ORIGINAL

DOCKET FILE COPY ORIGINAL

RECEIVED

JUN 3 0 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE 3 THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of Section 255 of the Telecommunications Act of 1996	)	
	)	WT Docket No. 96-198
Access to Telecommunications Services, Telecommunications Equipment, and Customer Premises Equipment by Persons with Disabilities	)	

COMMENTS OF
THE AMERICAN PUBLIC COMMUNICATIONS COUNCIL

Pursuant to the Commission's Notice of Proposed Rulemaking ("~~Notice~~") in WT Docket No. 96-198, released April 20, 1998, the American Public Communications Council ("APCC") hereby respectfully submits its comments regarding the Commission's proposed implementation of Section 255 of the Telecommunications Act of 1996 (the "Act").

APCC is a national trade association made up of almost 2,000 manufacturers and independent (non-local exchange carrier ("LEC")) payphone service providers ("PSPs"). APCC seeks to promote competitive markets and high standards of service for payphones. APCC recognizes the importance of ensuring that, where practicable, public payphone installations are accessible to individuals with disabilities. To that end, APCC has focused

No. of Copies rec'd 0+5
List ABCDE

on educating its members on compliance with applicable federal accessibility standards, such as the Architectural and Transportation Barriers Compliance Board's ("Access Board") guidelines for public accommodations and commercial facilities.' APCC has actively participated in every major proceeding affecting payphones, and in several proceedings addressing the access to telecommunications equipment by persons with disabilities.

I. THE COMMISSION MUST ALLOW COMPANIES TO PRIORITIZE ACCESSIBILITY ISSUES

Sections 255(b) and (c) of the Act require that manufacturers of telecommunications equipment and providers of telecommunications services ensure that their equipment and services are accessible to and usable by individuals with disabilities, if readily achievable.[2] As the Commission's "if readily achievable" qualifier correctly recognizes, manufacturers and service providers cannot achieve accessibility in all product or service offerings. While the Commission's proposal to require manufacturers and service providers to incorporate accessibility considerations into the development of products and service offerings is consistent with the mandate of Section 255, the Commission must permit manufacturers and service providers to make individual business decisions on what is "readily achievable," or compliance with Section 255 will be retarded.

---

1 36 C.F.R. Part 1191; 28 C.F.R Part 35, et al. .

2 47 C.F.R. §§255(b) and (c).

PSPs are primarily small businesses, with limited resources, that operate in a highly competitive environment with no barriers to entry. PSPs focus a significant portion of their marketing efforts on trying to find new locations that are either underserved or unserved. Frequently, these locations are underserved or unserved because they are at the margin of profitability. If PSPs are forced to incur additional costs on top of those they already incur in the normal course of business, their resources are thinned and they are further limited in the number of locations they are able to serve. PSPs are already obligated to provide access to individuals with disabilities under the Access Board's guidelines for public accommodations and commercial facilities. Complying with the additional requirements of Section 255 will further impact the already limited resources of PSPs. Therefore, the Commission must permit PSPs to prioritize accessibility issues individually based upon their particular circumstances.

As the Commission itself recognized in its Notice, "[the Commission] must allow industry the flexibility to innovate and marshal its resources toward the end goal of accessibility, rather than focusing on compliance with detailed implementation rules." Accordingly, the Commission's final rules regarding Section 255 should be drafted in a manner that affords manufacturers and service providers with the flexibility necessary to prioritize accessibility issues so that they do not overtake the product and service design processes.

II. THE COMMISSION'S DEFINITION OF "READILY ACHIEVABLE" MUST RECOGNIZE THAT WHAT IS ACHIEVABLE WILL VARY FROM PSP-TO-PSP and LOCATION-TO-LOCATION

The Commission cannot apply a uniform "readily achievable" standard to all manufacturers and service providers. The Commission must recognize that accessibility assessments will necessarily vary from manufacturer to manufacturer and service provider to service provider, due to differing priorities, finances, target market and other factors. In the payphone context, for example, one of the factors to be considered in a "readily achievable" assessment is the location at which a payphone will be installed. High traffic areas, such as airports, can usually support the high costs associated with installation of text telephones, while low traffic areas will not.[3] Thus, it is frequently cost prohibitive, and, therefore, not "readily achievable," for a payphone service provider to install a text telephone at a given location. Aside from the issue of cost, in relation to revenue at a given location, it may only be generally feasible for any manufacturer or service provider — large or small — to "readily" manufacture or provide accessibility features. For example, it may be feasible for a manufacturer or service provider to place either enlarged buttons on payphones or enlarged type on their payphones, but not both, due to space constraints. In addition, because of the significant of amount of consumer information that must be posted on payphones, a manufacturers or service provider must also choose which type, if any, to enlarge.

[3] APCC notes that text telephones are already required to be installed in high volume locations, such as airports, but are not required in locations that can support only one or two payphones. See, 36 C.F.R. Part 1191; 28 C.F.R. Part 35, et al.

APCC's membership is made up primarily of small companies with limited resources. Smaller companies simply do not have the ability to allocate to overhead the development costs associated with making "readily achievable" assessments. Thus, small companies may not make it through the 18-point checklist requirements for even one payphone feature, let alone all possible features. Therefore, companies must pick their priorities , and not all companies will have the same resources or priorities. Accordingly,. the Commission should not judge companies' accessibility decisions based upon what other companies have done. The Commission must provide manufacturers and service providers with the flexibility to make thoughtful and complete accessibility and readily achievable product and service assessments, without subjecting such assessments to subjective, and ultimately unproductive, second-guessing by the Commission.

As stated above, manufacturers and service providers must make a cut regarding which and how many payphone accessibility improvements are "readily achievable" in terms of accessibility, based on a variety of individualized factors. Because of this, it may only be "readily achievable" for a manufacturer or service provider to address one feature of a payphone, and/or to address only some of the items on the Access Board's 18-point checklist.[4] The determination of whether a manufacturer or service provider has complied with obligations under Section 255 should be measured by whether the manufacturer or service provider has made a reasonable effort to undertake "readily achievable" product or service assessments, and not by how many such assessments have been made. The

[4] Architectural and Transportation Barriers Compliance Board Telecommunications Act Accessibility Guidelines, Final Rule, 36 C.F.R. Part 1193 (released February 3, 1998).

Commission, therefore, must evaluate the efforts of manufacturers and service providers to comply with mandate of Section 255 on a company, rather than product-by-product or service-by-service, basis.

Respectfully submitted,

By: Robert F. Aldrich

Albert H. Kramer
Robert F. Aldrich
Valerie M. Furman
DICKSTEIN SHAPIRO MORIN
& OSHINSKY
2101 L Street, N.W.
Washington, DC 20037
(202) 828-2226

Attorneys for the American Public
Communications Council

June 30, 1998