

Applicant Name: Dana Mulvany

Proceeding Name: Author Name:

Lawfirm Name:

Contact Name: applicant_name Contact Email: dmulvany@usa.net

Address Line 1: 350 BudA venue, Apt. AI

Address Line 2:

City: Campbell State: CA

Zip Code: 95008 Postal Code: 4021

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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

Dana Mulvany
350 Budd Avenue, Apt. A1
Campbell CA 95008-402 1
(408) 379-6065
dmulvany@usa.net

I, Dana Mulvany, an individual with more than 36 years of experience living with a severe hearing loss in both ears, file these comments on June 30, 1998, in the FCC's Notice of Proposed Rule Making, WT Docket No. 96-198. I have served as a representative of hard of hearing people on a state equipment program which provides accessible telephone equipment and services to people with disabilities. I have interacted with many people of varying hearing losses and/or other disabilities and am more familiar than most of the problems people with disabilities can have utilizing telephone equipment and services.

Summary of Comments

1. Section 255 should apply to a broad range of telecommunications services, including information services.
2. Incorporate speech amplification as an accessibility standard
3. Ensure adequate, effective Hearing Aid Compatibility
4. Encourage provision of output/input ports to facilitate real and complete access for all people with disabilities

5. Eliminate the consideration of “cost recovery” for determining what is readily achievable
6. Require no filing fee for filing complaints against manufacturers, service providers, and common carriers
7. Treat software integral to telecommunications equipment the same as equipment or telecommunications services.

Note: text that is italicized is quoted material from the above-referenced NPRM.

Comments

Comment 1:

Section 255 should apply to a broad range of telecommunications services, including information services.

*42. Many services are considered telecommunications services and, therefore, are clearly subject to the requirements of Section 255. We recognize, however, that **there** are some important and widely used services, such as voice mail and electronic mail, which under our interpretation fall outside the scope of Section 255 because they are considered information services. Given the broad objectives Congress sought to accomplish by its enactment of Section 255, we seek comment on whether Congress intended Section 255 to apply to a broader range of **services**.*

Automated voice menu systems present great problems for deaf and severely hard of hearing people, for cognitively impaired people, and for some people with severe manual dexterity problems. Despite the use of amplification or relay services, many people with the above disabilities are still completely unable to navigate voice menu systems (which time out with the use of the relay service). The result is that people with disabilities can be completely excluded from certain companies who interact with the public only through automated voice menu systems. Congress cannot have intended for this denial of access to continue.

The Americans with Disabilities Act does not require private enterprises which do not own, operate, lease or lease to a place of public accommodation to be accessible to the public. Thus manufacturers of products, such as computers and telephone products, and certain service providers, such as Internet Service Providers, have not been required by the ADA to provide sales or support

information in a method which is accessible over the telephone. People with disabilities have been terribly affected by such lack of access; many menus offer no option to connect with a human operator and they remain cut off from communication. They thus remain in the dark about how to fix their products and how to access other important information from private enterprises. With the advent of automated voice menu systems, telephone communication has ironically deteriorated for people with disabilities due to their inaccessibility. (Although people without disabilities often dislike and complain about automated voice menu systems, they at least have the opportunity to use them to the fullest extent possible. This is not the case for others.)

Many companies and non-profit organizations would welcome the opportunity to use an accessible telephone management system for interfacing with their clientele but simply do not think about accessibility until after they have already purchased their phone systems. I believe our society as a whole would benefit greatly and operate much more effectively if universal access was designed into telecommunications in the design stage and accessibility features were available for all. Not building access into systems and products results in tremendous inefficiencies, frustration and costs.

The label, "information services" sounds like the services are considered an optional luxury that one can take or leave. While automated voice menu systems are indeed a choice for a company, which could have elected to have human beings answer the phone, the company's customers do not themselves have a choice. ***People who are unable to navigate an automated voice menu system cannot complete their phone call. They are denied access and equality even though designing access into the system would have been readily achievable.***

Congress could not have intended that Section 255 would leave people with disabilities without access to such an important and large part of our nation's telecommunications. It is my belief that designers of the hardware and software for information services should be held to the standards of Section 255, and service providers should be required to make any accessibility features available. If that became the case, I believe many users of these information services would then choose to utilize the built-in accessibility features, enhancing access and quality of life for all.

Comment 2:
Incorporate speech amplification
as an accessibility standard

The Access Board appears to have overlooked the need for speech amplification in telephones for people who have low-volume speech. (Speech amplification would also be extremely helpful when the user of the phone is talking to a hard of

hearing person on the other end.) “Accessible” phones (as defined by the current Access Board guidelines) would thus not be accessible to people with soft speech, who can use their voices but need amplification. I urge the FCC to add speech amplification in Section 1193.4 1, Input, control, and mechanical functions, of the Access Board Guidelines.

Comment 3:
Ensure adequate, effective
Hearing Aid Compatibility

Although Section 7 10 addresses hearing aid compatibility, I feel compelled to point out that some phones manufactured since the Hearing Aid Compatibility (HAC) Act of 1988 have nevertheless had extremely poor hearing aid compatibility. The phone on my fax machine, for example, is very, very weak in its HAC although I purchased it approximately six years after the HAC Act was passed; I cannot use it without an auxiliary device. Hearing aid compatibility can be made much stronger independent of the acoustic output on the telephone. If the standards for HAC were raised, people with hearing aids could be less adversely affected by electromagnetic interference in the environment. (When the telecoil is “amplified” via the hearing aid’s volume control, the telecoil also becomes more sensitive to environmental electromagnetic interference, such as that which is caused by some fluorescent lights, monitors, and airplanes. If the HAC of the telephone was sufficiently loud in the first place, the telecoil in the hearing aid could be put on a low setting to minimize electromagnetic interference from the environment.)

I believe the current HAC standards are not at a sufficiently high level; I have a good telecoil in my hearing aid but I still need to turn the volume all the way up in order to hear on a new Panasonic KX-TCC116 phone, despite the phone having volume control; even with all the way up, the phone is still not quite loud enough for optimal communication. Providing a standard for hearing aid compatibility which would allow all hearing aid users to leave their volume control setting at their customary level and use the phone by simply turning their telecoil on is technologically possible. We are not achieving this standard for hearing aid compatibility now, but we could be.

Comment 4:
Encourage provision of output/input ports
to facilitate real and complete access
for all people with disabilities

Many people require handsfree operation of telephones. Quadriplegics cannot hold up the phone by themselves. Persons who use artificial larynxes must hold

them up to the phone and cannot also write if the phone needs to be held. Many severely hard of hearing people need to use both ears in order to understand speech on the phone; they require the use of a **neckloop** or direct audio input cable to plug into the phone. All these people need phones which have output/input jacks or ports. Phones without these ports are not accessible to them.

I believe the nation would be best served by requiring phones to have output/input jacks or ports even if they meet the other accessibility standards proposed by the Access Board. Without such ports, these phones will simply not be accessible to many people with disabilities. I urge the FCC to explore the possibility of requiring “access ports” (a term coined by another hard of hearing person, Ron Vickery) in all phones, which would allow phones to be truly accessible to all people with disabilities with the appropriate equipment.

Comment 5:

Eliminate the consideration of “cost recovery”
for determining what is readily achievable

*115. We also believe it is appropriate to consider the extent to which **an** equipment manufacturer or service provider is likely to recover the costs **of** increased accessibility. This is not to say that the equipment manufacturer or service provider must be able to fully **recover** the incremental cost **of** the accessibility feature in **order for** accessibility to be readily achievable. Indeed, the assumption of some cost burden is an explicit element **of** the definition **of** “readily achievable.”²²³ We have previously indicated **our** tentative conclusion that the relevant measure of the “expense” of providing accessibility features is their net expense.²²⁴ Thus, cost recovery is a factor that a company should weigh in making its determination of what is readily achievable.*

Companies will not be able to estimate their cost recovery accurately, and the temptation could be for companies to exaggerate their costs and to underestimate their cost recovery. While the reality is that there -will- be a cost recovery via increased sales, more efficient customer support services, improved public image and relations, etc., it will be difficult for the company to track the effect of the improved **accessibility** of their products and services. I believe it would be far more prudent to deal with the here and now; if a company cannot afford to build in certain access features now, it doesn’t matter if they would have recouped all of the costs later. Conversely, if it is otherwise readily achievable to build in access features, it should not matter precisely how much of the cost is recovered later. Building in access should be considered a given, an essential part of doing business, unless doing so is truly not readily achievable. Companies should have as much motivation as possible to make a profit from their investment in

accessibility, but inviting them to calculate cost recovery as a defense against providing accessibility would have an unintended effect of motivating them to underestimate cost recovery. For example, if a company makes one accessible product but does a poor or ineffective job of designing or marketing the accessibility features and has correspondingly poor sales, it could blame the poor sales on the accessibility features and argue against providing accessibility features in similar products when the real problem was due to other factors.

The cost of providing accessibility should be absorbed as a natural part of doing business. All televisions 13” and larger were required to have closed captioning capability regardless of cost; all **wireline** telephones have been required to be hearing aid compatible since the implementation of the Hearing Aid Compatibility Act. Both of these changes were implemented without consideration of cost recovery, and have produced enormous benefits to people with hearing loss without decreasing sales or profit margins.

Comment 6:

Require no filing fee for filing complaints
against manufacturers, service providers
and common carriers

I appreciate and support the FCC’s position on not requiring fees for filing complaints against manufacturers. The same position should be applied to filing complaints against service providers. People with disabilities would not have a direct financial incentive to file complaints against service providers but need to be able to take action to correct problems without draining their often very limited financial resources. It is clearly in the interest of the public to waive fees for filing complaints against service providers.

Comment 7:

Treat software integral to telecommunications equipment
the same as equipment or telecommunications services

5.5. . . . We therefore propose to treat software integral to telecommunications equipment the same as equipment or telecommunications services, and seek comment on this proposal.

I strongly support this position and consider this vitally important. It would be disastrous if software was not covered by Section 255.

Conclusion

The work of the FCC on Section 255 will affect the lives of countless Americans on a daily basis for years to come. I urge the commissioners and staff of the FCC to do everything legally possible to expand accessibility of telephone services and equipment. I thank the commissioners and staff of the FCC for your careful consideration of these comments.

Submitted via **email** by:

Dana Mulvany
350 Budd Avenue, Apt. A1
Campbell CA 95008-402 1
June 30, 1998