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

COMMUNICATIONS SECTION
WASHINGTON, D.C. 20554

In the Matter of)
)
Implementation of Section 255 of the)
Telecommunications Act of 1996) WT Docket No. 96-198
)
Access to Telecommunications Services,)
Telecommunications Equipment, and)
Customer Premises Equipment)
By Persons With Disabilities)

To: The Commission

REPLY COMMENTS OF NEXTEL COMMUNICATIONS, INC.

NEXTEL COMMUNICATIONS, INC.

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I. INTRODUCTION

Pursuant to the Federal Communications Commission's ("Commission") Notice Of Proposed Rule Making ("Notice") in the above-referenced proceeding,^{1/} Nextel Communications, Inc. ("Nextel") respectfully submits these Reply Comments on the Commission's proposals to implement Section 255 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("the Act").^{2/}

The thrust of many of the comments filed herein is that the Commission must ensure that Section 255 is imposed on telecommunications carriers in a reasonable, responsible manner. Section 255 requires that disabled Americans have access to telecommunications services, which in the wireless industry,

^{1/} Notice of Proposed Rule Making, FCC 98-55, released April 20, 1998.

^{2/} 47 U.S.C. Section 255.

equates to access to communications "on the go." As long as disabled individuals are able to communicate "on the go" using a wireless product, it is irrelevant that the carrier may have provided that access on a product-by-product basis. A significant number of the comments filed on June 30, 1998 support the implementation of Section 255 on a product-line basis, *i.e.*, the development of specific telecommunications products designed to fulfill the accessibility needs of particular disabilities.^{3/} The product-line approach is reasonable, and would promote the implementation of features and designs that are readily achievable. As the Consumer Electronics Manufacturers Association ("CEMA") urges in its comments, the Commission must implement Section 255 "in an economically realistic manner."^{4/} Additionally, a number of commenters oppose the Commission's proposal to eliminate the standing requirement for bringing Section 255 complaints,^{5/} as

^{3/} See, *e.g.*, Comments of Consumer Electronics Manufacturers Association ("CEMA") at p. 14; Multimedia Telecommunications Association ("Multimedia") at p. 8; SBC Communications, Inc. ("SBC") at p. 12; Cellular Telecommunications Industry Association ("CTIA") at p. 12-13; Ericsson, Inc. ("Ericsson") at p. 2; and Telecommunications Industry Association ("TIA") at p. 10.

^{4/} Comments of CEMA at p. 2; see also Comments of Personal Communications Industry Association ("PCIA") at p. 9; Multimedia at p. 8; SBC at pp. 10-11.

^{5/} See, *e.g.*, Comments of CEMA at p. 17; PCIA at p. 15; Uniden America Corporation ("Uniden") at p. 6; Self Help for Hard of Hearing People ("Self Help") at p. 24; SBC at pp. 20-21; CTIA at p. 15; United States Telephone Association ("USTA") at pp. 14-15; TIA at p. 77.

well as its proposal to permit only five days for carriers/manufacturers to respond to a complaint.^{6/}

Nextel files these reply comments to support those commenters who propose a common-sense approach, while sensitive to the needs of the disabled, to Section 255 implementation. Congress included a readily achievable limitation on Section 255 requirements because, as Multimedia noted, manufacturers and carriers do not have unlimited time and resources to devote to any technical development or pursuit, including the development of a one-size-fits-all approach to Section 255.^{7/} The increasingly competitive wireless marketplace requires carriers to focus a significant amount of time and resources on satisfying the technological demands of the mass consumer marketplace. Diverting these resources to a "universal" product that would not satisfy the needs of the overall marketplace nor adequately meet the accessibility needs of every disability would stifle innovation -- a result clearly at odds with the intentions of the Telecommunications Act of 1996.^{8/}

^{6/} Comments of TIA at p. 72; PCIA at pp. 13-14; Uniden at p. 5; Northern Telecom, Inc. ("Northern Telecom") at p. 6; SBC at p. 16; National Association of the Deaf ("NAD") at p. 35; and AT&T Corp. ("AT&T") at p. 12.

^{7/} Comments of Multimedia at p. 9.

^{8/} See, e.g., Comments of CEMA at p. 11. Requiring retroactive compliance with Section 255, as suggested by some commenters, also would not be consistent with the Telecommunications Act of 1996 as it would require carriers to divert resources to products already on the market, rather than developing new, innovative products that meet the needs of not only disabled Americans, but also the mass market. See Comments of American Council for the Blind at p. 8; Self Help at p. 19; *but see*

II. DISCUSSION

A. **The Readily Achievable Requirement in Section 255 Requires a Product-Line Approach to Fulfill the Needs of Individuals With Handicaps That Prevent Access to Telecommunications Services.**

As CEMA stated in its Comments, the purpose of Section 255 is to meet the telecommunications needs of the disabled; not to require that every single product on the market include disability access features.^{9/} As long as the readily achievable needs of the disabled are met, *i.e.*, as long as disabled persons can access, for example, mobile telecommunications services and communicate while "on the go," the Commission should not dictate to manufacturers/carriers how to achieve that result.^{10/}

Although some commenters assert that Section 255's "ultimate goal is to have products and services universally designed for multiple users and away from the need for accessories and assistive technologies,"^{11/} they not only discount the readily achievable limitation in Section 255, but they also ignore the fact that some accessibility features are inherently inconsistent. As SBC states, carriers should be permitted to avoid the situation where providing an accessibility feature for one disability means a loss of accessibility for another.^{12/} Additionally, as TIA comments, a

Comments of SBC at p. 13; PCIA at p. 18.

^{9/} Comments of CEMA at p. 14.

^{10/} See Comments of CEMA at p. 14; see also Comments of Multimedia at p. 8; TIA at p. 10; Ericsson at p. 2.

^{11/} Comments of Self Help at p. 31.

^{12/} Comments of SBC at p. 12.

product line approach would provide more meaningful access for particular disabilities, rather than merely superficial access for all disabilities as would result with a one-size-fits-all approach.^{13/}

Just as every chair in a movie theater or every door into a public building does not have to be made wheelchair accessible, for example, a single product does not have to be accessible to every type of disability to fulfill the requirements of Section 255.^{14/} As long as telecommunications carriers and manufacturers ensure that disabled individuals can access telecommunications services, there is no justification for a one-size-fits-all approach, particularly given Congress' "readily achievable" framework.

Additionally, in considering whether a product feature or enhancement is readily achievable, the Commission must consider the carrier's/manufacturer's costs of developing and implementing the feature.^{15/} Had Congress intended to impose an open-ended requirement, without consideration of the economic impact, it would not have included the "readily achievable" limitation in the statute. "Anything" would be "readily achievable" without considering the cost of compliance, i.e., with unlimited time and resources. Thus, unlike the comments of some, the cost of an

^{13/} Comments of TIA at p. 13.

^{14/} See Comments of TIA at pp. 17-19.

^{15/} See, e.g., Comments of CEMA at p. 12; PCIA at p. 9.

accessibility feature is not "irrelevant" under Section 255.^{16/} Cost is, in fact, a critical consideration in the readily achievable determination.

Nextel supports the implementation of Section 255 and Congress' goal of ensuring access to telecommunications services for all Americans; however, Congress did not intend that such access be achieved at the expense of manufacturers' and carriers' ability to provide telecommunications equipment and service responsive to the demands of the mass market. Section 255 does not require that Nextel, for example, redesign each and every product and service it offers or plans to offer to include an accessibility feature for every possible disability -- potentially redesigning them in such a way that the mass market will have to "pay," whether due to larger, heavier phones with a shorter battery life or simply because these multi-function phones are more expensive.

Telecommunications carriers, moreover, is not seeking an "escape route," as suggested by some commenters.^{17/} Rather, they are simply impressing upon the Commission that, in a competitive marketplace where consumers are constantly demanding technological advancements, the Commission cannot ignore marketplace and financial realities, including the need to constantly innovate and enhance products and services, when considering a carrier's good faith efforts to comply with Section 255.

^{16/} Comments of Cerebral Palsy Association at p. 10.

^{17/} Comments of NAD at p. 27.

In applying Section 255, the Commission also should recognize that the provision applies only to telecommunications services -- unlike the Americans With Disabilities Act, which is broadly applicable to all public facilities. As a result, the definition of "disability" under Section 255 should be limited to those disabilities that prevent individuals from using telecommunications equipment.^{18/} Requiring features on mobile communications equipment that are not necessary for ensuring access by disabled Americans would be unnecessary and a waste of economic resources, and would not promote the public interest.

B. A Number Of Commenters Agree That the Commission Must Amend Its Proposed Complaint Process.

The Commission's proposed complaint process must be amended in order to ensure a fair, equitable and efficient procedure for all involved parties. First, as recognized by numerous commenters, the Commission cannot permit the filing of complaints without requiring the complainant to establish standing.^{19/} The United Cerebral Palsy Association asserts that there are "unique circumstances surrounding telecommunications access" that would justify eliminating this constitutionally-derived legal standard,^{20/} but there is nothing so unique about the rights and obligations contained in Section 255 that would allow the Commission to

^{18/} Comments of Lucent at p. 7; Ericsson at . 3.

^{19/} See, e.g., Comments of CEMA at p. 17; PCIA at p. 15; Uniden at p. 6; Self Help at p. 24; SBC at p. 20; CTIA at p. 15; USTA at pp. 14-15; and TIA at p. 77.

^{20/} Comments of United Cerebral Palsy Association at p. 13.

establish a complaint process devoid of the due process rights required by the Constitution.

If a particular individual has been injured because a carrier/manufacturer has failed to fulfill its Section 255 obligations, that person is entitled to an opportunity to establish that fact before the Commission. However, to permit "anyone" to file such complaints would merely encourage abuse of the complaint process and would result in the waste of valuable time and resources. As the association, Self Help for the Hard Of Hearing, recognized in its comments, the absence of a standing requirement could encourage companies to use the complaint process to sue their competitors.^{21/} Moreover, companies could be subject to frivolous complaints as well as "fishing expeditions" for confidential or proprietary information that would otherwise not be available to the "complainant."^{22/}

Second, a number of commenters agreed that five days is an insufficient amount of time for companies to respond to Section 255 complaints.^{23/} As TIA stated, five days is "unrealistic" and "counterproductive" to the resolution of complaints.^{24/} Even the National Association for the Deaf recognized that five days is insufficient, noting that the rule would merely result in endless

^{21/} Comments of Self Help at p. 24.

^{22/} See Comments of TIA at pp. 77-78.

^{23/} See, e.g., Comments of CEMA at p. 17; PCIA at pp. 13-14; Uniden at p. 5; Northern Telecom at p. 6; SBC at p. 16; NAD at p. 35; AT&T at p. 12; and TIA at p. 72.

^{24/} Comments of TIA at p. 73.

requests for extensions of time.^{25/} As Nextel stated in its comments, reducing the typical informal complaint response period to five days could actually disadvantage complainants by causing inaccurate and incomplete responses to meet the shortened deadline. A five-day response period for informal complaints would likely harm the process more than it would ensure speedy resolution of complaints concerning obligations under Section 255. Nextel, and many other commenters,^{26/} support a 30-day reply period, which would provide carriers/manufacturers adequate time to gather the necessary information and provide a responsive answer to the complaint or reach an accommodation with the complainant.

III. CONCLUSION

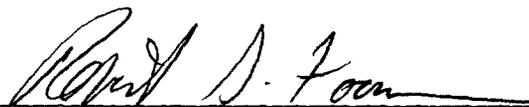
Section 255 promotes the important public policy objective of ensuring that disabled Americans have access to new and advanced telecommunications services. However, Section 255 requires that such access be provided in a manner that is "readily achievable" for the carrier/manufacturer, thus promoting a reasonable, practical and pragmatic approach to ensuring disabled Americans' access. Nextel, therefore, supports the implementation of Section 255 in a manner recognizing that a one-size-fits-all mobile telecommunications handset/unit is not "readily achievable" because it would stifle innovation by redirecting significant resources, increase the cost of providing mobile telecommunications services

^{25/} Comments of NAD at p. 35.

^{26/} See, e.g., Comments of PCIA at p. 14; Uniden at p. 5; SBC at p. 22.

to the public, and likely fall short of the goals of Section 255 by providing only superficial access to telecommunications services.

Respectfully submitted,

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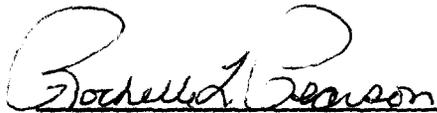
CERTIFICATE OF SERVICE

I, Rochelle L. Pearson, hereby certify that on this 13th day of August 1998, I caused a copy of the attached Reply Comments of Nextel Communications, Inc. to be served by hand delivery to the following:

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