

prepared, mailed, transmitted, or otherwise disseminated; (ii) the author, preparer, or other source; (iii) the recipient(s) or intended recipient(s); (iv) its physical location; and (v) a description of its relevance to the matters in dispute.

(3) A complete description of the manner in which the complainant identified all persons with information and designated all documents, data compilations and tangible things as being relevant to the dispute, including, but not limited to, identifying the individual(s) that conducted the information search and the criteria used to identify such persons, documents, data compilations, tangible things, and information;

(e) The reply shall attach copies of all affidavits, documents, data compilations and tangible things in the complainant's possession, custody, or control upon which the complainant relies or intends to rely to support the facts alleged and legal arguments made in the reply.

(f) The complainant may petition the staff, pursuant to § 1.3 of the rules, for a waiver of any of the requirements of this section. Such waiver may be granted for good cause shown.

Sec. 1.727 Motions.

(a) A request to the Commission for an order shall be by written motion, stating with particularity the grounds and authority therefor, and setting forth the relief or order sought.

(b) All dispositive motions shall contain proposed findings of fact and conclusions of law, with supporting legal analysis, relevant to the contents of the pleading. Motions to compel discovery must contain a certification by the moving party that a good faith attempt to resolve the dispute was made prior to filing the motion. All facts relied upon in motions must be supported by documentation or affidavits pursuant to the requirements of § 1.720(c) of the rules, except for those facts of which official notice may be taken.

(c) The moving party shall provide a proposed order for adoption, which appropriately incorporates the basis therefor, including proposed findings of fact and conclusions of law relevant to the pleading. The proposed order shall be clearly marked as a "Proposed Order." The proposed order shall be submitted both as a hard copy and on computer disk in accordance with the requirements of § 1.734(d) of the rules. Where appropriate, the proposed order format should conform to that of a reported FCC order.

(d) Oppositions to any motion shall be accompanied by a proposed order for adoption, which appropriately incorporates the basis therefor, including proposed findings of fact and

conclusions of law relevant to the pleading. The proposed order shall be clearly captioned as a "Proposed Order." The proposed order shall be submitted both as a hard copy and on computer disk in accordance with the requirements of § 1.734(d) of the rules. Where appropriate, the proposed order format should conform to that of a reported FCC order.

(e) Oppositions to motions may be filed and served within five business days after the motion is filed and served and not after. Oppositions shall be limited to the specific issues and allegations contained in such motion; when a motion is incorporated in an answer to a complaint, the opposition to such motion shall not address any issues presented in the answer that are not also specifically raised in the motion. Failure to oppose any motion may constitute grounds for granting of the motion.

(f) No reply may be filed to an opposition to a motion.

(g) Motions seeking an order that the allegations in the complaint be made more definite and certain are prohibited.

(h) Amendments or supplements to complaints to add new claims or requests for relief are prohibited. Parties are responsible, however, for the continuing accuracy and completeness of all information and supporting authority furnished in a pending complaint proceeding as required under § 1.720(g) of the rules.

Sec. 1.728 Formal complaints not stating a cause of action; defective pleadings.

(a) Any document purporting to be a formal complaint which does not state a cause of action under the Communications Act will be dismissed. In such case, any amendment or supplement to such document will be considered a new filing which must be made within the statutory periods of limitations of actions contained in section 415 of the Communications Act.

(b) Any other pleading filed in a formal complaint proceeding not in conformity with the requirements of the applicable rules in this part may be deemed defective. In such case the Commission may strike the pleading or request that specified defects be corrected and that proper pleadings be filed with the Commission and served on all parties within a prescribed time as a condition to being made a part of the record in the proceeding.

Sec. 1.729 Discovery.

(a) A complainant may file with the Commission and serve on a defendant, concurrently with its complaint, a request for up to ten written interrogatories. A defendant may file with the Commission and serve on a complainant, during the period starting with the service of the complaint and ending with the service of its answer, a request for up to ten written interrogatories. A complainant may file with the Commission and serve on a defendant, within three calendar days of service of the defendant's answer, a request for up to five written interrogatories. Subparts of any interrogatory will be counted as separate interrogatories for purposes of compliance with this limit. Requests for interrogatories filed and served pursuant to this procedure may be used to seek discovery of any non-privileged matter that is relevant to the material facts in dispute in the pending proceeding, provided, however, that requests for interrogatories filed and served by a complainant after service of the defendant's answer shall be limited in scope to specific factual allegations made by the defendant in support of its affirmative defenses. This procedure may not be employed for the purpose of delay, harassment or obtaining information that is beyond the scope of permissible inquiry related to the material facts in dispute in the pending proceeding.

(b) Requests for interrogatories filed and served pursuant to subpart (a) of this rule shall contain a listing of the interrogatories requested and an explanation of why the information sought in each interrogatory is both necessary to the resolution of the dispute and not available from any other source.

(c) A responding party shall file with the Commission and serve on the propounding party any opposition and objections to the requests for interrogatories as follows: (1) by the defendant, within ten calendar days of service of the requests for interrogatories served simultaneously with the complaint and within five calendar days of the requests for interrogatories served following service of the answer; (2) by the complainant, within five calendar days of service of the requests for interrogatories; and (3) in no event less than three calendar days prior to the initial status conference as provided for in § 1.733(a) of the rules.

(d) Commission staff will consider the requests for interrogatories, properly filed and served pursuant to subpart (a) of this section, along with any objections or oppositions thereto, properly filed and served pursuant to subpart (b) of this section, at the initial status conference, as provided for in § 1.733(a)(5) of the rules, and at that time determine the interrogatories, if any, to which parties shall respond, and set the schedule of such response.

(e) The interrogatories ordered to be answered pursuant to subpart (d) of this section are to be answered separately and fully in writing under oath or affirmation by the party served, or if such party is a public or private corporation or partnership or association, by any officer

or agent who shall furnish such information as is available to the party. The answers shall be signed by the person making them. The answers shall be filed with the Commission and served on the propounding party.

(f) A propounding party asserting that a responding party has provided an inadequate or insufficient response to Commission-ordered discovery request may file a motion to compel within ten days of the service of such response, or as otherwise directed by Commission staff, pursuant to the requirements of § 1.727 of the rules.

(g) The Commission may, in its discretion, require parties to provide documents to the Commission in a scanned or other electronic format that provides (1) indexing by useful identifying information about the documents; and (2) technology that allows staff to annotate the index so as to make the format an efficient means of reviewing the documents.

(h) The Commission may allow additional discovery, including, but not limited to, document production, depositions and/or additional interrogatories. In its discretion, the Commission may modify the scope, means and scheduling of discovery in light of the needs of a particular case and the requirements of applicable statutory deadlines.

Sec. 1.731 Confidentiality of information produced or exchanged by the parties.

(a) Any materials generated in the course of a formal complaint proceeding may be designated as proprietary by that party if the party believes in good faith that the materials fall within an exemption to disclosure contained in the Freedom of Information Act (FOIA), 5 U.S.C. § 552(b)(1) through (9). Any party asserting confidentiality for such materials shall so indicate by clearly marking each page, or portion thereof, for which a proprietary designation is claimed. If a proprietary designation is challenged, the party claiming confidentiality shall have the burden of demonstrating, by a preponderance of the evidence, that the material designated as proprietary falls under the standards for nondisclosure enunciated in the FOIA.

(b) Materials marked as proprietary may be disclosed solely to the following persons, only for use in prosecuting or defending a party to the complaint action, and only to the extent necessary to assist in the prosecution or defense of the case:

- (1) Counsel of record representing the parties in the complaint action and any support personnel employed by such attorneys;
- (2) Officers or employees of the opposing party who are named by the opposing party as being directly involved in the prosecution or defense of the case;
- (3) Consultants or expert witnesses retained by the parties;

- (4) The Commission and its staff; and
- (5) Court reporters and stenographers in accordance with the terms and conditions of this section.

(c) These individuals shall not disclose information designated as proprietary to any person who is not authorized under this section to receive such information, and shall not use the information in any activity or function other than the prosecution or defense in the case before the Commission. Each individual who is provided access to the information shall sign a notarized statement affirmatively stating that the individual has personally reviewed the Commission's rules and understands the limitations they impose on the signing party.

(d) No copies of materials marked proprietary may be made except copies to be used by persons designated in paragraph (b) of this section. Each party shall maintain a log recording the number of copies made of all proprietary material and the persons to whom the copies have been provided.

(e) Upon termination of a formal complaint proceeding, including all appeals and petitions, all originals and reproductions of any proprietary materials, along with the log recording persons who received copies of such materials, shall be provided to the producing party. In addition, upon final termination of the complaint proceeding, any notes or other work product derived in whole or in part from the proprietary materials of an opposing or third party shall be destroyed.

Sec. 1.732 Other required written submissions.

(a) The Commission may, in its discretion, or upon a party's motion showing good cause, require the parties to file briefs summarizing the facts and issues presented in the pleadings and other record evidence.

(b) Unless otherwise directed by the Commission, all briefs shall include all legal and factual claims and defenses previously set forth in the complaint, answer, or any other pleading submitted in the proceeding. Claims and defenses previously made but not reflected in the briefs will be deemed abandoned. The Commission may, in its discretion, limit the scope of any briefs to certain subjects or issues. A party shall attach to its brief copies of all documents, data compilations, tangible things, and affidavits upon which such party relies or intends to rely to support the facts alleged and legal arguments made in its brief and such brief shall contain a full explanation of how each attachment is relevant to the issues and matters in dispute. All such attachments to a brief shall be documents, data compilations or tangible things, or affidavits made by persons, that were identified by any party in its

information designations filed pursuant to Sections 1.721 (a)(10)(i), (10)(ii), 1.724 (f)(1), (f)(2), and 1.726 (d)(1), (d)(2). Any other supporting documentation or affidavits that is attached to a brief must be accompanied by a full explanation of the relevance of such materials and why such materials were not identified in the information designations. These briefs shall contain the proposed findings of fact and conclusions of law which the filing party is urging the Commission to adopt, with specific citation to the record, and supporting relevant authority and analysis.

(c) In cases in which discovery is not conducted, absent an order by the Commission that briefs be filed, parties may not submit briefs. If the Commission does authorize the filing of briefs in cases in which discovery is not conducted, briefs shall be filed concurrently by both the complainant and defendant at such time as designated by the Commission staff and in accordance with the provisions of this section.

(d) In cases in which discovery is conducted, briefs shall be filed concurrently by both the complainant and defendant at such time designated by the Commission staff.

(e) Briefs containing information which is claimed by an opposing or third party to be proprietary under § 1.731 shall be submitted to the Commission in confidence pursuant to the requirements of § 0.459 of this chapter and clearly marked Not for Public Inspection. An edited version removing all proprietary data shall also be filed with the Commission for inclusion in the public file. Edited versions shall be filed within five days from the date the unedited brief is submitted, and served on opposing parties.

(f) Initial briefs shall be no longer than twenty-five pages. Reply briefs shall be no longer than ten pages. Either on its own motion or upon proper motion by a party, the Commission staff may establish other page limits for briefs.

(g) The Commission may require the parties to submit any additional information it deems appropriate for a full, fair, and expeditious resolution of the proceeding, including affidavits and exhibits.

(h) The parties shall submit a joint statement of stipulated facts, disputed facts, and key legal issues no later than two business days prior to the initial status conference, scheduled in accordance with the provisions of section 1.733(a) of these rules.

Section 1.733 Status conference.

(a) In any complaint proceeding, the Commission may, in its discretion, direct the attorneys and/or the parties to appear before it for a status conference. Unless otherwise ordered by the Commission, an initial status conference shall take place, at the time and place designated by the Commission staff, ten business days after the date the answer is due to be filed. A status conference may include discussion of:

- (1) Simplification or narrowing of the issues;
- (2) The necessity for or desirability of additional pleadings or evidentiary submissions;
- (3) Obtaining admissions of fact or stipulations between the parties as to any or all of the matters in controversy;
- (4) Settlement of all or some of the matters in controversy by agreement of the parties;
- (5) Whether discovery is necessary and, if so, the scope, type and schedule for such discovery;
- (6) The schedule for the remainder of the case and the dates for any further status conferences; and
- (7) Such other matters that may aid in the disposition of the complaint.

(b) Parties shall meet and confer prior to the initial status conference to discuss (1) settlement prospects; (2) discovery; (3) issues in dispute; (4) schedules for pleadings; (5) joint statement of stipulated facts, disputed facts, and key legal issues; and (6) in a 47 U.S.C. § 271(d)(6)(B) proceeding, whether or not the parties agree to waive the 47 U.S.C. § 271(d)(6)(B) 90-day resolution deadline. Parties shall submit a joint statement of all proposals agreed to and disputes remaining as a result of such meeting to Commission staff at least two business days prior to the scheduled initial status conference.

(c) In addition to the initial status conference referenced in paragraph (a) of this section, any party may also request that a conference be held at any time after the complaint has been filed.

(d) During a status conference, the Commission staff may issue oral rulings pertaining to a variety of interlocutory matters relevant to the conduct of a formal complaint proceeding including, *inter alia*, procedural matters, discovery, and the submission of briefs or other evidentiary materials.

(e) Parties may make, upon written notice to the Commission and all attending parties at least three business days prior to the status conference, an audio recording of the Commission staff's summary of its oral rulings. Alternatively, upon agreement among all attending parties and written notice to the Commission at least three business days prior to the status conference, the parties may make an audio recording of, or use a stenographer to transcribe,

the oral presentations and exchanges between and among the participating parties, insofar as such communications are "on-the-record" as determined by the Commission staff, as well as the Commission staff's summary of its oral rulings. A complete transcript of any audio recording or stenographic transcription shall be filed with the Commission as part of the record, pursuant to the provisions of subpart (f)(2) of this section. The parties shall make all necessary arrangements for the use of a stenographer and the cost of transcription, absent agreement to the contrary, will be shared equally by all parties that agree to make the record of the status conference.

(f) The parties in attendance, unless otherwise directed, shall either:

(1) Submit a joint proposed order memorializing the oral rulings made during the conference to the Commission by 5:30 pm, Eastern Time, on the business day following the date of the status conference, or as otherwise directed by Commission staff. In the event the parties in attendance cannot reach agreement as to the rulings that were made, the joint proposed order shall include the rulings on which the parties agree, and each party's alternative proposed rulings for those rulings on which they cannot agree. Commission staff will review and make revisions, if necessary, prior to signing and filing the submission as part of the record. The proposed order shall be submitted both as hard copy and on computer disk in accordance with the requirements of § 1.734(d) of the rules; or

(2) Pursuant to the requirements of subpart (e) of this section, submit to the Commission by 5:30 pm., Eastern Time, on the third business day following the status conference or as otherwise directed by Commission staff either:

(i) A transcript of the audio recording of the Commission staff's summary of its oral rulings;

(ii) A transcript of the audio recording of the oral presentations and exchanges between and among the participating parties, insofar as such communications are "on-the-record" as determined by the Commission staff, and the Commission staff's summary of its oral rulings; or

(iii) A stenographic transcript of the oral presentations and exchanges between and among the participating parties, insofar as such communications are "on-the-record" as determined by the Commission staff, and the Commission staff's summary of its oral rulings.

(g) Status conferences will be scheduled by the Commission staff at such time and place as it may designate to be conducted in person or by telephone conference call.

(h) The failure of any attorney or party, following reasonable notice, to appear at a scheduled conference will be deemed a waiver by that party and will not preclude the Commission staff from conferring with those parties and/or counsel present.

Sec. 1.734 Specifications as to pleadings, briefs, and other documents; subscription.

(a) All papers filed in any formal complaint proceeding must be drawn in conformity with the requirements of §§ 1.49 and 1.50.

(b) All averments of claims or defenses in complaints and answers shall be made in numbered paragraphs. The contents of each paragraph shall be limited as far as practicable to a statement of a single set of circumstances. Each claim founded on a separate transaction or occurrence and each affirmative defense shall be separately stated to facilitate the clear presentation of the matters set forth.

(c) The original of all pleadings and other submissions filed by any party shall be signed by that party, or by the party's attorney. The signing party shall state his or her address and telephone number and the date on which the document was signed. Copies should be conformed to the original. Except when otherwise specifically provided by rule or statute, pleadings need not be verified. The signature of an attorney or party shall be a certificate that the attorney or party has read the pleading, motion, or other paper; that to the best of his or her knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose.

Sec. 1.735 Copies; service; separate filings against multiple defendants.

(a) Complaints may generally be brought against only one named carrier; such actions may not be brought against multiple defendants unless the defendant carriers are commonly owned or controlled, are alleged to have acted in concert, are alleged to be jointly liable to complainant, or the complaint concerns common questions of law or fact. Complaints may, however, be consolidated by the Commission for disposition.

(b) The complainant shall file an original copy of the complaint, accompanied by the correct fee, in accordance with Part I, subpart G (*see* 47 CFR 1.1105(1)(c)-(d)) and, on the same day:

- (1) File three copies of the complaint with the Office of the Commission Secretary;
- (2) If the complaint is filed against a carrier concerning matters within the responsibility of the Common Carrier Bureau (*see* 47 C.F.R. § 0.291), serve two copies on the Chief, Formal Complaints and Investigations Branch, Enforcement Division, Common Carrier Bureau;
- (3) If the complaint is filed against a wireless telecommunications carrier concerning matters within the responsibility of the Wireless Telecommunications Bureau (*see* 47 C.F.R.

§ 0.331), serve two copies on the Chief, Compliance and Litigation Branch, Enforcement and Consumer Information Division, Wireless Telecommunications Bureau;

(4) If the complaint is filed against a carrier concerning matters within the responsibility of the International Bureau (see 47 C.F.R. § 0.261), serve a copy on the Chief, Telecommunications Division, International Bureau, and serve two copies on the Chief, Formal Complaints and Investigations Branch, Enforcement Division, Common Carrier Bureau; and

(5) If a complaint is addressed against multiple defendants, pay a separate fee, in accordance with Part I, subpart G (see 47 CFR 1.1105(1)(c)-(d)), and file three copies of the complaint with the Office of the Commission Secretary for each additional defendant.

(c) Generally, a separate file is set up for each defendant. An original plus two copies shall be filed of all pleadings and documents, other than the complaint, for each file number assigned.

(d) The complainant shall serve the complaint by hand delivery on either the named defendant or one of the named defendant's registered agents for service of process on the same date that the complaint is filed with the Commission in accordance with the requirements of subpart (b) of this section.

(e) Upon receipt of the complaint by the Commission, the Commission shall promptly send, by facsimile transmission to each defendant named in the complaint, notice of the filing of the complaint. The Commission shall send, by regular U.S. mail delivery, to each defendant named in the complaint, a copy of the complaint. The Commission shall additionally send, by regular U.S. mail to all parties, a schedule detailing the date the answer will be due and the date, time and location of the initial status conference.

(f) All subsequent pleadings and briefs filed in any formal complaint proceeding, as well as all letters, documents or other written submissions, shall be served by the filing party on the attorney of record for each party to the proceeding, or, where a party is not represented by an attorney, each party to the proceeding either by hand delivery, overnight delivery, or by facsimile transmission followed by regular U.S. mail delivery, together with a proof of such service in accordance with the requirements of § 1.47(g) of the rules. Service is deemed effective as follows:

(1) Service by hand delivery that is delivered to the office of the recipient by 5:30 pm, local time of the recipient, on a business day will be deemed served that day. Service by hand delivery that is delivered to the office of the recipient after 5:30 pm, local time of the recipient, on a business day will be deemed served on the following business day;

(2) Service by overnight delivery will be deemed served the business day following the day it is accepted for overnight delivery by a reputable overnight delivery service such as, or

comparable to, the US Postal Service Express Mail, United Parcel Service or Federal Express;
or

(3) Service by facsimile transmission that is fully transmitted to the office of the recipient by 5:30 pm, local time of the recipient, on a business day will be deemed served that day. Service by facsimile transmission that is fully transmitted to the office of the recipient after 5:30 pm, local time of the recipient, on a business day will be deemed served on the following business day.

Section 1.736 Complaints filed pursuant to 47 U.S.C. § 271(d)(6)(B).

(a) Where a complaint is filed pursuant to 47 U.S.C. § 271(d)(6)(B), parties shall indicate whether they are willing to waive the ninety-day resolution deadline contained in 47 U.S.C. § 271(d)(6)(B) in the following manner:

(1) The complainant shall so indicate in both the complaint itself and in the Formal Complaint Intake Form, and the defendant shall so indicate in its answer; or

(2) The parties shall indicate their agreement to waive the ninety-day resolution deadline to the Commission staff at the initial status conference, to be held in accordance with § 1.733 of the rules.

(b) Requests for waiver of the ninety-day resolution deadline for complaints filed pursuant to 47 U.S.C. § 271(d)(6)(B) will not be entertained by the Commission staff subsequent to the initial status conference, absent a showing by the complainant and defendant that such waiver is in the public interest.

APPENDIX C

ACCESS BOARD GUIDELINES

36 C.F.R., PART 1193 — TELECOMMUNICATIONS ACT ACCESSIBILITY GUIDELINES

Subpart A — General

Sec.

- 1193.1 Purpose.
- 1193.2 Scoping.
- 1193.3 Definitions.

Subpart B — General Requirements

- 1193.21 Accessibility, usability, and compatibility.
- 1193.23 Product design, development, and evaluation.

Subpart C — Requirements for Accessibility and Usability

- 1193.31 Accessibility and usability.
- 1193.33 Information, documentation, and training.
- 1193.35 Redundancy and selectability. [Reserved]
- 1193.37 Information pass through.
- 1193.39 Prohibited reduction of accessibility, usability, and compatibility.
- 1193.41 Input, control, and mechanical functions.
- 1193.43 Output, display, and control functions.

Subpart D — Requirements for Compatibility With Peripheral Devices and Specialized Customer Premises Equipment

- 1193.51 Compatibility.

Subpart A — General**Sec. 1193.1 Purpose.**

This part provides requirements for accessibility, usability, and compatibility of telecommunications equipment and customer premises equipment covered by the Telecommunications Act of 1996 (47 U.S.C. 255).

Sec. 1193.2 Scoping.

This part provides requirements for accessibility, usability, and compatibility of new products and existing products which undergo substantial change or upgrade, or for which new releases are distributed. This part does not apply to minor or insubstantial changes to existing products that do not affect functionality.

Sec. 1193.3 Definitions.

Terms used in this part shall have the specified meaning unless otherwise stated. Words, terms and phrases used in the singular include the plural, and use of the plural includes the singular.

ACCESSIBLE. Telecommunications equipment or customer premises equipment which comply with the requirements of subpart C of this part.

ALTERNATE FORMATS. Alternate formats may include, but are not limited to, Braille, ASCII text, large print, and audio cassette recording.

ALTERNATE MODES. Different means of providing information to users of products including product documentation and information about the status or operation of controls. Examples of alternate modes may include, but are not limited to, voice, fax, relay service, TTY, Internet posting, captioning, text-to-speech synthesis, and video description.

COMPATIBLE. Telecommunications equipment or customer premises equipment which comply with the requirements of subpart D of this part.

CUSTOMER PREMISES EQUIPMENT. Equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications.

MANUFACTURER. A manufacturer of telecommunications equipment or customer premises equipment that sells to the public or to vendors that sell to the public; a final assembler.

PERIPHERAL DEVICES. Devices employed in connection with telecommunications equipment or customer premises equipment to translate, enhance, or otherwise transform telecommunications into a form accessible to individuals with disabilities.

PRODUCT. Telecommunications equipment or customer premises equipment.

READILY ACHIEVABLE. Easily accomplishable and able to be carried out without much difficulty or expense.

SPECIALIZED CUSTOMER PREMISES EQUIPMENT. Equipment, employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications, which is commonly used by individuals with disabilities to achieve access.

TELECOMMUNICATIONS. The transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

TELECOMMUNICATIONS EQUIPMENT. Equipment, other than customer premises equipment, used by a carrier to provide telecommunications services, and includes software integral to such equipment (including upgrades).

TELECOMMUNICATIONS SERVICE. The offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

TTY. An abbreviation for teletypewriter. Machinery or equipment that employs interactive text based communications through the transmission of coded signals across the standard telephone network. TTYS can include, for example, devices known as TDDs (telecommunication display devices or telecommunication devices for deaf persons) or computers with special modems. TTYS are also called text telephones.

USABLE. Means that individuals with disabilities have access to the full functionality and documentation for the product, including instructions, product information (including accessible feature information), documentation, and technical support functionally equivalent to that provided to individuals without disabilities.

Subpart B — General Requirements

Sec. 1193.21 Accessibility, usability, and compatibility.

Where readily achievable, telecommunications equipment and customer premises equipment shall comply with the requirements of subpart C of this part. Where it is not readily achievable to comply with subpart C of this part, telecommunications equipment and customer premises equipment shall comply with the requirements of subpart D of this part, if readily achievable.

Sec. 1193.23 Product design, development, and evaluation.

(a) Manufacturers shall evaluate the accessibility, usability, and compatibility of telecommunications equipment and customer premises equipment and shall incorporate such evaluation throughout product design, development, and fabrication, as early and consistently as possible. Manufacturers shall identify barriers to accessibility and usability as part of such a product design and development process.

(b) In developing such a process, manufacturers shall consider the following factors, as the manufacturer deems appropriate:

(1) Where market research is undertaken, including individuals with disabilities in target populations of such research;

- (2) Where product design, testing, pilot demonstrations, and product trials are conducted, including individuals with disabilities in such activities;
- (3) Working cooperatively with appropriate disability-related organizations; and
- (4) Making reasonable efforts to validate any unproven access solutions through testing with individuals with disabilities or with appropriate disability-related organizations that have established expertise with individuals with disabilities.

Subpart C — Requirements for Accessibility and Usability

Sec. 1193.31 Accessibility and usability.

When required by Sec. 1193.21, telecommunications equipment and customer premises equipment shall be accessible to and usable by individuals with disabilities and shall comply with Secs. 1193.33 through 1193.43 as applicable.

Sec. 1193.33 Information, documentation, and training.

(a) Manufacturers shall ensure access to information and documentation it provides to its customers. Such information and documentation includes user guides, installation guides for end-user installable devices, and product support communications, regarding both the product in general and the accessibility features of the product. Manufacturers shall take such other steps as necessary including:

- (1) Providing a description of the accessibility and compatibility features of the product upon request, including, as needed, in alternate formats or alternate modes at no additional charge;
- (2) Providing end-user product documentation in alternate formats or alternate modes upon request at no additional charge; and
- (3) Ensuring usable customer support and technical support in the call centers and service centers which support their products at no additional charge.

(b) Manufacturers shall include in general product information the contact method for obtaining the information required by paragraph (a) of this section.

(c) Where manufacturers provide employee training, they shall ensure it is appropriate to an employee's function. In developing, or incorporating existing training programs, consideration shall be given to the following factors:

- (1) Accessibility requirements of individuals with disabilities;
- (2) Means of communicating with individuals with disabilities;

- (3) Commonly used adaptive technology used with the manufacturer's products;
- (4) Designing for accessibility; and
- (5) Solutions for accessibility and compatibility.

Sec. 1193.35 Redundancy and selectability. [Reserved]

Sec. 1193.37 Information pass through.

Telecommunications equipment and customer premises equipment shall pass through cross-manufacturer, non-proprietary, industry-standard codes, translation protocols, formats or other information necessary to provide telecommunications in an accessible format. In particular, signal compression technologies shall not remove information needed for access or shall restore it upon decompression.

Sec. 1193.39 Prohibited reduction of accessibility, usability, and compatibility.

(a) No change shall be undertaken which decreases or has the effect of decreasing the net accessibility, usability, or compatibility of telecommunications equipment or customer premises equipment.

(b) Exception: Discontinuation of a product shall not be prohibited.

Sec. 1193.41 Input, control, and mechanical functions.

Input, control, and mechanical functions shall be locatable, identifiable, and operable in accordance with each of the following, assessed independently:

(a) OPERABLE WITHOUT VISION. Provide at least one mode that does not require user vision.

(b) OPERABLE WITH LOW VISION AND LIMITED OR NO HEARING. Provide at least one mode that permits operation by users with visual acuity between 20/70 and 20/200, without relying on audio output.

(c) OPERABLE WITH LITTLE OR NO COLOR PERCEPTION. Provide at least one mode that does not require user color perception.

(d) OPERABLE WITHOUT HEARING. Provide at least one mode that does not require user auditory perception.

- (e) OPERABLE WITH LIMITED MANUAL DEXTERITY. Provide at least one mode that does not require user fine motor control or simultaneous actions.
- (f) OPERABLE WITH LIMITED REACH AND STRENGTH. Provide at least one mode that is operable with user limited reach and strength.
- (g) OPERABLE WITHOUT TIME-DEPENDENT CONTROLS. Provide at least one mode that does not require a response time. Alternatively, a response time may be required if it can be by-passed or adjusted by the user over a wide range.
- (h) OPERABLE WITHOUT SPEECH. Provide at least one mode that does not require user speech.
- (i) OPERABLE WITH LIMITED COGNITIVE SKILLS. Provide at least one mode that minimizes the cognitive, memory, language, and learning skills required of the user.

Sec. 1193.43 Output, display, and control functions.

All information necessary to operate and use the product, including but not limited to, text, static or dynamic images, icons, labels, sounds, or incidental operating cues, shall comply with each of the following, assessed independently:

- (a) AVAILABILITY OF VISUAL INFORMATION. Provide visual information through at least one mode in auditory form.
- (b) AVAILABILITY OF VISUAL INFORMATION FOR LOW VISION USERS. Provide visual information through at least one mode to users with visual acuity between 20/70 and 20/200 without relying on audio.
- (c) ACCESS TO MOVING TEXT. Provide moving text in at least one static presentation mode at the option of the user.
- (d) AVAILABILITY OF AUDITORY INFORMATION. Provide auditory information through at least one mode in visual form and, where appropriate, in tactile form.
- (e) AVAILABILITY OF AUDITORY INFORMATION FOR PEOPLE WHO ARE HARD OF HEARING. Provide audio or acoustic information, including any auditory feedback tones that are important for the use of the product, through at least one mode in enhanced auditory fashion (i.e., increased amplification, increased signal-to-noise ratio, or combination). For transmitted voice signals, provide a gain adjustable up to a minimum of 20 dB. For incremental volume control, provide at least one intermediate step of 12 dB of gain.
- (f) PREVENTION OF VISUALLY-INDUCED SEIZURES. Visual displays and indicators shall minimize visual flicker that might induce seizures in people with photosensitive epilepsy.
- (g) AVAILABILITY OF AUDIO CUTOFF. Where a product delivers audio output through an external speaker, provide an industry standard connector for headphones or personal listening devices (e.g., phone-like handset or earcup) which cuts off the speaker(s) when used.

(h) **NON-INTERFERENCE WITH HEARING TECHNOLOGIES.** Reduce interference to hearing technologies (including hearing aids, cochlear implants, and assistive listening devices) to the lowest possible level that allows a user to utilize the product.

(i) **HEARING AID COUPLING.** Where a product delivers output by an audio transducer which is normally held up to the ear, provide a means for effective wireless coupling to hearing aids.

Subpart D — Requirements for Compatibility With Peripheral Devices and Specialized Customer Premises Equipment

Sec. 1193.51 Compatibility.

When required by subpart B of this part, telecommunications equipment and customer premises equipment shall be compatible with peripheral devices and specialized customer premises equipment commonly used by individuals with disabilities to achieve accessibility, and shall comply with the following provisions, as applicable:

(a) **EXTERNAL ELECTRONIC ACCESS TO ALL INFORMATION AND CONTROL MECHANISMS.** Information needed for the operation of products (including output, alerts, icons, on-line help, and documentation) shall be available in a standard electronic text format on a cross-industry standard port and all input to and control of a product shall allow for real time operation by electronic text input into a cross-industry standard external port and in cross-industry standard format. The cross-industry standard port shall not require manipulation of a connector by the user.

(b) **CONNECTION POINT FOR EXTERNAL AUDIO PROCESSING DEVICES.** Products providing auditory output shall provide the auditory signal at a standard signal level through an industry standard connector.

(c) **COMPATIBILITY OF CONTROLS WITH PROSTHETICS.** Touchscreen and touch-operated controls shall be operable without requiring body contact or close body proximity.

(d) **TTY CONNECTABILITY.** Products which provide a function allowing voice communication and which do not themselves provide a TTY functionality shall provide a standard non-acoustic connection point for TTYs. It shall also be possible for the user to easily turn any microphone on and off to allow the user to intermix speech with TTY use.

(e) TTY SIGNAL COMPATIBILITY. Products, including those providing voice communication functionality, shall support use of all cross-manufacturer non-proprietary standard signals used by TTYs.

APPENDIX D

LIST OF PLEADINGS

Due dates specified by the *Notice of Inquiry* for comments and reply comments were October 28, 1996, and November 27, 1996, respectively. Unless accompanied by a motion to accept a late-filed pleading, filings made after those dates are listed in this Appendix as informal comments. All comments and informal comments followed by an asterisk were also submitted on diskette or filed electronically and posted on the Commission's Internet Web Site.

Comments

AFB (American Foundation for the Blind)*
Arkenstone*
ASHA (American Speech-Language-Hearing Association)*
AT&T (AT&T Corp.)*
Barkley (Michael J. Barkley)*
Bell Atlantic (Bell Atlantic Telephone Companies)*
BellSouth (BellSouth Corporation)*
CAN (Consumer Action Network)
CCD (Consortium for Citizens with Disabilities Task Force on Communications
Access & Telecommunications)*
CEMA (Consumer Electronics Manufacturers Association)*
CTIA (Cellular Telecommunications Industry Association)*
Ericsson (Ericsson Inc.)*
Inclusive (Inclusive Technologies)*
ITI (Information Technology Industry Council)*
Lucent (Lucent Technologies Inc.)*
MATP (Massachusetts Assistive Technology Partnership)*
MCI (MCI Telecommunications Corporation)*
Microsoft (Microsoft Corporation)*
Motorola (Motorola, Inc.)*
Mulvany (Dana Mulvany)*
NAD (National Association of the Deaf)*
National Coalition (National Coalition for Blind and Visually Impaired Persons
for Increased Video Access)

NCD (National Council on Disability)*
Nortel (Northern Telecom Inc.)*
NTN (Narrative Television Network)*
NYNEX (NYNEX Telephone Companies)*
Omnipoint (Omnipoint Corporation)*
Pacific (Pacific Telesis Group)*
PCIA (Personal Communications Industry Association)*
Prosser (Annie Kate Prosser)
P&A-ULS (Protection and Advocacy Program - University Legal Services, Inc.)*
Railfone-Amtrak (Railfone-Amtrak Venture)*
SHHH (Self Help for Hard of Hearing People, Inc.)*
Siemens (Siemens Business Communication Systems, Inc.)*
Sprint (Sprint Corporation)*
SWBT (Southwestern Bell Telephone Company)*
TIA (Telecommunications Industry Association)*
Trace (Trace Research and Development Center)*
Tulsa (Tulsa Junior College)
UCPA (United Cerebral Palsy Associations)*
USTA (United States Telephone Association)*
U S WEST (U S WEST, Inc.)*
Waldron (Jo Waldron)*

Informal Comments

AAA (American Academy of Audiology)*
Langlois (Brian Langlois)
NVRC (Northern Virginia Resource Center for Deaf and Hard of Hearing Persons)
Orton (Rebecca Orton)
Torczyner (Jerome Torczyner)
Utratec (Ultratec, Inc.)
Winters (Michael A. Winters)

Reply Comments

AAA (American Academy of Audiology)*
AAAD (American Athletic Association of the Deaf, Inc.)
ACB (American Council of the Blind)*
AFB (American Foundation for the Blind)*

ALDA (Association of Late-Deafened Adults)
ASDC (American Society for Deaf Children)
AT&T (AT&T Corp.)*
CEMA (Consumer Electronics Manufacturers Association)*
COR (Council of Organizational Representatives)*
CTIA (Cellular Telecommunications Industry Association)*
Gallaudet (Gallaudet University)*
GTE (GTE Service Corporation)
ITI (Information Technology Industry Council)*
Lucent (Lucent Technologies Inc.)*
MATP-TAP (Massachusetts Assistive Technology Partnership and
Tech Act Projects)*
MCI (MCI Telecommunications Corporation)*
MOD (Massachusetts Office on Disability)*
Motorola (Motorola, Inc.)*
NAD (National Association of the Deaf)*
Nelson (David J. Nelson)
Netscape (Netscape Communications Corporation)*
Pacific (Pacific Telesis Group)*
PCIA (Personal Communications Industry Association)*
SHHH (Self Help for Hard of Hearing People, Inc. and Gene A. Bechtel)
Siemens (Siemens Business Communications Systems, Inc.)*
Sprint (Sprint Corporation)*
TIA (Telecommunications Industry Association)*
Trace (Trace Research and Development Center)*
UCPA (United Cerebral Palsy Associations)
WID (World Institute on Disability)*
WSAD (Washington State Association of the Deaf)

Informal Replies

AAA (American Academy of Audiology)
Alaska (Alaska Association of the Deaf)
NCD (National Council on Disability)*
RID (The Registry of Interpreters for the Deaf, Inc.)
Statewide (Statewide Independent Living Council of Tennessee)
Waldron (Jo Waldron)*

APPENDIX E

INITIAL REGULATORY FLEXIBILITY ANALYSIS

As required by the Regulatory Flexibility Act (RFA),¹ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact on small entities of the policies and rules proposed in this Notice of Proposed Rulemaking (Notice). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice provided in the Procedural Matters Section of the Notice.² The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).³ In addition, the Notice and IRFA (or summaries thereof) will be published in the Federal Register.⁴

A. Need for, and Objectives of, Proposed Action

This rulemaking proceeding was initiated to propose means of implementing and enforcing Section 255 of the Communications Act, as added by the Telecommunications Act of 1996.⁵ This section is intended to ensure that telecommunications equipment and services will be accessible to persons with disabilities, if such accessibility is readily achievable. If accessibility is not readily achievable, then the telecommunications equipment and services are to be made compatible with specialized customer premises equipment or peripheral devices to the extent that so doing is readily achievable.

Given the fundamental role that telecommunications has come to play in today's world, we believe the provisions of Section 255 represent the most significant governmental action for people with disabilities since the passage of the Americans with Disabilities Act of 1990. Pub. L. 101-336, 104 Stat. 327 (1990) (codified at 42 U.S.C. §§ 12102(2)(A),

¹ 5 U.S.C. §§ 601-612. The RFA has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

² See Notice at para. 184.

³ See 5 U.S.C. § 603(a).

⁴ See *id.*

⁵ Pub. L. 104-104, 110 Stat. 56 (1996) (1996 Act).

12181(9)) (ADA). Inability to use telecommunications equipment and services can be life-threatening in emergency situations, can severely limit educational and employment opportunities, and can otherwise interfere with full participation in business, family, social, and other activities. We must do all we can to ensure that people with disabilities are not left behind in the telecommunications revolution and consequently isolated from contemporary life.

We set forth proposals to implement and enforce the requirement of Section 255 that telecommunications offerings be accessible to the extent readily achievable. The centerpiece of these is a "fast-track" process designed to resolve many accessibility complaints informally, providing consumers quick solutions and freeing manufacturers and service providers from the burden of more structured complaint resolution procedures. In cases where fast-track solutions are not possible, however, or where there appears to be an underlying noncompliance with Section 255, we would pursue remedies through more conventional processes. In both cases, in assessing whether service providers and equipment manufacturers have met their accessibility obligations under Section 255, we would look favorably upon demonstrations by companies that they considered accessibility throughout the development of telecommunications products.

B. Legal Basis

The proposed action is authorized under Sections 1, 4(i), 10, 201, 202, 207, 208, 255, 303(b), 303(g), 303(j), 303(r) and 403 of the Communications Act, 47 U.S.C. §§ 151, 154(i), 160, 201, 202, 207, 208, 255, 303(b), 303(g), 303(j), 303(r) and 403.

C. Description and Number of Small Entities Involved

The Notice will apply to manufacturers of telecommunications equipment and customer premises equipment (CPE). In addition, telecommunications service providers of many types will be affected, including wireline common carriers and commercial mobile radio service (CMRS) providers.⁶ To the extent that software is integral to a telecommunication function, software developers or manufacturers may also be affected.⁷

Commenters are requested to provide information regarding how many entities (overall) and how many small entities would be affected by the proposed rules in the Notice. It should be noted that the resources of the regulated entity are taken into account in the

⁶ See Notice at paras. 44-46.

⁷ See *id.* at paras. 54-56.

determination of whether accessibility of a given product or service is readily achievable. Thus, there is an inherent consideration of the financial burden on the entity in its obligation to provide accessibility: if not readily achievable, the legal obligation is removed. However, all regulated entities are required to assess whether providing accessibility is readily achievable. Thus, an important issue for RFA purposes is not the absolute cost of providing accessibility, but, rather, the extent to which the cost of performing an assessment as to whether an accessibility feature is readily achievable is unduly burdensome on small entities.

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁸ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁹ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.¹⁰ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).¹¹ A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."¹² Nationwide, as of 1992, there were approximately 275,801 small organizations.¹³ Below, we further describe and estimate the number of small entity licensees and other covered entities that may be affected by the proposed rules, if adopted.

1. Equipment Manufacturers

The following chart contains estimated numbers of domestic entities that may be affected by this rulemaking. The data from which this chart was developed includes firm

⁸ 5 U.S.C. § 603(b)(3).

⁹ *Id.*, § 601(6).

¹⁰ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

¹¹ Small Business Act, 15 U.S.C. § 632 (1996).

¹² 5 U.S.C. § 601(4).

¹³ 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).