

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

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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WT Docket No. 96-198

**COMMENTS OF
UNIDEN AMERICA CORPORATION**

Pursuant to Section 1.415 of the Commission's Rules, Uniden America Corporation ("Uniden"), by its attorneys, hereby submits its comments in the above captioned proceeding.

Uniden manufactures and distributes business and consumer electronics and, as part of the largest world-wide manufacturer of cordless phones, Uniden is one of the largest distributors of consumer telephone equipment sold in the United States.

Section 255 of the 1996 Telecommunications Act ("1996 Act") requires manufacturers of telecommunications equipment and customer premises equipment ("CPE"), and telecommunications service providers to ensure that their equipment and services are accessible to those with disabilities, to the extent that it is readily achievable to do so. More specifically, Section 255(b) requires manufacturers to ensure that equipment is designed, developed and fabricated to be accessible to and usable by individuals with disabilities, if readily achievable. Under Section 255(d), if the above requirements are not readily achievable, then manufacturers must ensure compatibility with existing peripheral devices or specialized CPE commonly used by individuals with disabilities to achieve access, if that is readily achievable.

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The Commission, in its *Notice of Proposed Rulemaking* (“*NPRM*”),¹ seeks comment on a variety of issues surrounding the implementation of Section 255 of the 1996 Act. In doing so, the Commission proposes to implement guidelines adopted by the Architectural and Transportation Barriers Compliance Board (“Access Board” and “Access Board Guidelines”) pursuant to Section 255.²

Uniden generally supports those Commission proposals that seek to establish clear guidelines for manufacturers under Section 255 urges the Commission to treat the Access Board’s Guidelines as just guidelines. In addition to their subjective nature, the Guidelines appear to conflict with current FCC rules regarding Hearing Aid Compatibility (“*HAC*”) issues. Accordingly, the Commission should not rely solely on the Guidelines to determine compliance with Section 255 and should provide clarification of these differences.

Uniden also generally supports the Commission’s efforts to establish comprehensive complaint procedures to allow consumers to work out complaints with the manufacturer on an informal basis. Uniden recommends, however, that the Commission should not simply focus on the concerns of complainants, but those of the company-respondent as well. While Uniden generally supports the Commission’s Phase I and II complaint procedures, the complaint rules should be reasonable and should work to prevent abuse of process. Uniden proposes that the Phase I response time be extended from 5 days to 30 days. Uniden also recommends the use of a standing requirement and the imposition of sanctions for frivolous complaints. Furthermore,

¹ *Access to Telecommunications Services, Telecommunications Equipment, and Customer Premises Equipment by Persons with Disabilities - Notice of Proposed Rulemaking*, FCC 98-55, released April 20, 1998, (“*NPRM*”).

² *See, Telecommunications Act Accessibility Guidelines; Final Rule*, 63 FR 5607 (1998); see also, 36 CFR Part 1193.

Uniden does not support the imposition of damages under Section 255. As discussed below, Congress did not intend to empower the Commission to impose such a remedy and the Commission is without authority to do so.

**I. THE ACCESS BOARD'S GUIDELINES
SHOULD NOT BE DETERMINATIVE UNDER SECTION 255**

As the Commission recognized in the NPRM, many of the Access Board's Guidelines are general in nature.³ While its broad goals are laudable, the Access Board's Guidelines unfortunately do not offer the level of specificity nor the level of detail required by telecommunications manufacturers. As an illustration of the problems inherent in applying the Access Board's Guidelines, one need look no further than the Commission's HAC Rules whereby the minimum gain requirements for receivers contained in Section 1193.43 (e)⁴ and Section 68.317⁵ of the Commission's Rules appear to be in conflict. Moreover, the Access Board's Guidelines became effective March 5, 1998 and are currently in effect, whereas compliance with the HAC requirements under Section 68.317, is not mandatory until January 1, 2000.⁶

Because the Guidelines lack specificity and may conflict with existing Commission Rules, the Commission should provide sufficient clarification. The Access Board's Guidelines should not be considered determinative in the Commission's enforcement of Section 255. Furthermore, as an enforcement matter and because the Access Board's Guidelines now in effect are so imprecise,

³ *NPRM* at ¶ 17.

⁴ 36 C.F.R. § 1193.43 (e).

⁵ 47 CFR § 68.317

⁶ *See, Access to Telecommunications Equipment and Services by Persons with Disabilities*, 12 FCC Rcd 10077 at ¶ 6 (July 11, 1997).

Uniden supports the fact that the Commission proposes to consider a manufacturer's good faith efforts to comply with Section 255.'

H. THE COMMISSION'S ENFORCEMENT AUTHORITY

A. The Complaint Process

The Commission's proposed complaint process rests on a desire to be responsive to consumers and to allocate resources **efficiently**.⁸ It proposes a two phase complaint process whereby consumers may initiate a "fast track" complaint (Phase I) and, in cases where the complaint has not been settled, the complainant could then file an informal or formal complaint with the Commission (Phase II). Uniden recommends that the Commission recognize the industry's interests in any such proceedings by providing for rules that are reasonable in light of the subjective nature of the Access Board's Guidelines and rules constructed to prevent abuse of process.

1. The Phase I "Fast Track" Proposal

The Phase I procedure, must be a reasonable one, balancing informality with practicality if it is to be successful in resolving potential disputes. In this regard, Uniden is concerned with the Commission's proposal for a five business day period in which companies must resolve Phase I complaints.' Uniden is also concerned that the informal "Phase I" may be too informal to be of any real value to the parties in resolving potential disputes.

⁷ NPRM at ¶ 164.

⁸ NPRM at ¶ 124.

⁹ *Id.* at ¶ 136 - 137.

a. The Commission Should Allow 30 days for Industry Response

A five business day period within which to study a complaint, gather relevant information, identify possible accessibility solutions, and work with the complainant to solve the access problem is an unreasonable demand to place on manufacturers. Although the Commission recognized that a five day period would not necessarily apply in all circumstances,” it is reasonable to assume that a five day response time would likely become the exception rather than the rule. Uniden proposes that such a rule would be more equitably applied by recognizing the realities of the corporate environment. As most duties shared by many divisions and decisions require oversight at different management levels, a five day response time is simply insufficient. Such a requirement would result only in a flurry of extension requests filed with the Commission, especially where corporate action may result in further repercussions in a subsequent Phase II proceeding. Such a requirement would therefore divert Commission and industry attention from addressing the real problems of the complaint and subvert the Commission’s stated goals of responsiveness and efficient allocation of resources. Moreover, under such circumstances, a five day turn-around time would only serve to heighten the conflict in the process.

Uniden therefore proposes at least a 30 day period in which industry officials would be required to respond to Phase I complaints. While Uniden agrees with the Commission that the “fast track” process should be responsive to consumers’ complaints, 30 days would not impose a serious delay for a complainant and would strike a better balance between avoiding delay and giving companies a reasonable opportunity to study the matter, make a reasoned judgment, and formulate any preliminary solutions that would address problems that might exist. A 30 day time

¹⁰ *Id.*

period would also better allow for the responsiveness the Commission seeks and allow the parties to continue a dialog, hopefully to avoid the resource-intensive Phase II process altogether, rather than cutting dialog short. Of course if such a rule were adopted, nothing should prevent a company from responding sooner if it is possible.

h. The Commission's Rules Should Prevent Abuse of Process

In addition to giving companies adequate time to respond, Uniden is concerned that the process may be subject to abuse. For example, a company which develops a proprietary accessibility feature could conceivably use the complaint process in retribution against manufacturers who chose not to implement their particular solution despite the manufacturer's good faith belief that the feature does little to achieve access or is not readily achievable for the manufacturer's own product.

In this instance, a complaint based on the Access Board's subjective guidelines might be used to harass or seek improper market leverage over one or many manufacturers. Such controversies that amount to contractual and intellectual property claims, however, are better settled in civil proceedings rather than before the Commission under Section 255.¹¹ To prevent this, Uniden proposes that the Commission impose rules to prevent abuse of process including a standing requirement for complainants and providing for sanctions where frivolous complaints are brought. In addition, complainants should be required to follow through with a Phase I type complaint before initiating a Phase II complaint.

¹¹ The Commission has long held that such disputes are best left to the courts. *PCS 2000, LP*, 12 FCC Rcd 168 1, 169 1 (1997) (private transactions involving the exercise of business judgment are best resolved by courts of competent jurisdiction); see also, *RVC Services, Inc.*, 11 FCC Rcd 12136, 12145 (1996).

Despite the Commission's reluctance to impose a standing requirement for complaints under Section 255, Uniden proposes that complainants be required to demonstrate standing **and** that the Commission require such standing at the outset of any complaint procedure under either Phase I or Phase II. Uniden recognizes the Commission's desire to avoid burdening the complaint process with disputes relating to standing, however, without such a requirement the FCC could easily be more burdened by spurious complaints. There is simply no justification for the filing of a complaint by someone who does not have a direct interest in it, especially where, as here, the Commission's proposals make it a simple task for someone to file an access complaint. Uniden believes that standing should be made a requirement especially where sanctions such as damages and forfeitures are a possibility.

Further, Uniden recommends the adoption of a rule against frivolous complaints. The program access complaint rules under Part 76 of the Commission's Rules contain an appropriate model. The rule balances the Commission's desire to avoid constraining Multichannel Video Programming Distributors from filing legitimate complaints with its desire to afford program vendors protection **from frivolous complaints**.¹²

A frivolous complaint rule under the accessibility complaint process would prevent unscrupulous parties from using the vague accessibility guidelines against companies by involving them in unnecessary and even damaging complaint proceedings. So that such a rule would not prevent consumers from filing complaints, the rule could be applied only to those proceedings brought under Phase II. By adopting such a rule, the Commission would strike a balance between

¹² See, *Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992*, 8 FCC Rcd 3359 at ¶¶ 154 – 156 (1993) (hereinafter, “*Program Access Report & Order*”).

the need to make the complaints process accessible to consumers and prevent abuse of process by others.

2. Phase II Procedures

Generally, Uniden supports basing the Commission's dispute resolution rules on those used for Common Carriers under 47 C.F.R. §§ 1.711 *et seq.* Uniden also supports the Commission's proposal to deviate from the common carrier rules to allow consolidation of complaints. As set forth below, however, Uniden does not believe the Commission has the authority to impose damages aside from its forfeiture authority under Title V of the Communications Act of 1934, as amended.

A. Damages are Not a Proper Remedy

The 1996 Telecommunications Act unquestionably prohibits private rights of action *vis a vis* Section 255.¹³ It equally unquestionably grants to the FCC exclusive jurisdiction with respect to any complaint tiled *thereunder*.¹⁴ The Commission then correctly reads Section 255(f) as "compel[ling] complainants to seek redress exclusively from the Commission, rather than in Federal courts."¹⁵ Uniden, however, cannot agree with the *NPRM*'s conclusion that the Conference Report's reference to Sections 207 and 208 of the Act authorizes assessment of damages for violations of Section 255.¹⁶ No basis exists under any of these provisions for the

¹³ 47 U.S.C. § 255(f).

¹⁴ *Id.*

¹⁵ *NPRM*, FCC 98-55 at ¶ 32.

¹⁶ *Id.* at ¶ 33; See also, H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess., at 135 (1996).

imposition of damages on any entities other than common carriers, if even then. Sections 207 and 208 plainly and on their face apply only to common carriers and without more, the Commission cannot seriously interpret the legislative history as extending Sections 207 and 208 to non-common carriers. Indeed, it is unclear just what Congress meant by its reference to Sections 207 and 208 since neither provision in and of itself authorizes the Commission to impose damages.

Section 207 provides that:

Any person claiming to be damaged by any common carrier subject to the provisions of this Act may either make complaint to the Commission as hereinafter provided for, or may bring suit for the recovery of damages for which such carrier may be liable under the provisions of this Act, in any district court of the United States of competent jurisdiction; but such person shall not have the right to pursue both such remedies.

Rather than authorize the Commission to impose damages, Section 207 spells out the rights of persons allegedly damaged by a common carrier, *i.e.*, to either file a complaint at the FCC pursuant to further provisions in the Act or seek an award of damages in federal district court

Section 255, however, expressly precludes the right of parties to seek redress other than at the Commission. Thus, without more, the Commission cannot infer that the Statement of Managers restores to a complainant rights expressly withheld by Section 255, *i.e.*, the right to seek damages in federal court. The Commission has already made clear that deference should be given to the wording of the Act rather than a vague provision in the Statement of Managers.”

Section 208, in general, merely authorizes complaints by any person “complaining of anything done or omitted to be done by any common carrier” subject to the provisions of the Act and establishes timeframes within which the Commission must act pursuant to any such

¹⁷ See, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (Report & Order)*, 11 FCC Rcd 15499, 16058-60 (1996).

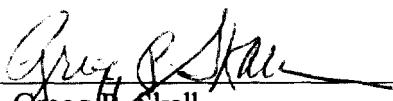
complaints. Like Section 207, by itself, Section 208 does not authorize an award of damages. Accordingly, Section 255 should not be read as authorizing the Commission to impose damages for violations of Section 255 by manufacturers of telecommunications equipment or CPE such as Uniden.

H. CONCLUSION

Accordingly, and for the reasons stated above, Uniden supports the Commission's interpretation of the scope of its authority under Section 255. Uniden also urges the Commission to adopt clearer more specific technical regulations and not rely solely on the subjective guidelines set forth by the Access Board. In enforcing its regulations, Uniden recommends that the Commission adopt procedures that recognize the circumstances under which many manufacturers operate. Such procedures should be both reasonable and prevent abuse of process. Lastly, Uniden urges the Commission to recognize its statutory limits and does not support the imposition of damages under Section 255.

Respectfully submitted,

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