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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
12th Street Lobby, TW-A325  
Washington D.C. 20554

Re: Ex Parte Filing: 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 Dkt. No. 96-198

To the Commission:

The undersigned submit this document to the Commission in an effort to assist the Commission in its implementation of Section 255 of the Telecommunications Act of 1996. For the most part, the regulatory framework proposed in this document is applicable only to the design and manufacture of accessible products. Its proposed language on standing, an access plan, and a definition for readily achievable, however, apply to both manufacturers and service providers. We will address more fully our proposal for the implementation of Section 255 by service providers in a separate document to the Commission.

This document is the product of much discussion and consensus building among the disability community, and carries the support of the undersigned organizations. The material contained herein is a compilation and synthesis of several of the proposals already submitted by these organizations in comments or ex parte presentations to the FCC. It also takes into consideration various industry submissions, both in comments and in ex parte filings.

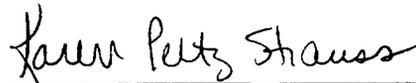
This proposal is designed to achieve the objectives of the disability access mandate while assuring telecommunications equipment manufacturers the freedom to pursue product innovation. It is specifically intended to allow each manufacturer to focus its resources on designing, developing, and implementing accessibility into its products and product lines without investing excessive resources toward documentation and legal procedures. It is our expectation that once the Section 255 rules and procedures are in place, companies will use their technical, planning, and marketing capabilities to achieve significant progress in bringing telecommunications products that meet the needs of individuals with disabilities to the marketplace. We do not expect this to happen overnight; however, we do expect this to occur as new products entering design, and even some of those already under design, reach the market.

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We remain open to further discussions with members of the FCC and representatives of the telecommunications industry regarding the points made in this proposal. We look forward to prompt agency action with respect to the implementation of Section 255.

Sincerely,



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On behalf of:

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League for the Hard of Hearing

American Council of the Blind

National Association of the Deaf

American Foundation for the Blind

Self Help for Hard of Hearing People, Inc.

American Society for Deaf Children

Telecommunications for the Deaf, Inc.

American Speech-Language-Hearing Association

United Cerebral Palsy Associations

Gallaudet University

World Institute on Disability

**Implementation of Section 255 of the Telecommunications Act of 1996:  
A Two-Tier Approach for Product Accessibility**

The intent of Section 255 is to provide individuals with disabilities with full access to telecommunications products that are available in the general market. The Commission's goal in implementing Section 255 should be to design a regulatory structure that maximizes the number and variety of telecommunications products that will be accessible to people with disabilities, at prices and availability that are comparable to that enjoyed by people without disabilities. Two significant factors in determining whether this goal is achieved will be (1) the extent to which an individual can easily locate and obtain accessible products and (2) the extent to which that consumer can acquire such products at comparable prices either separately or in product-service bundles. While individuals with disabilities have sometimes been provided access to mainstream telecommunications technology through assistive technologies, it is important to emphasize that the Commission should avoid a regulatory structure that would only foster the development of these "separate" or "special" accessible products.

The comments to the FCC's NPRM, subsequent discussions with, and ex parte filings from industry confirm that for the most part, much of the telecommunications industry prefers an approach which would permit consideration of access features across product lines. In the spirit of cooperation, and in an effort to arrive at a workable solution, this proposal endorses the use of a modified product line approach as a valuable component of the structure for implementing Section 255. We submit this proposal, however, with the understanding that the mandate of the law still requires every product to be accessible, where readily achievable.

Consumers recognize that at present it will be difficult, if not impossible, to incorporate all forms of access into every product. However, we expect that the coming years will bring technological advances that will continue to facilitate the incorporation of multiple access features into a variety of products. With this in mind, we consider a two-tier approach to be the most effective means of implementing Section 255. We urge the Commission to periodically evaluate the extent to which this approach does in fact achieve the goals set forth above.

The first tier of our proposed approach would require manufacturers to incorporate access features into every product where readily achievable. The second tier, a product line approach, would be triggered under certain conditions, for example, where incorporation of particular access features into individual products is not readily achievable. Similarly, manufacturers would retain discretion to utilize the second tier where incorporation of a particular access feature would fundamentally alter the characteristics of the product, or would substantially impair use of the product by other persons, including other persons with disabilities. Section II(1) below more fully sets forth the conditions under which manufacturers would retain the discretion not to incorporate access into every product.

Where the second tier is triggered, manufacturers would be required to achieve access for individuals with disabilities by incorporating access features across their product lines, in products with comparable features, functions, and price. It is expected that during the initial years of the implementation of this two tier approach, limited technological access solutions will result in greater utilization of the second tier by the telecommunications industry. However, over time, it will become easier and less expensive to incorporate a greater number of access features into a greater number of individual products. Gradually, then, we expect that the emphasis will shift to

the first tier, as new technological innovations make widespread incorporation of access features more readily achievable.

## I. Approach to Product Design - General Principles

1. Each manufacturer shall consider access at the earliest stages of its product design.
2. Manufacturers shall analyze each new product utilizing the criteria contained in Telecommunications Act Accessibility Guidelines established by the Access Board. 36 C.F.R. §§ 1193.41, 1193.43, and 1193.51. Where a company meets one access criteria within a product, it must still analyze whether it is readily achievable to meet other access criteria for that product.
3. Where readily achievable, manufacturers shall incorporate accessibility features into products that are intended for the general market. It is recognized that the general market is made up in part of individuals with disabilities, and that these individuals shall be considered within a company's various target markets.
4. As manufacturers upgrade and revise their existing products, they shall review these products for accessibility and shall incorporate access features that are readily achievable. Among other things, hardware or software revisions or additions shall trigger such accessibility reviews. Minor or insubstantial changes that do not affect functionality need not trigger accessibility reviews.

## II. Considerations Applicable to the Two Tier Approach

1. Manufacturers shall incorporate access features in their products, where readily achievable, with the following exception: A manufacturer will retain the discretion not to incorporate access into a product under the following circumstances:
  - A feature that achieves access would substantially interfere with the ability to offer other features that promote access and address other guidelines.
  - A feature that achieves access would substantially impair or substantially deter use of the product by individuals who are not disabled or by users with other disabilities.
  - A feature that achieves access would fundamentally alter the characteristics of the product, for example, its shape, size, or weight. For purposes of this analysis, a fundamental alteration is one that substantially or materially changes these product characteristics. The addition of input or output modes required for accessibility is not automatically considered a fundamental alteration.

In part, this exception is intended to enable manufacturers to maximize accessibility for a variety of functional limitations or combinations of functional limitations, by incorporating certain access features in some products within a product line, while incorporating other access features in other products in that line. One instance in which this would occur is where it is readily achievable to incorporate an access feature in some products, but not all products, within a product line.

2. Where an access feature is not incorporated into a product (for the reasons stated in II (1) above or because incorporation of that access feature is not readily achievable), the manufacturer must satisfy accessibility, usability, and compatibility requirements in products within the product line that are comparable in features, functions and price to that product. Thus, under this two-tier approach, a manufacturer shall be expected to either provide an accessible product, or to ensure accessibility to individuals with disabilities by implementing the access guidelines in other products that have comparable features, functions and price in the product line, if readily achievable.
3. A manufacturer shall not be prohibited from discontinuing a product which has access features so long as such access (or functionally equivalent access) is already incorporated in another product with comparable availability, features, functions, and price within that product line.

### III. Access Plan

1. Each manufacturer and service provider shall develop and follow a written access plan for the purpose of achieving accessibility, usability, and compatibility of its products and services. Each plan may be consistent with that company's unique organization and structure. A company's access plan shall:
  - a. Identify barriers to accessibility early in the design and development stages,
  - b. Develop and evaluate designs to remove barriers,
  - c. Incorporate designs that achieve accessibility, where readily achievable,
  - d. Disseminate information and, where otherwise provided, provide training to employees involved in equipment design and development,
  - e. Identify access features for consumers, i.e., in product/service literature and provide, in accessible formats, clear instructions for the installation and use of such access features, and
  - f. Provide a point of contact for all products and services: Voice, TTY, AND FAX telephone and e-mail addresses.
2. Where accessibility is not readily achievable, companies shall ensure compatibility with commonly used peripheral devices, if readily achievable.

### IV. Definitions

1. **Product:** consists of hardware, software or firmware that carries out the function of CPE, including subassemblies or components specifically marketed as being used for telecommunication purposes as defined in the Telecommunications Act of 1996.

2. **Product line:** refers to a set of a manufacturer's products that have the same telecommunications function and transmission protocol or standard, in a manner that allows those products to be used interchangeably.<sup>1</sup>
3. **Readily achievable:** is defined in Section 301(9) of the Americans with Disabilities Act. A manufacturer or service provider shall consider the entire product/service when making the "readily achievable" analysis (as opposed to separately analyzing each input and output access guideline). In addition, the telecommunications context warrants the consideration of the following factors in determining whether an action is readily achievable:
  - a. The extent to which the access feature is technically feasible. A company may not simply assert that a particular access feature is not technically feasible; rather this defense may be used only upon a showing that it is not technically feasible to incorporate a particular access feature, and
  - b. The extent to which the access feature does not significantly delay production or release of a product. The company must demonstrate that accessibility, usability, and compatibility were considered at the earliest stages of design and throughout the development process.
4. **Commonly Used Peripheral Devices:** should be defined by considering the following factors:
  - a. The extent to which the peripheral device is effective for individuals with particular functional limitations, and
  - b. The extent to which the peripheral device is used by individuals with disabilities.

Note: There will be a rebuttable presumption that a peripheral device is "commonly used" when the device is distributed through any of the statewide equipment distribution programs.

#### V. Compliance:

- A. **Standing** - A complainant shall have standing to file a complaint under Section 255 if the complainant is:
  - (a) A person or persons with a disability or someone filing a complaint on behalf of a specific, identifiable individual with a disability (such as an organization that represents people with disabilities, or a parent, spouse, or legal guardian); or

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<sup>1</sup> For example, two telephones that use the same transmission technology, but which code their data so differently that they cannot receive and decode the same transmissions, cannot be used interchangeably.

- (b) A person who is unable to use a specific identifiable piece of telecommunications equipment, CPE, or service to communicate with a person or persons with a disability, or
- (c) An institution, such as a school, business, health care facility, or employer, whose participants or beneficiaries are unable to use a specific identifiable piece of telecommunications equipment, CPE, or service.

**B. FCC Review of Complaints Involving Product Lines**

1. Where it is not readily achievable to incorporate access across all products in a product line, a manufacturer will have fulfilled its Section 255 obligations with respect to a product within that product line if:
  - (a) the manufacturer has an alternate accessible product in the same product line that is comparable in features, function and price, or
  - (b) the manufacturer has timely documentation that the access desired is not readily achievable within the product line.
2. In reviewing complaints on products under this section, the FCC shall measure comparable features, functions and price based on similarly situated individuals who do not have disabilities with respect to availability and price at point-of-sale.

**VI. Good Faith Efforts**

Manufacturers shall have considerable discretion in determining where and how they incorporate access features into their various products, depending on their individual business practices. In determining whether a company has engaged in good faith efforts to achieve compliance with Section 255, the FCC should consider, among other things, the extent to which the manufacturer engaged in the following practices:

1. Conducted training for employees on disability access related issues,
2. Included people with disabilities in market research,
3. Included people with disabilities in product design, testing pilot demonstrations, and product trials,
4. Worked cooperatively with appropriate disability-related organizations, and
5. Made reasonable efforts to test access solutions with persons or organizations representing persons with disabilities.