

### **C. The Commission Should Re-Evaluate Its Proposed Five Day Complaint Response Time**

In its Notice, the Commission has proposed a complaint<sup>6</sup> response time of five business days from the date that the complaint is forwarded by the Commission to the manufacturer. However, because such notices are forwarded via U.S. Mail, it could take days for the manufacturer to receive the complaint, and thus, the manufacturer's response time will not be a true five business days. So the time should run from receipt of the complaint. Moreover, even if the complaint were received instantaneously, the Commission must take into account the processes involved in responding to such complaints, and must recognize that in most cases such a short turn-around period would not provide the manufacturer with sufficient time to study the complaint, gather information, and **identify** possible accessibility solutions. Even in situations where the complaint identifies an accessibility issue that the manufacturer has addressed in the past, assembling the information necessary to supply the Commission and the consumer with a complete response might still take longer than the five-business day period proposed by the Commission. In cases where the complaint identifies an accessibility issue of first impression to the manufacturer, a complete response will certainly require more time than the proposed five-business day period would permit. An unduly short turn-around time will not advance accessibility. Rather, it will merely **incent** manufacturers to "paper the record" with readily accessible information to demonstrate why any particular accessibility

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<sup>6</sup> Again, the Commission proposes to apply this same "complaint" process to information requests. For the reasons stated in Section III, A, above, the Commission

feature is not readily achievable. The Commission should not encourage hasty investigation and reporting by manufacturers. Accordingly, the Commission must re-evaluate its proposed five day complaint response time in light of concerns about the timing of complaint delivery and depth of information required to be submitted in response to complaints.

In its Notice, the Commission specifically recognized that there may be instances where a five-business-day period may be enough time for a provider to assess a problem and begin to resolve it, but not long enough to complete the resolution. In such cases, the Commission proposes to permit manufacturers and service providers to provide the Commission with an informal progress report and request additional time to continue their problem-solving efforts. This procedure is appropriate not only for the exceptional case, but for any case where a product is not currently available to satisfy an inquiry or complaint. Rather than requiring manufacturers to respond to complaints within five business days, the Commission should require manufacturers to acknowledge receipt of complaints within a relatively short period, and to concurrently provide the Commission with an anticipated response date. In order to ensure that manufacturers make resolution of complaints a priority, the Commission could require that the response date selected by the manufacturer be within sixty days after the date of acknowledgement. The response

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must distinguish complaints from information requests, and provide for separate treatment of each.

date would then be duly noted by the Commission: and the manufacturer would be bound to respond by that date, unless an extension of time was **granted**.<sup>8</sup> Such a response system would provide manufacturers with sufficient time to thoughtfully and effectively respond to complaints, while at the same time not permitting complaints to go unanswered for extended periods of time.

The Commission should refrain from applying its proposed “complaint” process to product inquiries or information requests submitted by consumers. Although MMTA agrees that manufacturers should be required to respond within a reasonable time to the product inquiries and information requests they receive, the response should not be given to the Commission via the proposed complaint process. A response to the Commission should be limited to situations in which the manufacturer has made no **meaningful** effort to respond to the consumer, or has ignored the consumer altogether. Such matters are more appropriately handled in the private sector, among manufacturers and disabled users, their employers and the retailers that sell equipment to their employees.

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<sup>7</sup> The Commission’s administrative burden in recording report deadlines under MMTA’s proposal would be no greater than it would be under the Commission’s proposal, as the Commission will already have to document and monitor complaint response deadlines under its proposed five day report deadline system.

<sup>8</sup> It is likely that many manufacturers will need to seek extensions of time within which to respond to the complaints due to the short, five-business day response time **frame** proposed by the Commission. Providing manufacturers with additional time to respond to complaints initially will lead to fewer requests for extensions of time.

#### **Iv. COMPATIBILITY WITH PERIPHERALS**

Under Section 255, if equipment is not directly accessible, it should be compatible with peripheral devices, if that is “readily achievable.” The FCC should recognize, however, that universal compatibility is generally more difficult to achieve in the business systems environment, where the connections of equipment within a system often use proprietary technology.

Compatibility is also **difficult** to achieve because of the disparate technologies involved. For example, many accessibility issues involve the conversion of voice communications to data, or vice versa. Integration of voice and data, of course, has long been an elusive goal for business telecommunications systems. However, in the 1990s a good deal of progress has been made toward more effective integration of computer and telephone systems on the business premises.

Of critical importance to the success of computer-telephone integration (“CT,“) has been the development of standards. CTI has benefited from a series of standards efforts, including the Enterprise Computer Telephony Forum (“ECTF”), in which 70 companies are working to ensure CTI interoperability. In addition, individual companies have developed technologies that have become *de facto* standards, including Microsoft’s Telephony Applications Programming Interface (“TAP,“) and Novell’s Telephony Services Applications Programming Interface (“TSAPI”). A further step that would advance CTI is the development of a unified messaging system, in which voice, data and even video messages could be **left** in a universal mailbox.

Accessibility efforts potentially could build on the successful development of standards-based CTI. The standardization of a universal interface for voice and data transmission between telecommunication manufacturers' equipment and assistive device manufacturers' equipment would facilitate connectability. Such an "assistive device interface technology" ("ADIT") would have standard signaling for "specific operations." A universal interface would allow customer premise equipment ("CPE") with proprietary technology to incorporate the ADIT directly or allow a converter device to change the ADIT signaling to the CPE signaling.

In order to facilitate making equipment compatible with peripheral devices, however, the FCC's final rules must underscore the responsibility of adaptive device manufacturers to work with equipment manufacturers to ensure compatibility. In the past, the deployment of a standard interface – e.g., for hearing aids and telephone handsets – was delayed because both industry groups did not have the same incentive to cooperate. The Commission should be prepared to intervene where necessary to overcome obstacles to the development of workable standards. However, individual equipment manufacturers should not be sanctioned for being unable to "readily achieve" accessibility due to delays in the collective development of industry-wide standards.

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## V. TRANSITION TIME

In its Notice, the Commission notes that Section 255 of the Act became effective on February 8, 1996.<sup>9</sup> Although manufacturers arguably may be already under some degree of obligation to comply with Section 255, the Access Board's guidelines regarding Section 255 compliance were not publicly released until February, 1998. The Access Board's guidelines constitute the first meaningful form of notice for manufacturers of what is expected of them under Section 255. In addition, the Commission has only just begun to implement Section 255 and clarify manufacturers' responsibilities under that provision. As evidenced by the fact that the Commission has instituted a rulemaking proceeding to implement Section 255, the statutory requirements of Section 255 cannot be considered entirely straightforward or self-executing. While the Commission's final rules will provide important guidance, manufacturers will need time to familiarize themselves with those rules and implement revised product design and evaluation procedures. Accordingly, the Commission should provide manufacturers with a reasonable transition period, such as two years, after final rules are adopted within which to implement design and manufacturing processes that are consistent with the Commission's final rules.

Manufacturers conceiving and designing products in the wake of the release of the Access Board's guidelines and the Commission's implementation rules can rely on those guidelines and rules and, as a result, can make more thoughtful and thorough accessibility and readily achievable assessments in their product designs. However, in evaluating a

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<sup>9</sup> Notice, at ¶¶ 8 and 175.

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manufacturer's accessibility decisions, the Commission must take into account the significant lag time involved between the time a product is conceived and designed, and the time it is manufactured and delivered to the marketplace. Products that have been manufactured and marketed in the two years since the Act's enactment were likely conceived and designed prior to the time that Section 255 took effect. Although they are post-Act products, such products were pre-Act designed, and the accessibility and readily achievable assessments required in the post-Act environment were not required in pre-Act. Similarly, there are many products that have been conceived and designed since the time that Section 255 took effect, but are just now being manufactured or marketed. However, because those products were conceived and designed *before* the Commission's implementation and clarification of manufacturers' responsibilities under Section 255 of the Act, the accessibility and readily achievable assessments made during the post-Act/pre-Commission implementation period may not have been what the Commission will heretofore consider complete and thorough. The same may also be true for products that are being conceived and designed now, but will not be manufactured for quite some time. The Commission, therefore, should not rely on hindsight in evaluating a manufacturer's accessibility and "readily achievable" decisions.

## **VI. CONSISTENCY WITH CONCURRENT EQUIPMENT AUTHORIZATION STREAMLINING PROCEEDING**

The Commission has consistently sought to promote competition in the business telecom equipment market by removing unnecessary restrictions on customer interconnection of "privately beneficial" telecommunications equipment. As part of the

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Commission's biennial review of its rules and processes, the Commission has instituted a rulemaking proceeding to **further** streamline its authorization rules for terminal equipment that may be attached to the telephone network. In that proceeding, the Commission also proposes to implement the Mutual Recognition Agreement ("**MRA**") between the U.S. and the European Union ("EU"). The rule modifications that will result from that proceeding are intended to improve the efficiency process so that communications equipment may be introduced more rapidly both in the U.S. and abroad. The **MRA's** main objective is to reduce the time it takes for manufacturers to get products into the markets of signatory countries by enabling manufacturers to have products approved by either the U.S. or the EU.

MMTA is concerned that the rules adopted in this proceeding be consistent with the letter and spirit of the MRA and the Commission's equipment authorization streamlining effort. Accordingly, the Commission should ensure that its implementation of Section 255 does not result in the erection of new barriers to free interconnection and competition in telecom equipment.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert F. Aldrich", written over a horizontal line.

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