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August 14, 1998

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

Magalie R. Salas
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: In the Matter of 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 Ms. Salas:

Enclosed for filing are an original and seven copies of SBC Communications Inc.'s Reply Comments in the above-captioned proceeding.

Please date-stamp and return the extra copy to the individual delivering this package.

Sincerely,

Courtney S. Elwood /hrs

Courtney S. Elwood

Enclosures

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List A B C D E

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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	)	
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	)	

REPLY COMMENTS OF SBC COMMUNICATIONS INC.

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BEFORE THE
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REPLY COMMENTS OF SBC COMMUNICATIONS INC.

SBC Communications Inc. ("SBC") adheres to the positions detailed in its opening comments of June 30, 1998. It has only four specific, but important, points to make in response to comments of other parties to this proceeding.

I. SECTION 255 DOES NOT APPLY TO NON-TELECOMMUNICATIONS SERVICES SUCH AS INFORMATION SERVICES; HOWEVER, SBC RECOGNIZES THAT CONSUMERS NEED ACCESS TO THESE RESOURCES

Some commenters urge the Commission to disregard the plain language of Section 255 to find that the statute's requirements apply to enhanced or information services. See, e.g., Comments of the National Association of the Deaf at 9-l 7 ("NAD Comments"); Comments of

Self Help for Hard of Hearing People, Inc. at 5-7 ("SHHH Comments"); Comments of Universal Service Alliance at 7-8 ("USA Comments").'

While SBC understands the concerns voiced by these organizations, it is a bedrock principle of statutory interpretation that where -- as here -- "the statutory language is clear," the "'"sole function"'" of a court or agency "'"is to enforce it according to its terms."'" Rake v. Wade, 508 U.S. 464,471 (1993) (quoting United States v. Ron Pan Enterprises, Inc., 489 U.S. 235,241 (1989) (quoting Caminetti v. United States, 242 U.S. 470,485 (1917))). In this case, the language could not be more clear. By its express terms, Section 255 applies only to "telecommunications equipment," "customer premises equipment," and "telecommunications service," 47 U.S.C. § 255(b), (c) -- each of which are defined terms under the statute, see 47 U.S.C. § 153(14), (45), (46). Section 255 does not mention "information service," which by statutory definition expressly excludes "telecommunications service." 47 U.S.C. § 153(20).

Furthermore, the FCC has already twice held that the term "telecommunications services" as used in the Communications Act of 1934, as amended, does not include "information services." Report to Congress, Federal-State Joint Board on Universal Service, CC Dkt. No. 96-45, FCC 98-67, ¶ 33 (Apr. 10, 1998) ("Commission precedent . . . indicat[es] that telecommunications services and information services are 'separate, non-overlapping categories."'); See also Comments of SBC Communications Inc. at 3-4. e r t h e

'These commenters advocate reading the term "telecommunications service" "liberally" to include information services in order to accomplish the "overarching intent of Congress . . . to bring Americans with disabilities into the mainstream of the technological age." NAD Comments at 11, 9; USA Comments at 7 ("Section 255 . . . should be broadly construed to effectuate its purpose").

"basic canon of statutory construction" "that identical terms within an Act bear the same meaning," Estate of Cowart v. Nicklos Drilling Co., 505 U.S. 469,479 (1992), the Commission must interpret "telecommunications services" when used in Section 255 to exclude information services.[2]

The Commission cannot simply brush aside the plain language of the statute and past FCC precedent in an attempt to achieve what some believe to have been Congress's "overarching intent" or "broad objectives." NAD Comments at 9; SHHH Comments at 7; USA Comments at 7. The Supreme Court has expressly criticized that sort of approach to statutory interpretation. In Board of Governors of the Federal Reserve System v. Dimension Financial Corp., 474 U.S. 361 (1986), the Court wrote:

> Application of "broad purposes" of legislation at the expense of specific provisions ignores the complexity of the problems Congress is called upon to address and the dynamics of legislative action. Congress may be unanimous in its intent to stamp out some vague social or economic evil; however, because its Members may differ sharply on the means for effectuating that intent, the final language of the legislation may reflect hard-fought compromises. Invocation of the "plain purpose" of legislation at the expense of the terms of the statute itself takes no account of the processes of compromise and, in the end, prevents the effectuation of congressional intent.

Id. at 373-74. Accordingly, the FCC must adhere to the plain statutory language and find that Section 255 does not apply to non-telecommunication services.

Moreover, applying Section 255 to only telecommunications services will prevent the FCC from creating an arbitrary disparity between information service providers who happen to

---

[2]The commenters proposing that Section 255 be expanded to cover information services acknowledge that such an interpretation would be a break with the Commission's past and consistent rulings. See NAD Comments at 1 1 - 14; USA Comments at 7; SHHH Comments at 6.

also be telecommunications providers, and those information service providers who are not. As GTE explained in its comments:

> [T]he 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.

Comments of GTE at 5.

While Section 255 does not apply to non-telecommunications services, that does not mean that SBC will not voluntarily implement accessibility features in its information services. As explained in its opening comments, SBC's Universal Design Policy pledges that each of its subsidiaries will endeavor to create new products and services — including information services — that address the needs of consumers with disabilities. See SBC Comments at 2-3. SBC urges other companies to do the same and commends those that have already voluntarily gone beyond the minimum obligations imposed by the statute. See, e.g., Comments of Ameritech at 2-5; Comments of Motorola, Inc. at l-5; Comments of Bell Atlantic at l-2; Comments by Lucent Technologies at 3.

II. IF SECTION 255'S REQUIREMENTS ARE APPLIED TO A LINE OF PRODUCTS HAVING COMPARABLE FUNCTIONS, FEATURES, AND PRICE, MANUFACTURERS CAN DESIGN PRODUCTS THAT ARE ACCESSIBLE TO MORE CONSUMERS WITH DISABILITIES

SBC believes that the best way to ensure that telecommunications products are accessible to individuals with a wide variety of disabilities is for the FCC to apply Section 255's

requirements to a line of products with comparable features, functions, and price. SBC, accordingly, supports the Telecommunications Industry Association ("TIA") and others in arguing that the proper inquiry under Section 255 is whether a manufacturer has incorporated all readily achievable accessibility features across a product line, not whether a manufacturer has done so with respect to each individual product. See Comments of the Telecommunications Industry Association at 9-13.[3]

The FCC appears to recognize the benefits of a product-line approach in its Notice of Proposed Rulemaking ("NPRM"). In paragraph 170, the Commission explained that, in implementing Section 255, "it is reasonable for an informed product-development decision to take into account the accessibility features of other functionally similar products the provider offers, provided it can be demonstrated that such a 'product line' analysis increases the overall accessibility of the provider's offerings." NPRM ¶ 170.

A product-line approach is preferable, SBC submits, because it allows a manufacturer to develop products that are accessible to the widest possible audience of consumers. As so many commenters have stated, it is an indisputable fact that "no one product can be accessible to everyone." TIA Comments at 11. Consequently, a product designer will often have to choose between making a product accessible to individuals with one type of disability (for example, fine motor impairment) at the expense of making it accessible to individuals with another disability

[3] SBC supports TIA's position even though SBC is a service provider, and there are material differences between the regulation of services and products.

(gross motor impairment).[4] If Section 255 were applied on a product-by-product basis, the designer will confront this dilemma for each distinct product. The likely outcome would be that same set of disabilities would be repeatedly accommodated, and individuals with other (perhaps less common) disabilities would go without accessibility features at all. If, however, the accessibility requirements were imposed across an entire product line, a company would be allowed to make different products within that line accessible to individuals with different disabilities. SBC recommends, therefore, that the FCC require that the eighteen-point checklist, which was proposed by the Access Board and tentatively adopted by the Commission, be applied only across a product line, and not to each individual product.

By "product line," SBC, like TIA, contemplates a group of products "with similar features, functions, and price." TIA Comments at 9. For example, a manufacturer would

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[4]The Telecommunications Access Advisory Committee made this precise point in its Final Report, § 5.2.1, in stating that "because no single interface will accommodate all disabilities, companies must use discretion in choosing among disability features." Other commenters agree. See, e.g., TIA Comments at 27 ("[N]o single product can be accessible to everyone because different functional limitations generate conflicting accessibility needs. For example, multiple selectable access features would likely run afoul of the requirement that the product be accessible to persons with cognitive disabilities."); Motorola Comments at 10- 11 ("If the FCC were to adopt an approach to Section 255 that required each manufacturer to provide a range of functionally similar, comparably priced products that are accessible, the FCC would create incentives for product differentiation, which is critical to increased accessibility for persons with disabilities. The individual product-by-product paradigm . . . fails to recognize that certain kinds of products and technologies are inherently better-suited to meeting the needs of people with certain functional limitations than other products and technologies. For this reason, it will often be a waste of resources to require a manufacturer to incorporate features that accommodate different functional limitations into a single product or to document why the manufacturer has determined that it is not 'readily achievable' to do so."); BellSouth Comments at 12 ("Not all products in the marketplace can be equipped with all features. BellSouth thus urges the Commission to conclude that a 'product line' approach in many cases will increase overall accessibility of a company's offerings.").

produce a line of mobile telephones and a line of landline telephones; the product line would not be "telephones" in general.

SBC further believes that individuals with disabilities should have some choice among accessible products; therefore, if it is readily achievable, SBC encourages companies to maximize the number of accessibility features that can be accommodated on a single product.

Finally, SBC thinks it is in everyone's interest for companies to market their products with accessibility features to the general population. Greater amplification options (which provide improved access for someone who is hard of hearing), for example, may be extremely beneficial for anyone in a noisy environment. Increased access for people with disabilities often benefits people without disabilities.

III. FIVE DAYS TO RESPOND TO A FAST-TRACK COMPLAINT IS NOT REALISTIC

Among the commenters, there was almost universal agreement against the FCC's proposal to allow a manufacturer or service provider only five business days to respond to a fast-track complaint. See, e.g., NAD Comments at 35; Comments of the National Council on Disability at 29; TIA Comments at 72-76; Comments of Ameritech at 8-9. As SBC explained in its opening comments (at 17- 1 8), the FCC should allow a manufacturer or provider at least 15, if not 30, days to respond to the complaint with a final action report or with a request for an extension upon a proper showing that "substantial efforts" to resolve the dispute are underway.

IV. THE FCC SHOULD ENSURE PARITY WITH RESPECT TO A FILING FEE

Some commenters argue that "[t]here should be no filing fees for informal and formal complaints" and the "fees that currently exist for filing [formal] complaints against common

carriers should be waived for [formal] complaints brought under Section 255." Comments of the American Council for the Blind ¶ 15; Comments of Thomas D. Benziger, Access Living of Metropolitan Chicago at 4; Comments of the Long Island Center for Independent Living at 4.

The fee for filing a formal complaint against a common carrier is statutorily mandated, see 47 U.S.C. § 158(g), and simply cannot be waived by the FCC on a blanket basis for all Section 255 complaints, see 47 U.S.C. § 158(d)(2) (allowing waivers in "specific instance[s] for good cause shown"); NPRM, Implementation of Section 9 of the Communications Act, 9 FCC Rcd 6957, 6970, ¶ 24 (1994) (the FCC will grant waivers under Section 158(d)(2) "on a case-by-case basis"). The Commission, accordingly, has no choice but to impose a filing fee -- as a rule that can be waived on a case-by-case basis -- for all Section 255 complaints against common carriers.

However, as SBC explained in its opening comments, if the FCC required filing fees for complaints against only common carriers, it would create an arbitrary disparity between common carriers and all others who are subject to Section 255. See SBC Comments at 24. It would also make the formal complaint process susceptible to inappropriate gamesmanship to permit such a disparity. Id. Therefore, SBC recommends that the FCC apply the filing fee for formal Section 255 complaints across the board. At the same time, SBC urges the Commission to use its statutory authority to waive that fee on a case-by-case basis, "where such action would promote the public interest." 47 U.S.C. § 158(d)(2). In addition, the Commission should work with disability organizations to ensure that information about the waiver process is provided to those who may need it. Finally, and in any event, SBC supports the FCC's decision not to impose

filing fees on informal complaints -- a decision that ensures that no individual will be denied the ability to petition the FCC for financial reasons.

SBC urges the Commission to adopt the proposals outlined in SBC opening comments and these reply comments in implementing Section 255. By doing so, the FCC will adhere to the letter and spirit of the statute.

Respectfully submitted,

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August 14, 1998

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I, Holly R. Schroeder, hereby certify that on this 14th day of August, 1998, copies of the Reply Comments of SBC Communications Inc. were served by first-class United States mail, postage prepaid, upon the parties listed on the attached service list.

Holly R. Schroeder

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