ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 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

UNITED STATES TELEPHONE ASSOCIATION

Its Attorneys

Lawrence E. Sarjeant
Linda Kent
Keith Townsend

U . S. Telephone Association
1401 H Street, N.W.
Suite 600
Washington, D .C . 20005
(202) 326-7249

William F. Maher, Jr.
Halprin, Temple, Goodman & Sugrue
1100 New York Avenue, N.W.
Washington, D .C. 20005
(202) 371-9100

Of Counsel

June 30, 1998

SUMMARY

USTA and its members recognize the importance, to customers with disabilities and to all Americans, of successfully implementing section 255. USTA looks forward to working with the Commission and people with disabilities to realize the Act's vision of accessible telecommunications for those with disabilities. To meet this objective in a timely and cost-effective manner, the Commission's procedures should encourage joint problem-solving by telecommunications service providers, manufacturers, and consumers, without raising unrealistic and counterproductive expectations by any party.

The rules adopted in this proceeding should ensure regulatory parity between service providers and manufacturers. Regulatory parity for incumbent LECs is especially important because they, not manufacturers or even other service providers, are usually a customer's first point of contact when an accessibility issue arises regarding telecommunications service. Thus, service providers, including incumbent LECs, should be responsible under section 255 only for those aspects of accessibility over which they have direct control.

By its terms, section 255 applies only to manufacturers and providers of telecommunications services, not to providers of information services. Despite the limitations of section 255, many incumbent LECs have gone far beyond the scope of section 255 in providing to customers with disabilities a wide variety of advanced services.

The Commission's analysis of what is "readily achievable" in the context of section 255 must reflect the realities faced by incumbent LECs as well as other providers of telecommunications services. USTA agrees with the Commission's tentative conclusion that "readily achievable" in the telecommunications context simply means "easily accomplishable and able to be carried out without much difficulty or expense. "

The substantive standards that the Commission uses to determine whether an access solution is "readily achievable" should be based on the unique characteristics of the telecommunications industry. In particular, as the Commission implements and applies section 255 for service providers, it should be mindful of the constraints imposed by other Commission or state regulations on incumbent LECs.

In analyzing the "readily achievable" standard, USTA agrees with the Commission that there are a variety of reasons why a particular feature may not be feasible. By designing products to be as broadly accessible as possible to users, including people with disabilities, manufacturers and service providers can reduce expense while providing for accessibility. In considering expense, the Commission should avoid requiring incumbent LECs to implement accessibility features for which they cannot recover the costs.

When assessing the practicality of accessibility features, the Commission must recognize that existing regulation of incumbent LECs may limit the practicality of incumbent LECs making some types of advanced services available to customers, including some customers with disabilities. The Commission should not adopt the presumptions presented in the Notice regarding the business entities whose resources are deemed available to achieve accessibility consistent with section 255. Determining whether resources are available for any given accessibility feature is only one of many factual issues that are relevant to whether a proposed feature is "easily accomplished." The Commission should simply acknowledge the fact-based nature of this inquiry.

USTA agrees that the Commission should adopt a minimal set of procedural rules and guidelines to assist compliance with section 255. USTA therefore agrees with the Commission's proposal to refer all consumer complaints initially to the manufacturer or service provider. Moreover, only customers of a service provider or manufacturer, either

directly or through an authorized representative, should have standing to initiate a fast-track inquiry or an informal or formal complaint under section 255.

USTA's members are wholeheartedly committed to resolving accessibility issues as quickly as possible. Rapid resolution of these issues will enable incumbent LECs to provide high-quality telecommunications service to their customers with disabilities, to the benefit of all. But for many such issues, substantially more than five business days are needed for a meaningful response. Fifteen days is a minimal reasonable time for a response, and USTA recommends that the Commission adopt an option to extend the response period to thirty days, if necessary.

Because of the complexity of section 255 issues, USTA supports the proposed increases in time for respondents to answer informal complaints and for replies to answers. At the same time, the Commission should exercise great care when it uses information from section 255 processes to formulate policies, identify problems, assign responsibility and fashion remedies.

USTA and its members seek to implement section 255 successfully and to ensure more broadly that people with disabilities have access to services that permit them to communicate freely and effectively.

TABLE OF CONTENTS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 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
UNITED STATES TELEPHONE ASSOCIATION

I. INTRODUCTION

The United States Telephone Association ("USTA") respectfully submits these comments on the above-captioned notice of proposed rulemaking (the "Notice") concerning implementation of section 255 of the Communications Act of 1934 (the "Act").[1/] USTA and its members welcome the opportunity to comment on the important issues concerning the accessibility of the public switched network to customers with disabilities. USTA's members include more than 1200 incumbent local exchange carriers ("LECs"). USTA's members provide telecommunications service on a daily basis to customers with disabilities.

1/ *See* Notice of Proposed Rulemaking, FCC 98-55 (rel. Apr. 20, 1998).

USTA and its members fully recognize the importance of this proceeding to their customers with disabilities and to all Americans. USTA strongly supports the goals of section 255. USTA and its members look forward to working with the Commission and people with disabilities to realize the Act's vision of accessible telecommunications for those with disabilities. Long before the adoption of section 255 in 1996, USTA's members sought to meet the needs of their customers with disabilities. In today's diverse and competitive telecommunications environment, all participants must continue such efforts.

The overriding objective of section 255 is to increase access to telecommunications equipment and services by those with disabilities.[2/] To meet this objective in a timely and cost-effective manner, the Commission should adopt practical procedures that will encourage joint problem-solving by telecommunications service providers, manufacturers, and consumers, without raising unrealistic and counterproductive expectations by any party. However, several aspects of the Notice, including the proposed five business day "fast-track" process, would raise such expectations and hinder the resolution of accessibility issues.

The Commission's processes should support its role as a facilitator of access solutions, not as a referee of disputes or a policeman of putative violations of section 255. The Commission thus should seek to avoid becoming bogged down in the adjudication of thousands of individual complaints. To address complaints filed by consumers with disabilities, the Commission should implement a process that will serve as a vehicle for identifying broad-based problems and concerns whose resolution will produce benefits for significant segments of telecommunications users with disabilities. Doing so will result in

---

[2/] See H.R. Conf. Rep. No. 104-458 at 134-135 (1996).

the most efficient use of the Commission's limited resources and will ensure that the Commission focus on issues and problems that have broad impacts.

II. COMMISSION REGULATIONS SHOULD ENSURE REGULATORY PARITY BETWEEN SERVICE PROVIDERS AND MANUFACTURERS

The rules adopted in this proceeding should provide for regulatory parity between service providers and manufacturers. The Commission has stated that a major purpose of this proceeding is to "develop a coordinated approach to accessibility for both services and equipment."[3/] The Commission should impose no greater burdens on service providers, and particularly incumbent LECs, than it does on manufacturers.*'

Regulatory parity for incumbent LECs is especially important because they are usually a customer's first point of contact when an accessibility issue arises regarding telecommunications service. Yet incumbent LECs' ability to resolve accessibility issues independently may be extremely limited.

USTA thus agrees with the Commission that service providers, such as incumbent LECs, should be responsible under section 255 only for those aspects of accessibility over which they have direct control.5' In some cases, application of this standard is clear. For example, an incumbent LEC should not be held responsible for resolving accessibility issues regarding equipment, like CPE, over which the LEC has no control.[6/]

3/ See Notice ¶ 30 (noting that the guidelines of the Architectural and Transportation Barriers Compliance Board ("Access Board") address only the accessibility of equipment).

4' See Notice ¶ 66.

5/ See ***id. ¶ 79.***

6/ Similarly, an incumbent LEC should not be required to provide or replace a customer's CPE documentation when the LEC currently does not provide such documentation.

However, actual application of the "direct control" standard often will involve an inquiry into the capabilities of multiple parties. In particular, joint action by service providers and manufacturers may be necessary to effect some accessibility solutions." Any such joint action will be complex, since, for example, service providers and manufacturers will have to make independent assessments of what accessibility alternatives are "readily achievable." In such cases, close coordination between service providers and manufacturers will be especially important.

When accessibility issues can be resolved only through changes to equipment in LECs' networks, the equipment manufacturer often is the only party that is technically or contractually qualified to make the necessary equipment changes. Thus, for this purpose, the manufacturer is the party "in direct control" of the equipment at issue, and the Commission's rules should hold the manufacturer responsible for making the needed equipment changes.&' Service providers should not be held primarily responsible when modifications by a manufacturer are the sole means of resolving an accessibility issue. The service provider's responsibility in such cases should be limited to making available the services that use the modified equipment, if readily achievable.

Moreover, USTA agrees with the conclusions of paragraph 65 of the Notice regarding section 251(a)(2) of the Act, as applied to incumbent LECs. Section 251(a)(2) does not

---

7/ See Notice ¶¶ 76, 80.

8/ Because section 255 applies to "manufacturers of telecommunications equipment or customer premises equipment, " as well as service providers, the Commission has authority to so require.

make incumbent LECs guarantors of other service providers' decisions on how to assemble service from network capabilities that incumbent LECs provide to them.[9] Nor does section 25 1 (a)(2) impose requirements on incumbent LECs regarding the accessibility characteristics of underlying network components .[10]

III. THE PLAIN LANGUAGE OF SECTION 255 LIMITS ITS APPLICABILITY TO TELECOMMUNICATIONS SERVICES

By its terms, section 255 applies only to manufacturers and providers of telecommunications services, not to providers of information services like e-mail and voice mail. The Notice requests comment on the scope of section 255's coverage of services, notes that some "important and widely used" information services apparently fall outside the scope of section 255, and asks whether Congress intended section 255 to apply to a broader range of services than telecommunications services.[11] According to section 255:

> (c) TELECOMMUNICATIONS SERVICES. -- A provider of telecommunications service shall ensure that the service is accessible to and usable by individuals with disabilities, if readily achievable.
>
> (d) COMPATIBILITY. -- Whenever the requirements of subsections (b) and (c) are not readily achievable, such a manufacturer or provider shall ensure that the equipment or service is compatible with existing peripheral devices or specialized customer

---

[9] See Notice ¶ 65.

[10] ***Id.***

[11] ***See id. ¶ 42.***

premises equipment commonly used by individuals with disabilities to achieve access, if readily achievable.[12/]

The provision of information services therefore is not subject to section 255. Because information services, like telecommunications services, are defined terms in the Act,[13/] the fact that section 255 mentions only telecommunications services is a clear indication that section 255 does not apply to information services. If Congress had intended information services to be within the scope of section 255, it would have expressly mentioned them in that section, as it did in other sections of the Act, such as sections 272 and 274.[14/] The plain meaning of section 255 does not apply to providers of information services. Despite the limitations of section 255, however, many incumbent LECs have gone far beyond the limited scope of section 255 in providing to customers with disabilities a wide variety of advanced services, many of which would be considered information services under the Act.

In a closely related context, the Commission correctly acknowledges section 255's narrow applicability to telecommunications service. The Notice rightly proposes to subject providers of telecommunications service to the requirements of sections 255(c) and (d) only to the extent that they provide telecommunications services.[15/] In doing so, the Commission notes that the plain language of section 255(d) refers only to telecommunications service.[16/] USTA supports this proposal, and believes that the Commission can implement

---

12/ *47* U.S.C. §§ 255(c), (d).

13/ See 47 U.S.C. § 153(20) (defining "information service"), 153(46) (defining "telecommunications service").

14/ See, e.g., *47* U.S.C. §§ 272(a)(2)(C), (f)(2), § 274(h)(2)(C).

15/ See Notice ¶ 46.

16/ *Id.*

it successfully even in those cases where a provider is using the same facilities to provide both telecommunications services and services not covered by section 255. The Act's definitions are clear enough to permit the Commission to distinguish readily among services in applying section 255.

The issue of the scope of section 255 is, of course, separate from whether some information services may be useful in improving accessibility for customers with disabilities. USTA members will continue to make efforts, even when not mandated by section 255, to provide useful services to individuals with disabilities.

IV. THE DEFINITION OF "READILY ACHIEVABLE" MUST BE REALISTIC

The Commission's analysis of what is "readily achievable" in the context of section 255 must reflect the realities faced by incumbent LECs as well as other providers of telecommunications services. As the Notice states, section 255 incorporates by reference the definition of "readily achievable" in the Americans With Disabilities Act ("ADA").[17/] USTA agrees with the Commission's tentative conclusion, which it shares with the Access Board guidelines, that "readily achievable" in the telecommunications context simply means "easily accomplishable and able to be carried out without much difficulty or expense."[18/] The use of the "readily achievable" standard in section 255 reflects Congress' intent to impose minimal burdens on service providers or manufacturers in implementing section 255. As the legislative history of the ADA states:

17/ 42 U.S.C. §12181(9) (emphasis added).

18/ See Notice ¶ 97.

> "Readily achievable" . . . focuses on the business operator and addresses the degree of ease [or] difficulty of the business operator in removing a barrier; if barrier-removal cannot be accomplished readily, then it is not required.'?'

USTA also agrees that the detailed factors of the ADA's "readily achievable" definition primarily apply to "built environments" -- that is, to the removal of architectural barriers in buildings and facilities. As the Commission notes, there are major differences between the details of accessibility to built environments, as contemplated by the ADA, and accessibility to telecommunications services and equipment, as contemplated by section 255.[20/] Because of the complexity of the telecommunications industry, implementation of section 255 by service providers, manufacturers, and the Commission will prove just as complex.

Accordingly, the substantive standards that the Commission uses to determine whether an access solution is "readily achievable" should be based on the unique characteristics of the telecommunications industry. In particular, the Commission's analysis with respect to incumbent LECs must take into account the fact that LECs are already subject to comprehensive state and federal regulation. As the Commission implements and applies section 255 for service providers, it should be mindful of the constraints imposed by other Commission or state regulations on incumbent LECs.

USTA briefly discusses below the factors that the Commission proposes for determining what is readily achievable. In considering these factors, the Commission must not lose sight of the forest for the trees. To repeat the crucial portions of the definition,

---

19/ H.R. Rep. No. 101-485, pt. 2, at 239 (1990).

20/ ***See id. ¶¶ 98-99.***

accessibility solutions must be "easily accomplished." As importantly, they must be "able to be carried out without much difficulty or expense."

Feasibility. USTA agrees with the Commission that there are a variety of reasons why a particular feature may not be feasible, including the inability of available technology to provide accessibility features, the negative effects that accessibility solutions for one disability may have on solutions for another disability, and legal impediments to implementing some features.[21] Because of the complex legal and regulatory environment in which incumbent LECs operate, existing regulations, such as mandated modernization or infrastructure plans, may well prevent some accessibility solutions from being easily accomplished at a given time. This reinforces the Notice's conclusion that "despite advances in technology, some features are still not possible."[22]

Expense. By designing products to be as broadly accessible as possible to users, including people with disabilities, manufacturers and service providers can reduce expense while providing for accessibility. However, it is essential that the Commission avoid requiring incumbent LECs to implement accessibility features for which they cannot recover the costs. While incumbent LECs should retain the ability to make specific arrangements for services provided to persons with disabilities, the Commission should not create broad mandates for LECs to provide services for which explicit cost recovery does not occur. As the Notice states, "[t]he more a provider can recover the cost of providing an accessibility feature, the more likely the feature can be provided 'without much . . . expense.'"[23] This is

---

21/ ***See id.*** ¶ 101.

22/ ***See id.*** ¶ 102.

23/ See Notice at n. 203.

particularly so for incumbent LECs, which operate under state and federal regulatory systems that often place LECs in the position of providing services which do not explicitly allow for recovery of their costs.

However, nowhere in section 255 or the ADA is there support for the Notice's assertion that the "assumption of some cost burden is an explicit element of the definition of 'readily achievable.'"[24/] According to the ADA definition, an accessibility feature is readily achievable if it can be provided without much expense. The definition does not state that costs of the feature need not be recovered, and the Commission should not adopt such a rule.

When considering expense, USTA agrees that the Commission should include the cost of other resources and opportunity costs.[25/] However, claims cited in the Notice that the cost of accessible technology drops when required by regulation are incorrect in the case of incumbent LECs.[26/] Although mandatory standards hypothetically could result in scale economies in the provision of accessibility features, the Commission has proposed no such standards. More importantly, incumbent LECs' services are subject to a wide variety of state and federal regulation such that any "savings" at all, to consumers or LECs, from standardization are highly improbable.

Practicality. When assessing the practicality of accessibility features, the Commission must recognize that existing state and federal regulation of incumbent LECs can limit the types of potential investments by LECs and the technologies available in their networks by

---

24/ ***See id.*** ¶ 115.

25/ See ***id.*** ¶ 104.

26/ ***See id.*** ¶ 103.

requiring, for example, modernization or infrastructure development plans that affect network investment for years. Regulation thus may limit the practicality of incumbent LECs making some types of advanced services available to customers, including some customers with disabilities .[27/]

The Commission should not adopt the presumptions presented in the Notice regarding the business entities whose resources are deemed available to achieve accessibility consistent with section 255.[28/] Although the goal of these presumptions apparently is to prevent firms from "evading" section 255, the presumptions would not achieve this goal. Determining whether resources are available for any given accessibility feature is a factual issue that, at most, is only one of many that is relevant to whether a proposed feature is "easily accomplished." Rather than focusing on the business entity whose resources are to be considered available to achieve accessibility, the Commission should simply acknowledge the fact-based nature of this inquiry.

The resource issue is particularly complex for incumbent LECs. Incumbent LECs vary tremendously in size, business organization, and financial condition. The pervasive regulation imposed on incumbent LECs limits their available resources as well. As a practical matter, incumbent LECs' networks are technologically limited, in part because of regulation. As noted above, incumbent LECs often have modernization or infrastructure development plans in place that are subject to state regulatory oversight. These plans already govern the availability of capital for network development. The Commission should give these plans substantial weight when considering the practical aspects of accessibility issues.

[27/] See ***id.*** ¶¶ 109-110.

[28/] See ***id.*** ¶¶ 107-109.

The Commission's "practicality" analysis also should include the effect of accessibility features on the marketability and affordability of products and services.[29] Although the Notice states that such features frequently may make a product more desirable to mass markets,[30] the Commission should not presume that such effects will occur. To do so would distort the operation of the marketplace by substituting the Commission's judgment regarding the marketability of particular features for the judgment of service providers, like incumbent LECs, that will bear the market risks of offering such products.

V. IMPLEMENTATION REGULATIONS SHOULD FOCUS ON FLEXIBLE PROBLEM SOLVING. NOT AN ADVERSARIAL PROCESS

A. Commission Regulations Should Promote Accessibility Solutions

USTA agrees that the Commission should adopt a minimal set of procedural rules and guidelines to assist compliance with section 255. Because it is inevitable that case-by-case decision-making will occur as novel situations arise, some Commission rules are necessary to guide consumers and the industry on problem solving and compliance. This is especially important because, as the Commission notes, section 255 does not allow for private civil litigation.[31] However, incentives for cooperative problem solving, rather than adversarial procedures, should be the goal of any Commission rules. If the Commission's rules create adversarial relationships, there could be incentives to design to the minimum requirements necessary to ensure technical compliance with section 255 without considering the broader

---

29/ See, e.g., ***id.*** ¶ 111.

30/ See ***id.*** ¶ 113.

31/ See Notice ¶ 34.

needs of consumers with disabilities. This would not promote the innovative solutions that will optimize telecommunications access for all .[32/]

Despite the need for procedural rules, the Commission should make every effort to ensure that resolving accessibility issues takes place in the least burdensome and most cost-effective manner possible for consumers, service providers, and manufacturers. In most cases, this will be through direct contact among consumers, service providers, and manufacturers, without Commission involvement. Accordingly, the Commission should not implement any process that has the effect of discouraging customers from first bringing their concerns to their service provider or manufacturer before triggering Commission procedures.

USTA therefore agrees with the Commission's proposal to refer all consumer complaints initially to the manufacturer or service provider.[33/] In initial customer contacts concerning section 255 issues, the Commission should encourage customers to seek resolution of these issues through their manufacturer's or service provider's complaint resolution process.

USTA also agrees that the Commission should be accessible to consumers with disabilities through various modes of communication such as TTY, letter, electronic mail, Internet, audio cassette, or voice call.[34/] Calls to the Commission should be handled by trained Commission staff capable of working with customers with disabilities.%'

[32/] The Notice's emphasis on such adversarial procedural devices as penalties and defenses reinforces these concerns. See ***id.*** ¶¶ 164-166, 172.

[33/] ***See id.*** ¶¶ 128, 132.

[34/] ***See id.*** ¶ 129.

[35/] ***See id.*** ¶ 131.

At the same time, USTA requests the Commission to keep an open door for service providers or manufacturers to discuss or seek guidance on planned actions, processes and programs before they become points of contention. This could include Commission feedback, when requested, on the outreach, training and company-sponsored dispute resolution processes of service providers and manufacturers, and education of the public by the Commission on accessibility issues.[36/]

B. Only Customers Or Their Representatives Should Have Standing To File Section 255 Complaints

Only customers of a service provider or manufacturer, either directly or through an authorized representative, should have standing to initiate a fast-track inquiry or an informal or formal complaint under section 255. Although section 255 does not impose a standing requirement,[37/] it clearly does not foreclose the Commission from adopting one. Indeed, section 255 provides broadly that the Commission has exclusive jurisdiction with respect to any complaint under that section,"[38/] and gives the Commission substantial discretion to fashion its procedural rules.

A standing requirement that permits only customers of a service provider or manufacturer, or the customers' representatives, to file complaints under section 255 would promote the Commission's stated principles of (i) responsiveness to consumers. and (ii)

36/ ***See id.*** ¶ 165.

37/ ***See id.*** ¶ 148.

38/ See ***47*** U.S.C. § 255(f).

efficient allocation of resources. [39] Because customers -- consumers -- of telecommunications products are precisely those parties that section 255 is designed to assist, USTA's proposed standing requirement is entirely consistent with the Commission's responsiveness principle.

USTA's proposed rule would improve the Commission's responsiveness to consumers by focusing on the concerns of those who most directly rely on the products of manufacturers and service providers. Similarly, the proposed standing rule would enhance the efficient allocation of the parties' resources. Although the Notice states a desire to avoid burdening the complaint process with disputes about standing,%' USTA's proposed rule would be simple to enforce, thus effectively lessening burdens on the resources of the Commission and private parties without restricting customers' rights.

C. The Proposed Fast-Track Process Would Hinder The Constructive Resolution Of Accessibility Issues

USTA has grave concerns about the practicality of the fast-track process proposed in the Notice. Most importantly, five business days is an inadequate amount of time for incumbent LECs to receive, investigate, and respond to the Commission regarding a fast-track inquiry. As presented in the Notice, the Commission's emphasis on the initial five-business-day period for a response will create false expectations among consumers that the important issues they raise can be resolved in that short period.

---

[39] See Notice ¶ 124.

[40] See *id.* ¶ 148.

USTA's members are wholeheartedly committed to resolving accessibility issues as quickly as possible. Rapid resolution of these issues will enable incumbent LECs to provide high-quality telecommunications service to their customers with disabilities, to the benefit of all. But for many such issues, substantially more than five business days are necessary to determine which of the involved service providers or manufacturers might need to effect changes to their products to meet the consumers' needs and to determine whether such changes are readily achievable. Once possible solutions are identified as readily achievable, additional time is generally needed to test and implement them.

The false expectations raised by the proposed fast-track process will be unconstructive and ultimately wasteful. Fifteen days is a minimal reasonable time for a response, and USTA recommends that the Commission adopt an option to extend the response period to thirty days, if necessary. Even with such a schedule, it is very likely that additional time will be needed for complete resolution of an accessibility issue. The Commission should make these realities clear to consumers involved in a fast-track inquiry.

For a fast-track inquiry to succeed, the Commission must pass sufficient information to the service provider or manufacturer to conduct an effective investigation. In this regard, the incumbent LECs' contact points for the Commission should be the agents for receipt of service that the Commission required the LECs to designate in March 1998 in revising the formal complaint process.[41/] It would be confusing and redundant for the Commission to require LECs to provide additional contact points. The Commission should also specify the manner in which a service provider or manufacturer should communicate a response to a

---

[41/] ***See id.*** ¶¶ 132-134; ***see also Implementation of the Telecommunications Act of 1996, Amendment of Rules to Be Followed When Formal Complaints Are Filed Against Common Carriers,*** CC Docket No. 96-238, Report and Order, FCC 97-396 (rel. Nov. 25, 1997) ¶¶ ***54, 67; 47*** C.F.R § 1.47(h).

customer, especially if the Commission has determined that one form of communication is preferable to another.

D. Procedures For Informal And Formal Complaints Should Address The Complexity Of Section 255 Issues

To minimize confusion and increase efficiency, Commission rules for formal and informal complaints under section 255 that involve LECs should not deviate from those already in place for common carriers except when essential to address the unique issues posed by section 255.[42/] For this reason, and because of the complexity of section 255 issues, USTA supports the proposed increases in time for respondents to answer informal complaints and for replies to answers.[43/]

E. The Commission Should Exercise Care In Using And Releasing Data Collected In Section 255 Proceedings

The Commission should exercise great care when it uses information from section 255 processes to formulate policies, identify problems, assign responsibility and fashion remedies.[44/] The privacy of people with disabilities must be respected, and firms' proprietary information must be protected. The Commission must test and validate any data on which it relies for those purposes. Any data collection should include the tracking of positive solutions, problem-solving processes, and examples of accessibility. To the extent

---

42/ ***See id.*** ¶ 147.

43/ See ***id.*** ¶¶ 150, 151.

44/ ***See id.*** ¶ 174.

that the Commission compiles and releases data regarding section 255 issues, service providers and manufacturers should have the opportunity to first review the types of data to be published and the format to be used. They also should have a reasonable opportunity to correct, clarify or supplement such data.

Because of the widely varying factual circumstances involved in section 255 issues, the Commission should not compare, or "benchmark," service providers or manufacturers regarding such issues.[45] The Commission must be sensitive to the impacts to competitive companies that find themselves benchmarked against their competitors on the basis of erroneous data, incomplete data or data presented out of context.

VI. CONCLUSION

USTA and its members look forward to working with customers with disabilities and the Commission to implement section 255 and to ensure more broadly that people with disabilities have access to services that permit them to communicate freely and effectively. USTA supports the policy goals of this rulemaking. Accordingly, USTA urges the Commission to create processes that promote cooperative, rather than adversarial,

---

45/ See ***id.*** For example, these results should not be placed in a format such as that of the Common Carrier Scorecard, whose data and presentation have been disputed on several occasions.

relationships among service providers, manufacturers, and telecommunications customers who have disabilities.

Respectfully submitted,

UNITED STATES TELEPHONE ASSOCIATION

By: Lawrence E. Sarjeant/WSM

Lawrence E. Sarjeant
Linda Kent
Keith Townsend

U.S. Telephone Association
1401 H Street, N.W.
Suite 600
Washington, D . C . 20005
(202) 326-7249

William F. Maher, Jr.
Halprin, Temple, Goodman & Sugrue
1100 New York Avenue, N.W.
Washington, D. C. 20005
(202) 371-9100

Of Counsel

June 30, 1998