

notion of a five day time frame for responses to Section 255 complaints completely impracticable from the standpoint of the complainant and the carriers/manufacturers.

Simply stated, the Commission's five day fast track proposal runs a distinct risk of creating unreasonable expectations and unachievable goals. While such goals may be worthy, their pursuit is likely to thwart the greater objectives of Section 255.⁵⁷ Rather than establishing a complaint resolution scheme which strives to achieve the true policy objective of the statute, namely improved access, the Commission has chosen to place more emphasis on the haste of the carrier's and manufacturer's response. Such a plan virtually ensures perfunctory and inadequate resolution of access complaints.⁵⁸

The Commission, in its proposal, fails to quantify the costs associated with the five day process. It appears unaware that it will need to train Commission staff members in the intricacies associated with wireless and wireline access for individuals with disabilities, including the need to provide them with sufficient

⁵⁷ Setting lofty goals through the regulatory process may be admirable and socially beneficial, but such aspirations may also serve to defeat the primary objective. For instance, the Federal Aviation Administration's efforts to implement a modern air traffic control system established such high expectations that it eventually "paralyzed the updating of the air traffic control system and led to the old system's remaining in place." W. Kip Viscusi, Regulating the Regulators, 63 U. Chi. L. Rev. 1423, 1424 (1996).

⁵⁸ A five day response requirement will not satisfy even the most elemental standards of fairness under the Administrative Procedure Act, and also implicates issues of due process because of the narrow timeframe for developing an appropriate response.

expertise to handle wireline and wireless equipment issues.⁵⁹ Without Congressional authorization of additional resources, the fast track process promises to strain already scarce Commission resources. Given the lack of evidentiary proof that the current informal complaint process is deficient, these kinds of resource outlays are inappropriate.

The availability of a waiver or extension of the five day time limit⁶⁰ is insufficient to overcome the defects created by an initial, impractical response time. Moreover, waiver and extension requests impose costs on carriers and manufacturers. This is true especially considering that most, if not all, complaints involving interpretation of the "readily achievable" standard, will require a careful, documented response. These additional procedural costs should, at the outset, be avoided.

⁵⁹ To illustrate, in ¶ 135 of the Notice, the Commission has proposed its intention generally to forward any complaints received within one day of receipt. Because the Commission is also contemplating a liberal complaint submission policy (i.e., persons with disabilities could submit "complaints by any accessible means, including, for example, letter, Braille, facsimile, electronic mail, internet, TTY, audio cassette, or telephone call" (Notice at ¶ 129)), during this one day period, the Commission may have to (1) translate a complaint from Braille, or copy an audio cassette, or transcribe a conversation, (2) determine to whom the complaint applies, and (3) forward the relevant information in an expeditious manner, ostensibly guaranteed overnight delivery. Meeting this objective will require a significant allocation of Commission resources. Failure to do as intended will unduly frustrate all parties to the process.

⁶⁰ See Notice at ¶ 137.

E. Given The Competitive Nature Of CMRS, The Commission Must Adopt Measures Which Preserve Confidential Business Information.

In an effort to ensure that complainants are fully apprised of access efforts, the Commission has proposed⁶¹ to require that carriers and manufacturers provide copies of their reports on access issues to complainants. The Commission acknowledges that proprietary business data may be involved in determining accessibility issues.⁶²

Given the nature of the CMRS market, the public availability of sensitive information such as a manufacturer's description of its source code or a carrier's intent to introduce (or its inability to provide) a new service can have a very detrimental impact on competition. The Commission should make every effort to protect such confidential information, perhaps through generic protective orders.

⁶¹ Notice at ¶ 139.

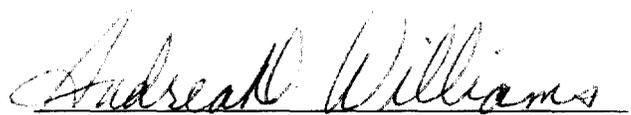
⁶² Notice at ¶ 153. As the Commission notes, proprietary business information may need to be evaluated during the fast track phase. This eventuality also renders a five day process impracticable. See Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, GC Docket No. 96-55, *Notice of Inquiry and Notice of Proposed Rulemaking*, 11 FCC Rcd. 12406, ¶ 44 (1996) (given the complexities, requests for confidential treatment in the tariff review process "may not be resolved within the 120 day statutory time frame established for the tariff review process under current law. . . . A request for confidentiality is unlikely to be resolved under the 7 or 15 day time frame that is to become effective for streamlined local exchange carrier filings. . . ."); *id.* at ¶ 50 ("considerable time might be necessary for the staff to examine all materials subject to claims of confidentiality and rule on those claims").

IV. CONCLUSION

For these reasons, CTIA respectfully requests that the Commission adopt rules governing Section 255 consistent with the proposals made herein.

Respectfully submitted,

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Indirect Wireless Retail Store Survey – Washington, D.C. Area

Stores Surveyed	Number of Carriers	Over the Air Activation	In-Store Activation	Number of Phone Models Offered (*per Service where noted #--#)	Separate Manufacturers
1. Office Depot, 19 th & L, Washington, DC	3	2	1	3-3-2 (total 8)	5
2. Office Depot – Alexandria, VA	2	1	1	1-3 (total 4)	4
3. Office Depot – Lee Highway, VA	3	2	1	2-2-2 (total 6)	5
4. Radio Shack – 401 M Street, DC	2	1	1	3-2 (total 5)	4
5. Radio Shack – Oxon Hill, MD	2	1	1	4-3 (total 7)	6
6. Radio Shack – Waldorf, MD	2	0	2	3-5 (total 8)	6
7. Radio Shack – Vienna, VA	2	1	1	3-2 (total 5)	5
8. Best Buy – Arlington, VA	4	2	2	5-4 (total 9)	5
9. Circuit City – Arlington, VA	4	2	2	4-4 (total 8)	5
10. Let's Talk – Arlington, VA	4	2	2	7-4 (total 11)	8
11. Staples, Georgetown, DC	2	1	1	3	3
12. Staples, Alexandria, VA	2	1	1	3	3
13. Staples, Waldorf, MD	2	1	1	4	4
Totals	34	17	17	81	63
Average	2.6	1.3	1.3	6.2	4.9

CTIA Attachment
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