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In the Matter of)

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 Docket No. 96-198

COMMENTS OF BELL ATLANTIC

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June 30, 1998

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COMMENTS OF BELL ATLANTIC¹

I. Introduction and Summary

In enacting Section 255 of the 1996 Telecommunications Act, Congress wanted to give all Americans access to a wide range of telecommunications services and equipment. In support of this vision, Bell Atlantic has already taken forthright action to increase the accessibility of its products and services by adopting a set of Universal Design Principles which will be taken into account in the services and products that it

¹ The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company; and New England Telephone and Telegraph Company.

offers,² and it has assigned one of its most senior executives the responsibility of ensuring that new services and products comply with these principles.

Going beyond the requirements of Section 255 that new telecommunications equipment and services be made accessible, where readily achievable, Bell Atlantic has also assessed its existing services and products to improve overall accessibility. Bell Atlantic is also improving its outreach program to customers with disabilities. For example, Bell Atlantic is introducing Braille and large print bills throughout the region and, during the summer of 1998, will conduct a direct marketing trial of products and services geared to customers with hearing and sight disabilities and mobility and speech impairments.

The Commission can best implement Congress's vision by creating a flexible regulatory approach that (1) gives the industry latitude to meet the mandates of Section 255 in a manner that will serve the needs of all customers for innovative products and services without unnecessary intrusive regulation, (2) affords consumers a process for resolving accessibility problems in a non-adversarial manner and in a way that places minimal regulatory burdens on both consumers and the Commission, and (3) assists the

² These principles are (1) Bell Atlantic will provide quality services that can reasonably accommodate a broad range of diverse users, including individuals with disabilities; (2) Bell Atlantic will review existing services to determine which services should be more accessible; (3) Bell Atlantic will design and develop services, to the extent readily achievable, so as to be accessible to a broad range of diverse users; (4) Bell Atlantic will market and provision its services in a manner consistent with accessibility by a broad range of diverse users; (5) Bell Atlantic will employ these Universal Design Principles Bell Atlantic-wide, in relationships with customers, employees, shareholders, and suppliers. Bell Atlantic will encourage companies related to but not controlled by Bell Atlantic to adopt these principles.

industry in working with the disabled community to find common solutions to broad-based accessibility issues.

Accordingly, the Commission should begin implementing Section 255 with a light regulatory hand and add more intensive regulatory mandates only if and when it proves necessary. Instead of developing a separate comprehensive implementation scheme, as it proposes – *see Notice of Proposed Rulemaking*, FCC 98-55, ¶ 30 (rel. Apr. 20, 1998) (“Notice”) – the Commission should start with the guidelines which the Architectural and Transportation Barriers Compliance Board (“Access Board”) has already promulgated for telecommunications equipment and CPE based on its authority under Section 255(e).³ In order to assist the parties and focus any disputes, the Commission should target this proceeding to providing any needed interpretations and modifications to those guidelines and use the complaint process, as specified in Section 255(f), to address specific issues as they arise.

In addition, the complaint procedures that the Commission has proposed should be modified to establish a non-adversarial arrangement, during which the parties would attempt to resolve the issues, under Commission auspices, on a non-contentious basis. In this way, only in rare instances will parties need to resort to informal or formal complaints, in which case the existing complaint processes should be used.

³ The Access Board’s guidelines, codified at 36 C.F.R. Part 1193, were published on February 3, 1998 (63 Fed. Reg. 5608).

11. Rules and Guidelines Should Be the Minimum Needed to Implement Section 255.

As required by Section 255(e) of the Act, the Access Board has issued guidelines for accessibility of equipment by persons with disabilities. See 47 U.S.C. § 255(e). The Commission's role here should be limited to supplementing and interpreting those guidelines as needed to assist parties in resolving accessibility problems cooperatively and in expediting resolution of disputes that are brought to the Commission.

a. Providers of telecommunications services: The Act requires providers of telecommunications services to ensure that their telecommunications services are accessible to and usable by individuals with disabilities, if readily achievable. 47 U.S.C. § 255(c). There is no need for the Commission to define "telecommunications services" (See Notice at ¶¶35-46), because the Act already does so. 47 U.S.C. §153(46). And the Commission has already correctly found that telecommunications services do not include information services.⁴ Even though it has no statutory obligation to do so, Bell Atlantic considers the needs of its customers with disabilities in the development of all of its services and products, including information services. However, the Commission cannot redefine "telecommunications service" in a manner that is inconsistent with the Act (and its own precedents).

⁴ See *Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Second Report and Order and Further Notice of Proposed Rulemaking*, 13 FCC Rcd 806 1, ¶ 72 (1998); *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, As Amended*, 11 FCC Rcd 21905, ¶ 107 (1996).

b. Manufacturers: The Commission proposes to define who is a “manufacturer” of telecommunications equipment or CPE. Notice at ¶¶ 47-61. Whether an entity is a manufacturer will generally be a question of fact, and regulations are not needed to define the term. The entity or entities that actually manufacture the product, either by fabricating or assembling it, should be responsible for ensuring that it meets the requirements of Section 255. Entities that merely sell or distribute the product, whether or not affiliated with the manufacturer, cannot be held responsible for incorporating accessibility features into the design or fabrication of the equipment, because they have no direct control over those activities. These include service providers that brand equipment with their own service mark for sale or lease in connection with telecommunications or information services. See Notice at ¶¶ 59 and 61. In any event, the Commission should use its good offices to encourage manufacturers and service providers to work cooperatively to ensure that accessibility and consumer choice are maximized.

c. Readily Achievable: Section 255 requires that telecommunications equipment and services and CPE be made accessible if it is “readily achievable” to do so. 47 U.S.C. § 255(b) and (c). Whether accessibility is “readily achievable” in a given instance should turn on the specific facts of the case presented in the complaint proceeding. In applying the facts, the Commission is required by the Act to rely on the definition of “readily

⁵ The Commission asks whether a distributor that is affiliated with a manufacturer should acquire the manufacturer’s responsibility under Section 255 to make products accessible. Notice at ¶ 61. There is no legal justification for attempting to pierce the corporate veil to hold a non-manufacturing affiliate responsible for the actions of the manufacturer, and the Commission should not attempt to assign such responsibility.

achievable” that is in the Americans for Disabilities Act, 42 U.S.C. §12181(9) (“ADA”). See 47 U.S.C. § 255(a)(2). The Commission recognizes, however, that the ADA definition may not always be fully applicable to telecommunications equipment or services. Notice at ¶¶ 98-99. Accordingly, it has appropriately proposed a number of specific factors that are tailored to the telecommunications industry that can be used to guide a Commission decision in Section 255 complaint proceedings. Notice at ¶¶100-123. Most of these factors, which include feasibility, expense, and the practicality of making a product accessible, are derived from the TAAC Report.”

In adjudicating a particular dispute, however, the Commission must recognize that it may not be technically or economically possible for a company to transfer accessibility features among its various products and services. Nor may one provider always be able technically or economically to incorporate into its services or products all of the features that another provider has put into a somewhat similar service or product. Finally, a provider may be able to incorporate features that make a product or service accessible to individuals with some disabilities but not others. The ADA definition, together with the factors the Commission has proposed, would take into account variations among providers as well as products and services in deciding whether accessibility is readily achievable in a particular instance.

The Commission should not adopt one of its proposed factors, however.

In examining the resources that a provider has available to commit to making a service or

⁶ Telecommunications Access Advisory Committee, Access to Telecommunications Equipment and Customer Premises Equipment by Individuals with Disabilities, Final Report (Jan. 1997) (“TAAC Report”).

product accessible, the Commission should look only at the particular corporate entity, not to the parent corporation or other affiliates, and to the service or class of services in question, not to other services or products. See Notice at ¶ 109. In the absence of fraud or other “sham” arrangements, there is no justification for attempting to force one affiliate to finance the activities of another. Nor may it violate its own rules against cross-subsidization by requiring the revenues from one service or product to be used to subsidize another. Forced transfers of assets from one affiliate to another or between regulated and unregulated services would violate the Commission’s own affiliate transaction rules, 47 C.F.R. §§ 64.901-904, and similar state requirements, and the Commission cannot and should not adopt that proposal.

III. Complaint Procedures Should Facilitate Accommodation and Quick Resolution.

In implementing the requirements of Section 255, the Commission proposes to supplement the existing informal and formal complaint procedures with a new “fast track” complaint process. Notice at ¶¶ 126-43. To the extent the Commission pursues such a process, it should modify its proposal in certain respects.

First, this concept should not be viewed as a complaint procedure but as a non-adversarial opportunity to resolve issues before they mature into a more formal dispute. This change would tend to foster cooperation between the provider and consumer and avoid the contention that usually accompanies complaints. As telecommunications services and equipment become increasingly sophisticated, specialized, and complex, and as competition increases, all parties would be best served

by working out accessibility concerns in a non-adversarial atmosphere rather than forcing the Commission to decide between the hardened positions presented in a complaint.

Second, as the Commission proposes, consumers should be encouraged first to contact the provider or manufacturer to attempt to resolve the issue. Notice at ¶ 126. The company may not be aware of an accessibility problem with a particular service or product and may be able to provide a simple solution, suggest a way that the consumer may use the product or service to avoid the accessibility problem, or offer an alternative that meets the customer's need. Bell Atlantic expects that such initial contacts will resolve most problems without any resort to Commission processes. Pre-filing informal contacts are consistent with the Commission's new formal complaint rules, which mandate pre-filing settlement talks as a pre-condition to filing a complaint. See 47 C.F.R. § 1.721(a)(8). Here, as with the formal complaint procedures, pre-filing **contact** will give the provider or manufacturer an opportunity to investigate the consumer's concern. If informal resolution is not reached, this pre-filing activity will reduce the time needed to respond.

In any event, if the problem cannot be resolved and the consumer chooses to bring the dispute to the Commission, the Commission should provide a minimum of fifteen days for the carrier to respond after service.⁷ The five-day period the Commission proposes will rarely, if ever, provide a carrier with sufficient time to "study the complaint, gather relevant information, identify possible accessibility solutions, . . . work

⁷ Unless a carrier designates another agent, the Commission should serve Section 255 inquiries on the agent already of record for formal complaints. Manufacturers will need to designate agents for this purpose.

with the complainant to solve the access problem” and provide the Commission and the consumer with a response. See Notice at ¶ 136. Unless it specifies a realistic response period, the Commission will be faced with routine requests for additional time, and this could delay, rather than expedite, resolution. Of course, for complex inquiries, more time may be needed to provide a meaningful response. See *id.* at ¶ 137.

If the proposed “fast-track” process is unable to resolve the problem, the consumer will need to resort to the complaint procedures. There is no reason for the Commission to establish unique procedures for Section 255 complaints. The existing flexible informal complaint rules, 47 C.F.R. §§ 1.716-718, and the new, streamlined formal complaint procedures, 47 C.F.R. §§ 1.720-735, should allow for efficient resolution of accessibility complaints.

The Commission should not adopt its proposal to eliminate all standing requirements for Section 255 complaints. See Notice at ¶ 148. Instead, the Commission should prescribe minimal standing requirements – the complainant must be disabled or be represented by a public or private organization representing the disabled and assert that he or she has a need to obtain a product or service that is accessible to persons with that particular disability. Dispensing entirely with standing would invite complaints by competing manufacturers or service providers designed not to address any legitimate concern but to harass competitors.

IV. A Broad-Based Advisory Group Can Help Resolve Industry-Wide Issues.

Section 255 represents a new Congressional initiative and a new area of enforcement for the Commission. For some companies, like Bell Atlantic, Section 255 simply formalizes existing commitments and goals, while, for others, it may represent an entirely new imperative. Given the uncertainty of the number and substance of the requests and the diversity of the affected providers, the Commission needs to be mindful of the straight jacket that a “one size fits all” approach may create.

To assist in creating a flexible regulatory environment, the Commission should turn to “neutral parties with special expertise in accessibility matters [to] help us resolve complaints.” Notice at ¶ 160. As the Commission also points out, “[o]ther groups with accessibility expertise may well develop out of the process by which Section 255 is being implemented and as accessibility efforts become more widespread,” and these groups may provide ongoing assistance in implementing Section 255. *Id.* at ¶ 161. Similarly, the TAAC suggests that “[t]he FCC may at its discretion refer inquiries and complaints to a joint industry/disability advisory panel for opinion.” TAAC Report, § 6.7.5 at 33.

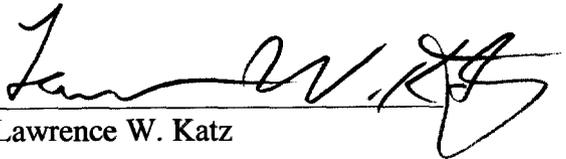
To facilitate on-going implementation, the Commission should form a broad-based accessibility forum to provide a vehicle in which common problems can be handled in a collegial fashion. This forum should include a representative cross-section of the disabled community, equipment manufacturers, and telecommunications service providers. While individual complaints of particular applicability should be resolved through the fast-track inquiry and complaint process, this forum would be charged with

examining issues of more general concern, particularly those that transcend industry segments. A body such as this could provide valuable informal input to the Commission and the industry alike. It could help resolve issues that have not yet matured into disputes and obviate the need for complaints.'

V. Conclusion

Accordingly, the Commission should adopt policies and rules consistent with these comments.

Respectfully Submitted,



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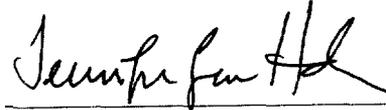
Attorney for the Bell Atlantic
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June 30, 1998

⁸ To the extent that this forum develops industry-wide standards, it would need to comply with the requirements of Section 273(d)(4) to invite interested industry parties to participate in its deliberations.

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of June, 1998 a copy of the foregoing "Comments of Bell Atlantic" was sent by first class mail, postage prepaid. to the parties on the attached list.

A handwritten signature in cursive script, appearing to read "Jennifer L. Hoh", written over a horizontal line.

Jennifer L. Hoh

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