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

AUG 14 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
Implementation of Section 255 of ) WT Docket 96-198  
the Telecommunications Act Of )  
1996 )  
)  
Access to Telecommunications )  
Services, Telecommunications )  
Equipment, and Customer Premises )  
Equipment by Persons with )  
Disabilities )

To: The Commission

**REPLY COMMENTS OF TANDY CORPORATION**

Tandy Corporation ("Tandy"), by its attorneys and pursuant to Section 1.415(c) of the Commission's Rules, 47 C.F.R. § 1.415(c), hereby respectfully submits these Reply Comments in response to the Commission's Notice of Proposed Rulemaking in the captioned proceeding ("NPRM"), FCC 98-55 (rel. Apr. 20, 1998).<sup>1</sup>

I. **INTRODUCTION**

Through its more than 6,900 affiliated RadioShack stores, Tandy Corporation is one of America's leading retailers of high quality customer premises equipment (CPE)<sup>2</sup> to consumers and small businesses alike. CPE purchases represent a large portion of

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<sup>1</sup> Federal Register notice of the NPRM was published on May 22, 1998, 63 Fed. Reg. 28,456.

<sup>2</sup> CPE "means equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications." 47 U.S.C. § 153(14).

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products sold each year by RadioShack to its 65 million customers.

The NPRM proposes rules to implement Section 255 of the Telecommunications Act, 47 U.S.C. § 255. Tandy strongly supports the goal of Section 255 to make CPE and telecommunications equipment and services accessible to persons with disabilities. Tandy has long provided affordable CPE to meet the needs of individuals with disabilities. RadioShack currently offers a variety of both corded and cordless telephones with volume control, telephones with tactile buttons for the visually impaired, speakerphones and telephones with extra large push buttons for those with mobility impairments as well as three different models of text telephones. In addition, RadioShack offers a variety of other special needs devices for individuals with disabilities including portable telephone volume amplifiers, visual ringer indicators and amplified ringers. No other national retailer carries such a large assortment of CPE specifically designed for persons with disabilities; RadioShack is committed to continuing to serve this important customer segment.

In these Reply Comments, Tandy addresses two issues raised by the NPRM. First, Tandy is concerned that the Commission apparently intends to require all new CPE to satisfy one or more parts of the Architectural and Transportation Barriers Compliance Board's (the "Access Board") 18-part "accessibility" definition. For the reasons stated below, Tandy encourages the Commission to

adopt a product-line approach to accessibility. Second, **Tandy** respectfully submits that there is no statutory foundation for treating **CPE** retailers as manufacturers for any purpose under Section 255.

## II. DISCUSSION

### A. **A Product-Line Approach To Accessibility Would Best Serve The Public Interest.**

RadioShack is proud of its long history of offering an array of affordable CPE to consumers with disabilities. However, not all consumers desire CPE that meets the needs of individuals with disabilities. Rather, as RadioShack customers demonstrate every day, they select CPE based upon the features they desire at the price they **are** willing to pay. It is precisely for that reason that RadioShack carries over 350 different telephony items. American consumers enjoy an extremely competitive CPE market today and the Commission should not impose unnecessary requirements upon manufacturers in this proceeding that could harm that competition.

The Commission should not compel CPE manufacturers to make each new product accessible to individuals with disabilities. See NPRM at ¶ 169 (manufacturers should "consider providing accessibility features in each product they develop and offer"). Foremost, **Tandy** believes a product-by-product **approach to** accessibility is unnecessary because today's vibrant CPE market competition is resulting in many products that meet the varying needs of individuals with disabilities. Instead of a product-by-product approach, the Commission should adopt an accessibility

requirement across entire CPE product lines of a manufacturer as a number of parties urge. As TIA cogently explains,

    this would mean manufacturers would attempt to provide, for example, at least one product in a product line that incorporated accessibility features for individuals with hearing impairments, at least one product that incorporated accessibility features for individuals with vision impairments, at least one product for individuals with mobility impairments, and so on.

TIA Comments at 19. Motorola convincingly demonstrates that the product-line approach will foster incentives for product differentiation and actually increase the accessibility of CPE to persons with disabilities. See Motorola Comments at 10-23. See also CTIA Comments at 13 ("access obligations which attach to every product in a product-line will stifle innovation").

Tandy concurs with CEMA that

    the definition Congress provided for 'readily achievable' could not allow the Commission to impose requirements to provide accessibility features in every product.

CEMA Comments at 13. Mandatory inclusion of accessibility features across entire product lines would raise the price of CPE to the financial detriment of millions of American consumers. Simply stated, many consumers may not desire to purchase CPE incorporating accessibility features for individuals with disabilities. The Commission should heed the Access Board's finding that "it **may** be determined that providing accessibility to all products in a product line is not readily achievable." 63 Fed. Reg. 5608, 5611.

Tandy believes that so long as manufacturers' CPE product lines provide accessibility for those with hearing, vision and mobility impairments, the manufacturers should have discretion to develop products without any accessibility features. This approach will best serve the public interest by ensuring the continued availability of an array of affordable CPE to American consumers while encouraging development of new CPE to meet the needs of individuals with disabilities.

**B. CPE Retailers Are Not Manufacturers  
Under 47 U.S.C. § 255.**

In paragraph 61 of the NPRM, the Commission tentatively concludes that it may be desirable to treat retailers **as** manufacturers under Section 255 in limited circumstances. Treating retailers **as** manufacturers would improperly shift the burden of compliance with Section 255's accessibility requirements from manufacturers to retailers. Section 255 cannot be so read. Section 255(b) provides:

A manufacturer of . . . customer premises equipment shall ensure that the equipment is designed, developed, and fabricated to be accessible to and usable by individuals with disabilities, if readily achievable.

47 U.S.C. § 255(b) (**emphasis** added). The Access Board defines a manufacturer as: "A manufacturer . . . that sells to the public or to vendors that sell to the public; a final assembler." 36 C.F.R. § 1193.3. Nowhere in Section 255 or in the Access Board's regulation is the word retailer or a synonym thereof contained.

The Commission is not at liberty to ignore the plain terms of the statute. As the Supreme Court has explained:

If the words are plain, they give meaning to the act, and it is neither the duty nor the privilege of the courts to enter speculative fields in search of a different meaning.

Caminetti v. United States, 242 U.S. 470, 490 (1916). Only if a statute is ambiguous is an agency afforded discretion to interpret its meaning. See Chevron U.S.A. Inc. v. Natural Resources Defense Counsel, Inc., 467 U.S. 837, 842-43 (1984).

The word "manufacturer" in both the statute and the Access Board regulation is free of ambiguity. Moreover, there is nothing in the legislative history of Section 255 from which the Commission could draw even remote support for its proposed interpretation of the statute. See H.R. Rep. No. 104-458, at 134-135 (1996); S. Rep. No. 104-23, at 52-54 (1995).

The Commission specifically asks whether private brand arrangements, where the retailer provides customer support services, may be an appropriate situation to assign the retailer the manufacturer's accessibility obligations. NPRM at ¶ 61. Not surprisingly, a review of the comments filed in this proceeding finds little support for the Commission's tentative conclusion. See American Foundation for the Blind Comments at 21 ("Treating the retailer as the manufacturer is not a totally satisfactory solution . . . since the retailer may be dependent on the manufacturer's design and other decisions."). The mere fact that a retailer provides customer support services to privately branded products is irrelevant under Section 255. Many CPE

retailers, including RadioShack, provide customer support services to both their privately branded products and to **name** brand products.

Where CPE consists of subcomponents, Tandy agrees that the Commission should "**fix** responsibility for product accessibility on the final assembler of the product." National Association of the Deaf Comments at 19. See also PCIA Comments at 7 (the Commission should "place responsibility for product accessibility on the final assembler of a product"). However, there is simply no basis to treat retailers as manufacturers under Section 255.

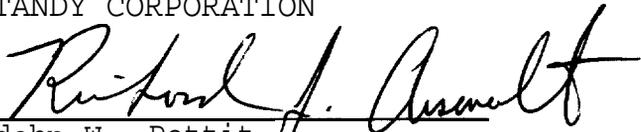
**III. CONCLUSION**

In view of the foregoing, Tandy Corporation respectfully requests that the Commission (1) adopt a product-line approach to accessibility under Section 255 and (2) not, under any circumstances, treat CPE retailers as manufacturers under Section 255.

Respectfully submitted,

TANDY CORPORATION

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