

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

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AUG 14 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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)	

AT&T REPLY COMMENTS

Pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, AT&T Corp. ("AT&T") submits this reply to the comments of other parties on the Commission's NPRM in this proceeding to implement Section 255 of the Communications Act of 1934, as amended (47 U.S.C. § 255).¹

The initial round of comments in this rulemaking proceeding has elicited submissions from a wide range of entities, including equipment manufacturers, service providers, state agencies, trade associations, and individuals and groups representing

¹ 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, Notice of Proposed Rulemaking, FCC 98-55, released April 20, 1998 ("NPRM"). Attachment A lists other parties that filed comments, and the short forms by which they will be cited by AT&T.

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List A B C D E

persons with disabilities. Together with the submissions in the Notice of Inquiry ("NOI") leading up to this proceeding, soliciting information on equipment and service accessibility issues,² these submissions provide the Commission with a substantial record for decisionmaking to adopt rules implementing the statutory requirements of Section 255. In these reply comments, AT&T addresses two specific aspects of the initial round of comments: (a) the scope and interpretation of certain Section 255 terms and requirements, and (b) implementation of the Commission's proposed "two-phase program" for resolving complaints brought under Section 255.

A. Statutory Scope and Requirements

AT&T showed in its Comments (pp. 6-10) that because Section 255 is derived from the Americans with Disabilities Act ("ADA"), which applies to physical access to facilities, these substantive legal principles must be modified where necessary to address the materially different context of telecommunications equipment and services. Certain of the ADA's provisions, such as the definition of "disability" can be carried

² See Implementation of Section 255 of the Telecommunications Act of 1996/Access to Telecommunications Services, Telecommunications Equipment, and Customer Premises Equipment by Persons with Disabilities, 11 FCC Rcd 19152 (1996) ("NOI"). See also AT&T Comments in id., filed October 28, 1996 ("AT&T NOI Comments"); AT&T Reply Comments in id., filed November 27, 1996 ("AT&T NOI Reply Comments").

over directly into the Section 255 context without modification. However, as AT&T showed, in interpreting other ADA-based criteria -- and, in particular, the construction of the term "readily achievable" -- as they bear on telecommunications services and service providers, the Commission has correctly proposed to develop its own analytical standards rather than to rely on guidance borrowed from either the physical access context or access to telecommunications equipment.³

A prime example of the need for such accommodation of the statutory terminology to the communications marketplace is the argument raised by some commenters that the Section 255 standards should be construed and applied to require that every service offering be made "accessible" to and "usable" by persons with any one of several disabilities. For example, SHHH asserts (p. 31) that "t[h]e ultimate goal" of Section 255 "is to have products and services universally designed for multiple users" with disabilities. However, SHHH cites no support in the language or legislative history of Section 255 for this construction of the statutory accessibility requirements, and the obligation it seeks

³ For this reason, the Commission cannot simply carry over bodily to the service context guidelines for access to telecommunications equipment developed by the Architectural and Transportation Barriers Compliance Board ("Access Board"), as some commenters suggest. E.g., NAD, p. 4.

to impose on manufacturers and service providers is wholly unwarranted and would disserve the needs of persons with disabilities.

For example, as Nextel points out (p. 3), a mobile unit that serves the needs of visually-impaired persons by using a larger set of keys would not address the needs of persons with limited motor abilities, who could instead benefit from a model with a touch-sensitive keypad. Neither of these modifications, moreover, will fulfill the needs and desires of the broader market of mobile telephone users.

Similarly, in the service context, any obligation to make each and every telecommunications service accessible to users with such wide-ranging disabilities as visual-, hearing-, speech-, motor- and other impairments (or combinations of several such impairments) is calculated to create for service providers a set of conflicting and often mutually-inconsistent requirements that cannot be reconciled at any reasonable cost (if at all). Such a construction of Section 255 is far more likely to impede, rather than to facilitate, the accessibility of telecommunications services to persons with disabilities and should be

rejected by the Commission, as the record developed in the NOI already has demonstrated.⁴

B. Implementation Process

AT&T showed in its comments (pp. 10-16) that the Commission's "two-phase program," under which consumers would not be required initially to resort to the current formal complaint process in order to raise Section 255 claims, appropriately recognizes the desirability of resolving such issues in an expeditious and consensual manner, where possible. At the same time, AT&T pointed out the need for significant modification of the Commission's proposed "fast-track" procedure to assure responsiveness to these customer claims while protecting the due process rights of manufacturers and carriers.

Specifically, AT&T demonstrated that the proposed five business day period for respondents initially to report to the Commission regarding handling of "fast-track" complaints is both facially insufficient, unduly burdensome, and unfair to respondents. AT&T also showed that allowing claimants to bypass the fast-track process, and proceed directly to "second-phase dispute resolution procedures," would seriously disserve the

⁴ See AT&T NOI Comments, pp. 10-11; AT&T NOI Reply Comments, pp. 6-9.

public interest in development of a full factual record and should be prohibited.

Other commenters echo these concerns, in particular the inadequacy of the proposed five business day reporting period. For example, GTE (p. 13) points out that five business days "is nowhere near enough time for respondents to perform the required tasks" to address a Section 255 fast-track claim. GTE states (p. 14) that requiring such a response "in . . . any period shorter than thirty days is both unrealistic and counter-productive." In like manner, Lucent notes (p. 10) that a five business deadline "will not provide consumers and manufacturers sufficient time to resolve possibly complex complaints," and thus undermine the Commission's express objective of achieving speedy resolution of fast-track complaints without burdening scarce Commission resources. Like GTE, Lucent proposes (p. 11) that respondents "be given at least 30 days to respond to fast-track complaints." Finally, the NCD acknowledges (p. 29) that "five days will not be long enough for the resolution, or even in many cases for the investigation" of many Section 255 claims, and therefore proposes that the initial fast-track process be lengthened to 20 business days.'

⁵ Accounting for intervening weekends and any legal holidays, the 20 business day period for fast-track reporting NCD suggests is approximately equivalent to

(footnote continued on following page)

Commenters also point out the potential that, in the absence of appropriate safeguards, the Commission's proposed two-phased Section 255 process may be subject to abuse by (and even perhaps encourage) the filing of frivolous or harassing complaints. To address this serious concern, Lucent proposes (p. 11) that the Commission adopt and apply standing requirements to all Section 255 claimants (including requiring that the claimant have identified him/herself as disabled and needing additional access to telecommunications services or equipment). As Bell Atlantic correctly points out (p. 9), failure to impose such standing requirements would invite complaints by entities, such as competing manufacturers or service providers, that are not intended beneficiaries of the Section 255 complaint resolution process.

Similarly, to minimize non-meritorious Section 255 claims, TIA like AT&T recommends (pp. 63-69) that the Commission require, and not merely "encourage," claimants to pursue resolution of all Section 255 complaints with manufacturers or carriers before seeking to invoke the Commission's second-phase complaint process. Other comments (e.g., Bell Atlantic, p. 8;

(Footnote continued from prior page)

the 30 calendar day reporting interval advocated by other commenters.

CTIA, p. 16) mirror the need to correct this deficiency in the current proposed two-phased process. The Commission should therefore mandate that all claimants pursue the fast-track process (suitably modified to eliminate the current unfairness of that procedure) as a necessary predicate to pursuing any further avenues of relief from the Commission.⁶

Finally, in crafting any relief under the Section 255 complaint process the Commission should refrain from requiring service providers to "retrofit" their offerings to make them accessible and usable, in the event it determines that including such capabilities was "readily achievable" at the time the service was first deployed. As SBC correctly points out (p. 27), any such "remedy" will in most cases simply require service providers to make uneconomic resource commitments to offerings that may have already become technologically obsolescent in the highly competitive telecommunications service marketplace. Such modifications, if they are required to be made at all, should only be implemented coincident with other upgrades in the affected services.

⁶ Among other additional necessary modifications to the dispute resolution process as proposed in the NPRM, commenters also correctly point out the need for protection of respondent manufacturers' and service providers' trade secrets and other confidential or proprietary business data. *E.g.*, CTIA, p. 25; GTE, p. 14; USTA, p. 17.

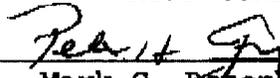
CONCLUSION

For the reasons stated above, the Commission should adopt regulations implementing Section 255 in accordance with AT&T's comments and reply comments.

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By



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August 14, 1998

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I, **Ann Marie Abrahamson**, do hereby **certify** that on this 14th day of **August**, 1998, a copy of the foregoing "**AT&T Reply Comments**" was served by U.S. first class mail, postage prepaid, on the parties listed on the attached Service List.


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