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Federal Communications Commission
Washington, D.C. 20554

SEP 14 1998

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IN REPLY REFER TO:
9805829

RECEIVED

SEP 14 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mr. Leo A. LaPointe
49 Highland Terrace
Worthington, Ohio 43085

Dear Mr. LaPointe:

Congressman John R. Kasich has asked that I respond to your letter regarding the Commission's implementation of Section 255 of the Communications Act (Section 255), added by the Telecommunications Act of 1996. Section 255 requires that telecommunications equipment manufacturers and service providers must ensure that their equipment and services are accessible to persons with disabilities, to the extent that it is readily achievable to do so. In adopting Section 255, Congress gave the Commission two specific responsibilities, to exercise exclusive jurisdiction with respect to any complaint filed under Section 255, and to coordinate with the Architectural and Transportation Barriers Compliance Board (Access Board) in developing guidelines for the accessibility of telecommunications equipment and customer premises equipment.

The Commission adopted a Notice of Inquiry in September 1996, initiating WT Docket 96-198 and seeking public comment on a range of general issues central to the Commission's implementation of Section 255. The Commission also adopted a Notice of Proposed Rule Making (NPRM) in April 1998, which sought public comment on a proposed framework for that implementation. The NPRM examined the Commission's legal authority to establish rules implementing Section 255, including the relationship between the Commission's authority under Section 255 and the guidelines established by the Access Board in February 1998. The NPRM further solicited comment on the interpretation of specific statutory terms that are used in Section 255, including certain aspects of the term "readily achievable," and the scope of the term "telecommunications services." In addition, the NPRM sought comment on proposals to implement and enforce the requirement that telecommunications equipment and services be made accessible to the extent readily achievable. The centerpiece of these proposals was a "fast-track" process designed to resolve many accessibility problems informally, providing consumers with quick solutions.

It is important to note that the Commission has not issued a final decision regarding any of the proposals suggested in the NPRM. The record in this proceeding closed on

August 14, 1998, and the Commission staff is currently reviewing public comments. Since the passage of Section 255, the Commission has worked closely with the Access Board and with various commenters to design an implementation framework that best reflects the intent of Congress in adopting Section 255. Your comments will be included as an informal comment in the record of WT Docket 96-198, and carefully considered, along with the many other comments, before final action is taken on this critically important matter. I appreciate your input as a way of establishing as thorough and representative a record as possible on which to base final rules implementing Section 255.

Sincerely,



Daniel B. Phythyon
Chief, Wireless Telecommunications Bureau

JOHN R. KASICH
12TH DISTRICT, OHIO

MEMBER
COMMITTEE ON NATIONAL SECURITY
COMMITTEE ON THE BUDGET
CHAIRMAN

Congress of the United States

House of Representatives

Washington, DC 20515-3512

July 22, 1998

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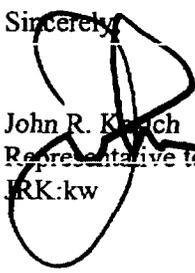
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Ms. Meryl Icove, Director
Disabilities Issues Task Force
Federal Communications Commission
1919 M St., NW
Washington, DC 20554

Dear Ms. Icove:

Enclosed is a letter from Mr. Leo LaPointe of Worthington, Ohio. Please give this letter every due consideration and respond to Mr. LaPointe directly. Thank you so much for your attention to this matter.

Sincerely,


John R. Kasich
Representative to Congress
JKK:kw



JUL 02 1998

The Honorable John R. Kasich
U. S. House of Representative
1111 Longworth House Office Building
U.S. House of Representatives
Washington, DC 20515-3512

June 29, 1998

Subject: Section 255 of Telecommunications Act of 1996 and related issues

Dear Representative Kasich

On May 10, 1998 I wrote to you by e-mail concerning the matter that telephone voice menu systems are a very difficult problem for hard of hearing people and my fear the FCC may not consider itself to really have the authority to mandate that the systems be used in a manner most beneficial for the hearing impaired.

I have not heard from you and not being e-mail expert I do not feel comfortable that my e-mail was actually transmitted. I have therefore decided to send this letter to you by as regular mail. I have changed the wording quite a bit from the earlier letter which dealt almost entirely with the subject of voice menus. This letter covers four issues I consider to be crucially important in having the FCC adopt rules that really embody the spirit that it is believed Congress intended or perhaps should intend as the case may be.

I am writing to you again to let you know how concerned I am that FCC is undermining Congressional intent to make telecommunications equipment and services accessible to people with disabilities as called for in Section 255 of the Telecommunications Act of 1996. I Hope to explain my concerns in the following comments and hope you will appreciate where I am coming from. Your efforts to contact the FCC and express similar views will be greatly appreciated by millions of disabled and especially the hard of hearing and deaf. If it should be that amendments in law should be needed to really overcome the problems, we will certainly welcome and urge you to be helpful.

Issue One:

It is not clear whether the FCC intends to adopt the Access Board guidelines, which were published in February 1998. Congress gave the Access Board authority for developing guidelines and indicated that the FCC guidelines must be consistent with those. Further, the FCC appears undecided as to whether the guidelines should be applied to service providers as well as manufacturers.

Please urge the FCC to adopt the Access Board guidelines for both manufacturers and service providers. Please urge that definitive wording to that effect is needed to ensure that manufacturers and providers clearly understand their access responsibilities and obligations in their design of new equipment.

One of my approaches to hearing better over the phone is to connect up a pocket talker (amplifier) to the speaker area of my speaker phone which permits me to comprehend better, perhaps twice as well. This is because I use a headset in the provided jack of the pocket talker, and this allows me to hear in both of my ears. This is the reason I began to use hearing aids in both ears. I understand that it is economically feasible to connect an adapter for a headset in most telephones. This would permit myself to simply have a headset with me wherever I go, and a speakerphone would not be needed. Such a system would be very usable by all people in the workplace and would have the privacy that the telephone handset allows and the workplace requires. I believe it will permit considerably more hard of hearing people to cope with job situations.

However I much fear that the NPRM as presently written will not result in many modestly priced telephones having the desired feature. I am sure there are other examples that can be furnished.

Also, from information I have come across it seems the FCC may be planning to more or less ignore the work done by the Access Board as it relates to service providers. I really don't understand why the distinction should be made between manufactures and service providers but if it results in more confusion as to the access responsibility of each

group then this should be avoided and this end will be better served by the FCC's adoption of the Access Board's guidelines:

Issue Two:

When Congress wrote the Telecommunications Act, it adopted the term "readily achievable" from the Americans with Disabilities Act (ADA) to describe a company's obligation to make products accessible. Under the ADA, entities are not expected to undertake changes that are difficult or involve a financial burden. The overall financial resources of the entity are a consideration meaning that large companies might be expected to provide an accommodation that would be out of the reach of a smaller concern.

The FCC deviates dramatically from the readily achievable standard that has traditionally been used in disability law by introducing the concept of "cost recovery." The FCC states that it is appropriate for a manufacturer or provider to consider whether or not it will recover the costs of increased accessibility in its assessment of the readily achievable standards.

The introduction of the cost recovery concept would undermine the concept of accessibility in our society. It is because market forces do not work that we have laws, such as the ADA, requiring accessibility. Entities already have protection from excessive cost impacts under the readily achievable standard. Allowing a company to determine if an accessibility feature will "pay for itself" is a major deviation from the way we have addressed accessibility in the past.

I draw attention to the fact that because telecoil (sound devices built into hearing aids permitting better and amplified hearing) compatibility were not mandated for cellular telephones, most analog cell phones still don't have telecoils for hearing aid users, limiting accessibility in many cases to 100%. This should not be permitted to happen in future technological improvements.

In the case of TV closed captioning that so many of us enjoy, is it likely that these would not have been required under a cost recovery concept? The fact is the FCC did make the closed caption chips a requirement, thus the present thinking appears inconsistent. The TV manufacturers did not necessarily charge more (perhaps some did) but it is safe to say they sold a lot more TV's than they would otherwise.

Issue Three:

I understand the regulations will be enforced via a complaint procedure that will use "fast track" processes that ostensibly would resolve most consumer problems within five days. Consumers could contact the FCC directly via an 800 number and the FCC would facilitate the initial complaint. If resolution is not reached, then the complaint proceeds to the informal or formal complaint process.

The FCC has proposed that there be no filing fees for complaints directed against manufacturers or service providers. The FCC states that it will establish formal legal procedures for use only when the complainant requests these procedures and where the FCC permits the complainant to invoke these procedures. In other words, individuals would not have the right to take their case to court if the FCC chose to oppose such action. Conditioning formal complaints upon FCC approval is unprecedented.

While I think it would be wonderful if complaints of substance could be resolved in such a short period time. This is certainly insufficient time for companies to gather documentation--much less resolve a problem. I think that the fast track should be extended to 10 days and that companies which indicate that they need more time, could extend to a maximum of 30 days.

I do support the proposal not to require filing fees directed at manufacturers or service providers. I also believe the FCC should waive such fees for formal complaints against common carriers. It is in the public interest to allow individuals to easily lodge complaints.

I also believe individuals should not be denied their day in court rather than as proposed, which seems to be automatically to deny same. Are there other situations where a complainant is denied the right of a hearing in court? Is the ADA law structured in this manner?

Issue Four:

"Enhanced services" under the proposed rules are excluded from coverage under Section 255. Most of these services are very commonly used and include voice mail and automated voice response systems—both of which are inaccessible to many people with hearing loss. I believe Congress would not have intended to leave out these services. Doing this undermines the very purpose of the law.

I will appreciate it greatly if someone from your staff will send to me the rationale why it is believed that "enhanced services", and especially the automated voice menus part, are not included under section 255. Being a layman it is sometimes difficult to understand things. Is it perhaps because the Telecommunications act applies to manufacturers and service providers and not the manner in which the end user of telecommunications equipment might use such equipment and services? Is the matter an issue that likely is covered by the ADA laws? If no laws presently exist that can be applied to require end users to be more accommodative to the hard of hearing would new law be includible as amendments to section 255 or includible under the ADA provisions? In any event please do whatever is helpful to the hard of hearing.

Is it likely that how the manufacturers and service providers when acting as end users would use the product, i.e. the manufactured equipment could be required to provide an "automatic out"? If so, then why would not other users also be subject. I guess this whole thing has me confused or maybe I have really got to the core of the matter. I will appreciate being enlightened.

I strongly believe that automated voice response systems which are classed as "enhanced services" should be regulated so that they are made as accessible as possible. At present millions of hard of hearing people who use voice telephones find them difficult to use. Also the systems cannot be accessed by TTY relay services because of the short time the operator has to type the choice so the relay caller can respond.

Before voice menu technology became popular this was not a problem. Why should a simple "improvement" in technology helpful in labor savings to so many organizations be a step backward for the hard of hearing and deaf? It should not! Some of the labor savings should rightly be offset by whatever increased costs that the automatic out may cause. I find myself increasingly wanting to avoid making calls to entities that may have the automatic voice menus and therefore spend a lot of time trying to learn things on my own without making calls. How much simpler it could be to get the information I seek if only I could navigate the voice menus. It is too bad the great majority have them.

I refer you to a recent "Dilbert" cartoon on which the following sentences appears: "I'm having a severe case of telephone shyness". "I'm afraid to pick up the phone and make business calls". "I'll duck into a restroom stall until the shyness passes". Well in my case and millions of others the shyness doesn't pass very much.

In my earlier efforts to drum up support from the general public for seeking improvements I found it very easy to obtain signatures upon advising a prospect what it was I was concerned about. In other words I was learning from normal hearing how frustrating the voice menus were for them. This should be convincing evidence that improvements must be done. A good way for this to happen will be if the FCC includes at least this part of "services" as basic.

A very good procedure for the FCC to provide is that voice menus must always allow an option for an "automatic out" that connects to a real live person.

In keeping with the spirit of other ADA provisions this requirement could be mandatory for large companies.

Another procedure I believe could be adopted in conjunction with the "automatic out" is to provide an option for the caller to hear the same menu choices as the main body of choices at approximately twice as slow as the main one.

(What I am suggesting is a system that is similar to what many organizations use for their Spanish speaking callers except the voices menus are spoken in Spanish rather than in a slow manner.)

I think it would be nice if an even slower version could be made available if the caller requests it.

As a part of the slow voices choice the "automatic out" could be offered and maybe the normal hearing callers will be less likely to "take advantage" if no earlier choice for an out is mentioned.

Now I know some will say that if you just hold on to the line long enough, a live person will come on line. This is not true in all too many cases so why not accommodate this having all of them used by large organizations by simply pressing "0" and making it a requirement for all users (callees) of such voice menu systems. Keep in mind there are a lot of them that have two and three tiers of menu choices and the end result often is to cut the caller off if he has not pressed a keypad item soon enough.

While I may be generalizing from the specific, I had one large company I called that took me probably four times longer to navigate as it would for a normal hearing person. During the course of this series of calls the representative I talked with said I should call a certain number for the hearing impaired (I had complained that I was having difficulty comprehending others within the same organization). When I called this number no one answered at all. I later learned the number was for TTY calls that the deaf use. I am not deaf. This happened with other organizations as well. When I wrote a letter of complaint with suggestions on how it could improve its telephone services I never received a reply.

What I am suggesting is that little or no improvements will ensue unless the users of voice menu systems are faced with regulations and perhaps new law provisions that require them to do better.

I would like for readers of this letter to be aware of how much "dead time" is already built into so many calls we make. "Dead time" refers to the frequent amount of music, some advertising, and the phrase "we are presently busy with other calls -----". To my way of thinking, asking for a slower and therefore more time consuming procedure, is not asking for very much at all under the circumstances.

Regarding voice mail accessibility, I don't have any technologic suggestion to make except to say it would be helpful if telephones had a slow down feature similar to some answering machines and playbacks on some recorders. I am aware of some telephone reading service for low-vision people that permits a range of slower playing of the readings by pressing a key on the telephone pad. Perhaps the voice mail systems should have the feature built into them that the caller can hear the greeting messages much slower by pressing the one key or the pound key (also to hear a repeat by pressing "0").

Whether any of the above are feasible for inclusion with modestly priced telephones and equipment, I don't know but to automatically consider voice mail systems as "enhanced services" is a mistake in that it precludes what might eventually become useful features for the hard of hearing and some normal hearing people.

I would urge any educational programs that the FCC might eventually undertake, to teach users of all telecommunications devices and systems to always speak clearly which means in most cases to speak slower. This would be helpful to everyone because even normal hearing have difficulty when voices go too fast. If such educational programs are ever undertaken it could include a standardized list of words to represent each character of the alphabet like Adam for "A", Boston for "B" and so forth. This is especially useful regarding names and addresses. For example, many technical support persons are especially hard to understand. Now this education area may be outside the scope of law but if it could in some manner come to pass things would be better for us all.

This matter of "enhanced services" is a very critical access issue under Section 255 and leaving out such services severely limits educational and employment opportunities and interferes with full participation in today's society.

I also call to attention that many financial and life insurance institutions are providing telephone information regarding a callers accounts as to balances, current values and so forth. I have personally had difficulties with these because they request information too rapidly. Why should hard of hearing be denied this valuable service? If the FCC does not mandate an option to hear the questions in a slower manner because these are "enhanced services" we are effectively locked out.

Another area that will be requiring attention in the near future is the greater use of voicing over the Internet as more advertising and other programming takes place (a large part of it likely will be interactive). Thus, "closed captions" (or open) should be displayed in accompaniments. If this area as it presently seems likely under the NPRM will be outside of section 255, then I fear a great disservice to the hard of hearing will occur.

Please keep in mind that our hard of hearing people are increasing.

While I have written a lengthy letter I hope you will consider the difficulties we hard of hearing are coping with. I once heard it said that in any meeting of importance that the amount of time spent in attempting to resolve problems is usually in inverse proportion to the complexities involved. I do hope that appropriate efforts are made to help us.

I urge you to contact the Chairman of the FCC, William E. Kennard to let him know their are serious concerns that are bothering me and others as expressed above.

Thanks for all that you do.

Very truly yours



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