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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 Premises Equipment by Persons with Disabilities	)	

REPLY COMMENTS OF THE

UNITED STATES TELEPHONE ASSOCIATION

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SUMMARY

Successful resolution of this important proceeding is essential to realizing the vision in section 255 of the Communications Act to make telecommunications accessible for people with disabilities. USTA supports section 255's goal of increasing access to telecommunications equipment and services and customer premises equipment ("CPE") for those with disabilities.

As the record in this proceeding demonstrates, section 255 clearly states the means by which such improved accessibility is to be achieved. In particular, the only services to which section 255 applies are telecommunications services. If Congress had intended services other than telecommunications services to be within the scope of section 255, it would have expressly included them in that section. This legal issue regarding the scope of section 255 is separate from the issue of whether some information services may be useful in improving accessibility for people with disabilities. USTA members will continue to make efforts, including some not mandated by section 255, to offer services that are useful to people with disabilities.

The Commission should affirm that the access sections of the Communications Act only apply prospectively, USTA agrees with other commenters that sections 255 and 251(a)(2) should not apply to products already in the marketplace unless a manufacturer or provider substantially changes or upgrades its product. Mandatory retrofitting of existing telecommunications services, equipment, or CPE based on section 255 would be unsound as a matter of both policy and law.

USTA agrees with many commenters that the use of a product family approach to accessibility is the only practical means of ensuring compliance with section 255. While no

one product can be accessible to all users, service providers and manufacturers should be responsible for ensuring that at least one of the products in each of their product families should incorporate accessibility features for users with a specific disability, if readily achievable. For service providers and manufacturers, the flexibility inherent in a product family approach will spur efforts to increase accessibility for a wide range of disabilities while offering a full range of product features, functions, and prices.

USTA agrees with other commenters that the Commission is correct to fashion its own set of analytical criteria for applying the "readily achievable" standard of section 255. Feasibility, expense, and practicality are realistic criteria for assessing compliance with the "readily achievable" standard. The Commission should avoid limiting its analysis under the "readily achievable" standard to the factors used in the Americans With Disabilities Act, which do not adequately address the unique nature of the telecommunications industry.

The record demonstrates that there are a variety of reasons why an accessibility feature may not be feasible, including the inability of available technology to provide accessibility features, the negative effects that accessibility solutions for one disability may have on solutions for another disability, and legal impediments to implementation.

USTA agrees that by designing products to be as broadly accessible as possible to users, including people with disabilities, manufacturers and service providers can reduce expense while providing for accessibility. The Commission should consider the costs, and prospects for cost recovery, of accessibility features when evaluating whether such a feature is readily achievable under section 255. These factors are highly relevant to such an analysis. Incumbent LECs should be permitted to recover the costs of the accessibility features that they implement pursuant to section 255.

The Commission should not adopt the presumptions presented in the Notice regarding the business entities whose resources are deemed available to achieve accessibility consistent with section 255. Commission and state regulations already strictly control the transfer of assets and other transactions among LEC affiliates or between a LEC parent and its subsidiaries.

As the comments demonstrate, the Commission should avoid implementing any process that discourages customers from first bringing their concerns to their service provider or manufacturer before even involving the Commission. Only customers or their representatives should have standing to file section 255 complaints. USTA agrees that the Commission should adopt a reasonable time limit within which complaints must be brought.

The proposed fast-track procedures for section 255 complaints would hinder the constructive resolution of disability access issues. Other procedural proposals should recognize the complexity of section 255 issues. At the same time, the Commission should exercise care in using and releasing data collected in section 255 proceedings.

Regulatory parity between service providers and manufacturers is essential. Although the Commission should reaffirm that all telecommunications equipment and CPE marketed in the United States is subject to the obligations of section 255, the Commission should clarify that an entity is not a manufacturer or final assembler of such equipment or CPE for purposes of section 255 merely because its brand name appears on a product.

USTA looks forward to enhancing cooperative relationships among users with disabilities, service providers, and manufacturers. USTA's proposals in this proceeding will fulfill the mandate of section 255 and promote the deployment of accessibility solutions for people with disabilities.

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REPLY COMMENTS OF THE
UNITED STATES TELEPHONE ASSOCIATION

I. INTRODUCTION

The United States Telephone Association ("USTA") and its members welcome the exchange of views in the initial comments in this important docket[1] from people with disabilities, their representative organizations, service providers, manufacturers, and government agencies.[2] USTA believes that successful resolution of this docket will be essential to making a reality of the vision in section 255 of the Communications Act (the "Act") of accessible telecommunications for those with disabilities.

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[1] See Notice of Proposed Rulemaking, FCC 98-55 (rel. Apr. 20, 1998) (the "Notice"). USTA filed initial comments in this proceeding on June 30, 1998.

[2] Unless otherwise noted, all references in these reply comments to comments of parties refer to comments filed in WT Docket No. 96-198 on or about June 30, 1998.

USTA supports section 255's goal of increasing access to telecommunications equipment, telecommunications services, and customer premises equipment ("CPE") by those with disabilities. Section 255 clearly and plainly states the means by which such improved accessibility is to be achieved. The Commission should carefully apply this statutory language, which reflects Congressional intent in this vital area. Efforts to alter the scope of section 255 by either expanding or limiting its purported reach beyond the statute's terms do not fulfill that intent.

At the same time, the Commission is fully justified in considering the specific circumstances of the telecommunications industry when applying section 255. These circumstances are particularly important to USTA's members, which are local exchange carriers ("LECs") subject to pervasive state and federal regulation. The Commission must consider the effects of this regulation when implementing section 255.

The initial comments fully demonstrate the need for the Commission to encourage joint problem-solving by industry members and consumers with disabilities, without raising unrealistic expectations. In this regard, the commenters' near-universal opposition to the proposed fast-track process should caution the Commission not to exalt process over practicality in implementing section 255. Reasonable procedures, such as a standing requirement and a time limit for bringing complaints, are means of preserving the Commission's resources to address users' concerns.

USTA urges the Commission to resolve the issues raised in this proceeding expeditiously. Doing so will benefit people with disabilities, who will be able to communicate more readily and on an equal and cost-effective basis. It will also benefit Americans without disabilities, businesses, and others who gain from greater inclusion of a

significant segment of our population. USTA looks forward to remaining active on these issues as implementation of section 255 proceeds.

II. THE ONLY SERVICES TO WHICH SECTION 255 APPLIES ARE TELECOMMUNICATIONS SERVICES

Numerous commenters agree that the provision of information services such as e-mail and voice mail is not subject to section 255.[3] As the record shows, in the Commission's recent report to Congress on universal service, it properly stated that telecommunications services and information services are mutually exclusive, and that information service providers do not provide telecommunications and thus are not subject to regulation under Title II of the Communications Act.2' Section 255, of course, is a part of Title II. Applying Title II provisions such as section 255 to information services and information service providers would curtail the regulatory freedom of these providers, contrary to the Commission's Computer *II* proceeding and the goals of the 1996 Act.[5]

If Congress intended services other than telecommunications services to be within the scope of section 255,[6] it would have expressly included them in that section. Information

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[3] See, e.g., comments of AT&T at 4-6; Telecommunications Industry Association ("TIA") at 53-56; Business Software Alliance ("BSA") at 6-8; Cellular Telecommunications Industry Association ("CTIA") at 11-12; Computer and Communications Industry Association ("CCIA") at 2; Information Technology Industry Council ("ITIC") at 9-10; Bell Atlantic at 4; BellSouth at 4.

[4] See comments of ITIC at 9, *citing Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, Report To Congress, FCC 98-67 (rel. Apr. 10, 1998) ¶¶ 39, 47.

[5] *See id.* ¶¶ *46, 47.*

[6] See comments of National Association Of The Deaf ("NAD") at 15-17; *cf.*, comments of American Foundation For The Blind ("AFB") at 6.

service, like telecommunications service, is a defined term in the Communications Act.[7] The term information service was excluded from the language of section 255, indicating that section 255 does not apply to such service." The only services to which section 255 applies are telecommunications services. Section 255 does not authorize the Commission to include services that do not satisfy that definition. Even when the Commission has subjected so-called "adjunct-to-basic" services to the same treatment as telecommunications services under other sections of the Act,[9] it has not included information services such as Internet access, e-mail, and voicemail. [10]

USTA reiterates that this legal issue regarding the scope of section 255 is separate from the issue of whether some information services may be useful in improving accessibility for disabled customers. USTA members will continue to make efforts, including some not mandated by section 255, to offer services that are useful to people with disabilities.

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[7] See 47 U.S.C. § 3(20) (defining "information service"); *id.* § 3(46) (defining "telecommunications service).

[8] In contrast, see, e.g., sections 272 and 274 of the Act, 47 U.S.C. §§ 272(a)(2)(C), (f)(2), § 274(h)(2)(C), which specifically refer to information services.

[9] *See Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of I934, as amended,* 11 FCC Rcd 21905, 21958 n. 245 (1996) (stating that examples of adjunct-to-basic services include speed dialing, call forwarding, computer-provided directory assistance, call monitoring, caller ID, call tracing, call blocking, call return, repeat dialing, and certain Centrex features).

[10] *See Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Information and Other Customer Information; Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of* 1934, CC Docket Nos. 96-l 15, 96-149, Second Report and Order and Further Notice of Proposed Rulemaking, FCC 98-27 (rel. Feb. 26, 1998) ¶ 73 (excluding call answering, voice mail or messaging, voice storage and retrieval services, fax store and forward, and Internet access services from treatment as "adjunct-to-basic" services for purposes of rules regarding customer proprietary network information).

III. THE ACCESS SECTIONS OF THE COMMUNICATIONS ACT ONLY SHOULD APPLY PROSPECTIVELY

USTA agrees that sections 255 and 251(a)(2) should not apply to products already in the marketplace unless a manufacturer or provider substantially changes or upgrades its product.[11] Mandatory retrofitting of existing telecommunications services, equipment, or CPE based on section 255 would be unsound as a matter of both policy and law.

Mandatory retrofitting of older technologies can be extremely expensive[12] without being effective in providing an accessibility solution that is useful in the long term. By the time that such retrofitting takes place, technical innovations will likely have made the older technology obsolete.[13] Moreover, the prospect of mandatory retrofitting can hinder future innovation, by diverting resources that could be deployed on developing new accessibility technologies. A retrofitting requirement could have the unfavorable result of effectively locking manufacturers, service providers, and consumers into older forms of technology.

As a legal matter, commenters correctly note that retroactivity is "generally disfavored in the law" because it can "deprive citizens of legitimate expectations and upset settled

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[11] See comments of GTE at 10; SBC Communications, Inc. ("SBC") at *27, citing Access to Telecommunications Equipment and Customer Premises Equipment by Individuals with Disabilities,* Final Report, Telecommunications Access Advisory Committee (Jan. 1997) § 4.2; CTIA at 10-l 1; see also comments of Personal Communications Industry Association ("PCIA") at 18.

[12] For example, in attempting to implement the Hearing Aid Compatibility Act of 1988, the Commission suspended and replaced substantial portions of its implementing regulations in large part because of public concerns over the costs of retrofitting or replacing telephones to comply with those regulations. *See Access to Telecommunications Equipment and Services by the Hearing Impaired and Other Disabled Persons, CC* Docket No. 87- 124. Order, 8 FCC Rcd 4958 (1993) (suspending enforcement of certain rules because of retrofitting issues); Report and Order, 11 FCC Rcd *8249* (1996), *recon. pending.*

[13] See comments of SBC at 27.

transactions. "[14] Mandatory retrofitting is an example of such improper retroactivity, since it would single out certain firms to bear a substantial burden, based on conduct far in the past and unrelated to any commitment they made or to any injury they caused.[15] Such a requirement would be especially unwarranted because there is no indication that Congress even contemplated retroactivity in adopting section 255.

IV. THE COMMISSION SHOULD ADOPT A PRODUCT FAMILY APPROACH FOR COMPLIANCE WITH SECTION 255

USTA agrees with many commenters that the use of a product family approach to accessibility is the only practical means of ensuring compliance with section 255.[16] USTA agrees that while no one product can be accessible to all users, service providers and manufacturers should be responsible for ensuring that at least one of the products in each of their product families should incorporate accessibility features for users with a specific disability, if readily achievable. A product family approach to accessibility permits service providers and manufacturers to provide a full range of product features, functions, and prices, which will increase accessibility opportunities. As the Campaign for Telecommunications Access states:

> 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

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[14] See comments of PCIA at 18, *citing Eastern Enterprises v. Apfel,* __ U.S. __, 66 U.S.L.W. 4566, 1998 U.S. LEXIS 4213 (1998) *("Apfel"),* 1998 LEXIS 4213 at 61-62.

[15] *See id.* at 69.

[16] See, e.g., comments of TIA at 9-19; Motorola at 9-10, 17-18.

> 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.[17]

A product family approach also provides the flexibility to permit service providers and manufacturers to include more accessibility features in a given product for a particular type of disability. For users with disabilities, this result may be far superior to receiving a minimal level of access provided in all products.[18]

For service providers and manufacturers, the flexibility inherent in a product family approach will spur efforts to increase accessibility for a wide range of disabilities.[19] While it may be too costly to achieve accessibility for all products in a particular family, under a product family approach, it may be less costly to provide accessibility in one or more of such products. Conversely, there may be more incentives under a product family approach for manufacturers and service providers to focus their efforts on achieving accessibility in one or more products in a family, rather than seeking to limit their liability under section 255. A product family approach to section 255 compliance provides strong incentives to achieve accessibility within every product family.

A product family approach to compliance also would decrease the need to rely on the "compatibility" provision of section 255(c). That subsection obligates telecommunications service providers to ensure that if accessibility to their services is not readily achievable,

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[17] Comments of Campaign for Telecommunications Access at 14.

[18] See comments of TIA at 12-13.

[19] See comments of Motorola at 11-12.

those services must be at least "compatible with existing peripheral devices and specialized CPE commonly used by persons with disabilities to achieve access, if readily achievable. "[20]

As demonstrated above, a product family approach to accessibility provides the flexibility and incentives for service providers and manufacturers to ensure that one or more products in a product line would in fact be accessible. This would reduce the need for invoking the compatibility provision as a second-best alternative to designing products to be accessible on a stand-alone basis. Moreover, a product family approach should apply to satisfying the compatibility requirement itself. USTA agrees with manufacturers that the strong reasons for a product family approach to the accessibility requirement apply as well to the compatibility requirement. [21]

In this regard, the Commission should apply the definition of compatibility to encourage advances in technology that will increase accessibility for people with disabilities. The Commission should not place current users of TTYs at any disadvantage in implementing section 255. However, USTA cautions the Commission to avoid perpetuating reliance on TTY s .[22] Because TTYs rely on technology from the 1960s, they have difficulties in interacting with digital technology.[23] The Commission should consider measures that will encourage the development and use of more modern technologies while easing any transition for TTY users.

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[20] See 47 U.S.C. § 255(d).

[21] See comments of Motorola at 49.

[22] See comments of Telecommunications for the Deaf, Inc. ("TFD") at 13 - 14.

[23] See comments of TIA at 39 n. 49; Motorola at 46-48.

V. THE DEFINITION OF READILY ACHIEVABLE" MUST BE REALISTIC

Feasibility, expense, and practicality are realistic criteria for the Commission to use in assessing compliance with the "readily achievable" standard of section 255. As proposed by the Commission, these criteria realistically apply the "readily achievable" standard to the characteristics of the telecommunications industry .[24] The Commission should avoid limiting its analysis under the "readily achievable" standard to the factors used in the ADA, which do not adequately acknowledge the unique nature of the telecommunications industry.[25] Use of the Commission's proposed criteria is especially important because the factors applied under the ADA have addressed physical access to premises. Physical access issues under the ADA are far different from those confronted by section 255 -- consumers' access to telecommunications equipment, services, and CPE. Thus, USTA agrees with commenters that conclude that the Commission is "indisputably correct" to fashion its own set of analytical criteria for applying the "readily achievable" standard.[26]

USTA disagrees with claims that the Commission's proposed criteria are not telecommunications-specific.2' These criteria, when properly applied, address the characteristics of the telecommunications industry, which is characterized by advanced technology, growing competition, and, for LECs, pervasive regulation. Indeed, as USTA

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[24] See Notice ¶¶ 98-99.

[25] See, e.g., comments of Advocacy Center at 2; AFB at 23; Don Arnold at 4; Bay State Council of the Blind at 2; Cape Organization for Rights of the Disabled ("CORD") at 2 (supporting such limitations).

[26] See comments of AT&T at 8.

[27] See, e.g., comments of NAD at 20-23; National Council on Disability ("NCD") at 21-22.

discussed in its initial comments, the criteria proposed by the Commission should even more specifically address the impacts on LECs of comprehensive state and federal regulation and the evolving market environment.

Feasibility. The record supports the Notice's analysis that a variety of reasons exist for why an accessibility feature may not be feasible, including the inability of available technology to provide accessibility features,[28] the negative effects that accessibility solutions for one disability may have on solutions for another disability, and legal impediments to implementing some features .[29] In particular, the legal impediments to some accessibility solutions are significant. Because of the complex legal and regulatory environment in which incumbent LECs operate, existing regulations, such as mandated modernization or infrastructure development plans, may well prevent some accessibility solutions from being easily accomplished at a given time.

Expense. The Commission should consider the costs, and prospects for cost recovery, of accessibility features when evaluating whether such a feature is readily achievable under section 255. Although several commenters oppose any consideration of such factors,[30]

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[28] The Commission has significant experience in assessing the technical feasibility of features. See *Telecommunications Relay Services, and the Americans with Disabilities Act of* 1990, CC Docket No. 90-571, 10 FCC Rcd 10927 (Corn. Car. Bur. 1995) ¶¶ 6-10, 14 (analyzing the feasibility of the coin sent-paid operation of payphones related to the Telecommunications Relay Service). See *also id.,* 12 FCC Rcd 12196 (Corn. Car. Bur. 1997); *id.,* Order, DA 98-1595 (Corn. Car. Bur. Aug. 10, 1998).

[29] See Notice ¶ 101; comments of CTIA at 5-7; Philips at 7.

[30] See, e.g., comments of NAD at 25-29; Architectural and Transportation Barriers Compliance Board ("Access Board") at 4-5; CORD at 2; Center for Disability Rights at 2-3; State of Connecticut Office of Protection and Advocacy for Persons with Disabilities at l-2; CPB-WGBH National Center for Accessible Media ("NCAM") at 6-7.

these factors are highly relevant to an analysis of the "readily achievable" standard in the telecommunications industry.

USTA agrees that by designing products to be as broadly accessible as possible to users, including people with disabilities, manufacturers and service providers can reduce expense while providing for accessibility.[31] Indeed, incumbent LECs should be permitted to recover the costs of the accessibility features that they implement pursuant to section 255. Cost recovery issues are especially important for USTA's members, many of which are small and rural LECs with very limited resources. USTA members operate under state and federal regulatory systems that often have required LECs to provide services which do not explicitly allow for recovery of their costs. Because of these existing government-imposed burdens, the Commission should consider such issues in determining whether a particular accessibility proposal is "readily achievable. "

When considering expense, USTA agrees that the Commission should include the cost of other resources and opportunity costs.[32] These are valid economic concepts that are routinely considered in regulatory decision-making.

Practicality. Existing state and federal regulation of incumbent LECs can limit the types of potential investments by LECs and the technologies available in their networks. For example, modernization or infrastructure development plans may affect network investment for years. Regulation thus may limit the practicality of incumbent LECs making some types of advanced services available to customers, including some customers with disabilities. The pervasive regulation imposed on incumbent LECs limits their available resources as well. As

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[31] See, e.g., comments of SBC at 12.

[32] See, e.g., comments of PCIA at 10; Lucent Technologies ("Lucent") at 5.

a practical matter, incumbent LECs' networks are technologically limited, in part because of regulation.

The Commission should not adopt the presumptions presented in the Notice regarding the business entities whose resources are deemed available to achieve accessibility consistent with section 255. Although some parties support these presumptions,[33] USTA is concerned that the presumptions would unduly and artificially place too much weight on the resource issue. This is only one of many issues that are relevant to whether a proposed feature is "easily accomplished."

Rather than focusing on the presumptions regarding the entity whose resources are to be considered available to achieve accessibility, the Commission should acknowledge that the resource issue is company-specific, and address it on a case-by-case basis. This is extremely important in the case of USTA's members, which vary dramatically in size, business organization, and financial condition. As the record demonstrates, the size of a corporation often is not a good indication of whether it can afford to develop and provide particular accessibility features.[34]

Moreover, there is no reason to hold an entity to be financially responsible for the activities of an affiliate under section 255.[35] Indeed, Commission and state regulations already strictly control the transfer of assets and other transactions among LEC affiliates or between a LEC parent and its subsidiaries. These regulations on transfers among affiliates

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[33] See, e.g., comments of NAD at 24-25.

[34] See comments of BSA at 10-11.

[35] This assumes that fraud is not an issue. See comments of Bell Atlantic at 7.

and cost allocation operate for purposes of section 255 and effectively limit the access of LEC subsidiaries to a parent firm's financial resources.

Timing is another important aspect of practicality.%' Accessibility features are much more easily included in a service at the beginning of its development cycle than at the end of the cycle. Consistent with the prospective nature of section 255 discussed above, the Commission should conclude that once a product is designed without accessibility features that were not readily achievable at the beginning of the development cycle, the product should not have to be modified to include features that subsequently become available.

Despite the comments of some parties, the Commission should consider the effects of accessibility features on the marketability and affordability of products and services.[37] The Commission should not presume that such features will make a product more desirable to mass markets.[38] As telecommunications competition develops in response to the 1996 Act, the Commission should not distort such competition by imposing its judgment on the marketability of particular features rather than the judgment of service providers, like LECs, that will bear the market risks of offering such products.

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[36] See comments of GTE at 10; SBC at 12-13.

[37] One means of enhancing competition in telecommunications is through the use of promotional offers or individualized tariff offerings. USTA urges the Commission to avoid adopting *a priori* regulation of promotional offers based on section 255, as urged by TFD. See comments of TFD at 7-8. Such regulation could distort the marketplace for innovative goods and services.

[38] See Notice ¶ 113.

VI. IMPLEMENTATION REGULATIONS SHOULD NOT MIRE PARTIES IN AN ADVERSARIAL PROCESS

A. Commission Regulations Should Promote Problem Solving

As the comments demonstrate, the Commission should not implement any process that discourages customers from first bringing their concerns to their service provider or manufacturer before even involving the Commission.[39] It is critical that the Commission initially refer all consumer complaints to the manufacturer or service provider. Doing so will ensure that the resolution of accessibility issues takes place in the least burdensome way possible for consumers, service providers, and manufacturers alike. In initial customer contacts concerning section 255 issues, the Commission should refer customers to seek resolution of these issues through their service provider's or manufacturers's complaint resolution process. Such referrals by Commission staff to manufacturers or service providers should be without prejudice to the person seeking assistance.[40]

USTA agrees that the Commission should be accessible to disabled consumers through various modes of communication such as TTY, letter, electronic mail, Internet, audio cassette, or voice call. However, if the Commission's complaint process is invoked, respondents should receive from the Commission a hard copy of the complaint as it will appear in the Commission's records, as well as in its original format. Calls to the Commission should be handled by trained Commission staff capable of obtaining necessary information from the caller. In developing this specialized staff training, the Commission should seek input from people with disabilities, service providers, and manufacturers.

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[39] See comments of TIA at 65; PCIA at 11-13; SBC at 15; GTE at 12-13.

[40] USTA agrees with NCD on this issue. See comments of NCD at 28.

USTA also supports the use of Alternative Dispute Resolution ("ADR") as an optional means of addressing section 255 compliance issues.[41] USTA's members have had long experience with ADR, and believe that in some circumstances, ADR can be an effective way of resolving accessibility issues. The Commission staff should monitor and facilitate the ADR process.

As numerous commenters have stated, only customers of telecommunications service providers or their representatives should have standing to file section 255 complaints.[42] This standing requirement would eliminate the potential for abuses of the Commission's process, such as complaints from competitors of a service provider or manufacturer for nuisance or harassment purposes.[43] There is no place for such gaming of the regulatory process, especially in the context of accessibility for people with disabilities. The standing requirement proposed by USTA poses no obstacle to those that section 255 was designed to protect and assist.%'

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[41] See comments of Association of Access Engineering Specialists at 4 (expressing willingness to serve as a "neutral party" in an ADR process).

[42] See, e.g., comments of AirTouch at 7; Brightpoint, Inc. at 5-6; BSA at 12; CTIA at 15; CEMA at 15-16; Lucent at 11-12; Motorola at 50; PCIA at 15-16; Philips Consumer Communications LP at 12-13. Such representatives could include parents or family members of the customer, or organizations representing the needs of people with disabilities.

[43] See comments of Bell Atlantic at 9.

[44] USTA agrees that telecommunications service providers and manufacturers should not be subject to complaints in the first instance from employees of companies that are purchasers of telecommunications services. The employee should first be required to attempt to resolve any such issue of reasonable accommodation with his or her employer. See comments of Multimedia Telecommunications Association ("MTA") at 6.

USTA agrees that the Commission should adopt a reasonable time limit within which complaints must be brought.[45] Basic principles of administrative fairness and finality mandate such time limits. A reasonable time limit provides certainty to service providers, which is essential in a fast-moving and increasingly competitive industry such as telecommunications. A reasonable time limit does not harm consumers with disabilities. A time limit will provide additional incentives to resolve any accessibility issues. Some commenters advocate a time limit of 6-12 months, while others recommend a two-year time limit, based on section 415(b) of the Act.[46] USTA recommends that the time limit for bringing section 255 complaints should not exceed two years.

B. The Proposed Fast-Track Process Would Hinder The Constructive Resolution Of Disability Access Issues

There is wide agreement among commenters representing people with disabilities, service providers, and manufacturers, that a five-day response time in a fast-track process is unrealistic.[47] Commenters rightly recognize the need for a realistic approach to resolving complaints. As USTA has pointed out, fifteen days is a minimal reasonable time for a response, and the Commission should adopt an option to extend the response period to thirty

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[45] See, e.g., comments of AirTouch at 7; BellSouth at 11-12; BSA at 12-13; CTIA at 17.

[46] See comments of BSA at 12 (recommending a 6- 12 month time limit); PCIA at 16 (recommending a two year limit, and citing 47 U.S.C. § 415(b)). Section 415(b) limits the filing of all complaints against common carriers for the recovery of damages not based on overcharges to within two years from the time the cause of action accrues.

[47] See, e.g., comments of Trace Research & Development Center at 8; NCD at 28-29; Uniden America Corporation at 5-6; Self Help for Hard of Hearing People, Inc. at 29; TDI at 21; MTA at 24-26; Nextel Communications, Inc. at 9-10; NAD at 35-36; Lucent at 10-11; Leo A. LaPointe at 2; Joan P. Ireland at 2.

days, if necessary. Even with such a schedule, it is likely that additional time will be needed for complete resolution of an accessibility issue. The Commission should make these realities clear to consumers involved in a fast-track inquiry.

C. Other Procedural Proposals Should Recognize The Complexity Of Section 255 Issues

To minimize confusion and increase efficiency, Commission rules for formal and informal complaints regarding section 255 that involve LECs should deviate from those already in place for common carriers only when necessary to address the issues posed by section 255. Because of the complexity of section 255 issues, USTA supports the increases in time proposed in the Notice for respondents to answer informal complaints and for replies to answers. [48]

Consistent with section 8(g) of the Act,[49] the Commission should require a filing fee for formal complaints under section 255, as it does for other complaints against common carriers, with waiver of the filing fees possible for consumers pursuant to section 8(d)(2) of the Act.[50] The Commission should inform consumers of the availability of fee waivers and the procedures for obtaining them.

Because section 255(f) forbids any private right of action to enforce any requirement of section 255, private parties cannot seek damages, either in the federal courts or in the

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[48] See Notice ¶¶ 150-151.

[49] *47* U.S.C. § 158(g).

[50] See *id.* § 158(d)(2); comments of AirTouch at 7-8.

Commission's complaint process, to enforce that section.[51] The specific, recently enacted requirement of section 255(f) controls the more general language of sections 207 and 208. As several commenters have noted, section 255(f) applies both to judicial suits for damages and actions for private damages in the Commission's complaint process.[52]

D. The Commission Should Exercise Care In Using And Releasing Data Collected In Section 255 Proceedings

The Commission must respect the confidentiality of proprietary information revealed by service providers and manufacturers in section 255 proceedings, as well as the privacy of the people with disabilities who are involved in those proceedings. USTA believes that the Commission should recognize and publicize innovative and effective accessibility features, while being cautious about holding out individual companies as either good or bad examples on accessibility issues.[53] Because of the complex factual circumstances involved in section 255 issues, the Commission should not attempt to compare, or "benchmark," service providers or manufacturers regarding such issues.

Indeed, it is so difficult to impartially and accurately present data on complex issues such as those associated with section 255 that the Commission must test and validate any data on which it relies for those purposes. Any data collection should include the tracking of positive solutions, problem-solving processes, and examples of accessibility. Service providers and manufacturers should have the opportunity to review the types of data to be

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[51] See comments of Ameritech at 11-19.

[52] See *id.*

[53] See, e.g., comments of ITIC at 45-46.

published and the format to be used prior to its public release, with an opportunity to correct, clarify or supplement such data.

VII. REGULATORY PARITY BETWEEN SERVICE PROVIDERS AND MANUFACTURERS IS ESSENTIAL

Regulatory parity between incumbent LECs and manufacturers is especially important because LECs are usually a customer's first point of contact when an accessibility issue arises regarding telecommunications service .[54] However, incumbent LECs' ability to resolve accessibility issues independently may be extremely limited. Service providers, such as incumbent LECs, should be responsible under section 255 only for those aspects of accessibility over which they have direct control, as the Commission proposes. [55] Thus, the Commission should not impose new or continuing obligations on service providers when manufacturers' changes to equipment or CPE are necessary to resolve access issues. In particular, telecommunications service providers and manufacturers are discussed separately in section 255 and their roles -- the provision of accessible telecommunications services and the manufacture of accessible telecommunications equipment and CPE -- should not be confused. [56]

In particular, the Access Board's definition of a manufacturer as a "final assembler of subcomponents" improperly appears to include the "entity whose brand name appears on the

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[54] This is a result of the ongoing relationship that exists between LECs and their customers. The Commission should not take any action that would require LECs to be the initial point of contact for all section 255 complaints. *Cf.*, comments of TIA at 52.

[55] See Notice ¶ 79.

[56] See comments of AirTouch at 5.

product. "[57] Service providers frequently "brand" equipment and CPE with their names pursuant to licensing agreements without manufacturing or performing "final assembly" of the equipment or CPE at all.[58] To label such service providers as manufacturers would be both inaccurate and confusing to consumers. Although the Commission should reaffirm that all telecommunications equipment and CPE marketed in the United States is subject to the obligations of section 255,[59] the Commission should clarify that an entity is not a manufacturer or final assembler of such equipment or CPE for purposes of section 255 merely because its brand name appears on a product.@

The Commission should refrain from making a blanket finding that manufacturers should not be subject to section 251(a)(2).[61] Rather, the Commission should affirm its tentative conclusion in the Notice that section 251(a)(2) does not make LECs guarantors of other service providers' decisions on how they assemble their service from network capabilities that LECs provide to them, and it does not impose requirements on LECs regarding the accessibility characteristics of underlying components.

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[57] See Notice ¶ 59.

[58] See comments of BellSouth at 5.

[59] See comments of Lucent at 5; TIA at 52.

[60] See comments of Bell Atlantic at 5; *contra* comments of TIA at 52.

[61] See, e.g., comments of Lucent at 4.