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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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**FEDERAL COMMUNICATIONS COMMISSION  
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**WT Docket No. 96-198**

In the Matter of )  
)  
Implementation of Section 255 of the )  
Telecommunications Act of 1996 )  
)  
Access to Telecommunications Services, )  
Telecommunications Equipment, and )  
Customer Premises Equipment )  
By Persons With Disabilities )

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COMMUNICATIONS INDUSTRY ASSOCIATION**

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**COMMENTS OF THE PERSONAL  
COMMUNICATIONS INDUSTRY ASSOCIATION**

The Personal Communications Industry Association ("PCIA")<sup>1</sup> hereby submits its initial comments in response to the above-captioned *Notice of Inquiry* regarding the implementation of Section 255.<sup>2</sup> PCIA believes that the Commission should craft flexible rules that allow members of the telecommunications industry to work together with

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<sup>1</sup> PCIA is the international trade association created to represent the interests of both the commercial and the private mobile radio service communications industries. PCIA's Federation of Councils includes: the Paging and Narrowband PCS Alliance, the Broadband PCS Alliance, the Specialized Mobile Radio Alliance, the Site Owners and Managers Association, the Association of Wireless System Integrators, the Association of Communications Technicians, and the Private System Users Alliance. In addition, as the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of licensees.

<sup>2</sup> *Implementation of Section 255 of the Telecommunications Act of 1996, Access to Telecommunications Services, Telecommunications Equipment, and Customer Premises Equipment By Persons With Disabilities*, FCC 96-382 (rel. Sept. 19, 1996) ("*NOI*" or "*Notice of Inquiry*").

individuals with disabilities to provide ever improving access to telecommunications equipment and services.

## I. INTRODUCTION AND SUMMARY

Section 255 of the Telecommunications Act of 1996 mandates that -- if "readily achievable" -- telecommunications equipment, customer premises equipment ("CPE"), and telecommunications services shall be "accessible to, and usable by individuals with disabilities."<sup>3</sup> In its *Notice of Inquiry*, the Commission sought comment on how this section should be interpreted and implemented. Specifically, the Commission requested input on its jurisdiction to implement Section 255,<sup>4</sup> on the definition of "readily achievable,"<sup>5</sup> on developing equipment and CPE guidelines in conjunction with the Access Board,<sup>6</sup> and on procedures to ensure compliance.<sup>7</sup>

Preliminarily, it is important to point out that even prior to the enactment of Section 255, the wireless industry already offered a variety of products that are useful to customers with various types of disabilities. Current examples of accessible wireless products and services include: (1) voice pagers for individuals with visual impairments; (2) vibrating text pagers for individuals with hearing impairments; (3) voice-activated cellular phones -- which

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<sup>3</sup> 47 U.S.C. §§ 255(b), (c).

<sup>4</sup> *NOI*, ¶¶ 6-7.

<sup>5</sup> *Id.*, ¶¶ 15-20.

<sup>6</sup> *Id.*, ¶ 35.

<sup>7</sup> *Id.*, ¶¶ 36-40.

can be attached to wheelchairs -- for individuals with manual impairments; and (4) educational outreach programs by PCS service providers to the entire community of individuals with disabilities. Because supplying such services is both incumbent upon responsible corporate citizens *and* makes sound business sense, the wireless industry intends to continue to develop new and innovative services for individuals with disabilities.

As an example of such efforts, wireless service providers are currently offering a wide variety of educational outreach programs designed to enhance accessibility of their services. These outreach programs include distributing information to consumers on products that make wireless services easier to use by persons with disabilities, conducting consumer workshops and product demonstrations, and offering hearing aid accessories to consumers at no additional charge. In addition, several wireless carriers are using outreach programs to solicit consumer's suggestions in identifying accessibility solutions. For example, Pacific Bell Mobile Services is working with disabled persons to conduct field trials of new products designed to improve accessibility.

Against this background, PCIA proposes that any rules implementing Section 255 be flexible enough to allow the telecommunications industry -- including the wireless industry -- to continue to provide those with disabilities with access to equipment and services where economically and technologically feasible. Thus, in defining "readily achievable," the Commission must recognize the rapidly changing nature of technology and take into account both economic and technological factors. Further, the definition of "readily achievable" must acknowledge that not every piece of equipment or telecommunications service need be usable by every individual. Rather, the FCC should promote the concept that there is *a* product or

service that is accessible to, and meets the communications needs of, every American, regardless of his or her functional limitations.

The Commission should also ensure that in developing equipment and CPE guidelines, there are coordination efforts both among the telecommunications industry and between representatives of other affected industries and consumer groups. As demonstrated by the broad participation in meetings to address compatibility between hearing aids and digital wireless telephones, such coordination efforts will promote the development of new accessibility technologies and make certain that these technologies are rapidly disseminated to every member of the telecommunications industry. In addition, by involving consumer groups in the guidelines process, the Commission will ensure that the diverse needs of Americans with disabilities are taken into account prior to the issuance of guidelines, thereby preventing the need for expensive and wasteful retrofitting.

Finally, the complaint process should be designed so that it allows for the quickest possible resolution of complaints with a minimal expenditure of Commission resources. In order to achieve these goals, the Commission should implement a process whereby it immediately refers any complaint to an industry wide group, and then allows a reasonable time for direct consumer-industry interaction prior to further FCC action.

**II. THE DEFINITION OF "READILY ACHIEVABLE" SHOULD BE FLEXIBLE, TAKE INTO ACCOUNT BOTH ECONOMIC AND TECHNOLOGICAL FACTORS, AND NOT REQUIRE EVERY COMMUNICATIONS PRODUCT TO BE USABLE BY EVERY AMERICAN**

The Commission seeks comment on "the factors [it] should consider in attempting to apply the components of the ADA [Americans With Disabilities Act] definition of 'readily

achievable' to telecommunications equipment and services."<sup>8</sup> These ADA factors include: (1) the nature and cost of the action needed; (2) the overall financial resources of the facility involved; (3) the overall financial resources of the covered entity; and (4) the type of operations of the covered entity.<sup>9</sup> The Commission also notes that "the rapid pace of market and technological developments" makes "readily achievable" a highly dynamic standard.<sup>10</sup> Thus, what is not "readily achievable" today may become so tomorrow.

PCIA agrees that the telecommunications industry, and especially the wireless telecommunications industry, is incredibly dynamic. Therefore, it is counterproductive to mandate rigid solutions for accessibility, as such solutions might lock the industry into technologies and accessibility solutions that will rapidly become obsolete. Instead, to the greatest extent possible, the Commission should allow competition and innovation to provide Americans with disabilities with the equipment and services they need. By avoiding rigid, obsolete accessibility solutions, the FCC will keep those with disabilities out of a technological backwater and in the mainstream of modern telecommunications equipment and services. Moreover, consumers will be better served by a greater selection of products, and a flexible approach is consistent with Congress' mandate to "promote competition and consumer choice."<sup>11</sup>

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<sup>8</sup> *NOI*, ¶ 16.

<sup>9</sup> 42 U.S.C. § 12181(9)(A)-(D).

<sup>10</sup> *NOI*, ¶ 16.

<sup>11</sup> *Id.*, ¶ 1.

The Commission further tentatively concluded that "the issue of cost is an important area of inquiry" for the establishment of accessibility standards.<sup>12</sup> PCIA agrees with the FCC that in applying the term "readily achievable" to the telecommunications industry, the Commission must consider economic feasibility. The necessity for such a monetary calculus is made clear by the ADA definition of "readily achievable," which is incorporated by reference into Section 255(a)(2). Because three of the four factors enumerated by the ADA address monetary considerations,<sup>13</sup> the Commission is statutorily obligated to integrate cost when defining the term "readily achievable." Similarly, Congress required the Commission to consider economic factors when developing regulations that promote access to telephone service by the disabled.<sup>14</sup>

In addition, the Commission seeks comment on whether "a manufacturer or service provider must ensure that each of its telecommunications equipment, CPE, or service offerings is accessible to persons with various types of disabilities."<sup>15</sup> PCIA believes that if technically and economically feasible, products should be made accessible and usable to people with a wide range of abilities and disabilities. However, because consumers with disabilities have a variety of needs -- some of which are mutually incompatible -- no one

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<sup>12</sup> *Id.*, ¶ 17.

<sup>13</sup> *See* 42 U.S.C. § 12181(9)(A)-(C).

<sup>14</sup> *See* 47 U.S.C. § 610(e) ("the Commission shall specifically consider the costs and benefits to all telephone users, including persons with and without hearing impairments"); *Access to Telecommunications Equipment and Services by Persons With Disabilities*, 11 FCC Rcd 8249, 8274-8276 (1996) (considering the costs and benefits of rules implementing 47 U.S.C. § 610).

<sup>15</sup> *NOI*, ¶ 22.

product can be accessible and usable to all people. For example, while digital pagers are not usable by individuals with visual impairments, voice pagers are. Conversely, individuals with hearing impairments can use digital pagers, but cannot use voice pagers.

Therefore, the question of whether any particular individual is being accommodated must be answered by looking to each industry segment, including landline service, broadband CMRS, and messaging service. If a given individual with disabilities can find a combination of services and equipment in each of these market segments that meets his or her communications needs, then he or she is being accommodated. In this regard, industry trade associations and consumer organizations can work together to collect and distribute a list of accessible products.

Finally, if there is no technically and economically feasible accessibility solution, new products should not be prevented from coming to market. Preliminarily, the general public should not be denied access to new and innovative technology solely because accessibility is not "readily achievable." Moreover, as noted above, telecommunications technologies are very dynamic, leading to the possibility that accessibility solutions will become available even after a product reaches the market. Thus, preventing an initially non-accessible product from coming to market might have the undesirable long-term effect of denying Americans with disabilities access to this product.

**III. THE COMMUNICATIONS INDUSTRY SHOULD BE INTIMATELY INVOLVED IN DEVELOPING EQUIPMENT AND CPE GUIDELINES IN CONJUNCTION WITH CONSUMER GROUPS AND THE ACCESS BOARD**

The Commission seeks comment on how it should "work in conjunction with the Access Board to develop equipment and CPE guidelines."<sup>16</sup> PCIA believes that there are two important steps to ensuring that accessibility guidelines are developed for equipment and CPE, and to making sure that the public has access to the accessible equipment and services developed as a result of these guidelines. First, there must be coordination efforts within the telecommunications industry, and second, there must be coordination efforts between industry representatives and consumer groups.

As a matter of intra-industry coordination, accessibility issues should be a part of all levels of the product design, marketing, and distribution processes. As accessibility standards become a regular part of the agenda of industry technical committees, these standards will be increasingly integrated into the corporate culture of all industry members. In addition, industry associations could play a critical role in identifying accessibility solutions and circulating that knowledge, thereby providing up-to-date information on accessibility solutions occurring within the industry. Finally, industry committees could assist in providing education and outreach to consumers.

As a matter of consumer-industry coordination, as products come to market, data should be made available to direct consumers to these accessible products. Further, a group should be formed consisting of members of the telecommunications industry and members of

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<sup>16</sup> *NOI*, ¶ 35.

organizations representing Americans with disabilities. This group would be involved in developing and coordinating accessibility standards and training programs for both the wireless industry and individuals with disabilities. In essence, this organization would function as a central "coordination point" to identify current and potential future solutions for implementing telecommunications access.

#### **IV. RECENT EFFORTS TO ADDRESS COMPATIBILITY BETWEEN DIGITAL WIRELESS PHONES AND HEARING AIDS ILLUSTRATE THE BENEFITS OF INDUSTRY WIDE SOLUTIONS**

On behalf of the digital wireless telephone industry, PCIA initiated an industry wide effort to ensure that persons with hearing disabilities have greater access to digital wireless telephone services and to address complaints of interference caused by digital wireless telephones to hearing aids. To this end, wireless service providers and other necessary parties -- such as equipment manufacturers, standards organizations and consumer groups -- met to share information and recommend a framework to resolve accessibility issues. As a result of these efforts, industry representatives recently submitted a report to the Commission, including a proposal by the wireless industry to enhance accessibility of wireless services where technically and economically feasible.<sup>17</sup>

PCIA believes that such cooperation between all interested parties is an important component in developing equipment and CPE guidelines under Section 255. As the Commission has recognized, telecommunications service providers -- or any one industry segment for that matter -- cannot solve accessibility problems on their own. Rather,

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<sup>17</sup> See Ex Parte Letter from Pamela J. Ransom, Summit Facilitator to Reed E. Hundt, Chairman, Federal Communications Commission (filed May 16, 1996).

telecommunications carriers, consumers and equipment manufacturers must be jointly involved in any effort to establish equipment or service guidelines to improve accessibility. Further, an industry wide outreach program benefits all parties because it promotes information sharing and improves the mutual understanding of the needs of consumers, providers of telecommunications services and equipment manufacturers. Thus, PCIA remains committed to the development of equipment and CPE accessibility guidelines in cooperation with other interested parties during the implementation of Section 255.

**V. THE TELECOMMUNICATIONS INDUSTRY SHOULD BE PERMITTED TO ATTEMPT TO RESOLVE COMPLAINTS PRIOR TO THE COMMISSION'S TAKING ENFORCEMENT ACTION, AND COMPLIANCE WITH INDUSTRY STANDARDS SHOULD BE A DEFENSE AGAINST COMPLAINTS**

In seeking comment on what complaint procedures should be implemented under Section 255, the Commission specifically asked whether it should adopt any "new mechanisms" for addressing complaints, and if so, what they should be.<sup>18</sup> PCIA recommends the following new procedures under which parties can express concern with existing technology while having this complaint heard virtually simultaneously by the FCC and the industry members responsible for the allegedly defective technology.

Under this plan, as soon as the consumer has complained to the FCC, the Commission would immediately contact an industry wide review panel regarding the complaint. The particular company would then be given a reasonable period of time to attempt to respond and if necessary, correct the situation, if technically and economically feasible. During this period of consumer-company interaction, the FCC would toll its enforcement mechanisms.

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<sup>18</sup> *Id.*, ¶ 37.

Such a process will provide companies with an opportunity to make a good faith attempt at providing solutions prior to the FCC taking action. Thus, if PCIA's plan is implemented, complaints should be resolved more rapidly and with a lesser expenditure of FCC enforcement resources.

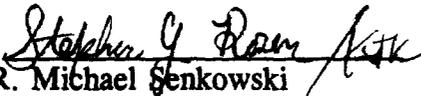
## **VI. CONCLUSION**

In implementing Section 255 of the 1996 Act, the Commission should adhere to the principles of flexibility and cooperation. By imposing a flexible definition of "readily achievable" that recognizes that not all consumers with disabilities need access to all telecommunications services, the Commission will allow the telecommunications industry to develop a product that meets the needs of each such consumer. Further, the Commission should actively involve the communications industry in setting accessibility guidelines and resolving consumer complaints. PCIA believes that recent industry wide efforts to address hearing aid compatibility might serve as a useful model for developing future collaborative

efforts between all parties. By so doing, the Commission will expend less resources, develop more achievable accessibility guidelines, and resolve complaints more rapidly.

Respectfully submitted,

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