
Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington DC 20554

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

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COMMENTS OF AMERITECH

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COMMENTS OF AMERITECH

Summary

Ameritech has always been committed to seeking greater accessibility to telecommunications products and services for persons with disabilities. Accordingly, Ameritech welcomes the enactment of Section 255 of the Telecommunications Act of 1996 and the efforts of the Commission to implement the new law's provisions. Ameritech is pleased to support by far the vast majority of the proposals the Commission has put forth in its Notice of Proposed Rulemaking.

However, Ameritech urges the Commission to conclude that it has not been authorized under Section 207 or 208 of the Act to award any private damages for accessibility complaints under Section 255. This result is required by the unambiguous declaration by Congress in Section 255(f) that “[n]othing in this section shall be construed to authorize any private right of action to enforce any requirement of this section or any regulation thereunder.” Furthermore, the prohibition against private rights of action is not contradicted by the provision saying that “[t]he Commission shall have exclusive jurisdiction with respect to any complaint under this section,” since the effect of the latter is not to broaden the scope of permissible complaints, but

merely to declare that it is the Commission (rather than the Access Board or some other forum) who will hear such complaints as Congress has *not* forbidden in its rule against private actions. Thus the primary procedural focus of Section 255 is to invoke the administrative, investigational, and prosecutorial functions of the Commission, rather than to enlarge its adjudicatory powers into the realm of deciding individual claims for damages on disabilities issues. The powers thus granted will surely be adequate to protect the rights of persons in the disabled community and for the efficient deterrence of carriers and manufacturers from any unlawful conduct in violation of Section 255.

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**I. Ameritech Maintains a Firm Commitment to
Telecommunications Accessibility.**

Section 255 of the Telecommunications Act of 1996 has brought a new focus of attention to the design and marketing of telecommunications services and equipment for persons with disabilities in the United States. The Commission's recent Notice of Proposed Rule-making (hereinafter referred to as the "Notice" or "NPRM"),¹ to

¹ FCC 98-55, released April 20, 1998.

which Ameritech² hereby responds, distinctly highlights the significant provisions of that Section.

In fact, however, the new legislation only adds to the long history of the efforts of service providers and equipment manufacturers to serve the specialized telecommunications needs of disabled persons in this country. Indeed, that history had been launched one hundred twenty years earlier, since Bell's very invention of the telephone, as every schoolchild since that time has learned, flowed fortuitously from his earlier research for the benefit of persons with hearing impairment.

The men and women of today's Ameritech are proud that they may trace back a continuous history of service to the disabled, through predecessor companies, all the way to the original Bell and his auditory experiments. More important, however, the modern Ameritech, following its divestiture from the old Bell System in 1984, has continued to move forward on disability issues. Some of the highlights of Ameritech's current activities in this area include:

² Ameritech comprises five entities defined as Bell operating companies under the Telecommunications Act of 1996 — Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan Bell Telephone Company, The Ohio Bell Telephone Company, and Wisconsin Bell, Inc. — and other affiliates.

Products and Services

Ameritech Product Development Blueprint. Ameritech considers the needs of all its customers early in the product development process, known internally as the "Blueprint". In the early developmental stages, all products and services are evaluated with the objective of increasing accessibility and utility by individuals who have functional limitation requirements. Further, Ameritech requires that both vendors and internal product management personnel detail how people with disabilities will be able to use a product, as well as provide a report of the methods and results of the usability testing conducted.

Ameritech Human Factors. Ameritech was one among the first communications companies to commit specific resources toward ensuring that customer experiences and user interfaces developed by Ameritech or acquired from its vendors are "best in class" and usable for the most diverse population possible. The consideration of "Human Factors" is at the heart of the product development process and includes specific accessibility and usability casting.

Ameritech Special Needs Center. Ameritech provides the Ameritech Special Needs Center, which provides a wide range of assistive communications devices, including telephones for people with hearing, vision, mobility, and other disabilities. Customers with special needs who contact Ameritech customer care centers are online transferred to the Special Needs Center. The Center can also be contacted directly by dialing 800 433-8505 voice/TTY.

Teletypewriters. Ameritech provides low cost or free teletypewriters (TTYs) to persons with disabilities who are deaf, hard of hearing, or speech impaired and who meet certain qualifications. The qualifications, programs, and eligible product vary from state to state.

Operator Services Exemption. Customers who are unable to dial calls directly are exempt from the added cost of having an operator dial the call.

Information Charges Exemption. Customers who cannot look up numbers in the telephone directory may be eligible for an exemption from local information charges.

Special Telephone Bills. Ameritech provides Braille or large print telephone bills, at no charge, to visually impaired customers.

IntraLATA Discounts. Ameritech provides discounts on Ameritech long distance charges. Because calls placed using a TTY generally take longer than voice calls, Ameritech offers TTY users usage discounts on long distance calls within the LATA. State specific eligibility criteria apply.

Michigan Belay Center. Telecommunications Relay Service is a way for deaf, hard of hearing or speech impaired individuals to have telephone conversations with hearing individuals, using a Teletypewriter or Telecommunications Device for the Deaf. Ameritech, with the concurrence and support of other local exchange providers,

developed the service and has operated the center since its inception in 1991. An eleven-member Consumer Advisory Board, which includes users and interested community members, 51 percent or more of which are deaf, hard-of-hearing or speech impaired, provide recommendations on all aspects of the center operation to a three member Advisory Board.

Volunteerism

Ameritech Pioneers. Earlier volunteer efforts of the Telephone Pioneers employee and retiree social service organization, such as their dissemination of the "Green Book," are chronicled in the TAAC report.³ Ameritech Pioneers have also long supported programs and projects that benefit people with disabilities.⁴

Grants and Financial Support.

Ameritech has long supported projects and program that benefit people with disabilities of all agents. Highlights include:

Innovations Award Program. The Innovations Award Program is sponsored with the National Council on the Aging. Its goal is to improve the quality of life for older people and people with disabilities by fostering the development, adaptation, and broad use of innovations in communication technology. Now in its second year, the company has invested over \$500,000 on this program.

³ See United States Architecture and Transportation Barriers Compliance Board, Telecommunications Access Advisory Committee, **ACCESS TO TELECOMMUNICATIONS EQUIPMENT AND CUSTOMER PREMISES EQUIPMENT BY INDIVIDUALS WITH DISABILITIES, Final Report ¶ 2.1** (January 1997).

⁴ Examples of recent Ameritech Pioneers activities include:

The Cabins in the Woods. Working with the Wisconsin Department of Natural Resources, the Pioneers have funded and built three cabins, which are fully accessible to people with physical disabilities, so that they can enjoy some time in a natural setting.

Sports Jamboree for the Physically Challenged. Each year Ameritech Pioneers providing funding and volunteers for this three-day event in Ohio.

Special Sports Day. This one day event held in Independence, Ohio, provide opportunities to participate in sporting events for children with developmental disabilities, both physical and mental.

Orion Oaks County Park. For several years, Pioneer volunteers from Ameritech Advertising Services in Troy, Michigan, have worked to make this park accessible to people who use wheelchairs. Ameritech pioneers have built and installed a wooden bridge connecting two sides of the park and recently dedicated a new wheelchair accessible fishing and boating pier, funded and built by these volunteers.

Special Olympics. Corporate sponsorship of numerous Special Olympics programs. Grants in excess of \$500,000 have been awarded over the past two years.

Ameritech has contributed over \$130 **million** over the past five years to support hundreds of programs in the communities it serves.

Annually, 25,000 employees, retirees, partners and their families volunteer close to 350,000 hours of volunteer time in their communities.

Support of Advocacy Organizations

Ameritech has long maintained active corporate membership on key disability advocacy groups.

Commitment to Workplace Diversity

Employment. Ameritech has long been a leader in providing employment to persons with disabilities. Today, visually impaired individuals work as service representatives, maintenance administrators, operators, etc.

Employer of the Year. Ameritech was named as Employer of the Year by Cleveland Sight Center in 1997.

Helen Keller Corporate Service Award. Mr. Dick Notebaert, CEO of Ameritech, received this award from the American Foundation for the Blind in 1997.

Commitment to Accessibility

Ameritech has integrated EPA and Act of 1996 guidelines into its product development and management processes and into other operational areas. An departmental team is currently developing an accessibility policy, to be adopted corporate wide.

Having compiled such a record of accomplishment in its service to telephone customers with disabilities, Ameritech naturally welcomes the enactment of Section 255 of the 1996 Act and the efforts of the Commission to implement the new law's provisions. Accordingly, Ameritech is happy to support by far the vast majority of the proposals the Commission has made in the Notice. Indeed, the only

major issue that Ameritech wishes to raise concerning the Notice is that Ameritech believes, as discussed at length hereinafter, that Congress has not authorized the Commission (nor indeed any other agency or court) to adjudicate purely private claims of disabled individuals for damages arising out of disability issues.

II. Ameritech Supports the Commission's Determination That It May Promulgate Rules To Enforce Section 255.

In the NPRM (¶¶ 25-28) the Commission concludes that it is duly authorized by Congress to adopt regulations interpreting and enforcing Section 255, and it rejects the claims of some parties that the Commission should be limited to presiding over complaint proceedings or to issuing non-binding guidelines. Ameritech supports the Commission's conclusions in this regard.⁵ The Commission is wholly correct in finding that it has full authority to issue regulations under Section 4(i), Section 201(b), and Section 303(r) of the Communications Act. Ameritech urges the Commission to issue regulations of sufficient specificity that manufacturers and service providers will be

⁵ This is, of course, subject to the reservation that the Commission would not be authorized to promulgate regulations authorizing a private right of action under Section 255 because, as Ameritech explains on pp. 10-19 *infra*, such actions have been directly forbidden by Congress itself.

able to ascertain therefrom what duties are expected of them under Section 255.

III. Ameritech Supports the Commission's Proposed Definitions of Providers of Telecommunications Services.

The Commission points out in the NPRM (§ 44) that the Act does not define "provider of telecommunications service," but it assumes that Congress intended a broad scope for that term and it proposes that all entities offering telecommunications services to the public, including resellers and aggregators, should be separately subject to Section 255, without regard to accessibility measures taken by the provider who originates the offering. Ameritech concurs in this broad reading. Ameritech also supports the Commission's proposal (§ 46) that a provider of telecommunications service is subject to the requirements only to the extent it is providing telecommunications services. In response to the Commission's invitation for comment (id.) on whether such a distinction is practical if a provider is using the same facilities to offer telecommunications services and services not meeting the statutory definition, Ameritech submits that any impracticality should not prevent the Commission from adopting the rule, since the question of practicality should be left to the provider,

who might choose, for example, to separate the facilities into compliant and non-compliant versions.

IV. Ameritech Supports the Commission's Proposed Standards for What Is "Readily Achievable."

In the Notice (¶¶ 94–123) the Commission declares that the potential application of the term "readily achievable" is subject to significant variation in the way it is applied to public accommodations under the Americans with Disabilities Act and the way it ought to be applied to telecommunications under Section 255. For its application to telecommunications, the Commission proposes that what is "readily achievable" should be determined by answering three main questions:

1. Is the feature feasible?
2. What would be the expense of providing the feature?
3. Given its expense, is the feature practical?

Ameritech concurs in this analysis of what is "readily achievable."

V. Ameritech Supports the Commission's Proposals for a Fast-Track Complaint Process.

Ameritech supports most of the proposals in the Notice for a Fast-Track Problem-Solving Phase procedure. However, it does appear to Ameritech that the limit of five business days for respond-

ing to complaints (¶ 137) would often be too brief unless extensions of time were, as the Commission suggests, frequently granted.⁶

VI. Ameritech Supports the Use of Traditional Informal Complaint Procedures, Although Some Period of Limitations Should Be Established.

Ameritech also largely supports the Commission's proposed use of traditional informal complaint procedures. However, in ¶ 149 of the Notice, the Commission asks for comment on the application of Section 415(b) of the Act, which imposes a two-year statute of limitations upon actions against common carriers for money damages.⁷ Ameritech, of course, shows elsewhere in these comments that Section 255 does not authorize private parties to seek damages anyway, so it follows that the limitations provided in Section 415(b) would not apply. However, in the absence of any such statutory limitation, the Commission should not be reluctant to establish one by rule. The complete lack of any period of limitation, when combined with the Commission's other proposal (in ¶ 148 of the NPRM) not to

⁶ The commission's proposal also does not make clear what would happen if the deadline is missed; in a more formal context, if the respondent fails to answer, the complainant wins by default, but that extreme result hardly seems appropriate in a fast-track informal procedure.

⁷ That section states, "All complaints against carriers for the recovery of damages not based on overcharges shall be filed with the Commission within two years from the time the cause of action accrues, and not after. . .".

impose a standing requirement, might encourage absurd or vexatious results. For example, the able-bodied descendants of a disabled individual (or even unrelated persons) might be enabled to initiate claims against carriers or manufacturers on disabilities issues many years after the original claimant had died. Such outcomes should be avoided. At the very least, complaints should be limited to the lifetime of the person aggrieved, or some reasonable period thereafter, and there would be sound reasons for the Commission to fix by rule an even shorter limitation period, such as two years. Part of the Commission's objective in this docket has been to encourage the implementation of accessibility features at the time of the original design of products and services; this goal will not be well served without a statute of limitations to thwart stale claims that might be asserted long after the alleged injury.

**VII. Section 265 Precludes
Private Actions for Damages.**

In the NPRM's discussion of the formal and informal procedures that will apply to complaints brought by consumers with disabilities against telecommunications service providers and telecommunications equipment manufacturers, a serious issue is raised as to

whether the statute authorizes actions for damages. Ameritech believes that actions for damages cannot be allowed in the face of the Congressional directive that “any private right of action” is forbidden outright under Section 255, and it urges the Commission to adopt formal complaint procedures specifying that private claims for damages are not allowed.

A. *The Rule Against “Private Actions” Bars Complaints for Damages Under Sections 207 or 208.*

The Commission’s analysis in the Notice begins by asserting that “Section 255, on its face, makes no special provision for penalties for manufacturers or service providers found to violate its requirements.”⁸ However, the Notice also observes (*id.*) that “Sections 207 and 208 provide for the award of damages for violations by common carriers, and arguably others,” and therefore it seeks comment from the industry and the disabled community on “the relationship between Sections 207 and 208 and Section 255.”⁹

⁸ NPRM at 11 172. Even this seemingly routine introductory remark is not immune from challenge. The crucial portion of Section 255(f), discussed at length *infra*, which forbids “any private right of action,” is itself nothing other than a “special provision for penalties,” and one that without doubt appears on the face of Section 255.

⁹ *Id.*

Ameritech believes that neither Section 207¹⁰ nor Section 208¹¹ could possibly be sufficient, alone or in combination, to authorize private complaints for damages related to matters of accessibility, either against carriers or non-carriers, in the face of the unambiguous declaration by Congress in Section 255(f) that “[n]othing in this section shall be construed to authorize *any private right of action* to enforce *any requirement of this section* or any regulation thereunder” [emphasis added].¹²

The only way to read these unambiguous words in conjunction with Sections 207 and 208 is to acknowledge that Section 255(f)

¹⁰ Section 207, 47 U.S.C. § 207, provides:

Any person claiming to be damaged by any common carrier subject to the provisions of this Act may either make complaint to the Commission as hereinafter provided for, or may bring suit for the recovery of the damages for which such common carrier may be liable under the provisions of this Act, in any district court of the United States of competent jurisdiction; but such person shall not have the right to pursue both such remedies.

¹¹ Section 208, 47 U.S.C. § 208, provides in pertinent part:

Any person, any body politic or municipal organization, or State commission, complaining of anything done or omitted to be done by any common carrier subject to this Act, in contravention of the provisions thereof, may apply to said Commission by petition which shall briefly state the facts, whereupon a statement of the complaint thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time to be specified by the Commission.

¹² Subsection 255(f), 47 U.S.C. § 255(f), contains in its entirety but a subhead and two sentences:

(f) No **ADDITIONAL PRIVATE RIGHTS AUTHORIZED**.- Nothing in this section shall be construed to authorize any private right of action to enforce any requirement of this section or any regulation thereunder. The Commission shall have exclusive jurisdiction with respect to any complaint under this section.

controls. The earlier sections do not establish any rights to relief of their own force, but only in relation to the substantive rights ordained elsewhere in the 1934 Act.¹³ Thus, where the substantive right is both more specific, and more recent, than Sections 207 and 208, such as in the case of Section 255, the specific prohibition against private rights of action must prevail over any purported reading of Sections 207 or 208 that would restore private rights of action to the statute. To rule otherwise is to proclaim that Congress must no longer have the power to modify its own sixty-two-year-old creations, for it could hardly have spoken more plainly and directly than to say, “Nothing in this section shall be construed to authorize any private right of action to enforce any requirement of this section or any regulation thereunder.” Thus it is plain that actions for damages are prohibited.

¹³ Section 207 speaks only of “damages for which such common carrier may be liable under the provisions of this [the 1934}Act” and Section 208 pertains to acts of carriers “in contravention of the provisions thereof [i.e., of the 1934 Act]. Because those sections do not stand alone, it would be impossible to “construe” either Section 207 or Section 208 to allow private damages for disabilities issues without *also* construing Section 255 to achieve that same result — which is exactly the construction that Congress expressly forbids.

B. *The Rule Against “Private Actions” Applies to the Commission As Well As to the Courts.*

Language as forceful and lucid as that found in Section 255(f) would ordinarily bring an end to most discussions; but elsewhere in the Notice the Commission seems to wash these vital words right out of the law when it reads them to say that only the *courts* are barred from hearing private complaints, but *not* the Commission: “The preclusion of *private litigation* in Section 255(f),” the NPRM confidently states (even though one of its italicized words does not even appear in the subsection cited), “compels complainants to seek redress exclusively from the Commission, rather than in Federal courts, but it does not prevent the filing of administrative complaints pursuant to Section 255.”¹⁴

Ameritech submits that such a reading, insofar as it might permit actions in the Commission for private damages, is fundamentally incorrect because it confuses the separate meanings of the two distinct sentences in Section 255(f). Undoubtedly, of course, the courts *are* barred from hearing disabilities complaints, but that is because the *second* sentence declares that exclusive jurisdiction shall

¹⁴NPRM at ¶ 32 [italics by the Commission].

be in the Commission, *not* because of the prohibition against “private” actions in the first sentence. Actions in the courts are never “private,” and indeed the courts and the Commission are equally *public* institutions,¹⁵ so Congress surely cannot have intended to refer *only* to the courts in its forbiddance of “private” actions. Such a reading would rudely abuse the plain meaning of the word “private.”¹⁶

Clearly, then, in order to conform to the plain meaning of the language and to give full effect to both Congressional sentences, the question of what is or is not a “private right of action” under Section 255 must depend not upon the *forum*, which will always be one that is “public,” but upon *who* it is who *brings* the action; furthermore, unless some official entity is suing, the action cannot be “private.” This meaning is aptly illustrated by the example provided right in the very words of Section 208, which say that relief may be sought before the Commission or the courts by “any person,” on the

¹⁵ Indeed the courts, with their broader jurisdictional scope, could be viewed, if anything, as even less private entities than the Commission, and in that event the rule against “private” claims, if it applies at *all* to the type of *forum*, would preclude the Commission, rather than the courts, from hearing complaints.

¹⁶ Furthermore, it would be utterly redundant, for why would Congress need to abolish “private” actions in the courts if it was about to confer exclusive jurisdiction on the Commission in the very next sentence?

one hand, or by “any body politic or municipal organization, or State commission,” on the other.¹⁷ It is inescapable that the first of these categories must now be barred by Section 255’s rule forbidding “any private right of action” for disabilities access claims, while the latter group of cases is left undisturbed. In short, actions for damages *brought* by private parties are thus plainly and bluntly *barred* by the statute, no matter what the forum, and any other reading openly ignores the words deliberately chosen by Congress.

Furthermore, the prohibition against private actions in the first sentence of Section 255(f) is not contradicted by the next sentence, which, as already noted, says, “The Commission shall have exclusive jurisdiction with respect to any complaint under this section.”

A private right of action, being barred by the previous sentence, cannot, of course, be valid as a “complaint under this section.” Thus the effect of the second sentence is not to permit the filing of every imaginable type of complaint, but merely to declare that it is the Commission (rather than the Access Board or some other forum) who will hear such complaints as Congress has *not* forbidden in the prior sentence. By no means, then, does the second sentence confer upon

¹⁷ See full text quotation of Section 208, *supra* note 11.

the Commission (or anyone) *any* jurisdiction whatsoever to hear any purely *private* claims for damages.

Moreover, reading the law correctly will not actually diminish the exclusive authority of the Commission over telecommunications disabilities access issues, but will summon to the forefront the Commission's broad array of administrative and inquisitional powers, even as the Commission is relieved of the prospect of a heavy burden upon its processes of adjudication. The language of Section 255, of course, plainly and unequivocally *permits* the Commission to deal with "any complaint" — *even* one brought by a private party — that does not rise to the level of a "right of action." This will decidedly enhance the Commission's broad discretion to deal with and satisfy consumer complaints in an administrative, rather than adjudicatory, mode. Thus, although the Commission is precluded by the law from presiding over or ruling upon private, personal claims for damages or injunctive relief directly against carriers or manufacturers, the Commission would nevertheless be entirely unimpeded, in its administrative or prosecutorial capacity, from entertaining and responding to complaints by private citizens who do not seek to recover damages directly, but who petition the Commission for redress of their **griev-**

ances through invocation of the Commission's considerable enforcement powers in the realms of forfeiture, cease-and-desist orders, and similar non-private remedies.¹⁸ Such measures will be entirely adequate both for the protection of persons in the disabled community and for the efficient deterrence of carriers and manufacturers from any unlawful conduct in violation of Section 255.

In addition, the correct reading of the law is sustained not only by the foregoing word-for-word analysis, but also by compelling policy reasons and practical factors. In particular, fears of a cumbrous proliferation of claims in this area would not be without foundation. Some parties before the Commission have asserted that as many as forty million Americans with disabilities are covered by Section 255. The potential volume of complaints for damages from such a multitudinous group, comprising many diverse types of disabilities, gathered from the four corners of the nation and brought to a single focal point in Washington, could quickly overwhelm the limited resources of the Commission; thus no one should lightly assume that Congress did not mean just what it said when it declared that private actions for **dam-**

¹⁸ Except for the award of private damages, Ameritech does not dispute the items on the Commission's list of enforcement options in 11 172 of the NPRM.

ages were prohibited. Furthermore, if Congress meant to authorize an avalanche of suits for damages at the Commission, why would it simultaneously deprive the Commission of the usual concurrent Section 207 and 208 jurisdiction that the courts have always had over other aspects of the Act less prone to such voluminous litigation? No answer to this thorny question can be readily forthcoming.

In short, then, every realistic practical consideration confirms the view, already compelled by the statutory language standing alone, that suits for damages have been completely and absolutely forbidden by Congress under Section 255.¹⁹

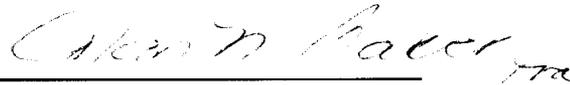
VIII. Conclusion

Ameritech is able to support the vast majority of the proposals the Commission has made in its Notice of Proposed Rulemaking on Section 255 disability issues. However, Ameritech cannot read the

¹⁹ In ¶ 155 of the Notice, the Commission asks for comment on what to do about Section 8(g) of the Act, 47 U.S.C. § 158(g), which imposes a fee, presently \$150, upon the filing of formal complaints against common carriers, subject to the power of the Commission under Section d(2) to “waive or defer payment of an application fee in any specific instance for good cause shown, where such action would promote the public interest.” Ameritech believes that because the formal complaint process **usually** is available to seek private damages, but will not be so under Section 255, the Commission should waive the filing fee in all Section 255 cases. The substantial public benefit from enforcement of the disabilities accessibility rules satisfies the public interest test, and good cause would be adequately established by the fact that the usual ability to seek damages had been removed by operation of Section 255(f).

statute to authorize private claims of disabled individuals for damages arising out of disability issues, no matter whether such purported claims were to be brought before the Commission or the courts. Accordingly, Ameritech asks the Commission to make clear that private damages claims will not be permitted under its rules.

Respectfully submitted,



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