



# National Council on the Handicapped

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An Independent Federal Agency

March 2, (Handwritten month/date) 1988

To: Members of Hearing Impaired community/ Feb. 29 Attendees

From: Bob Burgdorf, Attorney/Research Specialist (BOB signed Bob)

Subject: Follow-up to Monday's meeting

I was very pleased by the thoughtful discussions at our meeting on Monday, February 29. I wish to thank each of you for taking time out of your busy schedules to provide us with input on how to best address communication barriers in the Council's draft bill -- the Americans with Disabilities Act. You were all good advocates for your positions as well as good listeners to the points of view of others, and I am appreciative of the fair and frank interchange of ideas. I also was pleased that after considerable discussion there seemed to be a fair degree of consensus on some of the major points.

I have tried to follow-up with the charge I was given by the group at the end of the meeting -- to take the advice and approaches that the group had suggested and try to reflect them in some proposed legislative language for you to critique and react to with the help of Ray Fuller and members of our staff, I have developed some draft language for your review. A copy of these proposals is attached. As we discussed, they break down into two areas. The first of these is prohibiting discrimination by the communications industry, including T.V. stations and the issue of captioning. This issue is addressed on the page entitled "COVERAGE OF BROADCASTING AND COMMUNICATIONS INDUSTRY." I believe that I heard unanimous agreement from you that broadcasters and communication providers should be covered by the law; this would be accomplished through the first paragraph (subsection (6)). I also think there was general agreement that we should try to require increased captioning of television programs without specifying any particular percentage of programs. This is the intent of the second sentence of the second paragraph (subsection (g)).

As you review the proposed provisions dealing with the coverage of broadcasting and the communications industry, please help me to answer several questions:

(1) Do you agree with the overall approach on this issue? (2) Do you like the "progressively increasing the proportion" concept to address captioning? Can you suggest a better approach?

(3) Do you have any specific comments, suggestions, or problems regarding the wording of these provisions?

The second major area we discussed concerns the removal of communication barriers in all the programs and activities covered by the Act, including employment, housing, public accommodations (stores, dining establishments, stadiums, shopping centers, etc.), transportation, and activities of state and local governments. There seemed to be a consensus among the group that this issue should be more explicitly addressed and defined in the Bill than was done in the prior draft. I have drafted three options for addressing this issue -- labeled "COMMUNICATION BARRIERS -- OPTIONS 1, 2, AND 3." They all seek to accomplish the same thing -- to provide a more detailed explanation of the requirement of removing communication barriers -- but their placement and presentation would be somewhat different. option 1 requires the development of regulations that spell out the requirements for removing communication barriers and defines the term "communication barriers;" concrete examples of communication barrier removal would be included in the opening statements of the sponsors of the bill and in the committee reports accompanying the bill, and would provide guidance to the agencies charged with writing regulations. Option 2 uses the same concrete examples but places them in the text of the bill rather than in opening statements and report language. Option 3 is basically the same as 2 but adds more explanatory language about the categories of communication barrier removal.

As you review these option proposals, please consider the following questions:

- (1) Which of the three options do you prefer?
- (2) Does any of them accomplish our objectives?
- (3) Is the definition of "communication barriers" adequate?
- (4) Are there other examples of devices, systems, etc. that you believe should be included in the list of examples.
- (5) Do you have other suggestions, comments, or advice about the language of these proposals?

I very much appreciate your review and feedback about these drafts. I will be contacting you by telephone in the next day or so to get your reaction. Thanks again for your assistance with this most worthwhile and helpful issue. I hope that working together we shall be able to craft language that includes a clear delineation of communication barriers as a major type of discrimination that must be prohibited if equality for persons with disability is ever to be a reality in our country.

COVERAGE OF BROADCASTING AND COMMUNICATIONS INDUSTRY

(Insert on page 5, after paragraph (a) (5)]

(6) broadcasts, communications, or telecommunications services provided by a person, company, or agency engaged in the principal business of broadcasting or of communication by wire, as defined in section 153 of the Communications Act of 1934, as amended (47 U.S.C. 153 (a) and (o)).

[Insert on page 17, after paragraph 8(f)]

(g) FEDERAL COMMUNICATIONS COMMISSION.--within 1 year of the date of enactment of this Act, the Federal Communications Commission shall promulgate regulations for the implementation and enforcement of this Act as it applies to those engaged in the business of broadcasting or of communication by wire. In regard to television broadcast stations, such regulations shall include requirements for progressively increasing the proportion of programs, advertisements, and announcements that are closed captioned.

COMMUNICATION BARRIERS -- OPTION 1

[Insert on p. 17, after subsection (f) and inserted subsection (g)]

(h) EFFECTIVE COMMUNICATION.--

(1) REQUIREMENT.--Regulations promulgated under this Section shall include requirements for the prevention or removal of communication barriers and for making reasonable accommodations to assure effective communication with a particular person with a physical or mental impairment, perceived impairment, or record of impairment.

(2) COMMUNICATION BARRIERS.--The term "communication barriers" means:  
the absence of devices, services, systems, or signage and information media, or modifications of devices, services, systems, or signage and information media that are necessary to achieve effective communication with persons with a physical or mental impairment, perceived impairment, or record of impairment in regard to a service, program, activity, benefit, job, or other opportunity.

[Include in the opening statements of the principal sponsors of the bill, and in the committee report the following language:]

EXAMPLES OF REQUIREMENTS In appropriate circumstances, prevention or removal of communication barriers or making a reasonable accommodation may require: (A) the provision and maintenance of such devices as Telecommunications Devices for the Deaf (TDDs), visual aids such as flashing alarms and indicators, and augmentative communication devices for nonvocal persons such as language, symbol or alphabet boards; (B) the provision of such services as interpreting, reading, taping, and notetaking, by qualified personnel; (e) the development and effective operation of such systems as captioning, audio loops, infrared communications, and telephone relay services systems; (D) the development and effective use of alternative signage and information media such as brailled or audio information, and visual alerts for audio announcements and other information; and (E) the modification of devices, services, systems, and signage and information media, such as audio input/output on a computer terminal, adapted software, and the addition of a flashing light on a telephone or amplifiers on telephone headsets.

#### COMMUNICATION BARRIERS -- OPTION 2

[Insert on p. 17, after subsection (f) and inserted subsection (g) ]

(h) EFFECTIVE COMMUNICATION.-- Regulations promulgated under this Section shall include requirements for the prevention or removal of communication barriers and for making reasonable accommodations to assure effective communication with a particular person with a physical or mental impairment, perceived impairment, or record of impairment, consistent with the following:

(1) COMMUNICATION BARRIERS.--The term "communication barriers" means:  
the absence of devices, services, systems, or signage and information media, or modifications of devices, services, systems, or signage and information media that are necessary to achieve effective communication with persons with a physical or mental impairment, perceived impairment, or record of impairment in regard to a service, program, activity, benefit, job, or other opportunity.

(2) COMMUNICATION METHODS.--In appropriate circumstances, methods of preventing or removing communication barriers or making a reasonable accommodation may include Telecommunications Devices for the Deaf (TDDs), visual aids such as flashing alarms and indicators, and augmentative communication devices for nonvocal persons such as language symbol or alphabet boards; interpreting, reading, taping, and notetaking services by qualified personnel; captioning, audio loops, infrared communications, and telephone relay services systems; brailled or audio information, visual alerts for audio announcements and other information~ audio input/output on a computer terminal, adapted software, and the addition of a flashing light on a telephone or amplifiers on telephone headsets.

COMMUNICATION BARRIERS -- OPTION 3

[Insert on p. 17, after subsection (f) and inserted subsection (g) ]

(h) EFFECTIVE COMMUNICATION. -- Regulations promulgated under this section shall include requirements for the prohibition or removal of communication barriers and for making reasonable accommodations to assure effective communication with a particular person with a physical or mental impairment, perceived impairment, or record of impairment, consistent with the following:

(1) COMMUNICATION BARRIERS.--The term "communication barriers" means:  
the absence of devices, services, systems, or signage and information media, or modifications of devices, services, systems, or signage and information media that are necessary to achieve effective communication with persons with a physical or mental impairment, perceived impairment, or record of impairment in regard to a service, program, activity, benefit, job, or other opportunity.

(2) EXAMPLES OF REQUIREMENTS.--In appropriate circumstances, prohibition or removal of communication barriers or making a reasonable accommodation may require: (A) the provision and maintenance of such devices as Telecommunications Devices for the Deaf (TDDs), visual aids such as flashing alarms and indicators, and augmentative communication devices for nonvocal persons such as language symbol or alphabet boards;  
(B) the provision of such services as interpreting, reading, taping, and notetaking, by qualified personnel;  
(C) the development and effective operation of such systems as captioning, audio loops, infrared communications, and telephone relay services systems;  
(D) the development and effective use of alternative signage and information media such as brailled or audio information, and visual alerts for audio announcements and other information; and  
(E) the modification of devices, services, systems, and signage and information media, such as audio input/output on a computer terminal, adapted software, and the addition of a flashing light on a telephone or amplifiers on telephone headsets.