A NEW CIVIL RIGHT
Telecommunications Equality for Deaf and Hard of Hearing Americans

KAREN PELTZ STRAUSS
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Karen Peltz Strauss

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For my husband Scott, whose extraordinary love, patience, and wisdom not only helped me write this book, but whose remarkable support and sense of humor has kept me afloat and brought joy and laughter to our first twenty-five years of marriage. No words can describe how wonderful it is to have you in my life.

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For the deaf and hard of hearing community, who have allowed me, a hearing person, to share in the beauty and warmth of your culture.
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FOREWORD

The struggle of people who are deaf and hard of hearing to gain meaningful access to telecommunications products and services over the past three decades is a complex and poignant story. Like other major movements to advance human rights, it is a story of great triumphs and painful defeats; headline-grabbing drama and behind-the-scenes deal-making; a few celebrated leaders, and many, many, unsung heroes. At last, we have a comprehensive chronicle of this movement.

This book is written by one of America’s most prominent advocates for disability access. During her remarkable career, Karen Peltz Strauss has worked in and out of government to champion the rights of people who are deaf and hard of hearing. As a disability rights leader, she has had a role in every major breakthrough regarding telecommunications access for more than the past twenty years: from access to basic telephone service over TTYs, telecommunications relay services, hearing aid compatibility, closed captioning, and now high-speed broadband networks. She and countless numbers of deaf and hard of hearing advocates around the country have brought about changes that have revolutionized the way that deaf and hard of hearing people communicate with each other and the rest of the world.

This book examines how and why these changes took place when they did. In chronicling the forty-year history of the access movement, it provides an insider’s perspective on how these successes were achieved, including strategies used and compromises made. It analyzes the forces within the deaf community that led to these developments, and the fascinating interplay of politics, policy and marketplace pressures.

Having served as general counsel and then chairman of the Federal Communications Commission during the administration of President Bill Clinton, much of this history has special resonance for me. Indeed, Karen Peltz Strauss and I served together at the FCC and worked side by side to significantly expand telecommunications access in a number of areas, including relay services (by authorizing video relay services, speech-to-speech relay services, and 711 dialing access), closed captioning (by requiring visual access to emergency television programming and extending the captioning mandates to digital TV), and hearing aid compatibility (by initiating the rulemaking that ultimately extended this mandate to digital wireless phones). The FCC’s accomplishments during my tenure would not have been possible without her leadership, insights, and, above all, her credibility with the deaf and hard of hearing community.

This is a story that needs to be told. Most Americans have become aware of changes in the laws during the 1990s that made the physical world more accessible for people with disabilities. The general public is now very familiar with the Americans with Disabilities Act—the groundbreaking legislation enacted in 1990 that required ramps on
public buildings and curb cuts in streets. Yet the story of the movement for disability access to the electronic, or virtual world, has never comprehensively been told.

With the advent of the Internet, increasingly Americans live and work in a virtual world. It is not a world of bricks and mortar, ramps and curb cuts. It is a world made possible by trillions upon trillions of digital bits that move at the speed of light over fiber-optic cables and through the airwaves. It is an exquisitely complex world that it is every bit as real as the physical world. And it is just as important, because those who have access to this world and can navigate through it with ease have a huge advantage in our society and in our economy. Americans routinely go to the virtual world to buy products and services, to get college degrees, and to find jobs. They go there to seek medical care. They go there to shop and to socialize and to play games. Many even go there to find romance.

Notwithstanding the extraordinary technological gains made over the past decades, too many Americans with disabilities are still being denied access to communication that is only available through this virtual world. These Americans need access to technology that can bring them jobs and information and education in ways undreamed of just a few years ago. A principal challenge for leaders in our information-age economy is to make sure that wondrous new technologies uplift the lives of every American and bring us together—regardless of age or ability.

Martin Luther King, Jr., once said that “the arc of history is long, but it bends toward justice.” The history told in this book chronicles the struggles of some 28 million Americans who are deaf or hard of hearing to find justice in a society that for too long has ignored their basic right to communicate using our nation’s telecommunications networks. Much has been accomplished, but the struggle is far from over. The lessons learned in the past forty years and revealed in the pages of this book offer a compelling roadmap to those who are willing to take up this challenge in the decades to come.

William E. Kennard
Chairman, Federal Communications Commission
1997–2001
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I am deeply grateful to Al Sonnenstrahl, TDI’s executive director between 1987 and 1996, whose energy, enthusiasm, and knowledge have both inspired and guided me for the twenty years that we have worked together, and whose ongoing willingness to step into unchartered waters (sometimes despite their unpopularity) contributed to so many of the victories described in this book. I am equally indebted to Judy Harkins, Gallaudet University researcher and professor, whose friendship, direction, and technical expertise I and so many others working to achieve telecommunications equality have come to depend upon, and whose encouragement motivated me to write this manuscript.

My special gratitude also goes to the many individuals who took time out of their active schedules to read and provide feedback on significant portions of the book: my husband, whose willingness to spend hours and hours patiently reading and expertly editing every line of this manuscript went far beyond any promises made in our marital vows; Dan Bart of TIA who never tired of meticulously combing through any of the drafts I sent his way; Larry R. Goldberg of NCAM, who answered my incessant questions over the past four years, and Elaine Hatcher and Ron Hatley of the former AT&T, who created bonds with disability advocates long before it was popular to do so. Special thanks also go to Claude Stout, current TDI executive director, for lending overall support and allowing me to comb through TDI’s files for pictures and other archives.

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A NEW CIVIL RIGHT
INTRODUCTION

It is 8:45 p.m. on a Thursday night in 1970. Olivia, a deaf woman, tucks her six-year-old daughter Beth into bed for the night. After a lengthy day at work, Olivia is exhausted. She enjoys her job, but the days often seem endless, and leave her wanting a relaxing evening. Television is not a good option—without sound or captions, it is hardly worth the experience. Calling a friend over the telephone doesn’t even enter her mind; neither she nor any of her deaf friends have a phone. On this particular night, she has some buttons to sew on her daughter’s jacket, but decides that this can wait for another evening. She changes into her nightclothes, gets into bed, and reaches for her novel. After a few pages, she drifts off to sleep.

At dawn, she awakes to the push of an arm. Still drowsy, she opens her eyes to see Beth standing over her. She notices immediately the flush in her daughter’s cheeks, and confirms the suspected fever at the touch of her daughter’s forehead. She had a suspicion that this might happen. Just the day before, she and Beth had been forced to wait for Beth’s school bus more than an hour in sub-zero temperatures. They only found out that their bus had broken down when a substitute bus arrived an hour later. Other families had been alerted of the breakdown by phone and had only ventured from the warmth of their homes in time to catch the rescheduled bus.

As she contemplates the severity of Beth’s illness, Olivia turns over to wake her husband. When she realizes that he has already left for work, she assesses the tasks before her. She needs to notify Beth’s school that her daughter will be out sick. She needs to call Beth’s pediatrician to obtain medical advice. And she needs to inform her boss that she will not be able to work that day. Without a telephone, Olivia has no choice but to rely on neighbors for assistance in making these calls. The neighbors on the left had just helped call her insurance company a few days before. Not wanting to bother them again, she bundles up her sick daughter in her heaviest coat and heads for the neighbors to the right. But as soon as Olivia steps into the bitter air and sees the color turning on her daughter’s face, she changes her plan. The two walk to Olivia’s car and set out for the pediatrician. Olivia realizes that she has not informed her boss that she will not be coming to work, but there is nothing she can do about it.

*   *   *

It is 8:45 p.m. on a Thursday night in 2006. It is just before tax season, and Beth, Olivia’s deaf daughter, has just returned from working late in her accounting firm. Beth’s six-year-old son, Justin, jumps up and clings to her as she enters the door. After several intense days of dealing with demanding clients, Beth is exhausted and wants to take her mind off of work. She puts her son to bed and checks the TV listings. There are a number of new captioned sitcoms she has wanted to try out, but her premium cable station has a captioned movie she has always wanted to see. It is not scheduled to
begin for another thirty minutes. This gives Beth time to check her e-mail, visit some
vacation spots on the Internet, do some on-line comparison shopping for a new car,
and exchange a few instant message (IM) conversations.

Eventually, Beth settles down to watch the movie with captions. It is enjoyable, but
sleep overtakes her after the first hour. She is awakened in the morning by Justin, his
face flushed with fever. She brings her son back to her own warm bed, tucks him in,
and goes over to her camera-equipped computer to call her pediatrician through a
video relay service. She learns that she does not need to bring her son to the doctor;
and obtains the advice that she needs to effectively care for him at home. After bring-
ing him a glass of water and setting him in front of his favorite cartoons, she goes
back to her computer and connects to an Internet relay service to inform Justin’s
school about his illness. She then uses her pager to notify her husband, already at
work, about the state of affairs. She asks him whether they can split the day, that is,
whether he can return home midday so that she can attend some afternoon business
meetings. When he confirms that he is able to do so, Beth sends a text message to her
boss, so that he can switch the time of their meetings to the afternoon. Finally, she
sends e-mails to her clients who are comforted to know that she will still be able to
handle their affairs later in the day.

It is hard for any of us to imagine a world in which we could not, with ease, be able
to communicate with anyone, anywhere, at any time. In today’s high speed society,
the ability to establish communication with someone else, at any time of the day or
night—via a landline phone, a wireless phone, a computer, a text device, a pager, or
any other device—has become commonplace.

Yet until the latter part of the twentieth century, the communication that most
of America now takes for granted was completely cut off for millions of deaf and
severely hard of hearing individuals. Without relay services, the Internet, text and
paging devices, and hearing aid compatible telephones, there was no access to critical
and basic telecommunications services that were needed for employment, education,
recreational, professional, and social activities. A simple telephone call required re-
liance on a friend, a relative, or even a stranger, for help. Privacy and dignity were
compromised and independence, sacrificed. It was quite common to have to depend
on someone else—even one’s own children—to make a call about sensitive and con-
fidential matters that even involved financial decisions or medical treatment. If no
one was available to make the call, the simplest of tasks, calling a repairman, learn-
ing a store’s hours, or making a dinner reservation, became a major undertaking. A
task that could be accomplished in a five-minute voice call became a long and traffic-
ensnarled journey through a city.

The far-reaching consequences of not having telecommunications access can be
illustrated by returning to the hypothetical story of Olivia. In the interest of attending
to her daughter’s serious medical needs, Olivia had rushed her daughter off to her
doctor. In her haste, Olivia neglected to make arrangements for someone to call her
employer, and consequently, failed to show up at work without notice. It was not
the first time that the lack of telephone communication had prevented Olivia from
notifying her employer of circumstances that caused her to be absent. A few months
after this occurrence, when promotions and merit awards were distributed in Olivia’s
office, she was not among the employees who received recognition. Through no fault
of her own, Olivia was perceived as an employee who was not regularly compliant
with her firm’s employment guidelines. Scenes like this played out all over America. The inability to communicate by telephone came at great costs.

Olivia typically relied on newspapers to keep apprised of current events. But she could still remember how she felt when, just a few months before, she had sat with her husband huddled in front of their neighbor’s TV to watch Neil Armstrong’s momentous walk on the moon. Although awe-struck as the images of the astronauts unfolded, she and her husband could not help but feel that they were missing a great deal as the scenes played out without captions. Attempts to get neighbors to explain the precise details of what was happening were to little avail, as they sat mesmerized by the screen’s images.

In the 1960s and 1970s, the lack of telephone access that was experienced by deaf and hard of hearing people was accompanied by the lack of access to an equally important communication medium—television. Without the distractions of computer games and the competition of multi-channel cable and satellite programming, it was quite common for hearing families across America to gather around their televisions on a nightly basis to watch their favorite television programs on broadcast TV. Viewers eagerly awaited the new talent of performers on Ed Sullivan’s Sunday night variety show. They roared with laughter as they watched Lucy outsmart Ricky in each week’s new episode of *I Love Lucy*. They sat in thrilling suspense as the *Twilight Zone* kept them glued to their seats. And they delighted in the antics of Archie Bunker as he exposed bigotry in America on *All in the Family*.

These television shows and hundreds more were not only entertaining; they provided Americans with knowledge about the society around them. In addition to information directly provided through news and public affairs programming, weekly series exposed Americans to cultural mores and societal norms. Dr. Kildare taught medical terminology, Perry Mason introduced legal jargon and courtroom procedures, and a plethora of other programs introduced our nation’s youth to the professions to which they might one day aspire.

But for people who could not hear, access to the first three decades of television programming was extremely limited. Without access to the audiotrack through captions, deaf and hard of hearing viewers could get only pieces of the programs that they watched. This prevented these individuals from learning basic facts that other people in America absorbed through routine television viewing. I remember one deaf client upset with the news that her routine medical tests had come back “negative.” Having not had access to medical programs aired on TV, she did not realize that a “negative” test result was a good thing. On another occasion, a deaf college student reported a run-in with the police. Not having ever watched crime shows, he was unaware that he had a right to an attorney. By the time he came to our law offices, he had already signed a document waiving that right.

In the 1960s, the U. S. Congress began to think about ways to end discrimination against people with disabilities. But its focus at that time was largely on breaking down barriers of mobility, not communication. It is for this reason one of the first federal laws ever to address civil rights for people with disabilities was the Architectural Barriers Act of 1968, a law that focused only on the removal of physical barriers to buildings supported with federal funds. The civil rights of deaf and hard of hearing people to receive information carried over the airwaves and through the telephone networks had not yet been conceived.
It was not until the early 1970s, nearly a decade after the very first TTY was invented, that one can say that the movement by deaf and hard of hearing people to obtain full telecommunications access truly began to come to life. It is a movement whose passion and momentum often accomplished what everyone seemed to say was impossible. It is a movement for self-determination, one that consistently rejected the paternalistic attempts of telephone companies and federal regulators to make decisions about what was best for people who cannot hear. And it is a movement that continues to this day, in an ongoing struggle to ensure that new advances in telecommunications technologies do not eliminate gains spanning nearly forty years of advocacy. Throughout it all, advocates have shown the persistence and determination to follow each battle through to its successful outcome.

The odyssey for equal telecommunications access has been fueled by the failure of competitive market forces to produce and supply accessible products and services for people with disabilities. Over the past several decades, telecommunications policy has leaned toward allowing competition in a free marketplace to take its course, rather than impose heavy governmental regulation that is perceived to stifle innovation and progress. But the theories behind this approach—those that have assumed that business incentives will, on their own, bring about innovative products to allow companies to capture greater shares of the market—have never been successfully applied to markets of people with disabilities, which tend to be small, segmented and disproportionately populated by low income wage earners. Where these competitive market forces have failed these populations, the government has had to step in.

Throughout the telecommunications access movement, individuals with hearing loss have waged two wars, one against the legal restrictions that have held them back from having full telecommunications access; the second against the attitudinal barriers that have unwittingly sustained these restrictions. It was not uncommon in the 1970s and even the 1980s for telephone companies to refer to the quest for equal telecommunications access as a “social service” issue or a charitable cause that society had an obligation to address. Rather than treat access as a routine component of their business practices, companies tended to single out accessible products and services as “special,” and thrust them into segregated categories that often failed to merit the same level of attention given to general public offerings. Even now, people with hearing loss sometimes have to fight against this patronizing approach, in attempts to convince industry and regulators to accept telecommunications access as a civil right to which they are entitled. To this end, deaf and hard of hearing advocates continue to push for all telecommunications products and services to be universally accessible, all the while seeking to ensure that hearing people do not unilaterally make decisions about what they need. Paul Taylor, one of the fathers of the telecommunications access movement, best explained the importance of this self-determination when he said, “it is impossible for those who can hear to fully understand how individuals have had to adjust their lives in response to cultural and language deprivations.”

The efforts to secure greater access to our nation’s telecommunications systems at the federal level has taken place through various forums and venues—through legislation enacted by the U. S. Congress, through the federal courts, and through the Federal Communications Commission (FCC), an independent regulatory agency that is charged with regulating telephone, television, radio, and to some extent the
Internet. Although often consumer-industry relationships were strained to the point where federal intervention was the only way to achieve resolution of an issue, there were also times when advocates were able to secure promises for improved access from companies through direct negotiation and collaboration.

In an effort to allow the struggles of the past to serve as lessons for the future—and to avoid re-inventing any wheels while doing so—this history chronicles the trail of federal laws and regulations that led to telecommunications access, sharing tales of extraordinary successes and occasional defeats. It is a tribute to all of the tireless advocates who achieved these victories against all odds. This history primarily focuses on proceedings that took place on the federal level, with occasional references to state and local events that helped to trigger national action. But no history on telecommunications access would be complete were it not to recognize the remarkable role that individuals at the grassroots level played in shaping the national disability telecommunications agenda, as well as the countless engineers who poured days and nights into finding accessibility solutions. Although this book recognizes many leaders for their notable contributions, far more in local communities—or even behind the scenes at the national level—were equally important in triggering the national events that played out. Over the years, hundreds, if not thousands, had both the vision of a better future and the willingness to see it through. While the absence of your names in these chapters may be my oversight, it in no way lessens your amazing achievements.

Note