Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections 255 and 251(a)(2) of	)	WT Docket No. 96-198
The Communications Act of 1934, as Enacted by	)	
the Telecommunications Act of 1996	)	
	)	
Access to Telecommunications Services,	)	
Telecommunications Equipment, and	)	
Customer Premises Equipment by	)	
Persons with Disabilities	)	

Reply Comments of the Telecommunications Industry Association

The Telecommunications Industry Association ("TIA") submits the following brief reply comments in response to the Federal Communications Commission's Further Notice of Inquiry ("NOI") in the above-captioned proceeding.[1] TIA is the principal industry association representing manufacturers and suppliers of communications and information technology products and equipment.

TIA has been an active participant in the FCC proceedings implementing Section 255 of the Telecommunications Act of 1996. Even more importantly, TIA has been a consistent

[1] Implementation of Sections 255 and 251(a)(2) of the Telecommunications Act of 1996 – Access to Telecommunications Services, Telecommunications Equipment, and Customer Premises Equipment by

proponent of the goals and purposes of Section 255 – ensuring that persons with disabilities have access to communications products and services. TIA member companies continue to design and produce a broad array of innovative products and implement services that continuously add features and functions that enhance accessibility for consumers with varying degrees of disabilities.

The Regulatory Status of IP Telephony Must Be Addressed Only in the Context of a Broader Proceeding

In their initial responses to this NOI, several commenters assert that Internet Protocol ("IP") telephony meets the definition of a "telecommunications service" and thus is subject to Section 255.[2] TIA, however, suggests that the facts do not support this sweeping conclusion and urges the Commission to address the regulatory classification of IP telephony in a broader context than Section 255 implementation. To date, the Commission has not concluded that phone-to-phone IP telephony constitutes a telecommunications service. As AT&T and GTE noted in their respective comments,[3] while the Commission has concluded that phone-to-phone IP telephony bears the characteristics of a telecommunications service, it explicitly has stated that it would be inappropriate "to make any definitive pronouncements in the absence of a more complete record focused on individual service offerings."[4] Reclassifying phone-to-phone IP telephony as a telecommunications service here could impact other Federal and even state

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Persons with Disabilities, WT Docket No. 96-198, *Report and Order and Further Notice of Inquiry*, FCC 99-181 (released Sept. 29, 1999).

[2] *See, e.g.*, Comments of the National Association of the Deaf at 21-22; Comments of Inclusive Technologies at 11; Comments of Trace/Gallaudet at 2-3.

[3] See Comments of AT&T at 2; Comments of GTE at 2-3.

regulatory regimes, such as access charges, universal service, and tariffing policies. Thus, TIA agrees with AT&T and GTE, among others,[5] that the Commission must develop a comprehensive record addressing the impact of a possible regulatory status change before reaching a determination on how phone-to-phone IP telephony services should be classified.

Ancillary Jurisdiction Must Be Exercised Cautiously

In the Report and Order in this proceeding, the Commission employed the use of its ancillary jurisdiction to include voicemail and interactive menu services under the requirements of Section 255.[6] The Commission, however, limited its reach to only those services found "essential to making telecommunications services accessible."[7] The Commission reasoned that a particular service is not essential if there are alternatives. For example, the Commission concluded that electronic mail and web pages are alternative mechanisms for accessing information that can be received over the phone using telecommunications services.[8] Thus, they were not deemed to be subject to Section 255 requirements. Although the Commission limited its exercise of ancillary jurisdiction, numerous parties, including Commissioners Powell and Furchtgott-Roth,[9] questioned the legal sustainability of the Commission's action. As a result,

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[4] *See* Federal-State Joint Bd. on Universal Serv., *Report to Congress*, 13 FCC Rcd 11501 (1998) at ¶ 91.
[5] *See also* Comments of Level 3 at 4-7; Comments of iBasis at 4-5; Comments of Voice on the Net (VON) Coalition at 2.
[6] *Report and Order*, ¶¶ 93-108.
[7] *Id.*, ¶ 107.
[8] *Id*.
[9] *See* Separate Statement of Commissioner Michael Powell ("I am unconvinced that such an unrestrained application of ancillary jurisdiction has been sanctioned by the courts, nor do I believe it to be consistent with our own precedents"); Separate Statement of Commissioner Harold W. Furchtgott-Roth*, concurring in*

TIA encourages the Commission to consider the matter carefully and review all regulatory implications before invoking ancillary jurisdiction over other information services in this proceeding.

Exercise of ancillary jurisdiction at this time may be premature. Phone-to-phone IP telephony services are not widely deployed and are not as ubiquitous as voicemail or interactive menu services. In addition, as stated in the comments of the Voice on the Net (VON) Coalition, the industry voluntarily is working to develop an accessible voice-over-IP standard.[10] Inclusion of phone-to-phone IP telephony in Section 255 requirements before an industry standard is reached may lead to incompatible approaches for accessibility and hamper, rather than expedite, this industry initiative.

Increased Regulation Not Only is Unnecessary, It May Precipitate Unintended and Undesirable Results

The regulations adopted by the Commission in the Report and Order are based on an assumption that manufacturers would not incorporate accessibility features unless required to do so by law. TIA disagrees with the premise and suggests that the Commission consider the introduction of new accessible products in the marketplace before concluding that regulation is essential. Increasingly, ignoring the needs of persons with disabilities in product or service

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part and dissenting in part ("Nowhere in any relevant statutory provisions do we find any reference to information services, a term with which the Act's authors were certainly familiar").

[10] *See* Comments of the VON Coalition.

design is inconsistent with business objectives focused on growing market share. In other words, business is paying attention.

The broader issue is usability by everyone, as the Commission often has acknowledged. A product more usable by persons with disabilities also is likely to be more usable by those not disabled, and thus more competitive. A company that ignores the needs of persons with disabilities in its product design shuts off the possibility for serendipitous market expansion. For example, vibration alerts in pagers benefit not just the deaf or the hard of hearing, but those in good hearing who use them, for among reasons, in order to not disturb others nearby.

Further, assuming the validity of this figure, the 54 million Americans experiencing some form of disability represent a sizeable market. Companies who ignore this fact essentially are choosing not to serve one out of every 5 consumers in the United States. Additionally, with the aging of the "baby boom" population in this country, the need to provide products that accommodate their needs will grow. As a result, sound business sense will lead to their inclusion in targeted consumer markets.

The above paragraphs demonstrate that an open, competitive market can respond to meet the needs of persons with disabilities, and can do so efficiently. While in some instances regulation may be an important tool for preserving and advancing public interests, the Section 255 regulations may become an obstacle to achieving the very economic and social goals intended. Extending regulation to a currently unregulated segment of the market likely will result

in higher costs, misallocation of resources, reduced product innovation, and poor service quality.

Conclusion

The member companies of TIA are committed to complying fully with Section 255's directives and, individually and as an industry, are going further and seeking creative solutions to accessibility in new products and services that fall beyond the scope of the statute. For both society and any company, the benefits of the objective of striving to make all types of products and services accessible, whether subject to Section 255 or not, is unquestionable. Nonetheless, for the reasons mentioned herein, TIA does not support the Commission pursuing regulation for an unregulated class of products and services. Clearly, if the Commission seeks to address the regulatory classification of IP telephony and revisit issues surrounding the definition of "information services," it needs to do so in the context of a proceeding with broader public participation. The Commission also must understand that IP telephony still is in a formative stage and regulating it at this point in its history may stifle development and delay its deployment and implementation for the benefit of all Americans, including those with disabilities.

Respectfully submitted, **Telecommunications Industry Association**

/s/

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