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# NATIONAL ASSOCIATION OF THE DEAF

814 THAYER AVENUE • SILVER SPRING, MARYLAND • 20910-4500  
HEADQUARTERS: 301-587-1788 VOICE • 301-587-1789 TTY • 301-587-1791 FAX  
BOOKSTORE: 301-587-6282 VOICE • 301-587-6283 TTY • 301-587-4873 FAX

February 26, 1999

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:

On January February 19 and February 22, 1999, Karen Peltz Strauss and Nancy Bloch of the National Association of the Deaf, Claude Stout of Telecommunications for the Deaf, Inc., Brenda Battat of Self Help for Hard of Hearing People, Inc., met with the five FCC Commissioners and the following staff members of their offices: Karen Gulak and Christi Shewman (Commissioner Tristani), Dan Conners (Commissioner Ness), Peter Tenhula (Commissioner Powell), and Paul Misener (Commissioner Furchtgott-Roth). The purpose of the meetings was to discuss the accompanying presentation on the implementation of Section 255 of the Telecommunications Act.

Sincerely,

Karen Peltz Strauss  
Legal Counsel for Telecommunications Policy

Enclosure

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List A B C D E

# **Section 255**

**I. A Modified Product Line Two-Tier Approach**

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**II. A Practical View of Telecommunications Services**

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**Consumer Action Network  
Council of Organizational Representatives  
National Association of the Deaf  
Self Help for Hard of Hearing People, Inc.  
Telecommunications for the Deaf, Inc.**

**February 19, 1999**

## **I. A Modified Product Line Two-Tier Approach**

- **Goal: Design a Regulatory Structure that Maximizes the Number and Variety of Accessible Telecommunications Products at Prices and Availability Comparable to Products enjoyed by People without Disabilities.**

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- **Avoid a Regulatory Structure that Fosters the Development of “Separate” or Special” Accessible Products**

## **First Tier**

**Principle: Under Section 255, manufacturers must incorporate access features into every product where readily achievable.**

- Consider and incorporate access at the earliest stages of product design**
- Incorporate access features that are readily achievable, utilizing the Access Board's criteria**
- Upgrades and revisions (which are not minor or insubstantial) of products trigger accessibility reviews. Manufacturers must incorporate access features that are readily achievable.**

## **When would access not be required under the first tier?**

- **When access features are not readily achievable:**

**Section 255 incorporates definition of readily achievable contained in Section 301(9) of the Americans with Disabilities Act (requires a balancing of the costs of providing access with the resources of the covered entity). In addition, in telecommunications context, the FCC should consider:**

**Extent to which the access feature is technically feasible**

**Extent to which access feature does not significantly delay production or release of a product.**

- **When access features will fundamentally alter the characteristics of a product - e.g., its size, shape, or weight.**
- **When manufacturers exercise their discretion not to incorporate access in the following situations:**

**An access feature would substantially interfere with the ability to offer other access features.**

**An access feature would substantially impair or substantially deter use of the product by other individuals.**

**This will allow manufacturers to incorporate certain access features in some products within a product line, while incorporating other access features in other products in that line.**

## Second Tier

**Principle:** Where it is not readily achievable to make a product accessible OR where doing so would result in a fundamental alteration OR where a manufacturer exercises discretion not to do so (based on the above factors), the manufacturer must achieve access for individuals with disabilities by incorporating access features across their product lines, in products with comparable features, functions, and price, if readily achievable.

- **Initial years of Section 255 implementation:** Limited technological access solutions will result in greater utilization of the second tier.
- **The future:** As it becomes easier and less expensive to incorporate a greater number of access features into a greater number of products, the emphasis will shift to the first tier.

## **Access Plan**

Manufacturers shall develop and follow written access plans, consistent with their individual organization and structure. Such plans shall:

- identify access barriers
- develop and evaluate designs to remove barriers
- incorporate access designs, where readily achievable
- provide employee training on access, where otherwise provided
- identify access features for consumers in product literature and provide accessible instructions
- provide an accessible point of contact for all products

## **Good Faith Efforts**

Manufacturers have considerable discretion in determining where and how they incorporate access features. The FCC should consider the extent to which a manufacturer engaged in the following good faith efforts as a measure of the manufacturer's compliance with Section 255's mandates:

- conducted employee training on access issues
- included individuals with disabilities in market research
- included individuals with disabilities in product design, pilot demonstrations, and trials
- worked with disability-related organizations or individuals
- made reasonable efforts to test access solutions with disability-related organizations or individuals.

## **II. A Practical View of Telecommunications Services**

**Goal: The Definition of “Telecommunications Services” under Section 255 should be Consistent with Public Policy and Congressional Intent to Expand Telecommunications Access for Individuals with Disabilities.**

- Section 255 as a civil rights statute, to be construed liberally**
- Section 255 as part of an overall Congressional mandate to bring new and innovative forces into our nation’s telecommunications infrastructure**
- Section 255 as the next legislative step to removing telecommunications barriers for individuals with disabilities**

**Principle: The FCC has ongoing authority to reclassify services among “basic,” “adjunct to basic,” and “information” service categories to achieve the goals of Section 255. In the Past, the FCC has Defined “Adjunct -to-Basic” as Facilitating a Transmission Path for Telephone Calls, and Bringing Maximum Benefit to the Public.**

**Test: The FCC Should Determine Which Services are Truly “Basic” to Accessing Today’s Telecommunications Environment. Look at Whether a Service is Needed by Individuals with Disabilities to Originate, Transmit, and Receive Telephonic Information, Irrespective of the Use of Voice, Data, Sound, Video.**

## **Examples:**

- **Interactive voice response systems/audiotext information services: not accessible to deaf or hard of hearing people, yet basic access is needed to achieve communication.**
- **Voice mail: basic purpose of the call is defeated if able to technically establish a phone connection, but not leave a message for the intended party.**
- **Internet telephony: where exact same information, over exact same route, from same origination point to same destination is sent, without altering the form or content of the data, a basic phone to phone service is achieved.**

## **Conclusion**

**Traditional telecommunications services shrinking in number and importance.**

**New, advanced services need to be accessible in order to fulfill Congressional intent.**

**Define call “completion” in a realistic and practical fashion, so that it effectuates a measure of communication exchange.**

**A broad interpretation of “telecommunications services” will achieve the above goals and foster industry competition.**