



accommodations that allow them to be as fully integrated into the community as possible. In working to see that new and existing telecommunications technologies will be available to, usable by, and affordable for all citizens, the Campaign is an extension of that mission in the area of telecommunications.

The Campaign has read with interest the comments of the parties in this proceeding. While composed of people with many disabilities and older adults, the Campaign is concerned that, along with all others with disabilities and older adults, individuals who are deaf, hard of hearing, or have speech impairments should have full access to all existing and future telecommunications services at affordable rates. As such, we believe that lines used as a primary line<sup>≡</sup> for TTY users in a household should be treated as primary lines for purposes of the Commission's definition, even if another line in the household is used as a primary line for voice communications.

That conclusion has been well made by Telecommunications for the Deaf, Inc. and other commenters. The Campaign files these comments because it believes that an important concept has been left out of the discussion in these proceedings.

The issue that is presented in this proceeding whether TTY users should pay an additional charge for the telephone service on one line when they have a primary line into their household used for voice communication and they have another line (who can say if it is a second or first line?) in the household for TTY use. The parties weigh in with various public policy arguments on the point, but many do so from the assumption that to charge for the TTY line at the primary line rate would constitute a subsidy.<sup>≡</sup>

The Campaign suggests that rather than being a subsidy, so charging just eliminates discrimination against TTY.

If one views the line used for TTY calls, as a secondary line, then charging at a higher rate creates a level playing field and charging at the primary line rate is a subsidy. But that view of things discriminates against people who need TTY lines -- it relegates them to second class status relative to voice line users.

A voice line is required for anyone in a household who makes voice call. A TTY line is required for anyone in a household who makes a TTY call. If the household has both voice and TTY line needs, to charge more for one user than for the other discriminates in favor of one and against the other.

The Americans with Disabilities Act recognizes this principle. It requires public accommodations who provide services to the public provide though auxiliary aids if necessary so that all members of the public can get the same services:

A public accommodation shall take those steps that may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the public accommodation can demonstrate that taking those steps would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or would result in an undue burden, i.e., significant difficulty or expense.

28 C.F.R. §36.303. And it prohibits the accommodation from charging the person with the disability the extra cost for those auxiliary aids and services:

A public accommodation may not impose a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids . . . ,

that are required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part.

28 C.F.R. §36.301(c).

If giving such auxiliary aids and services were a subsidy, one could wonder whether the ADA was actually making an uncompensated taking in violation of the Fifth Amendment to the U.S. Constitution. Yet, no one seriously argues that. How can that be?

We submit it comes from the fact that any public accommodation or any telecommunications service provider inherently cannot charge any customer exactly what it costs to provide service to that customer. For example, eventually all local telephone companies will offer only touchtone dialing, even though some consumers receive no added benefit from such dialing and others obtain a great deal of benefit. All are priced the same and no one seriously contends that the consumers who get no marginal benefit from the service should not subsidize the system. The variations are all absorbed in a general concept of overhead of staying in business.

Take another example outside of telecommunications. An accounting or law firm provides an office to meet with clients. In the course of that it buys chairs for clients to sit in. When a client who uses a wheelchair comes to the office, the client does not use the chairs provided. But nobody thinks of giving the wheelchair user a discount because he or she has no use for the chairs provided. Yet applying the same subsidy analysis suggested by some of the commenters in this proceeding, wheelchair users are being forced to subsidize office chair using clients. The idea is absurd.

And the suggestions of discounting for the touchtone user who does not need or want a touchtone line or charging extra for the only line that the TTY user needs are just as absurd. The issue does not even come up in the touchtone example, because the group of consumers who have no use for touchtone dialing are not part of a readily identifiable class, such as people who have hearing or speech impairments. But the fact that people who have hearing or speech impairments are a readily identifiable class does not mean that providing a service to them at everyone else's same cost constitutes a subsidy to them. Rather, it is instead an elimination or obviation of discrimination against them.

The Commission should not allow charging TTY users more than the cost of primary lines for the primary line they use for telephone calls even if others in the household use a voice line as a primary line for their calls.

Respectfully submitted,

---

David J. Newburger  
Newburger & Vossmeier  
Counsel for Campaign for  
Telecommunications Access  
One Metropolitan Square, Suite 2400  
St. Louis, Missouri 63102  
Voice/TDD: 314/436-4300  
Telecopier: 314/436-9636

**CERTIFICATE OF SERVICE**

I, David Newburger, do hereby certify that a copy of the Comments of Campaign for Telecommunication Access has been served on the parties listed below, via first class mail, postage prepaid, on this 26th day of April, 1999.

---

David J. Newburger

Thomas A. Pajda/Robert M. Lynch  
Roger K. Toppins/Michael J. Zpevak  
SBC Communications Inc  
Southwestern Bell Telephone Company  
One Bell Plaza, Room 3003  
Dallas, Texas 75202

Claude L. Stout  
Executive Director  
Telecommunications for the Deaf, Inc.  
8630 Fenton Street, Suite 604  
Silver Springs, MD 20910

Stephen G. Kraskin  
Thomas J. Moorman  
Attorneys for New York State  
Telecommunications Assoc. Inc.  
2120 Street NW Suite 520  
Washington, DC 20037

M. Robert Sutherland  
Richard M. Sbaratta  
Attorneys for Bellsouth Corporation  
Bellsouth Telecommunications Inc.  
1155 Peachtree Street, NE, Suite 1700  
Atlanta, GA 30309-3610

Margot Smiley Humphrey  
Attorney for The National Rural Telephone Association  
Suite 1000  
1150 Connecticut Avenue, NW

Washington, DC 20036

Lisa M. Zaina/Kathleen Kaercher  
Steve Pastorkovich  
Attorneys, The Organization for the Promotion and Advancement of Small Telecommunications Companies  
21 Dupont Circle NW Suite 700  
Washington DC 20036

Sheryl Todd  
Accounting and Audits Division  
Federal Communications Commission  
2100 M Street, N.W., Room 8611  
Washington, DC 20554

Jane Jackson, Chief  
Competitive Pricing Division  
Federal Communications Commission  
445 - 12th Street, S.W. Fifth Floor  
Washington, DC 20554

Lyman Welch  
190 S. LaSalle Street, #3100  
Chicago, IL 60603

Richard Karre  
U.S. West, Inc.  
1020 19th Street, N.W. Suite 700  
Washington, DC 20036

Robert M. Lynch/Durward D. Dupre  
Michael Zpevak  
Southwestern Bell  
One Bell Center, Room 3524  
St. Louis, MO 63101

Werner Hartenberger/J. G. Harrington  
Laura Phillips  
Dow, Lohnes & Albertson  
1200 New Hampshire Avenue, N.W.,  
Suite 800  
Washington, DC 20036

Peter Arth, Jr./Lionel Wilson  
Janice Grau  
PUC of California  
505 Van Ness Avenue  
San Francisco, CA 94102

Jim Cicconi  
AT & T Corporation  
1120 20th Street, NW; Suite 1000  
Washington, DC 20036

Lawrence Fenster  
MCI Telecommunications Corp.  
1801 Pennsylvania Ave., NW  
Washington, DC 20006

John F. Raposa  
GTE Service Corporation  
600 Hidden Ridge, HQE03J27  
P.O. Box 152092  
Irving, TX 75015-2092

Brenda Battat  
Deputy Executive Director, SHHH  
7910 Woodmont Avenue, Suite 1200  
Bethesda, Maryland 20814

Lawrence Walker/Elizabeth Dickerson  
Swindler Berlin Shereff Friedman, LLP  
3000 K Street, NW Suite 3000

Washington, DC 20007-5116

Michael S. Pabian  
Counsel for Ameritech  
Room 4H82  
2000 West Ameritech Center Drive  
Hoffman Estates, IL 60196-1025

Robert W. Zinnecker  
President  
New York State Telecommunications  
Assoc.  
100 State Street, Room 650  
Albany, NY 12207

Leon M. Kestenbaum/Jay C. Keithley  
Jonathan Chambers/H. Richard Juhnke  
Attorneys for Sprint Corporation  
1850 M Street, NW 11th Floor  
Washington, DC 20036

David Cosson/Marie Guillory  
Attorney for The National Telephone  
Cooperative Association  
2626 Pennsylvania Avenue NW  
Washington, DC 20037

Richard McKenna  
GTE Service Corporation  
HQE3J36  
P.O. Box 152092  
Irving, TX 75015

International Transcription Svc.  
1919 M Street, N.W.  
Washington, DC 20554

Mark Rosenblum  
AT & T  
295 No. Maple Avenue  
Basking Ridge, NJ 07920

Gail Polivy

GTE  
1850 M. Street, N.W. Suite 1200  
Washington, DC 20036

Edward D. Young, III/Michael E. Glover  
Betsy Roe/Edward Shakin  
Bell Atlantic  
1320 North Court House Road  
Arlington, VA 22201

Bradley Stillman/Don Sussman  
Alan Buzacott  
MCI  
1801 Pennsylvania Ave., N.W.  
Washington, DC 20006

Keith Townsend  
USTA  
1401 H Street, N.W. Suite 600  
Washington DC 20005

Ms. Magalie Roman Salas  
Office of the Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W. - Rm TW-325  
Washington, DC 20554

Nancy C. Woolf  
140 New Montgomery Street  
Room 1523  
San Francisco, CA 94105

International Transcription Service (ITS)  
1231 20th Street, NW  
Washington, DC 20037