to telecommunications until he has access to videconferencing capacity. Therefore, in order for the Commission to realize the obvious purpose of § 255, it must not only worry about whether the equipment at the end of the line is fully accessible, but also whether the essential network reaches everybody in an affordable way.

The Campaign doubts the Commission has accomplished that to date. Subject to concerns expressed here below and by others, the Commission appears to be on a positive track toward ensuring the adequacy of the design of some equipment and services. To the extent that the Commission is not acknowledging the coverage of § 255 for some services related to, but not necessarily encompassed within telecommunications services, it is being less than a complete success in that area.

Perhaps more important, however, the process of ensuring that the necessary network capacity will be delivered to all doorsteps in the Nation is at major risk and seems to be deteriorating. Subsidies that have made that possible in the past are slipping away. Universal service proceedings are dealing with marginal issues on the edge of the central concern. They are not addressing how the mass of the population is going to continue to get high quality existing and future telecommunications technologies. Solutions are being tied up in demagogic politics. New entrant competitors are eschewing any responsibility for serving the population as a whole. Disincentives are being imposed on existing providers to invest in their own facilities. Past and potential Commission decisions endanger the situation further. These problems must be addressed--and they are not in

this NPRM--to ensure that telecommunications is fully accessible for all people with disabilities and older adults.

Parenthetically, and in order to make its position crystal clear, the Campaign refers to its filing on June 24 in SBC Petition for Relief from Regulation Pursuant to Section 706 of the Telecommunications Act and 47 U.S.C. § 160 for ADSL Infrastructure and Service, CC Docket No. 98-91. There, the Campaign suggested that the Commission should forbear from regulating the roll out of ADSL service. Here, one might (albeit erroneously) infer that the Campaign is arguing for regulation of the roll out of ADSL service.

The Campaign's overarching position on this question is this: The Commission should create incentives rather than deterrents for the roll out of all broadband capacity that will reach substantial portions of the population. The key opportunity to do that in the case of ADSL service (and other broadband services) is to forbear from regulating.

Meanwhile, in rolling out that service, the service provider should attend to the issues of universal design to ensure it does nothing that creates barriers for people with disabilities and older adults from using the service. ADSL service pretty clearly involves telecommunications services within the meaning of § 255, and the Campaign would expect any service provider, be it an SBC Communications Inc. (SBC) affiliate or some other local telephone company, to ensure that it did not create any barriers for people with disabilities and older adults from using the service.

SBC has informed the Campaign it has adopted a universal design policy under which it will review all its new services and products for accessibility--regardless of the coverage of § 255. Representatives of the Campaign have reviewed the content and plans

for implementing that policy and have confidence that the implemented policy will ensure SBC or its affiliates will only introduce reasonable accessible products and services. Therefore, the Campaign has no reason to worry at this time about the accessibility of SBC's new ADSL service.

To the extent that other local telephone companies seek to offer ADSL service, the Campaign believes, again, the Commission should forbear under § 706. But, it is equally true and important that the other companies should comply with § 255 and ensure their services are universally designed.

V. The Commission Should Adopt the Access Board Guidelines

As the Commission knows, the Architectural and Transportation Barriers Compliance Board (the Access Board) issued the Accessibility Guidelines for Telecommunications Equipment and Customer Premises Equipment (the Guidelines) on February 3, 1998. In performing that work the Access Board relied substantially on the Telecommunications Access Advisory Committee (TAAC) to the Access Board. TAAC was a committee of industry representatives and representatives of individuals with disabilities who have expertise on various issues affecting access to telecommunications and services.

The Guidelines are a product of full and fair discussion between industry representatives and people with disabilities. While now subject to several months of public review, they have not been materially criticized. The Campaign respectfully suggests that the Commission should adopt the Guidelines as part of this rulemaking for products and, to the extent feasible, for services and then allow experience to gather from their implementation before they are modified.

VI. Effective Universal Design Cannot Be Accomplished Without Consultation with Individuals with Disabilities and Older Adults

One fundamental truth discovered by members of the disability rights movement is people do not understand barriers to access until they experience them. Awareness programs try to replicate the experience of a disability by asking participants to wear a blindfold or use a wheelchair for a day to get an idea of the experience. But all admit that even such programs are inadequate to communicate the full experience.

Based upon that truth, companies attempting to "universally design" products or services should be quite concerned whether they are fully able to appreciate all the barriers to access their new product or service may involve. Therefore, they should adopt policies, and the Commission should require. that companies rolling out these new products and services should include people with disabilities and older adults in all levels of the development and bringing to market processes. This will be to ensure that barriers to access are recognized at the earliest possible moment, when solving the problem may be the least expensive and therefore most practical to fix.

VII. The Commission Should Broadly Define Telecommunications Services As Used in § 255

Section 255 provides that manufacturers of telecommunications equipment or customer premises equipment and providers of telecommunications services shall ensure that their respective equipment and services are "designed, developed, and fabricated to be accessible to and usable by individuals with disabilities, if readily achievable." The section is obviously remedial in nature and intended to provide people with disabilities with

services and equipment that they can use like all other Americans. In this respect it levels the playing field.

The question is how broadly can the provision be interpreted. The Campaign suggests that it can be interpreted to include all services the Commission has considered in the NPRM, from adjunct-to-basic service, to enhanced services, to information services. In reaching this conclusion, the Campaign suggests the first step of analysis is a search for the benefit and harm from taking such a position.

The benefit is that all aspects of telecommunications will be accessible for all people, to the extent readily achievable. Otherwise, it might not be. Consider for example, facsimile store-and-forward services. Such services, and facsimile transmission in general, are used as a primary source of communication among people who are deaf, as opposed to TTY communications. If the Commission fails to include facsimile store-and-forward services within telecommunications services as used in § 255, it simply opens up the opportunity for creating barriers to access for people with disabilities even with respect to a service that is readily used for communications with people who are deaf.

Moreover, other services that are currently categorized as information services create some of the most difficult barriers to access for people with disabilities. Voice mail, for example, requiring rapid response times can be impossible for TTY/Relay users and people with mobility disabilities to use. Yet attention to the problem of the barrier, such as creating means to adjust the required response time, may eliminate the barrier for all.

What is the harm offsetting these benefits in so interpreting telecommunications services for purposes of § 255? Fairly speaking, it is twofold. First, it brings a service

under the scrutiny of the Commission. As such it exposes a manufacturer or service provider to costs of money and time to ensure compliance. That can be a quite serious cost, but it is one that should be managed by the Commission's undertaking vigilance to eliminate wasteful bureaucratic requirements that do not really go to the substance of making the equipment or service accessible.

Second, it forces the manufacturer or service provider to make the equipment or service as accessible as is readily achievable. The combination of common courtesy and a market of more than 49 million Americans with disabilities and 33 million older adults would seem to lead manufacturers and service providers to do so voluntarily, but they have not. This harm be all but inconsequential. Moreover, the possible decision to exclude some of these services from the application of § 255 would be a serious step backwards for people with disabilities and older adults.

Some will argue, however, that the exclusion of at least "information services" for "telecommunications services" is necessitated by the law. The argument may be that §§ 3(20) and -(46) of the Communications Act define information services and telecommunications services as respectively different things. True, but those sections were enacted sometime before the 1996 amendments to the Communications Act to serve purposes other than the interpretation of § 255. Moreover, Congress specifically recognized that words can have different meanings in varying contexts within the same law.

The language that introduces all definitions of the Communications Act says, "For the purposes of this Act, *unless the context otherwise requires*," [emphasis supplied] and

then goes on to define terms, including "information services" and "telecommunications services." Thus, Congress has expressly allowed the Commission in the exercise of its authority to interpret the Act to recognize that the same words may have different meanings in different contexts. The Campaign suggests that the Commission can continue to use those terms exactly as it has in other contexts (though the Campaign would recommend forbearance in some or all under § 706 in other proceedings) but can and should treat all of those services as telecommunications services for purposes of § 255.

VIII. The Readily Achievable Standard Should Not Be Used as an Escape Hatch from Doing What Is Right

Much writing in the NPRM and elsewhere focuses on allowing the regulated to establish what *is not* readily achievable. Section 255 is a good law because it tells the manufacturer and service provider to focus on what *is* readily achievable. The Campaign suggests that, when one is talking about universally designing a product or service, it ought to be the exception rather than the rule that accessibility cannot be achieved. One who has a product and service that generates tens of millions of dollars in revenue ought to be able to afford devotion of substantial resources to make the product accessible.

To draw on the classic example from today's high tech world, the Campaign wonders whether Microsoft was unable or uninterested in making Windows 95 fully accessible. That it was unable to do so strains credulity in the face of successes that institutions like the Trace Research and Development Center out of the University of Wisconsin have had over the years in creating access for those with disabilties. When we are talking about large market products or services, the Campaign suggests that

documentation should be very clear to explain why a manufacturer or service provider would be suggesting a given universal design challenge is not readily achievable.

In that regard, there are certain conundrums pointed to by the Commission that seem to make an item inaccessible. How, for example is a cellular telephone manufacturer to make a small telephone with large buttons? Serious as that concern appears in some circles, it would seem obvious to the Campaign that one could make a line of telephones --one small with small buttons and one large with large buttons. Or one could make a telephone equipped with a connective capacity that allows connection with an external large button dialing pad.

It seems that the Commission should allow room in its rules for a certain amount of common sense to control. While one would like every item in a line of products to be accessible, one should be willing to accept some as not accessible if others truly are. Some product or service iterations are minor, and some are important. When a manufacturer or service provider should do a bottom up universal design review or when the product or service can just be left on the shelf are judgment calls that simply have to be answered with a fair dash of common sense. Neither should a regulated party be able to delay the issue forever, nor should the disabled and older adult communities cause private companies to incur vast uneconomic expenditures. Good faith exercise of experience is essential.

In that regard the Commission should be open to novel solutions. Sometimes, accessibility should be accomplished through a combination of approaches. If the large button adapter is made by one manufacturer, presumably another manufacturer should be

able to rely on it and merely make its small button mobile phone adaptable to receive the large button adapter. Industry, the older adult and disability rights community, academia, and the Commission should be seeking cooperative ways to overcome major hurdles should they emerge. This can be a war or it can be a cooperative effort to make all products and services usable by all people. It should be the latter.

The Campaign does suggest we should diligently watch three issues. First, replacing accessible products or services with inaccessible ones should only be done in rare circumstances and for clearly legitimate reasons.

Second, the costs of universal design should be incorporated in the overall cost of doing business, not just allocated to individuals with disabilities. Customers living some distance from a central office pay the same charge for having a line reach their home as do people who live closer so that they will be able to use telephone service on more or less the same basis. So too should individuals with disabilities pay for service on more or less the same basis even though there may be some additional cost associated with accessibility.

Third, we should diligently watch for manufacturers and service providers who ignore their responsibility to provide accessible products and services. In cases where a manufacturer or service provider simply ignores the question of universal design at initial stages of product or service design, the Commission should have the extraordinary power to force retrofitting a product or service to make it accessible. If such work could have been readily done in the first place and the manufacturer or service provider simply ignored the issue, it should not be able to reap the benefit of its indifference or sloth.

IX. The Complaint Process Should Facilitate Consumer Access to the Commission

The Campaign agrees that the Commission's complaint process should be as nonconfrontational and inexpensive for all concerned as possible. Still, certain steps should be taken to ensure that citizen complainants are fairly treated. Traditionally, consumers have commonly felt state commissions simply functioned to deflect citizen complaints against public utilities. The Commission should seek to avoid that reaction by giving consumers a full, fair, and understandable response to a complaint, regardless of its viability on the merits.

In addition, fees for filing consumer complaints should be eliminated and waived as a matter of policy.

Standing should be based on situation of complainant. It is fair to require a complainant to have experienced some real barrier to access created by his disability, but then he should be able to raise claims about all barriers to access related to the product or service regardless of whether he personally is affected by that barrier. On the other hand, competitors should not be able to complain if they are not injured in fact merely to skirmish with one another.

Section 208 gives all people with disabilities right to complain to the Commission. The Commission does not have the legal authority to vet complaints before deciding whether to consider their merits. The Commission should give all complaints a fair examination and a clearly understandable substantive response. To the extent the product

or service continues on the market, there is no statute of limitations for raising an issue with respect to its design.

X. Conclusion

Making all products and services accessible for all people is a laudable and moral goal. Happily, the Congress has led the Commission to undertaking that goal. Happily, the Commission is responding well. We are just starting the process. It will last indefinitely. The Campaign is glad for the good work the Commission, the Access Board, and the TAAC have already undertaken. We look forward to a steady, continued process aimed toward full accessibility.

Respectfully submitted,

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Certificate of Service

I hereby certify that a copy of these Comments was served upon the individuals listed on the attached Service List by mailing the same to them, postage prepaid, this June 30, 1998.