(g) Where a complainant chooses to seek the recovery of damages upon a supplemental complaint in accordance with the requirements of paragraph (e) of this section, the Commission will resolve the separate, preceding liability complaint within any applicable complaint resolution deadlines contained in the Act.

(h) In all cases in which recovery of damages is sought, it shall be the responsibility of the complainant to include, within either the complaint or supplemental complaint for damages filed in accordance with paragraph (e) of this section, either:

(1) A computation of each and every category of damages for which recovery is sought, along with an identification of all relevant documents and materials or such other evidence to be used by the complainant to determine the amount of such damages; or

(2) An explanation of:

(i) The information not in the possession of the complaining party that is necessary to develop a detailed computation of damages;

(ii) Why such information is unavailable to the complaining party;

(iii) The factual basis the complainant has for believing that such evidence of damages exists;

(iv) A detailed outline of the methodology that would be used to create a computation of damages with such evidence.

(i) Where a complainant files a supplemental complaint for damages in accordance with paragraph (e) of this section, the following procedures may apply:

(1) Issues concerning the amount, if any, of damages may be either designated by the Enforcement Bureau for hearing before, or, if the parties agree, submitted for mediation to, a Commission Administrative Law Judge. Such Administrative Law Judge shall be chosen in the following manner:

(i) By agreement of the parties and the Chief Administrative Law Judge; or

(ii) In the absence of such agreement, the Chief Administrative Law Judge shall designate the Administrative Law Judge.

(2) The Commission may, in its discretion, order the defendant either to post a bond for, or deposit into an interest bearing escrow account, a sum equal to the amount of damages which the Commission finds, upon preliminary investigation, is likely to be ordered after the issue of damages is fully litigated, or some lesser sum which may be appropriate, provided the Commission finds that the grant of this relief is favored on balance upon consideration of the following factors:

(i) The complainant's potential irreparable injury in the absence of such deposit;

(ii) The extent to which damages can be accurately calculated;

(iii) The balance of the hardships between the complainant and the defendant; and

(iv) Whether public interest considerations favor the posting of the bond or ordering of the deposit.

(3) The Commission may, in its discretion, suspend ongoing damages proceedings for fourteen days,

to provide the parties with a time within which to pursue settlement negotiations and/or alternative dispute resolution procedures.

(4) The Commission may, in its discretion, end adjudication of damages with a determination of the sufficiency of a damages computation method or formula. No such method or formula shall contain a provision to offset any claim of the defendant against the complainant. The parties shall negotiate in good faith to reach an agreement on the exact amount of damages pursuant to the Commission-mandated method or formula. Within thirty days of the release date of the damages order, parties shall submit jointly to the Commission either:

(i) A statement detailing the parties' agreement as to the amount of damages;

(ii) A statement that the parties are continuing to negotiate in good faith and a request that the parties be given an extension of time to continue negotiations; or

(iii) A statement detailing the bases for the continuing dispute and the reasons why no agreement can be reached.

(j) Except where otherwise indicated, the rules governing initial formal complaint proceedings govern supplemental formal complaint proceedings, as well.

§ 14.41 Joinder of complainants and causes of action.

(a) Two or more complainants may join in one complaint if their respective causes of action are against the same defendant and concern substantially the same facts and alleged violation of the Communications Act.

(b) Two or more grounds of complaint involving the same principle, subject, or statement of facts may be included in one complaint, but should be separately stated and numbered.

§ 14.42 Answers.

(a) Any defendant upon whom copy of a formal complaint is served shall answer such complaint in the manner prescribed under this section within twenty days of service of the formal complaint by the complainant, unless otherwise directed by the Commission.

(b) The answer shall advise the complainant and the Commission fully and completely of the nature of any defense, and shall respond specifically to all material allegations of the complaint. Every effort shall be made to narrow the issues in the answer. The defendant shall state concisely its defense to each claim asserted, admit or deny the averments on which the complainant relies, and state in detail the basis for admitting or denying such averment. General denials are prohibited. Denials based on information and belief are expressly prohibited unless made in good faith and accompanied by an affidavit explaining the basis for the defendant's belief and why the defendant could not reasonably ascertain the facts from the complainant or any other source. If the defendant is without knowledge or information sufficient to form a belief as to the truth of an averment, the defendant shall so state and this has the effect of a denial. When a defendant intends in good faith to deny only part of an averment, the defendant shall specify so much of it as is true and shall deny only the remainder. The defendant may deny the allegations of the complaint as specific denials of either designated averments or paragraphs.

(c) The answer shall contain proposed findings of fact, conclusions of law, and legal analysis relevant to the claims and arguments set forth in the answer.

(d) Averments in a complaint or supplemental complaint filed pursuant to §§ 14.38 and 14.39 of this subpart are deemed to be admitted when not denied in the answer.

(e) Affirmative defenses to allegations contained in the complaint shall be specifically captioned as such and presented separately from any denials made in accordance with paragraph (c) of this section.

(f) The answer shall include an information designation containing:

(1) The name, address, and position of each individual believed to have firsthand knowledge of the facts alleged with particularity in the answer, along with a description of the facts within any such individual's knowledge;

(2) A description of all documents, data compilations and tangible things in the defendant's possession, custody, or control, that are relevant to the facts alleged with particularity in the answer. Such description shall include for each document:

(i) The date it was 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 defendant 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.

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

(h) The answer shall contain certification that the defendant has, in good faith, discussed or attempted to discuss, the possibility of settlement with the complainant prior to the filing of the formal complaint. Such certification shall include a brief summary of all steps taken to resolve the dispute prior to the filing of the formal complaint. If no such steps were taken, such certificate shall state the reason(s) why the defendant believed such steps would be fruitless;

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

§ 14.43 Cross-complaints and counterclaims.

Cross-complaints seeking any relief within the jurisdiction of the Commission against any party

(complainant or defendant) to that proceeding are expressly prohibited. Any claim that might otherwise meet the requirements of a cross-complaint may be filed as a separate complaint in accordance with §§ 14.38 through 14.40 of this subpart. For purposes of this subpart, the term "cross-complaint" shall include counterclaims.

§ 14.44 Replies.

(a) Within three days after service of an answer containing affirmative defenses presented in accordance with the requirements of § 14.42(e) of this subpart, a complainant may file and serve a reply containing statements of relevant, material facts and legal arguments that shall be responsive to only those specific factual allegations and legal arguments made by the defendant in support of its affirmative defenses. Replies which contain other allegations or arguments will not be accepted or considered by the Commission.

(b) Failure to reply to an affirmative defense shall be deemed an admission of such affirmative defense and of any facts supporting such affirmative defense that are not specifically contradicted in the complaint.

(c) The reply shall contain proposed findings of fact, conclusions of law, and legal analysis relevant to the claims and arguments set forth in the reply.

(d) The reply shall include an information designation containing:

(1) The name, address and position of each individual believed to have firsthand knowledge about the facts alleged with particularity in the reply, along with a description of the facts within any such individual's knowledge.

(2) A description of all documents, data compilations and tangible things in the complainant's possession, custody, or control that are relevant to the facts alleged with particularity in the reply. Such description shall include for each document:

(i) The date 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 this chapter, for a waiver of any of the requirements of this section. Such waiver may be granted for good cause shown.

§ 14.45 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 § 14.38(c) of this subpart, 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 § 14.51(d) of this subpart. 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 § 14.51(d) of this subpart. 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 § 14.38(g) of this subpart.

§ 14.46 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 or a Commission rule or order 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.

§ 14.47 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 paragraph (a) of this section 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 § 14.50(a) of this subpart.

(d) Commission staff will consider the requests for interrogatories, properly filed and served pursuant to paragraph (a) of this section, along with any objections or oppositions thereto, properly filed and served pursuant to paragraph (b) of this section, at the initial status conference, as provided for in § 14.50(a)(5) of this subpart, 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 paragraph (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 a 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 § 14.45 of this subpart.

(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.

§ 14.48 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.

§ 14.49 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 §§ 14.39(a)(10)(i), (a)(10)(ii), 14.27(f)(1), (f)(2), and 14.44(d)(1), (d)(2) of this subpart. Any other supporting documentation or affidavits that are 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 § 14.48 of this subpart 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 § 14.50(a) of this subpart.

§ 14.50 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)(1) Parties shall meet and confer prior to the initial status conference to discuss:

(i) Settlement prospects;

(ii) Discovery;

(iii) Issues in dispute;

(iv) Schedules for pleadings;

(v) Joint statement of stipulated facts, disputed facts, and key legal issues; and

(2) 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 paragraph (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 § 14.51(d) of this subpart; or

(2) Pursuant to the requirements of paragraph (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.

§ 14.51 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 of this chapter.

(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 the party, or by the party's attorney. The signing party shall include in the document his or her address, telephone number, facsimile number and the date on which the document was signed. Copies should be conformed to the original. Unless specifically required 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 solely for purposes of delay or for any other improper purpose.

(d) All proposed orders shall be submitted both as hard copies and on computer disk formatted to be compatible with the Commission's computer system and using the Commission's current word processing software. Each disk should be submitted in "read only" mode. Each disk should be clearly labeled with the party's name, proceeding, type of pleading, and date of submission. Each disk should be accompanied by a cover letter. Parties who have submitted copies of tariffs or reports with their hard copies need not include such tariffs or reports on the disk. Upon showing of good cause, the Commission may waive the requirements of this paragraph.

§ 14.52 Copies; service; separate filings against multiple defendants.

(a) Complaints may generally be brought against only one named defendant; such actions may not be brought against multiple defendants unless the defendants 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 and, on the same day:

(1) File three copies of the complaint with the Office of the Commission Secretary;

(2) Serve two copies on the Enforcement Bureau;

and

(3) If a complaint is addressed against multiple defendants, 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 paragraph (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 this chapter. 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.

(g) Supplemental complaint proceedings. Supplemental complaints filed pursuant to § 14.39 of this subpart shall conform to the requirements set out in this section, except that the complainant need not submit a filing fee, and the complainant may effect service pursuant to paragraph (f) of this section rather than paragraph (d) of this section numerals.

APPENDIX C

Proposed Rules

The Federal Communications Commission proposes to amend Part 14 of Title 47 of the Code of Federal Regulations as follows:

Part 14 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 14 reads as follows:

AUTHORITY: 47 U.S.C. 151, 154(i), 154(j), 208, 255, 617, 618.

2. The Federal Communications Commission proposes amending Part 14 by adding new Subpart E.

*****

Subpart E – Internet Browsers Built Into Telephones Used With Public Mobile Services.

§ 14.60 Internet Browsers built into Mobile Phones.

(a) Accessibility- If a manufacturer of a telephone used with public mobile services (as such term is defined in Section 710(b)(4)(B) of the Act) includes an Internet browser in such telephone, or if a provider of mobile service arranges for the inclusion of a browser in telephones to sell to customers, the manufacturer or provider shall ensure that the functions of the included browser (including the ability to launch the browser) are accessible to and usable by individuals who are blind or have a visual impairment, unless doing so is not achievable, except that this subpart shall not impose any requirement on such manufacturer or provider--

(1) to make accessible or usable any Internet browser other than a browser that such manufacturer or provider includes or arranges to include in the telephone; or

(2) to make Internet content, applications, or services accessible or usable (other than enabling individuals with disabilities to use an included browser to access such content, applications, or services).

(b) Industry Flexibility- A manufacturer or provider may satisfy the requirements of this subpart with respect to such telephone or services by--

(1) ensuring that the telephone or services that such manufacture or provider offers is accessible to and usable by individuals with disabilities without the use of third party applications, peripheral devices, software, hardware, or customer premises equipment; or

(2) using third party applications, peripheral devices, software, hardware, or customer premises equipment that is available to the consumer at nominal cost and that individuals with disabilities can access.

AUTHORITY: 47 U.S.C. 151, 154(i), 154(j), 208, 255, 617, 618, 619

APPENDIX D

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended ("RFA"),[1] an Initial Regulatory Flexibility Analysis ("IRFA") was included in the *Accessibility NPRM* in CG Docket No. 10-213, WT Docket No. 96-198, and CG Docket No. 10-145.[2] The Commission sought written public comment on the proposals in these dockets, including comment on the IRFA. This Final Regulatory Flexibility Analysis ("FRFA") conforms to the RFA.[3]

B. Need for, and Objectives of, the Report and Order

2. The *Report and Order* implements Congress' mandate that people with disabilities have access to advanced communications services ("ACS") and ACS equipment. Specifically, these rules implement Sections 716 and 717 of the Communications Act of 1934, as amended, which were added by the "Twenty-First Century Communications and Video Accessibility Act of 2010" ("CVAA").[4] Given the fundamental role ACS plays in today's world, the Commission believes the CVAA represents the most significant legislation for people with disabilities since the passage of the Americans with Disabilities Act of 1990 ("ADA").[5] The inability to access communications 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.

3. The *Report and Order* implements the requirements of Section 716 of the Act, which requires providers of ACS and manufacturers of equipment used for ACS to make their products accessible to people with disabilities, unless accessibility is not achievable.[6] The Commission also adopts rules to implement Section 717 of the Act, which requires the Commission to establish new recordkeeping and enforcement procedures for manufacturers and providers subject to Sections 255, 716 and 718.[7]

4. The *Report and Order* applies to ACS, which includes interconnected VoIP, non-interconnected VoIP, electronic messaging service, and interoperable video conferencing service.[8] The *Report and Order* requires manufacturers and service providers subject to Section 716 to comply with the requirements of Section 716 either by building accessibility features into their equipment or service or by

---

[1] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601–12, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[2] *See Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010; Amendments to the Commission's Rules Implementing Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996; In the Matter of Accessible Mobile Phone Options for People who are Blind, Deaf-Blind, or Have Low Vision*, Notice of Proposed Rulemaking, 26 FCC Rcd 3133, 3219 App.C (2010) ("*Accessibility NPRM*").

[3] *See* 5 U.S.C. § 604.

[4] Pub. L. No. 111-260, § 104.

[5] Pub. L. No. 101-336, 104 Stat. 327 (1990) (codified at 42 U.S.C. §§ 12101-12213).

[6] *See* 47 U.S.C. § 617.

[7] *See* 47 U.S.C. § 618.

[8] 47 U.S.C. § 153(53).

relying on third party applications or other accessibility solutions. If accessibility is not achievable by building in accessibility or relying on third party applications or other accessibility solutions, manufacturers and service providers must make their products compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access, unless that is not achievable.

5. The *Report and Order* holds entities that make or produce end user equipment, including tablets, laptops, and smartphones, responsible for the accessibility of the hardware and manufacturer-installed software used for e-mail, SMS text messaging, and other ACS. The *Report and Order* also holds these entities responsible for software upgrades made available by such manufacturers for download by users. Additionally, the *Report and Order* concludes that, except for third party accessibility solutions, there is no liability for a manufacturer of end user equipment for the accessibility of software that is installed or downloaded by a user or made available for use in the cloud.

6. The *Report and Order* requires manufacturers and service providers to consider performance objectives at the design stage as early and consistently as possible and implement such evaluation to the extent that it is achievable. The *Report and Order* incorporates into the performance objectives the outcome-oriented definitions of "accessible," "compatibility," and "usable" contained in the rules regarding the accessibility of telecommunications services and equipment. The *Report and Order* adopts the four statutory factors to determine achievability. The *Report and Order* further expands on the fourth achievability factor – the extent to which an offering has varied functions, features, and prices – by allowing entities to not consider what is achievable with respect to every product, if such entity offers consumers with the full range of disabilities varied functions, features, and prices.

7. The *Report and Order* also establishes processes for providers of ACS and ACS equipment manufacturers to seek waivers of the Section 716 obligations, both individual and class, for offerings which are designed for multiple purposes but are designed primarily for purposes other than using ACS. The *Report and Order* clarifies what constitutes "customized equipment or services" for purposes of an exclusion of the Section 716 requirements. Pointing to an insufficient record upon which to grant a permanent exemption for small entities, the *Report and Order* also temporarily exempts all manufacturers of ACS equipment and all providers of ACS from the obligations of Section 716 if they qualify as small business concerns under the Small Business Administration's ("SBA") rules and size standards for the industry in which they are primarily engaged.

8. Specifically, the *Report and Order* adopted for this temporary exemption the SBA's maximum size standards that are used to determine whether a business concern qualifies as a small business concern in its primary industry.[9] These size standards are based on the maximum number of employees or maximum annual receipts of a business concern.[10] The SBA categorizes industries for its size standards using the North American Industry Classification System ("NAICS"), a "system for classifying establishments by type of economic activity."[11] The *Report and Order* identified some NAICS codes for possible primary industry classifications of ACS equipment manufacturers and ACS providers and the relevant SBA size standards associated with the codes.[12]

---

[9] *See* 13 C.F.R. § 121.201.

[10] 13 C.F.R. § 121.106 (describing how number of employees is calculated); 13 C.F.R. § 121.104 (describing how annual receipts is calculated).

[11] North American Industry Classification System; Revision for 2012, 76 Fed. Reg. 51240 (Aug. 17, 2011) ("*NAICS Final Decision*").

[12] This is not a comprehensive list of the primary industries and associated SBA size standards of every possible manufacturer of ACS equipment or provider of ACS. This list is merely representative of some primary industries in which entities that manufacture ACS equipment or provide ACS may be primarily engaged. It is ultimately up to (continued....)

	NAICS Classification[13]	NAICS Code	SBA Size Standard[14]
Services[15]	Wired Telecommunications Carriers	517110	1,500 or fewer employees
	Wireless Telecommunications Carriers (except satellites)	517210	1,500 or fewer employees
	Telecommunications Resellers	517911	1,500 or fewer employees
	All Other Telecommunications	517919	$25 million or less in annual receipts
	Software Publishers	511210	$25 million or less in annual receipts
	Internet Publishing and Broadcasting and Web Search Portals	519130	500 or fewer employees
	Data Processing, Hosting, and Related Services	518210	$25 million or less in annual receipts
Equipment[16]	Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing	334220	750 or fewer employees
	Electronic Computer Manufacturing	334111	1,000 or fewer employees
	Telephone Apparatus Manufacturing	334210	1,000 or fewer employees
	Other Communications Equipment Manufacturing	334290	750 or fewer employees
	Software Publishers	511210	$25 million or less in annual receipts
	Internet Publishing and Broadcasting and Web Search Portals	519130	500 or fewer employees

9. As stated above, the *Report and Order* indicated that this temporary exemption is self-executing. Under this approach, covered entities must determine whether they qualify for the exemption based upon their ability to meet the SBA's rules and the size standard for the relevant NAICS industry category for the industry in which they are primarily engaged. Entities that manufacture ACS equipment or provide ACS may raise this temporary exemption as a defense in an enforcement proceeding. Entities claiming the exemption must be able to demonstrate that they met the exemption criteria during the estimated start of the design phase of the lifecycle of the product or service that is the subject of the complaint. The *Report and Order* stated that if an entity no longer meets the exemption criteria, it must

(Continued from previous page)
an entity seeking the temporary exemption to make a determination regarding their primary industry, and justify such determination in any enforcement proceeding.

[13] The definitions for each NAICS industry classification can be found by entering the six digit NAICS code in the "2007 NAICS Search" function available at the NAICS homepage, http://www.census.gov/eos/www/naics/index.html. The U.S. Office of Management and Budget has revised NAICS for 2012, however, the codes and industry categories listed herein are unchanged. OMB anticipates releasing a 2012 NAICS UNITED STATES MANUAL or supplement in January 2012. *See NAICS Final Decision*, 76 Fed. Reg. at 51240.

[14] *See* 13 C.F.R. § 121.201 for a full listing of SBA size standards by six-digit NAICS industry code. The standards listed in this column establish the maximum size an entity in the given NAICS industry may be to qualify as a small business concern.

[15] *See* accompanying *Report and Order* at Section III.A.

[16] *See* accompanying *Report and Order* at Section III.A.

comply with Section 716 and Section 717 for all subsequent products or services or substantial upgrades of products or services that are in the development phase of the product or service lifecycle, or any earlier stages of development, at the time they no longer meet the criteria.

10. The *Report and Order* indicated that such an exemption was necessary to avoid the possibility of unreasonably burdening "small and entrepreneurial innovators and the significant value that they add to the economy. The *Report and Order* states that the temporary exemption enables us to provide relief to those entities that may possibly lack legal, financial, or technical capability to comply with the Act until we further develop the record to determine whether small entities should be subject to a permanent exemption and, if so, the criteria to be used for defining which small entities should be subject to such permanent exemption. The temporary exemption will begin on the effective date of the rules adopted in the *Report and Order*[17] and will expire the earlier of the effective date of small entity exemption rules adopted pursuant to the *Further Notice of Proposed Rulemaking* ("*Further Notice*") or October 8, 2013.

11. The Commission establishes procedures in the *Report and Order* to facilitate the filing of formal and informal complaints, including a discretionary pre-filing notice procedure to facilitate dispute resolution: as a prerequisite to filing an informal complaint, complainants must first file a "Request for Dispute Assistance" with the Consumer and Governmental Affairs Bureau's Disability Rights Office. In addition, under the rules adopted in the *Report and Order*, manufacturers and providers subject to Section 716 and Section 255 must maintain records of (1) their efforts to consult with people with disabilities; (2) descriptions of the accessibility features of their products and services; and (3) information about the compatibility of their products with peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access. The *Report and Order* also reminds covered entities that, while the Commission does not require them to create and maintain any particular records to claim a defense that it is not achievable for them to make their products or services accessible, they bear the burden of proof on this defense.

C. Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA and Summary of the Assessment of the Agency of Such Issues

12. In response to the *Accessibility NPRM*, one commenter addressed the proposed rules and policies implicated in the IRFA. NTCA requests that the Commission adopt an exemption for small entities from the obligations of Section 716 and the Commission's rules implementing Section 716 for small telecommunications carriers as defined by the SBA.[18] Alternatively, NTCA requests a waiver process for small entities to seek and qualify for a waiver.[19] NTCA argues that small telecommunications companies "lack the size and resources to influence the design or features of equipment . . . . [and] the purchasing power to enable them to buy equipment in bulk for a reduced price, or to compel sufficient production to ensure that compliant equipment 'trickles down' to smaller purchasers within a specific timeframe."[20]

13. As explained in the *Report and Order*, we lack a sufficient record upon which to base a permanent exemption for small entities. However, we believe that some relief is necessary for entities that may be unreasonably burdened by conducting an achievability analysis and complying with the recordkeeping and certification requirements as necessary under the Act and in accordance with the *Report and Order*. Therefore, we exercise our discretion under the Act to temporarily exempt from the obligations of Section 716 providers of ACS and manufacturers of ACS equipment that qualify as small

[17] *See* accompanying *Report and Order* at Section III.A.5.

[18] NTCA Comments at 2.

[19] NTCA Comments at 2.

[20] NTCA Comments at 3.

business concerns under the applicable SBA rules and size standards, and seek further comment on whether to exercise our authority to grant a permanent small entity exemption in the accompanying *Further Notice*, and if so, what criteria we should apply for defining which small entities should be subject to such permanent exemption. As such, the *Report and Order* extends temporary relief to all small business concerns that would otherwise have to comply with the Act.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

14. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that face possible significant economic impact by the adoption of proposed rules.[21] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[22] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[23] A "small business concern" is one that (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[24]

15. To assist the Commission in analyzing the total number of small entities potentially affected by the proposals in the *Further Notice*, we ask commenters to estimate the number of small entities that may be affected. To assist in assessing the nature and number of small entities that face possible significant economic impact by the proposals in the *Further Notice*, we seek comment on the industry categories below and our estimates of the entities in each category that can, under relevant SBA standards or standards previously approved by the SBA for small businesses, be classified as small. Where a commenter proposes an exemption from the requirements of Section 716 and in effect Section 717, we also seek estimates from that commenter on the number of small entities in each category that would be exempted from compliance with Section 716 and in effect Section 717 under the proposed exemption, the percentage of market share for the service or product that would be exempted, and the economic impact, if any, on those entities that are not covered by the proposed exemption. While the *Further Notice* and this IRFA seek comment on whether and how the Commission should permanently exempt small entities from the requirements of Section 716 and in effect Section 717 for the purposes of building a record on that issue, we will assume, for the narrow purpose of including a thorough regulatory impact analysis in this IRFA, that no such exemptions will be provided.

16. Many of the issues raised in the *Further Notice* relate to clarifying obligations on entities already covered by the *Report and Order*, which may affect a broad range of service providers and equipment manufacturers. The *Further Notice* seeks comment on making permanent a temporary exemption for small entities that qualify as small business concerns under the SBA's rules and small business size standards, or some other criteria. Therefore, it is possible that all entities that would be required to comply with Section 716 and Section 717, but are small business concerns or qualify as small entities under some other criteria, will be exempt from the provisions of the proposed rules implementing Section 716 and Section 717. The CVAA, however, does not provide the flexibility for the Commission to adopt an exemption for small entities from compliance with Section 718. Therefore, we estimate below the impact on small entities absent a permanent exemption from Section 716 and Section 717, and

---

[21] 5 U.S.C. § 604(a)(3).

[22] 5 U.S.C. § 601(6).

[23] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), 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).

[24] 15 U.S.C. § 632.

small entities that may have to comply with Section 718. Specifically, we analyze the number of small businesses engaged in manufacturing that may be affected by the *Further Notice*, absent a permanent small entity exemption, including manufacturers of equipment used to provide interconnected and non-interconnected VoIP, electronic messaging, and interoperable video conferencing services. We then analyze the number of small businesses engaged as service providers that may be affected by the *Report and Order*, absent a permanent small entity exemption, including providers of interconnected and non-interconnected VoIP, electronic messaging services, interoperable video conferencing services, wireless services, wireline services, and other relevant services.

17. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* Our action may, over time, affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive, statutory small entity size standards.[25] First, nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA.[26] In addition, a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[27] Nationwide, as of 2007, there were approximately 1,621,315 small organizations.[28] Finally, the term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[29] Census Bureau data for 2011 indicate that there were 89,476 local governmental jurisdictions in the United States.[30] We estimate that, of this total, as many as 88,506 entities may qualify as "small governmental jurisdictions."[31] Thus, we estimate that most governmental jurisdictions are small.

1. Equipment Manufacturers

a. Manufacturers of Equipment to Provide VoIP

18. Entities manufacturing equipment used to provide interconnected VoIP, non-interconnected VoIP, or both are generally found in one of two Census Bureau categories, "Electronic Computer Manufacturing"[32] or "Telephone Apparatus Manufacturing."[33] We include here an analysis of

---

[25] *See* 5 U.S.C. §§ 601(3)–(6).

[26] *See* SBA, Office of Advocacy, "Frequently Asked Questions," http://web.sba.gov/faqs (last visited May 6, 2011) (figures are from 2009).

[27] 5 U.S.C. § 601(4).

[28] INDEPENDENT SECTOR, THE NEW NONPROFIT ALMANAC & DESK REFERENCE (2010).

[29] 5 U.S.C. § 601(5).

[30] U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES: 2011, Table 427 (2007).

[31] The 2007 U.S Census data for small governmental organizations are not presented based on the size of the population in each such organization. There were 89,476 small governmental organizations in 2007. If we assume that county, municipal, township and school district organizations are more likely than larger governmental organizations to have populations of 50,000 or less, the total of these organizations is 52,125. If we make the same assumption about special districts, and also assume that special districts are different from county, municipal, township, and school districts, in 2007 there were 37,381 special districts. Therefore, of the 89,476 small governmental organizations documented in 2007, as many as 89,506 may be considered small under the applicable standard. This data may overestimate the number of such organizations that has a population of 50,000 or less. U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES 2011, Tables 427, 426 (data cited therein are from 2007).

[32] U.S. Census Bureau, 2007 NAICS Definitions, 334111 Electronic Computer Manufacturing, http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=334111&search=2007%20NAICS%20Search.

[33] U.S. Census Bureau, 2007 NAICS Definitions, 334210 Telephone Apparatus Manufacturing, http://www.census.gov/naics/2007/def/ND334210.HTM.

the possible significant economic impact of our proposed rules on manufacturers of equipment used to provide both interconnected and non-interconnected VoIP because it is not possible to separate available data on these two manufacturing categories for VoIP equipment. Our estimates below likely greatly overstate the number of small entities that manufacture equipment used to provide ACS, including interconnected VoIP. However, in the absence of more accurate data, we present these figures to provide as thorough an analysis of the impact on small entities as possible.

19. *Electronic Computer Manufacturing*. The Census Bureau defines this category to include "establishments primarily engaged in manufacturing and/or assembling electronic computers, such as mainframes, personal computers, workstations, laptops, and computer servers. Computers can be analog, digital, or hybrid . . . The manufacture of computers includes the assembly or integration of processors, coprocessors, memory, storage, and input/output devices into a user-programmable final product."[34]

20. In this category, the SBA deems and electronic computer manufacturing business to be small if it has 1,000 employees or less.[35] For this category of manufacturers, Census data for 2007 show that there were 421 establishments that operated that year. Of those 421, 384 had 100 or fewer employees and 37 had 100 or more employees.[36] On this basis, we estimate that the majority of manufacturers of equipment used to provide electronic messaging services in this category are small.

21. *Telephone Apparatus Manufacturing*. The Census Bureau defines this category to comprise "establishments primarily engaged in manufacturing wire telephone and data communications equipment. These products may be standalone or board-level components of a larger system. Examples of products made by these establishments are central office switching equipment, cordless telephones (except cellular), PBX equipment, telephones, telephone answering machines, LAN modems, multi-user modems, and other data communications equipment, such as bridges, routers, and gateways."[37]

22. In this category, the SBA deems a telephone apparatus manufacturing business to be small if it has 1,000 or fewer employees.[38] For this category of manufacturers, Census data for 2007 shows there were 398 such establishments in operation.[39] Of those 398 establishments, 393 (approximately 99%) had 1,000 or fewer employees and, thus, would be deemed small under the applicable SBA size standard.[40] On this basis, the Commission estimates that approximately 99% or more of the manufacturers of equipment used to provide VoIP in this category are small.

b. Manufacturers of Equipment to Provide Electronic Messaging

23. Entities that manufacture equipment (other than software) used to provide electronic messaging services are generally found in one of three Census Bureau categories: "Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing,"[41] "Electronic Computer

[34] U.S. Census Bureau, 2007 NAICS Definitions, 334111 Electronic Computer Manufacturing, http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=334111&search=2007%20NAICS%20Search.

[35] 13 C.F.R. 121.201, NAICS Code 334111.

[36] http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-_skip=300&-ds_name=EC0731I1&-_lang=en

[37] U.S. Census Bureau, 2007 NAICS Definitions, 334210 Telephone Apparatus Manufacturing, http://www.census.gov/naics/2007/def/ND334210.HTM.

[38] 13 C.F.R. § 121.201, NAICS Code 334210.

[39] U.S. Census Bureau, American FactFinder, 2007 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334210 (rel. Nov. 16, 2010); http://factfinder.census.gov.

[40] *Id.*

[41] U.S. Census Bureau, 2007 NAICS Definitions, 334220 Radio and Television Broadcasting and Wireless Communications Equipment, http://www.census.gov/econ/industry/def/d334220.htm.

Manufacturing,"[42] or "Telephone Apparatus Manufacturing."[43]

24. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing*. The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment." The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing which is: all such firms having 750 or fewer employees. According to Census Bureau data for 2007, there were a total of 919 establishments in this category that operated for part or all of the entire year. Of this total, 771 had less than 100 employees and 148 had more than 100 employees.[44] Thus, under this size standard, the majority of firms can be considered small.

25. *Electronic Computer Manufacturing*. The Census Bureau defines this category to include "establishments primarily engaged in manufacturing and/or assembling electronic computers, such as mainframes, personal computers, workstations, laptops, and computer servers. Computers can be analog, digital, or hybrid. . . . The manufacture of computers includes the assembly or integration of processors, coprocessors, memory, storage, and input/output devices into a user-programmable final product."[45]

26. In this category the SBA deems an electronic computer manufacturing business to be small if it has 1,000 or fewer employees.[46] For this category of manufacturers, Census data for 2007 show that there were 421 such establishments that operated that year. Of those 421 establishments, 384 had 1,000 or fewer employees.[47] On this basis, we estimate that the majority of the manufacturers of equipment used to provide electronic messaging services in this category are small.

27. *Telephone Apparatus Manufacturing*. The Census Bureau defines this category to comprise "establishments primarily engaged in manufacturing wire telephone and data communications equipment. These products may be stand alone or board-level components of a larger system. Examples of products made by these establishments are central office switching equipment, cordless telephones (except cellular), PBX equipment, telephones, telephone answering machines, LAN modems, multi-user modems, and other data communications equipment, such as bridges, routers, and gateways."[48]

28. In this category the SBA deems a telephone apparatus manufacturing business to be small if it has 1,000 or fewer employees.[49] For this category of manufacturers, Census data for 2007 shows that

---

[42] U.S. Census Bureau, 2007 NAICS Definitions, 334111 Electronic Computer Manufacturing, http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=334111&search=2007%20NAICS%20Search.

[43] U.S. Census Bureau, 2007 NAICS Definitions, 334210 Telephone Apparatus Manufacturing, http://www.census.gov/naics/2007/def/ND334210.HTM.

[44] http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=300&-ds_name=EC0731I1&-_lang=en.

[45] U.S. Census Bureau, 2007 NAICS Definitions, 334111 Electronic Computer Manufacturing, http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=334111&search=2007%20NAICS%20Search.

[46] 13 C.F.R. § 121.201, NAICS Code 334111.

[47] http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-_skip=300&-ds_name=EC0731I1&-_lang=en.

[48] U.S. Census Bureau, 2007 NAICS Definitions, 334210 Telephone Apparatus Manufacturing, http://www.census.gov/naics/2007/def/ND334210.HTM.

[49] 13 C.F.R. § 121.201, NAICS Code 334210.

there were 398 such establishments that operated that year.[50] Of those 398 establishments, 393 (approximately 99%) had 1,000 or fewer employees and, thus, would be deemed small under the applicable SBA size standard.[51] On this basis, the Commission estimates that approximately 99% or more of the manufacturers of equipment used to provide electronic messaging services in this category are small.

c. Manufacturers of Equipment Used to Provide Interoperable Video Conferencing Services

29. Entities that manufacture equipment used to provide interoperable and other video conferencing services are generally found in the Census Bureau category: "Other Communications Equipment Manufacturing." The Census Bureau defines this category to include: "establishments primarily engaged in manufacturing communications equipment (except telephone apparatus, and radio and television broadcast, and wireless communications equipment)."[52]

30. *Other Communications Equipment Manufacturing*. In this category, the SBA deems a business manufacturing other communications equipment to be small if it has 750 or fewer employees.[53] For this category of manufacturers, Census data for 2007 show that there were 452 establishments that operated that year. Of the 452 establishments 406 had fewer than 100 employees and 46 had more than 100 employees. Accordingly, the Commission estimates that a substantial majority of the manufacturers of equipment used to provide interoperable and other video-conferencing services are small.[54]

2. Service Providers

a. Providers of VoIP

31. Entities that provide interconnected or non-interconnected VoIP or both are generally found in one of two Census Bureau categories, "Wired Telecommunications Carriers" or "All Other Telecommunications."

32. *Wired Telecommunications Carriers*. The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry."[55]

33. In this category, the SBA deems a wired telecommunications carrier to be small if it has

---

[50] U.S. Census Bureau, American FactFinder, 2007 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334111 (rel. Nov. 16, 2010); http://factfinder.census.gov.

[51] *Id.*

[52] U.S. Census Bureau, 2007 NAICS Definitions, 334290 Other communications equipment manufacturing, http://www.census.gov/econ/industry/def/d334290.htm.

[53] 13 C.F.R. 121.201, NAICS Code 334220.

[54] http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-_skip=300&-ds_name=EC0731I1&-_lang=en.

[55] U.S. Census Bureau, 2007 NAICS Definitions, 517110 Wired Telecommunications Carriers, http://www.census.gov/econ/industry/def/d517110.htm.

1,500 or fewer employees.[56] Census data for 2007 shows 3,188 firms in this category[57] Of these 3,188 firms, only 44 had 1,000 or more employees. While we could not find precise Census data on the number of firms with in the group with 1,500 or fewer employees, it is clear that at least 3,144 firms with fewer than 1,000 employees would be in that group. On this basis, the Commission estimates that a substantial majority of the providers of interconnected VoIP, non-interconnected VoIP, or both in this category, are small.[58]

34. *All Other Telecommunications.* Under the 2007 U.S. Census definition of firms included in the category "All Other Telecommunications (NAICS Code 517919)"comprises "establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry."[59]

35. In this category, the SBA deems a provider of "all other telecommunications" services to be small if it has $25 million or less in average annual receipts.[60] For this category of service providers, Census data for 2007 shows that there were 2,383 such firms that operated that year.[61] Of those 2,383 firms, 2,346 (approximately 98%) had $25 million or less in average annual receipts and, thus, would be deemed small under the applicable SBA size standard. On this basis, Commission estimates that approximately 98% or more of the providers of interconnected VoIP, non-interconnected VoIP, or both in this category are small.[62]

b. Providers of Electronic Messaging Services

36. Entities that provide electronic messaging services are generally found in one of the following Census Bureau categories, "Wireless Telecommunications Carriers (except Satellites)," "Wired Telecommunications," or "Internet Publishing and Broadcasting and Web Search Portals."

37. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.[63] Prior to that time, such

---

[56] 13 C.F.R. § 121.201, NAICS Code 517110.

[57] http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.

[58] *Id.* As noted in para. 18 above with regard to the distinction between manufacturers of equipment used to provide interconnected VoIP and manufactures of equipment to provide non-interconnected VoIP, our estimates of the number of the number of providers of non-interconnected VoIP (and the number of small entities within that group) are likely overstated because we could not draw in the data a distinction between such providers and those that provide interconnected VoIP. However, in the absence of more accurate data, we present these figures to provide as thorough an analysis of the impact on small entities as we can at this time.

[59] U.S. Census Bureau, 2007 NAICS Definitions, 517919 All Other Telecommunications, http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517919&search=2007%20NAICS%20Search.

[60] 13 C.F.R. § 121.201, NAICS Code 517919.

[61] http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=900&-ds_name=EC0751SSSZ4&-_lang=en.

[62] *See* discussion *supra* note 58, regarding possible overestimation of firms and small entities providing non-interconnected VoIP services.

[63] U.S. Census Bureau, 2007 NAICS Definitions, 517210 Wireless Telecommunications Carriers (Except Satellite), http://www.census.gov/naics/2007/def/ND517210.HTM#N517210.

firms were within the now-superseded categories of "Paging" and "Cellular and Other Wireless Telecommunications."[64] Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.[65] For the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007 shows that there were 1,383 firms that operated that year.[66] Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service ("PCS"), and Specialized Mobile Radio ("SMR") Telephony services.[67] Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.[68] Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

38. *Wired Telecommunications Carriers.* For the 2007 US Census definition of firms included in the category, "Wired Telecommunications Carriers (NAICS Code 517110)," see paragraph 32 above.

39. In this category, the SBA deems a wired telecommunications carrier to be small if it has 1,500 or fewer employees.[69] Census data for 2007 shows 3,188 firms in this category.[70] Of these 3,188 firms, only 44 (approximately 1%) had 1,000 or more employees.[71] While we could not find precise Census data on the number of firms in the group with 1,500 or fewer employees, it is clear that at least the 3,188 firms with fewer than 1,000 employees would be in that group. Thus, at least 3,144 of these 3,188 firms (approximately 99%) had 1,500 or fewer employees. On this basis, the Commission estimates that approximately 99% or more of the providers of electronic messaging services in this category are small.

40. *Internet Publishing and Broadcasting and Web Search Portals.* The Census Bureau defines this category to include "establishments primarily engaged in 1) publishing and/or broadcasting content on the Internet exclusively or 2) operating Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format (and known as Web search portals). The publishing and broadcasting establishments in this industry do not provide traditional (non-Internet) versions of the content that they publish or broadcast. They provide textual, audio, and/or video content of general or specific interest on the Internet exclusively. Establishments known as Web search portals often provide additional Internet services, such as e-mail, connections to

---

[64] U.S. Census Bureau, 2002 NAICS Definitions, 517211 Paging, http://www.census.gov/epcd/naics02/def/NDEF517.HTM.; U.S. Census Bureau, 2002 NAICS Definitions, "517212 Cellular and Other Wireless Telecommunications"; http://www.census.gov/epcd/naics02/def/NDEF517.HTM.

[65] 13 C.F.R. § 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 C.F.R. citations were 13 C.F.R. § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

[66] U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-_skip=700&-ds_name=EC0751SSSZ5&-_lang=en.

[67] *See Trends in Telephone Service,* at tbl. 5.3.

[68] *Id.*

[69] 13 C.F.R. § 121.201, NAICS Code 517110.

[70] U.S. Census Bureau, American FactFinder, 2007 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 517110 (rel. Nov. 19, 2010); http://factfinder.census.gov.

[71] *Id.*

other web sites, auctions, news, and other limited content, and serve as a home base for Internet users."[72]

41. In this category, the SBA deems an Internet publisher or Internet broadcaster or the provider of a web search portal on the Internet to be small if it has 500 or fewer employees.[73] For this category of manufacturers, Census data for 2007 shows that there were 2,705 such firms that operated that year.[74] Of those 2,705 firms, 2,682 (approximately 99%) had 500 or fewer employees and, thus, would be deemed small under the applicable SBA size standard.[75] On this basis, the Commission estimates that approximately 99% or more of the providers of electronic messaging services in this category are small.

42. *Data Processing, Hosting, and Related Services*. The Census Bureau defines this category to include "establishments primarily engaged in providing infrastructure for hosting or data processing services. These establishments may provide specialized hosting activities, such as web hosting, streaming services or application hosting; provide application service provisioning; or may provide general time-share mainframe facilities to clients. Data processing establishments provide complete processing and specialized reports from data supplied by clients or provide automated data processing and data entry services."[76]

43. In this category, the SBA deems a data processing, hosting, or related services provider to be small if it has $25 million or less in annual receipts.[77] For this category of providers, Census data for 2007 shows that there were 14,193 such establishments that operated that year.[78] Of those 14,193 firms, 12,985 had less than $10 million in annual receipts, and 1,208 had greater than $10 million.[79] Although no data is available to confirm the number of establishments with greater than $25 million in receipts, the available data confirms the majority of establishments in this category were small. On this basis, the Commission estimates that approximately 96% of the providers of electronic messaging services in this category are small.

c. Providers of Interoperable Video Conferencing Services

44. Entities that provide interoperable video conferencing services are found in the Census Bureau Category "All Other Telecommunications."

45. *All Other Telecommunications*. For the 2007 US Census definition of firms included in the category, "All Other Telecommunications (NAICS Code 517919)," see paragraph 34 above.

46. In this category, the SBA deems a provider of "all other telecommunications" services to be small if it has $25 million or less in average annual receipts.[80] Census data for 2007 show that there

---

[72] U.S. Census Bureau, 2007 NAICS Definitions, 519130 Internet Publishing and Broadcasting and Web Search Portals, http://www.naics.com/censusfiles/ND519130.HTM.

[73] 13 C.F.R. § 121.201, NAICS Code 519130.

[74] U.S. Census Bureau, American FactFinder, 2007 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 519130 (rel. Nov. 19, 2010); http://factfinder.census.gov.

[75] *Id.*

[76] U.S. Census Bureau, 2007 NAICS Definition, 518210 Data Processing, Hosting, and Related Services, http://www.census.gov/cgi-bin/sssd/naics/naicsrch.

[77] 13 C.F.R. § 121.201; NAICS Code 518210.

[78] http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-_skip=800&-ds_name=EC0751SSSZ1&-_lang=en.

[79] *Id.*

[80] 13 C.F.R. § 121.201, NAICS Code 517919.