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Cellular Telecommunications Industry Association

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Andrea D. Williams  
Assistant General Counsel

July 7, 1999

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas  
Office of the Secretary  
Federal Communications Commission  
The Portals  
445 Twelfth Street, SW  
12th Street Lobby, TW-A325  
Washington, DC 20554

Re: *Ex Parte* Presentation  
WT Docket No. 96-198

Dear Ms. Salas:

On July 7, 1999, several representatives of the Section 255 Industry Coalition sent the attached letter to the Chairman and the Commissioners of the Federal Communications Commission concerning the implementation of Section 255 of the Telecommunications Act of 1996.

Pursuant to Section 1.1206 of the Commission's Rules, CTIA, on behalf of the signatories to the attached letter, is filing an original and one copy of this letter and the attachments with your office. If you have any questions concerning this submission, please contact the undersigned.

Sincerely,

*Andrea D. Williams*  
Andrea D. Williams

Attachment (1)

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List A B C D E



July 7, 1999

The Honorable William E. Kennard  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.E., 8<sup>th</sup> Floor  
Washington, D.C. 20054

**Re: Implementation of Section 255 of the  
Telecommunications Act of 1996  
WT Docket No. 96-198**

Dear Chairman Kennard:

Soon the Commission will adopt rules implementing Section 255 of the Telecommunications Act of 1996. The Section 255 Industry Coalition<sup>1</sup> ("Industry Coalition") supports the goals of Section 255 to ensure that both telecommunications services and equipment are accessible and usable by individuals with disabilities, if readily achievable. The Industry Coalition commends the Commission staff for their tireless efforts and significant progress in recommending a flexible and balanced approach to many issues raised in the Section 255 proceeding. The Signatories to this letter are committed to working with the Commission and consumer groups to achieve greater accessibility to telecommunications services and equipment, as such terms are defined specifically by the Communications Act of 1934, as amended.<sup>2</sup> However, in implementing this Section, the Commission should not disregard the intent of Congress and the well-established jurisprudence of statutory construction. Furthermore, the Signatories have serious concerns about several issues under consideration by the Commission, specifically the possible assertion of ancillary jurisdiction by the Commission to include information services within the requirements of Section 255, the "readily achievable" analysis and specific elements of the complaint process.

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<sup>1</sup> The Section 255 Industry Coalition includes representatives from the following organizations: Business Software Alliance (BSA), Consumer Electronics Manufacturers Association (CEMA), Cellular Telecommunications Industry Association (CTIA), Information Technology Industry Council (ITIC), Multi-Media Telecommunications Association (MMTA), National Telephone Cooperative Association (NTCA), Personal Communications Industry Association (PCIA), Rural Telecommunications Group (RTG), Telecommunications Industry Association (TIA), and United States Telephone Association (USTA).

<sup>2</sup> 47 U.S.C. § 3 (1996).

## **I. Ancillary Jurisdiction and the Treatment of Information Services**

It appears that the Commission is considering extending the “readily achievable” analysis of Section 255 to specific information services, *i.e.*, voicemail, interactive menus, and Internet telephony. While Congress has specifically limited Section 255 to telecommunications services, telecommunications equipment and customer premises equipment as defined in Section 3 of the Communications Act of 1934, as amended, discussions with Commission staff indicate that the Commission may invoke its ancillary jurisdiction to bring voicemail, interactive menus and Internet telephony within Section 255. The Coalition believes this is not an appropriate use of ancillary jurisdiction. The doctrine of ancillary jurisdiction does not provide the Commission with unfettered authority to include services and equipment beyond that which Congress has specifically addressed and contemplated.

Congress was quite clear in addressing the reach of Section 255 by excluding information services and limiting the scope of the provision to telecommunications services, telecommunications equipment and CPE. The Commission cannot act in derogation of Congress’ policy judgment, which is unambiguously stated in Section 255. Any expansion of the scope of Section 255 by the Commission, however limited, would constitute a usurpation of congressional authority.

## **II. Readily Achievable Analysis**

The Signatories support a broad definition of “readily achievable” that reflects the ever-changing competitive telecommunications market. The definition of “readily achievable” contemplates a balancing of legitimate, but competing interests. The Commission must take care as it gives life to “readily achievable” in the telecommunications context that it does not stifle innovation and competition in the development and deployment of telecommunications services, telecommunications equipment, and CPE, or impose costs that are not commensurate with the benefits produced. It must resist any temptation to adopt rules imposing detailed documentation and reporting requirements and only require compliance where it is truly “easily accomplishable and able to be carried out without much difficulty or expense.” The product-line approach and, in the case of business equipment, the system-based approach achieve the fair and reasonable balance that is contemplated by the statute’s readily achievable standard. Additionally, the product-line approach will result in greater depth of access features in targeted telecommunications products and telecommunications services.

The Commission should carefully consider the proposals before it in a manner that balances the goals of greater accessibility with the exigencies of business and technological development. Thus, the concept of readily achievable must include an analysis of technical feasibility, practicality, and market conditions. In addition, the Commission’s inquiry as to the financial resources of the entity that manufactures the product should focus on the actual business unit that manufactures the equipment, rather

than the corporation as a whole. It is at the business unit level where practical engineering and cost decisions concerning product are made.

### **III. Complaint Process**

The Signatories encourage the Commission to use efficient strategies for bringing the parties together to resolve Section 255 grievances. Thus, the Signatories recommend that the Commission provide a complaint process that: 1) at a minimum, strongly encourages a complainant to contact initially the relevant service provider or manufacturer;<sup>3</sup> 2) provides strong protection of proprietary information; 3) ensures a mechanism whereby the real party in interest is the appropriate party using the Commission's Section 208 complaint process; and 4) affords manufacturers and service providers a reasonable period of time (30-60 days) to have a constructive dialogue with their customers and take appropriate steps to try and resolve grievances prior to the Commission interjecting itself into the process.

The Signatories, however, are concerned that the Commission should not fail to address other issues of the complaint process that are problematic. For example, under the Commission's proposed rules, it is not clear whether there is any finality to the process, which leaves carriers and manufacturers open to complaints regarding products and services long after new products and services have been marketed to meet the broader needs of individuals with disabilities. Accordingly, the Signatories believe the Commission must consider the interaction between Sections 415(b) and 255. Specifically, in view of Section 415(b), when does a cause of action accrue with respect to a Section 255 complaint? Another example is the issue of cost recovery, particularly for ILECs that are under a price cap regime. Do costs associated with Section 255 qualify as exogenous costs? The Signatories are concerned whether these issues will be appropriately and sufficiently addressed in the forthcoming Report and Order.

The Signatories remain committed in ensuring that persons with disabilities have access to telecommunications services and equipment, if readily achievable, and will continue to work with consumer groups and the Commission to realize the goals of Section 255 as set forth by Congress. Please contact Brian Fontes if the Signatories or the individual trade associations can provide you with any additional information that may assist you in your deliberations on this issue. We look forward to working with the Commission in its implementation of Section 255.

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<sup>3</sup> In many situations, a consumer's inquiry or grievance may be with another party such as a government agency or employer who does not provide telecommunications services, telecommunications equipment or CPE that is accessible to individuals with disabilities. In such situations, the FCC should encourage consumers with government-agency or workplace-related inquiries or complaints relating to the accessibility of a product or service to contact their employer or the appropriate government official who have related obligations under the Americans with Disabilities Act..

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Lawrence E. Sarjeant  
Vice President Regulatory Affairs  
and General Counsel  
United States Telephone Association

cc: The Honorable Susan Ness  
The Honorable Harold Furchtgott-Roth  
The Honorable Michael Powell  
The Honorable Gloria Tristani