

Before the
Architectural and Transportation Barriers and Compliance Board
Washington, D.C.

In the Matter of

Telecommunications and Electronic and Information
Technology Access Advisory Committee –
Minority Reports

COMMENTS OF THE
CTIA – THE WIRELESS ASSOCIATION®
AND THE
TELECOMMUNICATIONS INDUSTRY ASSOCIATION

I. Introduction

The CTIA – The Wireless Association® (CTIA) and the Telecommunications Industry Association (TIA) believe that all consumers, including individuals with or without disabilities, should be able to enjoy the benefits of telecommunications technologies. Since passage of the Telecommunications Act of 1996, which amended the Communications Act of 1934, there have been significant strides towards telecommunications access. Over the past 12 years, leaders in the telecommunications industry have worked together with disabilities access leaders to achieve hearing aid compatible wireless phones, TTY and wireless phone compatibility, and a growing number of mainstream features that benefit consumers with disabilities such as: voice command for dialing and menu selection, “nib” on the 5 key, talking Caller ID for cordless and wire-line, software applications that “speak” everything displayed on a wireless device’s screen, and text magnifying software for a wireless device. We have come a long way since 1996, and CTIA and TIA members want to continue to work towards achieving even greater accessibility solutions.

Both CTIA and TIA appreciate the opportunity to have been members of the Telecommunications and Electronic and Information Technology Advisory Committee (TEITAC), and have benefited from each member’s insights and perspectives. The members of CTIA and TIA comprise a significant majority of the companies that manufacture customer premises and telecommunications equipment. As manufacturers of telecommunications, we too believe that our input is critical to the TEITAC process and the goal of making products even more accessible to our customers with disabilities. In particular, our members are industry leaders who are committed to accessibility and provide valuable insight into how the telecommunications guidelines can either facilitate even greater accessibility or slow down the process. Many of the industry members of the TEITAC, have demonstrated that working together with disabilities access leaders, respecting each others areas of expertise, and by finding common ground – we can better

serve all consumers. We look forward to the next steps in the Access Board's process with hopes that we can achieve the same.

II. Key Issues To Be Addressed

At the time of this writing the TEITAC Recommendations to the Access Board have not been finalized and we have been instructed by the TEITAC Co-Chairs to base our minority reports on the TEITAC Final Recommendations_06_draft2d, released for committee member review on March 26, 2008.

The CTIA and TIA minority report takes a higher level view of the TEITAC Recommendations Draft, noting our concerns and asking for Access Board clarification. The CTIA and TIA minority report will address the following six key issues:

- A. CTIA and TIA request clarification from the Access Board on the application of the Part C – Technical Requirements within the Section 255 context because the application may conflict with Section 255's regulatory scheme.**
- B. To claim all technologies are or will converge is misrepresenting the technological eco-system.**
- C. The Access Board should exercise caution regarding the technical requirements for captioning due to standardization development and interoperability testing.**
- D. The Access Board should exercise caution regarding technical requirements for real-time text while encouraging further research and standardization development**
- E. The TEITAC process posed significant challenges for CTIA and TIA to solicit membership authorization.**
- F. CTIA and TIA request the right to submit economic impact data at a subsequent date.**

In this minority report, CTIA and TIA will not be submitting responses or corrections to the statements contained in Sections 1 through 5 (collectively called the Narrative sections) of the TEITAC Final Recommendations Draft. The TEITAC has taken the position that the Narrative sections are not intended to be a consensus statement, a formal or official interpretation, or an explanation of the topics or events which it covers. Therefore, while both CTIA and TIA have submitted comments on the language of the Narrative sections at earlier points in the TEITAC process, we are not offering specific responses or corrections to the statements contained in the Narrative sections in this minority report.

- A. CTIA and TIA request clarification from the Access Board on the application of the Part C – Technical Requirements within the Section 255 context because the application may conflict with Section 255's regulatory scheme.**

Subpart A-2. Application

There are two versions of the application section, one for Section 255, and one for Section 508

Application for Section 255

Where readily achievable, telecommunications and interconnected VoIP equipment and customer premises equipment must comply with the requirements of Part C-Technical Requirements of this [rule].

Where it is not readily achievable to comply with Part C-Technical Requirements, telecommunications and interconnected VoIP equipment and customer premises equipment (CPE) must comply with the requirements of Part B-Functional Performance Criteria, if readily achievable.

While there was a consensus by the TEITAC Advisory Committee on the aforementioned text, there was no discussion about how these requirements would potentially impact the manufacturers' product development process. We also note that the Access Board's charge to the TEITAC in the TEITAC Charter recognizes that "[t]he Committee shall advise the Access Board on issues related to revising and updating accessibility guidelines for telecommunications equipment and customer premises equipment..." Therefore, the TEITAC reference to "technical requirements" in Part C of its Recommendations should at most be considered as guidelines, not requirements, under the Section 255 statutory framework.

As CTIA was soliciting member feedback on the TEITAC drafts, a number of questions were raised concerning the application of the TEITAC technical requirements to Section 255. On January 17, 2008, CTIA sent an email to the TEITAC Co-Chairs asking for their feedback on questions related to Section 1194.2 of the TEITAC Recommendation Draft and the application of the technical requirements within Section 255. The TEITAC Co-Chairs referred CTIA to Mr. Tim Creagan (Senior Accessibility Specialist, United States Access Board) for answers to these questions. CTIA spoke with Mr. Creagan by telephone on February 6, 2008. Since that time, it has become evident that there are a number of different interpretations of how the TEITAC technical requirements would be applied to manufacturers in the Section 255 context.

As a result, CTIA and TIA requests that the Access Board provide clarification concerning the application of technical requirements and the readily achievable standard within the Section 255 context. While we understand that the answers to these questions may not be within the Access Board's jurisdiction, we would appreciate any insights that the Access Board may provide on this issue.

As an example, we request clarification for a number of situations and questions based on the following scenario.

Scenario: A manufacturer is required to comply with the following draft technical requirement language for "text size": "For all public or shared products there must be at

least one mode where all information that is required for product use and is provided in text or images of text is readable by people with 20/20 vision at 3.5 times their typical viewing distance...”

Example A: The Section 255 covered manufacturer complies with the “text size” technical requirement by providing at least one mode where all information that is required for the product’s use is in text that is readable by people with 20/20 vision at 3.5 times their typical viewing distance.

Question 1 – Does the manufacturer’s compliance with the above technical requirement provide the manufacturer with a “safe harbor” should the manufacturer receive a complaint from a user who has low vision who cannot read the information required for the product’s use?

Question 2 – After the manufacturer incorporates the “text size” technical requirement into the product, would the manufacturer be required to incorporate any other “readily achievable” access solutions for users with low vision who would need to read the information that is required for product use?

Question 3 – What steps would the manufacturer be required to take if incorporation of the “text size” requirement is not readily achievable?

Example B: Instead of incorporating the “text size” technical requirement into its product the manufacturer decides to incorporate “voice output” for all the textual information that is required for the product’s use.

Question 1 – If the manufacturer provides a readily achievable access solution (e.g. voice output) that is an alternative to the required technical requirement, is the manufacturer in violation of the requirement?

Question 2 – If the manufacturer provides a readily achievable access solution that is an alternative (e.g. voice output) to the required technical requirement, would the manufacturer be required to prove that the “alternative” access solution is “functionally equivalent” to the technical requirement?

We thank the Access Board in advance for its insights into how the abovementioned situations and questions may impact manufacturers’ development of customer premises and telecommunications equipment. Once these questions are resolved and finalized, CTIA and TIA will be in a better position to assess the appropriateness and merits of the technical requirements.

The next step will be to address the question of whether any technical requirements will serve as Guidelines under Section 255 and be subsequently used or adopted for Section 255. Of course, the determination of how the Guidelines will be used under Section 255 is principally within the jurisdiction of the Federal Communications Commission because they are based on the statutory and regulatory interpretation of Section 255. Therefore, the question of whether the Guidelines are ultimately adopted for Section 255 is beyond the appropriate scope of the TEITAC. However, the Access Board’s insight would be helpful to clarify and inform the utility of the Guidelines in the context of Section 255 for consumers, industry and the Federal Communications Commission.

B. To claim all technologies are or will converge is misrepresenting the technological eco-system.

During the course of the TEITAC deliberations much attention was given to the convergence of technologies (information technology, consumer electronics, and telecommunications) in devices. Technology convergence is reflected in the Narrative section of the TEITAC Recommendations Draft in a way that might suggest, or be interpreted as, all technologies are presently converged or will be converged, and that accessibility and usability require convergence of technologies in devices. We believe this is a misrepresentation of the current technological eco-system.

Many digital devices, for example, provide a full digital experience for “road warriors” who want full productivity tools in their device. Other devices combine only two key functionalities such as basic telephone service with an MP3 player. However, many devices still provide just the “basics” such as basic telephone service, and are often times the preferred devices of many consumers. Many software applications for these devices are also packaged differently for different customer groups - one for the professional with all the gadgetry and one for the basic home user that would not use the other options. Not all devices will exhibit a comprehensive convergence of technologies.

The introduction of new technologies has also brought new challenges. The use of digital technologies has fueled innovation but this innovation has also often resulted in increased complexity for consumers using these products and services. For individuals and businesses, devices that have unwanted or unnecessary features may be cost prohibitive not only with the initial purchase but the time and training needed to use a device with unnecessary levels of complexity. Digital technologies have also increased the tools available to consumers with disabilities and simultaneously introduced new compatibility and interoperability challenges. As a result there are consumers who want to have the option to choose either the converged or non-converged products and services that will best meet their individual needs.

CTIA and TIA urge the Access Board not to assume that convergence exists in all products nor that convergence is a foregone conclusion. While some products presently have more convergence than others, this will continue to be so. CTIA and TIA urge the Access board to create a balance to ensure that its Section 255 Guidelines and Section 508 standards do not hamper innovation while seeking accessibility improvements.

C. The Access Board should exercise caution regarding the technical requirements for captioning due to standardization development and interoperability testing.

Captioning of the Internet and video programming on mobile devices is different from captioning on fixed devices. While media players on mobile devices do currently display ‘open captioned’ media content in support of persons with disabilities, ‘closed captioned’ media content on mobile devices is still a nascent technology where research into consumer needs, technology requirements and standards is required. Members of

industry, government and disability advocacy organizations have already joined in a collaborative effort to conduct research into captioning for mobile devices in the WGBH-NCAM project entitled, “*Captioning Solutions for Handheld Media and Mobile Devices*”. The goal of this project is to identify the technical challenges of, and possible solutions for, creating, distributing, downloading and displaying captioned content on handheld devices. CTIA and TIA urge the Access Board to exercise caution in the development of technical requirements for captioning and continue to monitor its progress. This reasonable approach will prevent unnecessarily getting in front of the standardization development and interoperability testing that is required for these new technologies.

D. The Access Board should exercise caution regarding technical requirements for real-time text while encouraging support for further research and standardization development.

The recommendations of the TEITAC make it clear that it is important to work toward enabling real-time text in conjunction with IP-enabled voice telephony devices. This is an area with multiple competing standards that mimic legacy TTY functionality. As well, multiple competing Instant Messaging standards attempt to deliver text communication capabilities that go beyond what was possible with TTY devices.

At present there is widespread demand for interoperable Instant Messaging capability around the world. The Internet Engineering Task Force (IETF) just published a new Instant Messaging standard in September 2007 to enable interoperable Instant Messaging within the context of Session Initiation Protocol (SIP) phone calls that hold the potential to deliver real-time text capability. At the same time there exists a strong desire by consumers who are deaf, severely hard of hearing or who have speech disabilities, to be able to use ubiquitous, mainstream technologies that will not require specialized devices. In addition, it would be a misplaced use of resources to require products to be able to communicate via real-time text with public safety answering points until such time as public safety response systems are able to receive real-time text.

If the goal is to enable consumers who are deaf, severely hard of hearing or who have speech disabilities, to use mainstream real-time text devices, it will be important to monitor and become involved in the significant activity that is taking place around the development of Instant Messaging standards. CTIA and TIA recommend the Access Board exercise caution in the development of technical requirements for real-time text at this time. For the foregoing reasons, CTIA and TIA urge the Access Board to encourage support for real-time text, but not to choose specific technologies or approaches until there is further research and development.

E. The TEITAC process posed significant challenges for CTIA and TIA to solicit membership authorization.

The TEITAC drafting and comment process posed significant challenges for both CTIA and TIA as trade association advisory committee members. Trade associations, by the very nature of their structure, are required to poll their members prior to agreeing or disagreeing with TEITAC proposals. Due to the constant revisions of the TEITAC

Recommendations, it was often very difficult to continuously solicit feedback from CTIA and TIA members in a timely fashion. This prompted CTIA's mention in its January 17, 2008 email to the TEITAC Co-Chairs, that explained that "CTIA's silence in the TEITAC Advisory Committee meetings didn't necessarily reflect support for the current draft provisions."

Most significantly, a static, finalized TEITAC document was never released for committee member review and comment. Instead, a final TEITAC Recommendation Draft was published on March 26, 2008 with a COB, April 1, 2008 deadline for minority reports. This provided CTIA and TIA with only four and a half working days to circulate the final draft document to its membership, request feedback, and organize that feedback into the drafting of a minority report.

F. CTIA and TIA request the right to submit economic impact data at a subsequent date.

As this process evolves and we receive further feedback from the Access Board concerning the guidelines for manufacturers of customer premises and telecommunications equipment, CTIA and TIA will be in a better position to evaluate the potential economic impact of the telecommunications guidelines on manufacturers of customer premises and telecommunications equipment. We request the right to submit economic impact data at that time.

III. Conclusion

CTIA and TIA thank the Access Board for the opportunity to submit a minority report as part of the TEITAC Recommendations. We look forward to the Access Board's development of a reasoned and balanced Notice of Proposed Rulemaking that will help to further telecommunications access for people with disabilities.

Respectfully submitted,



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