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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Appropriate Framework for Broadband Access to the Internet over Wireline Facilities	)	CC Docket No. 02-33
	)	
Universal Service Obligations of Broadband Providers	)	
	)	
Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements	)	CC Docket Nos. 95-20, 98-10

REPLY COMMENTS OF
TELECOMMUNICATIONS FOR THE DEAF, INC.

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Dated: July 1, 2002

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REPLY COMMENTS OF
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Telecommunications for the Deaf, Inc. ("TDI"), by its attorneys, submits these reply comments in response to the above-captioned notice of proposed rulemaking examining the appropriate regulatory framework for broadband access to the Internet over wireline facilities.[1]

As stated in its initial comments,[2] TDI is a national advocacy organization actively engaged in representing the interests of the twenty-eight million Americans who are deaf, hard of hearing, late deafened, and deaf-blind. TDI's mission is to promote equal access to media and telecommunications for these constituency groups.

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[1] *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Notice of Proposed Rulemaking, CC Docket No. 02-33, FCC 02-42 (rel. Feb. 15, 2002) ("NPRM").

[2] Comments of Telecommunications for the Deaf, Inc., May 3, 2002 ("TDI Comments").

It is disappointing that many commenters did not substantially address the issue of access for individuals with disabilities to wireline broadband services while emphasizing their own grievances concerning the regulatory treatment of such services. For example, the primary beneficiaries of the Commission's proposed reclassification of wireline broadband services as "information services" are the Bell operating companies ("BOCs"), and not one of them even mentioned application of Section 255 to the newly defined services. Verizon laudably consents to Title I regulation over its wireline broadband services in order to protect consumer interests, but doesn't acknowledge that very specific equal access rights for persons with disabilities attach to all of the telecommunications services it provides.[3] As TDI commented initially, Title I regulation should be considered the minimum, last-resort form of regulation that requires the BOCs to provide equal access to wireline broadband services to persons with disabilities.[4] The National Association for the Deaf agrees that the Commission must establish, at a minimum Section "255-like" regulations to ensure that services, content, and end-user equipment are accessible to, and usable by, people with disabilities.[5] The better alternative, of course, is not to reclassify wireline broadband services at all, but to leave them classified as telecommunications services as they are now, with all accompanying statutory obligations, including access to persons with disabilities under Section 255.

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[3] Verizon Comments at 42.

[4] TDI Comments at 9.

[5] NAD Comments at 2.

The other BOCs—BellSouth, SBC, and Qwest—also make no mention of equal access to persons with disabilities. SBC claims that reclassifying wireline broadband services will have no adverse impact on consumer protections.[6] SBC does not explain this position, nor does it commit to providing access to persons with disabilities in the event that SBC prevails in persuading the Commission to grant it the regulatory laxity it claims to need to compete with cable modem providers. BellSouth makes no mention of its Section 255 obligations, but devotes a substantial amount of its comments to reform of its accounting obligations under Part 64 of the Commission's rules.[7]

Numerous commenters opposed to the regulatory largesse that is proposed for the BOCs note, however, that reclassifying wireline broadband services as information services would remove them from the scope of Section 255.[8] That in itself should be sufficient for the Commission to abandon its proposal. The protections guaranteed by Congress for persons with disabilities would be undermined by such Commission action, and they might be replaced only upon an assertion of jurisdiction derived from more vague statutory authority. Had Congress intended to defer the development of all equal access protections for persons with disabilities to the discretionary judgment of the Commission, such a grant of authority would have been more explicit and Section 255 would not have been included within the 1996 Act.

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[6] SBC Comments at 40.

[7] BellSouth Comments at 26-29.

[8] California Internet Service Provider Association Comments at 27; Business Telecom, Inc. Comments at 32-33; Covad Communications Company Comments at 77; DirecTV Broadband, Inc. Comments at 40-41; Big Planet, Inc. Comments at 50-51; California Public Utilities Commission Comments at 42.

A number of commenters recognize the importance of leaving the classification of wireline broadband services alone and keeping them within the scope of Section 255. The Alliance for Public Technology, a long-time supporter of access to high-speed communications networks by persons with disabilities, opposes the Commission's proposal to redefine wireline broadband Internet access services as information services.[9] APT asserts that a critical component of any regulatory obligations resulting from this proceeding must be non-discriminatory access to telecommunications services by persons with disabilities.[10] Likewise, the Rehabilitation Engineering Research Center on Telecommunications Access ("RERC-TA") agrees that reclassification of wireline broadband Internet access service may result in eliminating protections for people with disabilities.[11] As technologies develop that provide combinations of traditional telecommunications and advanced information access, persons with disabilities could be left behind if the equal access safeguards of Section 255 do not apply to them.[12]

RERC-TA also agrees with TDI that market forces are not sufficient to protect the interests of persons with disabilities.[13] The types of disabilities are so varied that the market to serve them is too fragmented and small to influence marketing decisions.[14] For this reason,

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9 APT Comments at 3.

10 APT Comments at 6.

11 RERC-TA Comments at 2.

12 RERC-TA Comments at 6.

13 RERC-TA Comments at 9.

14 RERC-TA Comments at 9.

statutory and regulatory protections have been established to ensure equal access by persons with disabilities. Indeed, it should be self-evident that Congress would not have adopted Section 255 if it had expected market forces alone to ensure adequate access to services for persons with disabilities.

RERC-TA makes the good point, among others, that even when the Commission deregulated the production of consumer premises equipment ("CPE")—presumably acknowledging the presence of market forces sufficient as a general matter to maintain the quality of equipment attached to the public network—it retained those regulations that ensured compatibility of CPE with hearing aids.[15] Here, likewise—even assuming for the sake of argument that market forces are effective in the broadband market as a general matter—there is no reason to think that those forces alone will ensure access to wireline broadband Internet access services by individuals with hearing and speech disabilities "in a manner functionally equivalent to someone without such disabilities."[16]

As TDI explained in its initial comments, broadband services offer enormous potential benefits to persons with hearing disabilities.[17] Among other benefits, the simple ability to use video streaming technologies, which are viable only through broadband connections to the Internet, would allow persons with disabilities to communicate through sign language across great distances. "Tele-signing" would enable hearing and non-hearing people to communicate

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[15] RERC-TA Comments at 11.

[16] RERC-TA Comments at 11, *quoting 2000 Biennial Regulatory Review of Part 68 of the Commission's Rules and Regulations*, CC Dkt. No. 99-216, FCC 00-400 (Nov. 9, 2000) at ¶ 66.

[17] TDI Comments at 4-7.

with each other through separately located sign-language interpreters. Tele-signing directly between two sign-language users would provide them with the ability to actually see a person at the other end of a transmission, rather than relying on the relatively primitive and cumbersome TTY transmissions. This would constitute an invaluable improvement in communications for persons with hearing disabilities. As RERC-TA states, "The ability to carry on telephone conversations via sign language over broadband access services will finally afford signing deaf people the opportunity to experience natural phone interactions that they have never been able to enjoy. In doing so, they will finally experience 'functionally equivalent' telephone services as intended by Congress in Title IV of the Americans with Disabilities Act."[18]

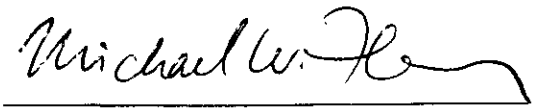
No matter which way the Commission slices and dices the statutory definitions of "telecommunications" as opposed to "telecommunications service" in order to decide whether to deregulate the Bell companies, the simple fact is that the plain meaning of "telecommunications" is the ability of two (or more) persons to use technology to convey information to each other across distances. The use of sign language through video streaming represents a great potential advancement for telecommunications for persons with hearing disabilities. The Commission should do nothing to jeopardize that potential—however well intentioned and embellished with assurances of regulatory protection—that exists now under the Telecom Act through Section 255.

For the foregoing reasons, and for the reasons stated in the initial TDI Comments, the Commission should abandon its proposal to reclassify wireline broadband Internet access

[18] RERC-TA Comments at 14.

services as information services. Alternatively, if the Commission were to reclassify wireline broadband Internet access services as information services, it must promulgate regulations simultaneously that require providers of such information services to make their services accessible to and usable by individuals with disabilities, if readily achievable.

Respectfully submitted,



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Dated: July 1, 2002

CERTIFICATE OF SERVICE

I, Michael W. Fleming, hereby certify that a copy of the foregoing Reply Comments of Telecommunications for the Deaf, Inc. was served by hand delivery upon the following.

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