ADA TITLE II · SECTION 504 · MEANINGFUL ACCESS · ALEXANDER V. CHOATE · JACKSON V. METROPOLITAN EDISON · EXECUTIVE FUNCTION · THE RELIANCE DEFECT

Every Sixty Days

The customer-initiated accommodation and the disability that cannot initiate

For a large population of disabled people, electricity is not a utility service. It is the delivery medium of a legally required accommodation. An augmentative communication device is speech for a person who does not speak; an alarm is medication adherence for a person whose disability impairs prospective memory; a timer is executive function. When the power goes off, the accommodation goes off. Every state disconnection protection is built on a single architecture, and that architecture is inaccessible by reason of disability: the customer must know the protection exists, initiate the request, obtain documentation, submit it inside a window, and renew it before it lapses. Those five acts describe the one capacity the protected class lacks by definition.

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9.8%
authorized return, one utility

10.1%
authorized return, the other

A bill-assistance program was a fact in the evidentiary basis of a shareholder return. Two commissions priced it.

"The Commission takes these facts into account in approving the 10.1% [return on equity]." The unasked question: **can a person whose disability consists in difficulty managing bills reach the program built for people who have difficulty managing bills?**

Sources State ex rel. N.C. Utils. Comm'n v. Carolina Indus. Grp. II, No. 75A24 (N.C. May 22, 2026); Brookings Inst. (Mar. 13, 2026); Gilly, sec. I.

For a large population of disabled people, electricity is not a utility service. It is the delivery medium of a legally required accommodation.

When the power goes off, the accommodation goes off. Every doctrine, defendant, and remedy that follows proceeds from that fact.

Sources Gilly, sec. II.A (The thesis).

None of these is a comfort. Each is a function the body or brain does not supply, restored by a machine that runs on electricity.

A communication device is speech for a person who does not speak.

Speech-to-text is written expression for impaired handwriting or spelling.

An alarm is medication adherence for impaired prospective memory.

A scheduling app is the predictability an autistic person regulates on.

A timer is executive function.

A smart lock and sensor let a person with an intellectual disability live alone, not in a congregate setting.

Sources 28 C.F.R. §§ 35.104, 35.160(a)(1), (b)(1) (auxiliary aids and services); Gilly, sec. II.C.

The ventilator and the communication device are on the same circuit, for the same reason. The rule sees only one.

Both convert electricity into a function the body does not supply, and there is no principled line between them a disconnection rule could draw. **The rules do not draw one. They do not see the second device at all.** The reason is structural, not malicious: the certificate form asks a physician about emergencies.

THE INVISIBLE HARM

There is no emergency to certify when a nonspeaking person loses their voice at 2 p.m. on a Tuesday. The harm is total, immediate, and **invisible to an instrument calibrated to detect acute medical crisis.**

Sources 83 Ill. Adm. Code 280.160(a); Gilly, sec. II.E.

The Customer-Initiated Architecture

83 Ill. Adm. Code 280.160, and the temporal unit that is the emergency

A licensed physician must certify a medical emergency; the certificate protects the account for sixty days; a person whose disability is permanent must obtain and submit six certifications every year, for life.

The unit is the emergency, an acute event with an expected end. Disability is not an emergency. It is a condition.

A physician must attest that disconnection will "aggravate an existing medical emergency or create a medical emergency," and the certificate holds for sixty days. Sixty days is a defensible window to expect an emergency to resolve. **But quadriplegia does not resolve. End-stage renal disease does not resolve. Autism does not resolve. Intellectual disability does not resolve.**

THE PERMANENT, PROCESSED AS EMERGENCIES

The regime has no category for the permanent, so it requires the customer to establish, **six times a year, for the rest of their life, a fact that has not changed and will not change.**

Sources 83 Ill. Adm. Code 280.130(m), 280.160(a)–(d), (g); 220 ILCS 5; Gilly, secs. III.B–C.

1/12

certified **on time** · 11 installments follow

→

1/4

certified **late** · only 9 installments

The rule assumes timing is a choice, and it prices the choice.

Defensible for a customer whose executive function is intact. Not defensible for one whose disability is difficulty tracking deadlines, initiating contact, and completing forms. **For that customer, lateness is not a choice. Lateness is the impairment, and the rule surcharges it.**

Five acts. Each unremarkable. Together they describe the one capacity the protected class lacks by definition.

1. **Know** the protection exists
2. **Initiate** the request
3. **Obtain** third-party documentation
4. **Submit** it within a window
5. **Renew** it before it lapses

That is the whole of the argument. The rest is an attempt to say it in the vocabulary the law uses.

Sources 83 Ill. Adm. Code 280.160; Gilly, sec. III.F.

Different state, different program, identical architecture: the customer initiates, or receives nothing.

Pennsylvania mandates customer assistance programs and, unlike Illinois, **defined affordability numerically**: households at 0 to 50% of the federal poverty level capped at 2% of income for electric non-heating and 6% for heating. The Commission sets the requirements; the utility administers; the customer must still know, apply, document, and stay enrolled.

WHY IT MATTERS HERE

Because Pennsylvania set a number, it could be measured against one. **That measured outcome, taken up in Part VI, is the proof of failure Illinois cannot yet supply.**

Sources The Tenant Union Representative Network v. Pa. Pub. Util. Comm'n, 318 A.3d 416 (Pa. Commw. Ct. 2024); 52 Pa. Code § 69.263(c); Gilly, sec. III.G.

The Doctrine

What Alexander v. Choate *declined, and what it preserved*

The argument does not rest on disparate impact. It rests on what Choate preserved: a benefit may not be defined so as to deny meaningful access.

> *A benefit may not be defined in a way that effectively denies meaningful access, and a facially neutral criterion survives only where it does not turn on a trait the protected class is less capable of meeting.*
>
> Alexander v. Choate, 469 U.S. 287 (1985)

What it declined: disparate impact as a general theory reaching all action that disparately affects people with disabilities. The Article does not need it and does not rely on it.

What it preserved: meaningful access, and the recognition that harm flows from "thoughtlessness and indifference" rather than animus. Section 504 does not reach only purposeful discrimination.

Sources Alexander v. Choate, 469 U.S. 287, 296–97, 301–02, 308 (1985); Gilly, secs. IV.A–B.

The trait the criterion selects for and the trait the disability removes are the same trait.

The regime protects some customers and not others on the basis of one capacity: to notice a threat, initiate a request, obtain a signature, submit inside a window, and repeat every sixty days without prompting. **That is a test the class is less capable of meeting, and not incidentally.**

WHAT THE CLINICAL LITERATURE SUPPLIES

Executive dysfunction is a core dysfunction of ADHD and a proposed endophenotype across the neurodevelopmental disorders. The strongest associations are **response inhibition, vigilance, working memory, and planning**: the certificate requires planning; remembering requires working memory; noticing the notice requires vigilance.

Sources Alexander v. Choate, 469 U.S. at 302; Matthews, Nigg & Fair (2013); Margari, Craig & Margari (2016); Thapar & Cooper, 387 Lancet 1240 (2016); Gilly, sec. IV.C.

> *"Where the plaintiffs identify an obstacle that impedes their access… they likely have established that they lack meaningful access. By contrast, where the plaintiffs seek to expand the substantive scope of a program… they likely seek a fundamental alteration."*
>
> American Council of the Blind v. Paulson, 525 F.3d 1256 (D.C. Cir. 2008)

The Article seeks no new protection. Illinois already prohibits disconnection on medical grounds; the request is only to make the existing protection **reachable, which is administration, not scope, and falls on the access side of the Paulson line.** The regulations already require accessible communication, forbid criteria that screen out by disability, and require reasonable modification of policies.

Sources Am. Council of the Blind v. Paulson, 525 F.3d 1256 (D.C. Cir. 2008); Jordan, 9 F. Supp. 3d 847 (S.D. Ohio 2014); Newkirk, No. 2:19-cv-04283 (E.D.N.Y. 2020); 28 C.F.R. § 35.130(b); Gilly, sec. IV.D.

The Defendant

Why Jackson v. Metropolitan Edison *points at the agency, not away from it*

The instinct is to sue the utility, and two independent doctrines defeat it. Both point to the commission that ordered the practice.

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THE REGULATORY BAR

"The programs or activities of entities that are licensed or certified by a public entity are not, themselves, covered by this part." **A regulated utility is a licensee. Title II does not reach it.**

THE CONSTITUTIONAL BAR · JACKSON

A private utility's termination is not state action: regulation, "extensive and detailed" as it is for utilities, does not "convert its action into that of the State." **A protected monopoly does not change it.**

Sources 28 C.F.R. § 35.130(b)(6); Jackson v. Metropolitan Edison Co., 419 U.S. 345, 350–52 (1974); Gilly, sec. V.A.

A commission that orders a practice, rather than approving one a utility proposed, has put its own weight behind it.

Jackson failed for want of a close nexus to a practice the utility itself chose. Here the disconnection architecture is **the Commission's own rule**: 83 Ill. Adm. Code 280, with the sixty-day certificate and the escalation its choices, not a utility's. The nexus Jackson found missing is present.

THE CORRECT DEFENDANT

The commission is a **public entity under 42 U.S.C. § 12131(1)(B) without argument.** It wrote the criterion; the cascade flows from its method of administration; ordinary enforcement applies to a public entity's rule.

Sources Jackson v. Metropolitan Edison Co., 419 U.S. 345, 357 (1974); 42 U.S.C. § 12131(1)(B); 83 Ill. Adm. Code 280; Hill, No. 2:26-cv-02311 (D.N.J. 2026); Gilly, secs. V.B–C.

The Reliance Defect

Commissions credited the programs in setting a return. None asked whether they reach anyone.

There is proof that a program can be credited and not reach, and it comes from a utility's own evaluator.

80%

of customers at or below 50% of the federal poverty level received **unaffordable bills** under the program built to make bills affordable.

A program existed. A commission had defined the target. It missed the households at the bottom.

PECO's own evaluator, APPRISE, reported it for 2017 to 2018. **That number is the whole argument in one line**, and it is the measurement Illinois has never performed, while commissions priced the programs into shareholder returns at 9.8 and 10.1 percent.

Sources The Tenant Union Representative Network v. Pa. Pub. Util. Comm'n, 318 A.3d 416 (Pa. Commw. Ct. 2024) (APPRISE Evaluation, filed June 28, 2019); Carolina Indus. Grp. II, No. 75A24; Gilly, sec. VI.

Four changes to administration, not scope. Each on the access side of the line.

1 · DURATION KEYED TO PROGNOSIS

Where the condition is permanent, the certificate should not expire in sixty days. The rule already trusts the physician on the medical facts.

2 · PASSIVE IDENTIFICATION

Where the entity already holds the triggering data, do not condition the protection on the customer reporting it. Metering records loss of service already.

3 · ELIMINATE THE ESCALATION

The 1/12-to-1/4 escalation should not apply where lateness is disability-related. Tripling the installment is a price on the impairment.

4 · ACCESSIBLE NOTICE FIRST

No protection is meaningful to a person who does not know it exists. Accessible notice should precede disconnection, the *Jordan* principle at the front of the sequence.

Sources 28 C.F.R. § 35.130(b)(1)(v), (b)(3)(iii), (b)(7); Jordan, 9 F. Supp. 3d 847; Newkirk, No. 2:19-cv-04283; Gilly, sec. VII.

Each decision is defensible. Together they built a protection reachable only by the person it was not written for.

Sixty days is a definition of the benefit, and it is the definition that fails. A person whose disability will not resolve must prove, six times a year, for the rest of their life, that it has not.

Choate does not require the Commission to have thought about this. It requires that the benefit not be defined in a way that denies meaningful access to the people entitled to it.

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28 C.F.R. § 35.130(b)(1)(v).

28 C.F.R. § 35.130(b)(6).

28 C.F.R. § 35.130(f).

83 Ill. Adm. Code 280 (Procedures for Gas, Electric, Water and Sanitary Sewer Utilities).

83 Ill. Adm. Code 280.160(a)–(d), (f)–(g), (i)(1)–(2).

52 Pa. Code § 69.263(c) (2019 Final CAP Policy Statement).

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