§ 10.482 Assistance towing.

(a) This section contains the requirements to qualify for an endorsement authorizing an applicant to engage in assistance towing. The endorsement applies to all licenses except those for master and mate (pilot) of towing vessels and those for master or mate authorizing service on inspected vessels over 200 gross tons. Holders of any of these licenses may engage in assistance towing within the scope of the licenses and without the endorsement.

* * * * *

§ 10.701 [Amended]

24. In § 10.701(a), remove the words ''operator of uninspected towing vessels'' and add, in their place, the words ''master or mate (pilot) of towing vessels''.

§ 10.703 [Amended]

25. In § 10.703(a), remove the words ''operator of uninspected towing vessels'' and add, in their place, the words ''master or mate (pilot) of towing vessels''.

§ 10.901 [Amended]

26. In § 10.901(b)(1), remove the words ''uninspected towing vessels'' and add, in their place, the words ''master or mate (pilot) of towing vessels''.

27. In § 10.903—

a. In paragraph (c) in Table 10.903–1, in the entry for STCW CODE II/2, p. 3 & 4, add an ''X'' in column 7;

b. In paragraph (c) in Table 10.903–1, in the entry for STCW CODE II/3, remove the ''X'' in column 7; and

c. Revise paragraphs (a)(18), (b)(4), and (c)(7) to read as follows:

§ 10.903 Licenses requiring examinations.

(a) * * *

(18)(i) Apprentice mate (steersman) of towing vessels;

(ii) Apprentice mate (steersman) of towing vessels, harbor assist;

* * * * *

(b) * * *

(4) Master or mate (pilot) of towing vessels (endorsed for the same route).

(c) * * *

(7) Master or mate of towing vessels of over 200 gross tons, oceans (domestic trade) and near-coastal.

* * * * *

28. In § 10.910, revise paragraphs 10 through 12 in Table 10.910–1 to read as follows:

§ 10.910 Subjects for deck licenses.

* * * * *

10. Apprentice mate, towing vessels, ocean (domestic trade) and near-coastal routes.

11. Apprentice mate (steersman), towing vessels, Great Lakes and inland routes.

12. Steersman, towing vessels, Western Rivers.

* * * * *

PART 15—MANNING REQUIREMENTS

29. Revise the authority citation for part 15 to read as follows:

Authority: 46 U.S.C. 2101, 2103, 3306, 3703, 8101, 8102, 8104, 8105, 8301, 8304, 8502, 8503, 8701, 8702, 8901, 8902, 8903, 8904, 8905(b), and 9102; and 49 CFR 1.45 and 1.46.

§ 15.301 [Amended]

30. Section 15.301 is amended as follows:

a. In paragraph (a), add the definition of *Disabled Vessel*, in alphabetical order;

b. Remove paragraph (b)(6); and

c. Redesignate paragraphs (b)(7) through (10) as paragraphs (b)(6) through (9).

The addition to § 15.301(a) reads as follows:

(a) * * *

Disabled vessel means a vessel that needs assistance, whether docked, moored, anchored, aground, adrift, or under way; but does not mean a barge or any other vessel not regularly operated under its own power.

* * * * *

31. Revise § 15.610 to read as follows:

§ 15.610 Master and mate (pilot) of towing vessels.

Every towing vessel at least 8 meters (at least 26 feet) in length measured from end to end over the deck (excluding sheer), except a vessel described by the next sentence, must be under the direction and control of a person licensed as master or mate (pilot) of towing vessels or as master or mate of vessels of appropriate gross tonnage holding an endorsement on his or her license for towing vessels. This does not apply to any vessel engaged in assistance towing, or to any towing vessel of less than 200 gross tons engaged in the offshore mineral and oil industry if the vessel has sites or equipment of that industry as its place of departure or ultimate destination.

§ 15.705 [Amended]

32. In § 15.705(d), remove the words ''individual operating an uninspected towing vessel'' and add, in their place, the words ''master or mate (pilot) operating a towing vessel''; and remove the words ''individuals serving as operators of uninspected towing vessels'' and add, in their place, the words ''masters or mates (pilots) serving as operators of towing vessels''.

33. In § 15.805, add paragraph (a)(5) to read as follows:

§ 15.805 Master.

(a) * * *

(5) Every towing vessel of at least 8 meters (at least 26 feet) or more in length.

* * * * *

34. In § 15.810, redesignate paragraphs (d) and (e) as (e) and (f); and add a new paragraph (d) to read as follows:

§ 15.810 Mates.

* * * * *

(d) Each person in charge of the navigation or maneuvering of a towing vessel of at least 8 meters (at least 26 feet) in length shall hold either a license authorizing service as mate of towing vessels—or, on inland routes, as pilot of towing vessels—or a license as master of vessels of appropriate gross tonnage according to the routes, endorsed for towing vessels.

* * * * *

35. Revise § 15.910 to read as follows:

§ 15.910 Towing vessels.

No person may serve as master or mate (pilot) of any towing vessel of at least 8 meters (at least 26 feet) in length unless he or she holds a license authorizing such service.

Dated: November 9, 1999.

R.C. North,

Rear Admiral, U.S. Coast Guard Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 99–29832 Filed 11–18–99; 8:45 am]

BILLING CODE 4910–15–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 6 and 7

[WT Docket 96–198; FCC 99–181]

Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document establishes rules to ensure that people with disabilities have access to telecommunications services and related equipment, if readily achievable. These rules are required to implement section 255 of Telecommunications Act

of 1996. These rules will increase the accessible products and services available in the marketplace.

DATES: These rules become effective January 28, 2000, except for §§ 6.18 and 7.18, which contain modified information collection requirements that have not been approved by the Office of Management and Budget (''OMB''). The Commission will publish a document in the **Federal Register** announcing the effective date of those sections. Written comments by the public on the modified information collection requirements should be submitted on or before December 20, 1999.

ADDRESSES: Office of the Secretary, Federal Communications Commission, 445 Twelfth Street SW, Room TW–A325, Washington, DC 20554. A copy of any comments on the information collection contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1C804, 445 12th Street, SW, Washington, DC 20554, or via the internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Ellen Blackler, Common Carrier Bureau. (202) 418–0491.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in WT Docket 96–198, adopted on July 14, 1999 and released on September 29, 1999. The full text of the Report and Order, including Commissioners' statements, is available for inspection and copying during normal business hours in the FCC Reference Center, 445 Twelfth Street, SW, Room CY–257, Washington, D.C. Alternate formats (computer diskette, large print, audio cassette and Braille) are available to persons with disabilities by contacting Martha Contee at (202) 418–0260 (voice), (202) 418–2555 (TTY), or at mcontee@fcc.gov. The Report and Order can be downloaded in WP or ASCII text at: http//www.fcc.gov/dtf/.

This report and order contains modified information subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public and other federal agencies are invited to comment on the modified information collection contained in this proceeding.

Synopsis of Report and Order

1. In this Report and Order (Order) we adopt rules and policies to implement sections 255 and 251(a)(2) of the Communications Act of 1934, as amended (Act). These provisions, which were added by the Telecommunications Act of 1996 (1996 Act), are the most significant opportunity for the advancement of people with disabilities since the passage of the Americans with Disabilities Act (ADA) in 1990. These rules are based on the Access Boards Guidelines, 63 FR 5631, and the comments after issuance of a Notice of Proposed Rulemaking, 63 FR 28456.

2. We conclude that we have authority to adopt regulations to implement section 255. We find that the language of section 255(f), which bars any private right of action ''to enforce any requirement of this section or *any regulation thereunder*,'' expressly contemplates the Commission's enactment of regulations to carry out its enforcement obligations under the provisions of section 255. We conclude that at a minimum, section 255 itself grants us authority to enact rules to implement the provisions of section 255.

3. The extensive record herein supports the adoption of rules consistent with the Access Board's guidelines. Accordingly, we adopt rules in this Order that are identical to or based upon the Access Board guidelines, with a few minor exceptions. We conclude that the Access Board guidelines can effectively serve as the basis of rules for both covered services and equipment.

4. We note, however, that we have the discretion to depart from the Access Board guidelines where merited. We find that the Commission would not be bound to adopt the Access Board's guidelines as its own, or to use them as minimum standards, if it were to conclude, after notice and comment, that such guidelines were inappropriate.

I. Requirements for Covered Entities

5. As stated in the statute, a manufacturer of telecommunications equipment or customer premises equipment shall ensure that the equipment is designed, developed, and fabricated to be accessible to and usable by individuals with disabilities, if readily achievable. Second, a provider of telecommunications service shall ensure that the service is accessible to and usable by individuals with disabilities, if readily achievable. Finally, whenever the requirements set forth above are not readily achievable, such a manufacturer or provider shall ensure that the equipment or service is compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access, if readily achievable.

6. We adopt the ADA definition of disability in its entirety, as required under section 255 of the Act. We further agree with commenters that, in implementing section 255, we should follow any applicable judicial and administrative precedent stemming from this definition, except in those limited circumstances in which such precedent is shown to be unsuitable to a specific factual situation.

7. We conclude further that, at a minimum, the statutory reference to ''individuals with disabilities'' includes those with hearing, vision, movement, manipulative, speech, and cognitive disabilities. By no means, however, is the definition of ''disability'' limited to these specific groups. Determinations of what constitutes a ''disability'' under section 255 must be made on a case-by-case basis.

8. We adopt the Access Board's definitions of ''accessible to'' and ''usable by.'' We initially proposed in the *NPRM* to combine these terms under one definition under our rules, reasoning that the term ''accessible to'' should be used in its broadest sense to refer to the ability of persons with disabilities actually to use the equipment or service by virtue of its inherent capabilities and functions. Upon further review, however, we believe that it is more precise, and will provide clearer guidance to entities covered by section 255, for us to follow the lead of the Access Board and define these two terms separately because the requirements of ''accessible to'' and ''usable by'' embrace two distinct concepts. Although the Access Board guidelines were designed in the context of equipment and CPE accessibility, we conclude that these guidelines are equally applicable to the services context, and thus our definition of accessibility and usable applies to both equipment and services. We also adopt the proposal made in the NPRM to ensure that support services (such as consumer information and documentation) associated with equipment and services are accessible to and usable by people with disabilities.

9. We conclude that, with one technical exception and one addition, the input, control and mechanical functions in § 1193.41 of the Access Board guidelines and the output, display and control functions in § 1193.43 of the Access Board guidelines shall constitute the definition of ''accessible to'' under the Commission's rules. The list is not a set of mandates, but rather a list of areas covered entities should be considering when designing products and services.

10. We do not adopt § 1193.43(e) of the Access Board rules, which would require that volume control telephones provide a minimum of 20 dB adjustable volume gain. We decline to adopt this 20 dB volume control standard under our rules because it conflicts with rules that we have previously adopted pursuant to the Hearing Aid Compatibility Act.

11. We also do not adopt a separate requirement regarding net reductions similar to that in section 1193.30 of the Access Board's guidelines. We believe that this requirement is addressed under the readily achievable definition and analysis. The flexibility of the readily achievable analysis recognizes that it will generally be unacceptable to completely eliminate an existing accessibility feature, but that legitimate feature trade-offs as products evolve are not prohibited.

12. We do, however, add to our rules one input factor to the list developed by the Access Board. Specifically, the definition of ''accessible to'' shall include being ''operable with prosthetic devices.'' Because some people with disabilities rely on prosthetic devices, we conclude that consideration of direct access by such persons is appropriately encompassed in the definition of ''accessible to''.

13. We adopt the Access Board's definition of ''usable by'' as our definition under the rules. As many commenters that addressed this issue recognized, providing access to all supporting documentation and support services is an essential ingredient for the successful implementation of section 255 and is encompassed by our definition of ''usable by.'' Support services include, but are not limited to, access to technical support hotlines and databases, access to repair services, billing and any other services offered by a manufacturer or service provider that facilitate the continued and complete use of a product or service. Support services also include efforts by manufacturers and service providers to educate its sales force about the accessibility of their products and how accessibility features can be used.

14. We further conclude, consistent with the Access Board's guidelines and supported by the record, that ''usable by'' means manufacturers and service providers ensure that consumers with disabilities are included in product research projects, focus groups, and product trials, where applicable, to further enhance the accessibility and usability of a product, if readily achievable.

15. We also conclude, consistent with the Access Board guidelines and the statutory definition of CPE, that specialized CPE, such as direct-connect TTYs, are considered a subset of CPE. The statute's requirement that manufacturers and service providers ensure compatibility with CPE which has a specialized use does not change the fact that this equipment still meets the definition of CPE as discussed *infra* in paragraphs 80 *et. seq.* We define specialized CPE as CPE which is commonly used by individuals with disabilities to achieve access. Thus, manufacturers and service providers have the same obligations to ensure accessibility and usability of SCPE as they do for any other CPE.

16. We adopt four of the five criteria set forth by the Access Board as the definition of ''compatibility'' under section 255. We do not adopt the criterion of ''compatibility of controls with prosthetic devices,'' which we have instead added to the definition of accessibility. We adopt the Access Board's definitions of ''peripheral devices'' and ''specialized CPE.'' As proposed in the *NPRM*, the definitions of the terms ''peripheral devices'' and ''specialized CPE'' limit the compatibility requirement to those devices that have a specific telecommunications function or are designed to be used primarily to achieve access to telecommunications.

17. A manufacturer or service provider must assess whether it is readily achievable to install features or design equipment and services so that the equipment or service can meet the criteria of compatibility. Compliance with these criteria must be mandatory. As technology evolves, the guidelines and the definition of ''compatibility'' may need to be revised.

18. We require manufacturers and service providers to exercise due diligence to identify the types of peripheral devices and specialized CPE ''commonly used'' by people with disabilities with which their products and services should be made compatible, if it has not been readily achievable to make those products and services accessible. In the *NPRM*, we had proposed using the concepts of affordability and availability to help define the statutory term ''commonly used'' in section 255(d) of the Act. We conclude that affordability and general market availability are insufficient, and in some cases inappropriate, criteria for determining whether a specific peripheral device or piece of specialized CPE is ''commonly used'' by persons with disabilities.

19. Section 251(a)(2) of the Act requires that telecommunications carriers not install network features, functions, or capabilities that do not comply with the guidelines or standards established pursuant to section 255. We conclude that telecommunications carriers must not install service logic and databases associated with routing telecommunications services, whether residing in hardware or software, that do not comply with the accessibility requirements of these rules.

II. Readily Achievable

1. Definition of ''Readily Achievable''

20. We adopt the ADA's definition of ''readily achievable.'' We agree with the DOJ that this definition is intended to ensure that a ''wide range of factors be considered in determining whether an action is readily achievable.''

21. The primary focus of a ''readily achievable'' analysis should be upon three general considerations delineated in the ADA definition, namely (1) the cost of the action; (2) the nature of the action; and (3) the overall resources available to the entity, including resources made available to the entity by a parent corporation, if applicable, depending on the type of operation and the relationship between the two entities. We decline to include consideration of feasibility, expense, and practicality, as proposed in our *NPRM*. We have modified the definition so that it more closely correlates with the terms used in section 255. For example, we have replaced the word ''facility'' throughout the definition with the terms ''manufacturer'' and ''service provider,'' as appropriate. We also have inserted the terms ''if applicable'' before the third and fourth prongs of the definition. Furthermore, we agree with those parties who have argued that, in interpreting section 255, we should look to the ''substantial body of judicial decisions interpreting and applying'' the terms of the ADA, including the phrase ''readily achievable.''

2. Application of Readily Achievable

a. In General

22. In implementing the requirements of section 255, we decline to adopt a ''product line'' framework proposed primarily by manufacturers of equipment. Under this approach, a manufacturer or service provider would not need to conduct a ''readily achievable'' analysis for each produce or service, but instead would ensure that select products within its product lines are accessible to persons with disabilities. We conclude that section 255, by its terms, applies to the design and production of individual products and service offered by a manufacturer or service provider.

23. We recognize that there are accessibility features that can be incorporated into the design of products with very little or no difficulty or expense. These features must be deployed universally. We will not identify specific features that fall into this category, because it necessarily varies given the individual circumstances. Manufacturers and service providers must make their own determinations based on the factors in the readily achievable definition. Thus, manufacturers and service providers cannot decline to incorporate modest features that will enhance accessibility simply because some other product or service with the feature may be available. We expect that, over time, more and more features will be incorporated into all products in this manner, and that features that today may not be readily achievable soon will become routine and universally adopted.

24. With respect to those features or actions that are not readily achievable to be deployed universally, but are readily achievable to be incorporated into some products and services, manufacturers and service providers have the flexibility to distribute those features across product or service lines as long as they do all that is readily achievable. In addition, we expressly encourage manufacturers and service providers to work closely with the disability community to ensure that under-represented disability groups, and multiple disabilities (such as deaf-blindness), are not ignored.

25. In those instances where accessibility under paragraphs (b) or (c) of section 255 is not readily achievable, service providers and manufacturers are required to comply with paragraph (d), which states that they must ensure that their equipment or services are compatible with existing specialized CPE or peripheral devices commonly used by persons with disabilities to achieve access, if readily achievable.

26. We believe this framework will provide manufacturers and service providers a viable means for compliance with section 255, while promoting accessibility to the maximum extent possible. We expect that different companies, faced with their unique circumstances, may well come to different conclusions about deployment of accessibility features. We believe that is a desirable outcome that will maximize the range and depth of accessible products and services available to customers and will capitalize on the positive forces of competition.

b. Cost of the Action Needed

27. We conclude that ''cost,'' for purposes of the ''readily achievable'' evaluation, is the incremental amount that a manufacturer or service provider expends to design, develop, or fabricate a product or service to ensure that it is accessible. Although we tentatively concluded in the *NPRM* that it would be appropriate to consider net costs, taking into account such factors as the potential for recovery of expenses from consumers through increased sales or higher product prices, we now reject that approach for several reasons. We believe that an assessment of market factors, such as the ability of a service provider or manufacturer to recover its costs through price changes, would involve speculation. Moreover, not considering market factors is consistent with ADA precedent, and we are not convinced that there are any factors specific to telecommunications that compel us to adopt an interpretation of costs different from that under the ADA. We also are persuaded that introducing cost recovery or market considerations into the meaning of ''cost'' could defeat one of the primary purposes of section 255—enhancing access to telecommunications equipment and service for a population whose needs have not been addressed by the market alone.

28. While we have concluded that we will not consider market factors in determining what is readily achievable, we do not rule out the ability of manufacturers and service providers to take these market factors into account when making the decisions regarding deployment of more significant readily achievable accessibility features throughout its products.

29. We will permit manufacturers and service providers to consider the cost of disability access actions for a product or service in conjunction with the cost of other actions taken by them to comply with these rules during a fiscal period, as proposed by a number of commenters. We agree it may be appropriate to consider the cost of other accessibility actions as a factor in determining whether a measure is readily achievable. Therefore, manufacturers and service providers may take into account the cumulative cost of all accessibility actions over a specific fiscal period in determining whether an action is ''readily achievable.'' We underscore, however, that ''cumulative costs'' cannot be the only factor used by a manufacturer or service provider to determine whether a measure is ''readily achievable.'' In particular, the ability to take into account cumulative costs shall not permit a manufacturer or service provider to predetermine caps or quotas on its total spending for section 255 compliance for a given fiscal period.

30. A manufacturer or service provider may consider whether inclusion of an accessibility feature significantly will delay production or release of a product, and therefore increase production costs, provided that the manufacturer or service provider demonstrates that it did in fact consider accessibility at the design stage. Of course, the mere fact that inclusion of a feature will add time and cost to production will not, alone, render the measure not readily achievable.

c. Nature of the Action Needed

31. Another consideration in the ''readily achievable'' analysis is the nature of the action needed to make equipment or service accessible to persons with disabilities. While commenters generally have not framed their comments in terms of ''nature of the action,'' many address the concepts of ''fundamental alterations'' and ''technical feasibility,'' which we believe fall within the ambit of ''nature of the action.''

32. We agree with the Access Board found that the ''fundamental alteration'' concept derives from the ''undue burden'' test under the ADA and, since ''undue burden'' is a higher standard than ''readily achievable,'' that the concept of fundamental alteration is implicit in the readily achievable analysis. Since a covered entity must, hypothetically, demonstrate a much more onerous burden in order to be relieved of any obligations under the ''undue burden'' standard of the ADA, it follows that any actions that constitute an undue burden, including fundamental alterations, are also not ''readily achievable.'' Manufacturer or service provider is not required to install an accessibility feature if it can demonstrate that the feature fundamentally would alter the product.

33. In the *NPRM*, we tentatively concluded that technical infeasibility should be one factor in determining whether an accessibility feature is readily achievable. We now conclude that, when assessing the ''nature of the action'' in a readily achievable analysis, manufacturers and service providers are not required to incorporate accessibility features that are technically infeasible, subject to several limitations.

34. We agree with several commenters, however, that in some rare instances, ''technical infeasibility'' may result from legal or regulatory constraints. We also agree with several

commenters that technical infeasibility encompasses not only a product's technological limitations, but also its physical limitations. We note, however, that manufacturers and service providers should not make conclusions about technical infeasibility within the ''four corners'' of a product's current design. Section 255 requires a manufacturer or service provider to consider physical modifications or alterations to the existing design of a product. Finally, we agree with commenters that manufacturers and service providers cannot make bald assertions of technical infeasibility. Any engineering or legal conclusions that implementation of a feature is technically infeasible should be substantiated by empirical evidence or documentation.

d. Resources of the Covered Entity

35. We conclude that we should follow the two-step analysis of a covered entity's resources set forth by the DOJ in its ADA regulation. Accordingly, the resources of the ''covered entity'' (i.e., the manufacturer or service provider) first are examined. The resources of any parent corporation or comparable entity with a legal relationship with the manufacturer or service provider would be examined and taken into account, unless the covered entity or parent can demonstrate why any legal or other constraints prevent the parent's resources from being available to the covered entity.

36. For purposes of the readily achievable analysis, the covered entity must take into account any and all financial resources available to it, including resources from third parties.

37. This would include any capital or other financial assets, recourse to guarantees that may be used for the covered entity's debt financing or to otherwise assist its business, resources in the form of labor or services, or any other items that would affect the ''overall financial resources'' available to the manufacturer or service provider. Resources of another entity shall be taken into account regardless of whether that other entity is a telecommunications manufacturer or service provider.

38. In some cases, consideration of the resources of another entity may not be applicable because of the nature of the legal relationship between the parties, or because no resources in fact are available to the manufacturer or service provider from the outside entity.

39. In the *NPRM,* we proposed establishing a ''rebuttable presumption'' that reasonably-available resources are those of the covered entity legally responsible for the equipment or service that is subject to the requirements of section 255. After reviewing the record, we have concluded that the better approach is to evaluate the resources of any parent company, or comparable entity with legal obligations to the covered entity, but permit any covered entity (or parent company) to demonstrate why legal or other constraints prevent those resources from being available to the covered entity.

3. Timing of Readily Achievable Assessments

40. The readily achievable obligation imposed by section 255 is both prospective and continuing. While it is appropriate to consider the time needed to incorporate accessibility solutions into new and upgraded products, technological advances that present opportunities for readily achievable accessibility enhancements can occur at any time in a product cycle. A manufacturer's or service provider's obligation to review the accessibility of a product or service, and add accessibility features where readily achievable, is not limited to the initial design stage of a product. We conclude that manufacturers and service providers, at a minimum, must assess whether it is readily achievable to install any accessibility features in a specific product whenever a natural opportunity to review the design of a service or product arises. If it is readily achievable to include an accessibility feature during one of these natural opportunities, the manufacturer or service provider must install the feature. Natural opportunities could include, for example, the redesign of a product model, upgrades of services, significant rebundling or unbundling of product and service packages, or any other modifications to a product or service that require the manufacturer or service provider to substantially re-design the product or service.

4. Documentation of Readily Achievable Assessments

41. As proposed in the *NPRM,* we conclude that we should not at this time delineate specific documentation requirements for ''readily achievable'' analyses. We fully expect, however, that manufacturers and service providers, in the ordinary course of business, will maintain records of their accessibility efforts that can be presented to the Commission to demonstrate compliance with section 255 in the event consumers with disabilities file complaints.

III. Services and Equipment Covered by the Rules

42. Section 255 applies to any ''manufacturer of telecommunications equipment or customer premises equipment'' and to any ''provider of telecommunications service.'' We conclude that, in so far as these phrases are broadly grounded in the Communications Act, our sole task here is to explain their application in the context of section 255. We will, however, as explained below, assert our ancillary jurisdiction to cover two non-telecommunications services.

a. Telecommunications and Telecommunications Service

43. Section 255(c) requires that any ''provider of telecommunications service shall ensure that the service is accessible to and usable by individuals with disabilities, if readily achievable.'' Section 3 of the Act defines ''telecommunications'' as ''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.'' It defines ''telecommunications service'' as ''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.''

44. We adopt our tentative conclusion in the *NPRM* that the phrases ''telecommunications'' and ''telecommunications services'' have the general meanings set forth in the Act. Telecommunications services, however, does include services previously classified as adjunct-to-basic. Adjunct-to-basic services are services which literally meet the definition of enhanced services, now called information services, established under the Commission's rules, but which the Commission has determined facilitate the completion of calls through utilization of basic telephone service facilities and are included in the term ''telecommunications services.'' Adjunct-to-basic services include such services as call waiting, speed dialing, call forwarding, computer-provided directory assistance, call monitoring, caller identification, call tracing, and repeat dialing.

45. We decline to expand the meaning of ''telecommunications services'' to include information services for purposes of section 255, as urged by some commenters. In the *NPRM,* we recognized that under our interpretation of these terms, some important and widely used services, such as voicemail

and electronic mail, would fall outside the scope of section 255 because they are considered information services. We conclude, however, that we may not reinterpret the definition of telecommunications services, either for purposes of section 255 only or for all Title II regulation. First, we emphasize that the term ''information services'' is defined separately in the Act. As we noted in the *NPRM,* there was no indication in the legislative history of the 1996 Act that Congress intended these terms to have any different, specialized meaning for purposes of accessibility.

b. Provider of Telecommunications Services

46. We conclude that all entities offering telecommunications services (*i.e.,* whether by sale or resale), including aggregators, should be subject to section 255. An entity that provides both telecommunications and non-telecommunications services, however, is subject to section 255 only to the extent that it provides a telecommunications service.

c. Telecommunications Equipment and Customer Premises Equipment

47. The Act defines ''telecommunications equipment'' as ''equipment, other than customer premises equipment, used by a carrier to provide telecommunications services, and includes software integral to such equipment (including upgrades).'' It defines ''customer premises equipment'' (CPE) as ''equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications.''

48. In accordance with the proposal made in the *NPRM,* the express statutory language, and the views of commenters, we find that telecommunications equipment includes software integral to telecommunications equipment. Operation of today's technologically sophisticated telecommunications networks would be impossible without software, and we believe that Congress' decision to expressly clarify that software and upgrades to software are to be considered ''equipment'' acknowledges the important role played by software products. Further, by referencing ''upgrades'' to software as equipment, the definition expressly contemplates that stand-alone software should be considered equipment. For these reasons, we conclude that all software integral to telecommunications equipment is covered by the definition, whether such software is sold with a piece of telecommunications equipment hardware or is sold separately.

49. The statutory definition of CPE under section 3(14) of the Act encompasses all ''equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications.'' Although section 3(14) does not specifically reference software integral to CPE, we find, nonetheless, that CPE includes software integral to the operation of the telecommunications functions of the equipment, whether sold separately or not. We note that this conclusion is contrary to our tentative conclusion in the *NPRM* that software sold separately from CPE would not fall within the definition of CPE. After review of the record, however, we are persuaded that stand-alone software that originates, terminates and routes telecommunications should be deemed ''equipment'' under the CPE definition.

50. In connection with multipurpose equipment, we adopt our tentative conclusion that customer premises equipment is covered by section 255 only to the extent that it provides a telecommunications function. Specifically, equipment that generates or receives an electrical, optical or radio signal used to originate, route or terminate telecommunications is covered, even if the equipment is capable of providing non-telecommunications functions. We believe that our interpretation ensures consistency between the obligations of manufacturers to ensure that telecommunications equipment and CPE is designed, developed and fabricated to be accessible, and the obligations of service providers to ensure that the service is accessible.

51. Furthermore, as supported by the record, we conclude that manufacturers will be liable under section 255 for all telecommunications equipment and CPE to the extent that such equipment provides a telecommunications function. In those instances, where a piece of equipment undergoes substantial modifications after its sale, however, we agree with those commenters who argue that it would be unfair to hold the manufacturer liable under section 255. In those instances, which we expect to be infrequent, manufacturers shall bear the burden of proving, by a preponderance of the evidence, that a piece of equipment has undergone substantial modifications after its sale.

d. Manufacturer

52. The Act does not define ''manufacturer of telecommunications or customer premises equipment.'' The Access Board guidelines define a ''manufacturer'' as an entity ''that sells to the public or to vendors that sell to the public; a final assembler.'' This approach, according to the Access Board, would generally cover ''the final assembler of separate subcomponents; that is, the entity whose brand name appears on the product.'' In the NPRM, the Commission proposed to adopt a definition of ''manufacturer'' based upon the Access Board guidelines.

53. In light of our enforcement obligations and based on the record, we now believe that we need a more precise definition of manufacturer than that adopted by the Access Board. In our rules, therefore, we define manufacturer as an entity that makes or produces a product. This definition puts responsibility on those who have direct control over the products produced, and provides a ready point of contact for consumers and the Commission in getting answers to accessibility questions and resolving complaints. We decline to adopt the Access Board's definition because we find that it is so broad that it could include retailers, who simply sell products and may not control any aspect of their actual manufacture.

54. We do not intend this definition to include those who simply sell or distribute a product manufactured by another entity. Nor do we extend the concept of manufacturer to anyone who might modify the equipment before sale to the public. We do not believe as a general matter that retailers, wholesalers, and other post-manufacturing distribution entities can be considered manufacturers who have accessibility obligations under the Act.

55. As supported by the record, we adopt our tentative conclusion to construe section 255 to apply to all manufacturers offering equipment for use in the United States, regardless of their location or national affiliation. Exempting foreign manufacturers would disadvantage American manufacturers, and would deny the American public the full protection section 255 offers.

e. Voicemail and Interactive Menus

56. The record has convinced us that in order for us to carry out meaningfully the accessibility requirements of section 255, requirements comparable to those under section 255 should apply to two information services that are critical to making telecommunications accessible and usable by people with disabilities. We assert ancillary jurisdiction to extend these accessibility requirements to the providers of voicemail and interactive menu service and to the manufacturers of the equipment that

perform those functions. By enacting section 255, Congress has charged the Commission with ensuring that telecommunications services and equipment are accessible to, and usable by, persons with disabilities. We cannot fully achieve that objective without this limited use of our ancillary jurisdiction.

57. We decline to extend accessibility obligations to any other information services. While some commenters have argued that there is an overwhelming need for all information services to be accessible to people with disabilities, we assess the record differently, and use our discretion to reach only those services we find essential to making telecommunications services accessible. Unlike voicemail and interactive menus, other information services discussed by commenters do not have the potential to render telecommunications services themselves inaccessible. Therefore, we decline to exercise our ancillary jurisdiction over those additional services. Many of these other services are alternatives to telecommunications services, but not essential to their effective use. For example, e-mail, electronic information services, and web pages are alternative ways to receive information which can also be received over the phone using telecommunications services. In contrast, inaccessible and unusable voicemail and interactive menus operate in a manner that can render the telecommunications service itself inaccessible and unusable.

IV. Enforcement of Section 255

58. Damages. We adopt our tentative conclusion in the NPRM that damages are available for violations of section 255 or our implementing rules against common carriers. In so holding, we reject the claim that section 255(f)'s preclusion of private rights of action deprives the Commission of any authority to entertain requests for damages by or on behalf of individual complainants.

59. Other Sanctions and Remedies. We affirm our conclusion in the NPRM that we should employ the full range of sanctions and remedies available to us under the Act in enforcing section 255. We conclude that we need not delineate in this Order the various sanctions and remedies available to us under the Act to address violations of section 255 and our rules. We recognize that sanctionable behavior may involve a wide range of conduct by manufacturers and service providers and we will use our considerable discretion to tailor sanctions or remedies to the individual circumstances of a particular violation. While we will view retrofitting as an extreme remedy to be used in egregious cases of willful misconduct, we nevertheless believe that the prospect of such action will serve as a major deterrent to willful and repeated violations of the Act and our rules.

60. We adopt our tentative conclusion in the NPRM that we should encourage consumers to express informally their concerns or grievances about a product to the manufacturer or supplier who brought the product to market before complaining to the Commission. We believe that this policy should apply with equal force to grievances or concerns relating to service providers. We fully expect that many accessibility-related disputes will be satisfactorily resolved through such communications without the need to file complaints. We decline, however, to adopt a rule that would require consumers to contact the manufacturer or service provider about an accessibility barrier before a complaint could be filed with the Commission. Under our section 208 rules, consumers are encouraged but not required to contact the carrier in advance of filing an informal complaint. Our rules governing formal section 208 complaints require both the complainant and defendant to certify, as part of the complaint and answer respectively, that they discussed, or attempted in good faith to discuss, the possibility of settlement with the opposing party prior to filing of the complaint. We conclude that this model is also appropriate for section 255 formal complaints.

61. Form. We adopt our proposal to allow informal complaints all to be transmitted to the Commission by any reasonable means such as by letter, facsimile transmission, voice telephone (voice and TTY), Internet e-mail, audio-cassette recording, and braille.

62. Content. We adopt a rule providing that any section 255 complaint filed with the Commission include: (1) the name and address of the complainant; (2) the name and address of the manufacturer or service provider against whom the complaint is made; (3) details about the equipment or service about which the complaint is made; (4) the date or dates on which the complainant or person on whose behalf the complaint is being filed either purchased, acquired, used or attempted to purchase or use the equipment or service about which the complaint is being made; (5) a statement of facts supporting the complainant's allegation that the equipment or service is not accessible to a person or persons with a disability; (6) the specific relief or satisfaction sought by the complainant; and (7) the complainant's preferred method of response to the complaint (*e.g.*, letter, facsimile transmission, telephone (voice or TTY), Internet e-mail, audio-cassette, braille, or another method that will provide effective communication with the complainant.

63. Standing to File. We conclude that our minimum form and content requirements will alleviate concerns raised by a number of commenters regarding the need for a standing requirement for filing section 255 complaints. The concerns raised by the commenters about possible frivolous complaints are too speculative to warrant a standing requirement where none otherwise exists under our common carrier complaint rules. There is no evidence that frivolous complaints have been a problem under our common carrier rules; nor is there any basis in the record to reasonably conclude that such will be the case for section 255 complaints. In any event, we believe that the minimum content requirements for section 255 complaints will effectively deter the filing of frivolous complaints.

64. Service. We adopt a rule requiring the staff to promptly forward complaints that satisfy our content rules to the manufacturer or service provider involved, along with specific instruction to the defendant company to investigate and attempt to satisfy the complaint within a specified period, generally thirty days. The rule further provides that Commission staff may, in its discretion, request from the defendant company whatever additional information it deems useful to its consideration of the complaint.

65. Designation of Contacts/Agents. We adopt a rule requiring affected manufacturers and service providers to designate an agent or contact whose principal function will be to ensure the manufacturer's or service provider's prompt receipt and handling of accessibility concerns raised by consumers or Commission staff.

66. The Commission will provide access to a listing of the contact representatives or agents designated by manufacturers and service providers. In order to establish this listing, we will require covered manufacturers and service providers to file the required contact information with the Secretary of the Commission within thirty days after the effective date of the rules adopted herein.

67. As a related matter, we note that certain commenters urged that we adopt a requirement that defendant manufacturers and service providers make reasonable, good faith efforts to contact the complainant within five business days of receipt of a complaint

to acknowledge such receipt and discuss how the company intends to proceed with its handling of the complaint. We agree with these commenters that this measure is consistent with our point of contact requirement and will not unduly burden affected companies, and adopt this requirement.

68. Our rules require defendant manufacturers and service providers to prepare their responses in the format requested by the complainant, except where the defendant service provider or equipment manufacturer is incapable of doing so. In cases in which the defendant is incapable of preparing a response using the format requested by the complainant, Commission staff will take actions necessary to ensure that the response is accessible to the complainant.

69. Time to Respond. The commenters are generally supportive of a thirty day period in which to respond to informal complaints, although certain commenters argue that the response should be shortened to 15 days while others favor a longer period of 60–90 days. We believe that a thirty day response period, which mirrors the response time afforded under our common carrier complaint rules, strikes a reasonable balance between our goals of promoting the prompt resolution of accessibility disputes and ensuring that manufacturers and service providers have sufficient time in which to evaluate the complaint and provide meaningful solutions or explanations to consumers.

70. Applicability of §§ 1.720 through 1.736 of the rules. We agree with a number of the commenters that certain accessibility disputes, by their nature or complexity, may not be able to be resolved by the disputing parties. Therefore, we adopt a rule providing that any person seeking formal adjudication of a problem or dispute with a manufacturer or service provider may do so pursuant to the procedures specified under §§ 1.720 through 1.736 of our rules.

71. We conclude that the existing accelerated dispute procedures may be used by the staff for purposes of section 255 formal complaints. Such accelerated procedures will minimize the opportunity for manufacturers and service providers to continue to delay otherwise readily achievable accessibility solutions because the lawfulness of such practices will be subject to expedited review.

72. Eligibility Requirements. Not all accessibility disputes raised in the context of formal complaints will be appropriate for handling under these accelerated procedures. Therefore, we adopt the following requirements that a complainant must satisfy in requesting accelerated resolution of its complaint:

- First, a complainant desiring accelerated dispute resolution must allege in good faith that a person with a disability is not able to access/use particular equipment or services is due to a product's lack of accessibility, and that such lack of access is having or will have an immediate adverse impact on consumers' ability to use the services and equipment covered by our rules.
- Second, the complainant must demonstrate that he or she has contacted or attempted in good faith to contact the manufacturer or service provider against whom the allegations are made and gave or attempted to give the manufacturer or service provider a reasonable period of time (not less than 30 days) to address the problem;
- Third, the complainant must have given prior advance notice to the manufacturer or service provider of its intention to file a formal complaint; and
- Fourth, the complainant must agree to participate in any settlement negotiations scheduled and supervised by Commission staff with respect to the matters alleged in the complaint.

73. Accelerated Dispute Resolution Procedures. Any person with a disability or entity acting on behalf of any such person who satisfies the above-listed conditions may submit its formal complaint, along with a request for accelerated dispute resolution, to the Common Carrier Bureau's Enforcement Division. Where practicable, such complaint and request may be submitted to the Commission by any reasonable means. The filing must include at a minimum: (1) the information described in §§ 1.721 through 1.724 of our rules and (2) a representation by the complainant that the conditions specified in § 1.730 have been met. Complaints accepted for accelerated dispute resolution will be promptly forwarded by the Commission to the named manufacturer or service provider, which shall be called on to answer the complaint in 15 days or such shorter time as the staff may prescribe. Commission staff may, in its discretion, require the complainant and defendant to appear before it, via telephone conference or in person, to bring and give evidence bearing on accessibility, usability or compatibility. In appropriate cases, the staff may schedule and supervise settlement negotiations between the parties.

74. Decisions Issued in Accelerated Proceedings. We adopt a 60-day timetable for issuing a decision in section 255 complaint proceedings under our accelerated procedures. At the same time, we recognize that some disputes that are likely to arise over the proper interpretation and application of our rules will be cases of first impression, the resolution of which may not be possible within the 60 day period. Therefore, staff administering the accelerated docket will have the discretion to extend the 60-day period.

75. We noted in the NPRM that the most common defenses likely to be mounted by manufacturers and service providers in response to either a complaint or an inquiry by the Commission are claims that: (1) the product or service lies beyond the scope of section 255; (2) the product or service is in fact accessible; or (3) accessibility is not readily achievable. We noted that while the first two defenses are relatively straightforward, the readily achievable defense is complex. We therefore proposed to use the Access Board Guidelines applicable to manufacturers as examples of the kinds of compliance measures we would consider in this regard.

76. While we believe some weight should be given to evidence that a respondent made good faith efforts to comply with section 255, we decline to adopt a rule establishing a presumption of compliance in favor of manufacturers and service providers in section 255 complaint actions. Instead, we will review section 255 complaints on a case-by-case basis, giving due consideration to whether the defendant took actions consistent with the rules and guidance we set forth today, as well as any other compliance measures that the respondent has undertaken, such as those set forth in the Access Board's Advisory Appendix.

77. Time Limit for Filing Complaints. We decline to adopt either the 6-month or 1-year limitations period on the filing of section 255 complaints urged by some commenters. We do not agree that a limitations period more restrictive than the 2-years prescribed in section 415 of the Act pertaining to damages claims against common carriers is necessary or desirable to guard against stale or unmeritorious claims.

78. To ensure that this Commission's resources remain properly focused, we adopt a general policy that complaints against manufacturers and service providers determined by the staff to raise issues that are dated or stale due to the passage of time or moot because of industry or product changes (and which do not raise timely damages claims within the meaning of section 415(b)) may, absent indications of an ongoing compliance problem, be subject to summary disposition by the staff.

79. We do not agree with the claim by certain commenters that the five-month complaint resolution deadline imposed on the Commission under section 208(b) of the Act is also applicable to all complaints alleging violations of section 255.

80. We conclude that section 208(b) would apply to a properly filed section 255 formal complaint only to the extent that the complaint raised issues concerning a matter contained in a service provider's tariff or that would have been included in the service provider's tariff but for our forbearance policies.

81. We conclude that our existing rules governing confidential materials adequately address the concerns raised by the commenters and, therefore, do not adopt the additional requirements proposed in the NPRM. As an initial matter, we note that we do not anticipate that confidentiality issues will arise frequently in informal section 255 complaint proceedings. Informal complaint actions, which are exempt proceedings under our ex parte rules, are by nature not designed or intended to facilitate the exchange of confidential information between disputing parties. Defendant manufacturers and service providers are not typically required to submit information designated as confidential or proprietary directly to a complainant; nor is the staff required to transmit confidential information provided by a complainant to a defendant company. To the extent that such information is deemed necessary to the staff's evaluation of an informal complaint, the submitting party may invoke the protection afforded under §§ 0.457 through 0.459 of our rules by clearly designating the information as confidential or proprietary at the time it is submitted to the Commission.

82. Formal complaints filed against common carriers pursuant to §§ 1.720 through 1.736 of our rules are classified as ''restricted'' proceedings under our *ex parte* rules. This ''restricted'' designation, as with other proceedings not designated as exempt or permit-but-disclose, expressly prohibits ex parte presentations in these adjudicatory proceedings from any source. Formal section 255 complaints filed against manufacturers or service providers shall be similarly treated as restricted proceedings.

83. We emphasize that to the extent that compliance issues or problems requiring regulatory intervention are perceived by the staff during the processing of an accessibility-related informal complaint or are otherwise brought to the Commission's attention, the staff will be poised to pursue the matter on its own motion and, when warranted, take or recommend appropriate remedial actions or sanctions from those available to us under the Act and our rules. We reject the suggestion by certain commenters that we establish specific guidelines for initiating investigations and other section 255 enforcement actions on our own motion.

84. As we noted earlier, the Commission has a responsibility to prohibit discrimination on the basis of disability in its programs and activities, as required by the Rehabilitation Act of 1973, as amended. The Commission's rules implementing these responsibilities are set forth at 47 CFR 1.1801 through 1.1870. These requirements apply to the Commission's enforcement provisions and activities. If a member of the public believes that the Commission is not providing equal access to its programs and activities, the procedures for filing a program accessibility complaint are set forth in 47 CFR 1.1870. Complaints regarding access to Commission programs and activities should be sent to the Commission's Office of the Managing Director. Commission staff will provide technical assistance to any member of the public wishing to file a complaint pursuant to §§ 1.1801 through 1.1870 of the rules; regarding access to Commission programs and activities; and any such complaint will not predispose the Commission negatively against any section 255 complaints.

V. Additional Implementation and Enforcement Measures

85. In the NPRM, the Commission sought comment regarding whether existing Commission processes (and associated forms) would be efficient vehicles for any requirements the Commission might develop in this proceeding, such as information collection, or providing notice to firms dealing with the Commission that they may be subject to section 255. The Commission listed the following examples: (1) The Commission's equipment authorization processes under part 2, subpart J of the Commission's rules; (2) equipment import documentation requirements under part 2, subpart K of the rules; (3) licensing proceedings under section 307 of the Act for various radio services used by entities subject to section 255 obligations; and (4) various common carrier filing processes.

86. The Commission also expressed the view that there could be other measures the Commission might take, or might encourage others to take, to foster increased accessibility of telecommunications products such as the establishment of a clearinghouse for current information regarding telecommunications disabilities issues, including product accessibility information, and accessibility solutions.

87. We find that modifying the current equipment certification or other existing Commission processes for purposes of compliance with section 255 is not appropriate. As outlined in the discussion on enforcement and the application of the readily achievable standard, no specific documentation is being required at this time.

88. We believe that the dissemination of technical assistance, including information on product capabilities and availability, as well as information about manufacturer and service provider compliance with section 255, is vitally important. It will both help ensure that people have access to needed products and serve as an enforcement tool. After we determine the best way to present the relevant data, we intend to publish information regarding entities' compliance with these rules. We also intend to provide technical assistance and conduct outreach efforts to inform customers and companies of their rights and responsibilities under these rules.

VI. Procedural Matters

A. Final Regulatory Flexibility Analysis

89. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking issued in this proceeding. The Commission sought written public comments on the proposals included in the Notice, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

1. Need for and Objectives of the Report and Order and Rules Adopted Therein

90. 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. Section 255 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 (CPE) or peripheral devices to the extent that so doing is readily achievable.

91. Given the fundamental role that telecommunications has come to play in today's world, we believe that 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 (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.

92. In the Notice, we set forth proposals to implement and enforce the requirement in section 255 that telecommunications offerings be accessible to the extent readily achievable. We proposed a ''fast-track'' process for resolving accessibility complaints informally and quickly and more conventional remedial processes for cases where fast-track solutions are not possible, or where there appears to be an underlying noncompliance with section 255. We noted that, in either case, we would look favorably upon demonstrations by companies that they had considered accessibility throughout the development of telecommunications products when assessing whether service providers and equipment manufacturers have met their accessibility obligations under section 255. In the accompanying Report and Order we have made the following decisions.

(1) We have incorporated most of the Access Board guidelines into our rules with two minor exceptions and have applied them to the services covered;

(2) We have asserted our ancillary jurisdiction to extend section 255's coverage to voicemail and interactive menu services and service providers and equipment used to provide these services;

(3) We have clarified that section 255 applies to each piece of equipment and all service offerings, but have noted that the industry has the discretion to determine which accessibility features should be incorporated in all products and which ones can be less than universally deployed, so long as all that is readily achievable is done; and

(4) We have adopted enforcement rules patterned after our long-standing rules governing complaints filed against common carriers under section 208 of the Act, with certain modifications we have concluded are necessary to fulfill the goals of section 255.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

93. We noted in the IRFA that the resources of the regulated entity are taken into account in the determination of whether accessibility of a given product or service is readily achievable and that there is thus an inherent consideration of the financial burden on the entity in its obligation to provide accessibility: if not readily achievable, the obligation is removed. Nevertheless, we acknowledged that all regulated entities would be required to assess whether providing accessibility is readily achievable and that an important issue for RFA purposes is thus 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.

94. We received four comments specifically captioned as being in response to the IRFA. In its comments to the IRFA, CEMA states that ''the Commission must take all steps necessary to ensure that any Section 255 implementation rules are not unduly burdensome to small manufacturers; it should also adopt those rules that serve to minimize the economic impact of this rulemaking on small entities.'' Lucent's comments question the apparent conflict between § 1193.43 of the Access Board's Guidelines and § 68.317 of the Commission's rules dealing with telephone volume control standards, especially in view of the Commission's tentative conclusion in the Notice that the Access Board's Guidelines do not overlap, duplicate or conflict with existing Commission Rules. Motorola comments that the Fast Track process imposes a substantial information collection requirement on manufacturers at each decisional point in the product design, development and fabrication process. Both Motorola and TIA contend that the cost of this information collection requirement should be considered as part of the readily achievable analysis. We believe that the information collection requirement on manufacturers has been minimized by the implementation of informal complaint procedures.

C. Description and Estimate of the Number of Small Entities to Which the Rules Adopted in the Report and Order Will Apply

93. The RFA directs agencies to provide a description and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted in the accompanying Report and Order. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. 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 Small Business Administration (SBA). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 1992, there were approximately 275,801 small organizations.

96. The rules adopted in the Report and Order will apply to manufacturers of telecommunications equipment and CPE to the extent it provides telecommunications, voicemail and interactive menu functions. In addition, telecommunications service providers of many types will be affected, including wireline common carriers and commercial mobile radio service (CMRS) providers. To the extent that software performs a telecommunication function, software developers or manufacturers may also be affected. We have described and estimated the number of small entity licensees and other covered entities that may be affected by the rules adopted in the Report and Order.

97. Equipment Manufacturers. The following chart contains estimated numbers of domestic entities that may be affected by the rules promulgated in this proceeding. It is based, in part, on firm counts that reflect product lines not involved in telecommunications, as defined by the 1996 Act, and reflects overlapping firm counts and firm counts that have been deliberately commingled to avoid disclosing the value of individual firms' equipment shipments for the reporting period.

Product class/ code	Product description	Estimated firm count
3571 ..	Personal computer, terminals and workstations.	546
3661 ..	Telephone and telegraph equipment.	540
3663 ..	Communications systems and equipment.	938

Product class/ code	Product description	Estimated firm count
3577 ..	Computer peripheral equipment, not elsewhere classified.	259
3577 ..	Parts and subassemblies for computer peripherals and input/output equipment.	72

98. Software Manufacturers. We sought comment in the IRFA on the impact of our proposed rules on the small businesses within this industrial category. No comments on this issue were forthcoming. The SBA has two small business size standard to be used for software publishers: (1) Entities that design, develop or produce prepackaged software have a size standard of $18 million in average annual revenues; and, (2) entities that sell existing, off-the-shelf prepackaged software as a finished product have a size standard of 500 employees or less. According to the Software Information Industry Association (SIIA), there are approximately 8,000 publishers of packaged software. Of these 8,000, we estimate that only about 500 are involved in the production of software specific to telecommunications. We do not have information on the number of these publishers that are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of software publishers that would qualify as small business concerns under the SBA definition. Consequently, we estimate that there are equal to or fewer than 500 telecommunications software publishers that will be affected by section 255.

99. Telecommunications Service Entities. The United States Bureau of the Census reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services for at least one year. This number contains a variety of different categories of carriers, including LECs, IXCs, CAPs, cellular carriers, other mobile service carriers, operator service providers, pay telephone providers, personal communications services (PCS) providers, covered specialized mobile radio (SMR) providers, and resellers. In the IRFA, we noted that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not ''independently owned and operated.'' As an example, we cited a PCS provider that is affiliated with an IXC having more than 1,500 employees and tentatively concluded that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs.

100. According to the Telecommunications Industry Revenue: Telecommunications Relay Service Fund Worksheet Data (TRS Worksheet), there are 3,604 interstate carriers. These carriers include, inter alia, LECs, wireline carriers and service providers, IXCs, CAPs, operator service providers, pay telephone providers, providers of telephone toll service, providers of telephone exchange service, and resellers. In the IRFA we sought information regarding how many providers of telecommunications services, existing and potential, are considered small businesses. We did not receive comment on this issue, so we conclude that this data is acceptable to the industry. We noted that the SBA has defined a small business for Radiotelephone Communications (SIC 4812) and Telephone Communications, Except Radiotelephone (SIC 4813), as a small entities having no more than 1,500 employees, and sought comment as to whether this definition is appropriate for our purposes here. Additionally, we requested that each commenter identify whether it is a small business under this definition and, if a subsidiary of another entity, provide this information for both itself and its parent corporation or entity.

101. Wireline Carriers and Service Providers. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to the SBA definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees.

102. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. We noted in the IRFA that we did not have information regarding which of these carriers are not independently owned and operated, and thus were unable to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA definition. Consequently, we estimated that there are fewer than 2,295 small telephone communications companies other than radiotelephone companies.

103. Incumbent Local Exchange Carriers. Neither the Commission nor the SBA has developed a definition for small providers of local exchange services. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information of which we are aware regarding the number of LECs nationwide appears to be the data that we collect annually in connection with the TRS Worksheet. According to our most recent data, 1,410 companies reported that they were engaged in the provision of local exchange services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA definition. Consequently, we estimate that there are equal to or fewer than 1,410 small incumbent LECs. Because the small incumbent LECs subject to these rules are either dominant in their field of operations or are not independently owned and operated, they would be excluded from the definition of ''small entity'' and ''small business concern,'' consistent with our prior practice.

104. Interexchange Carriers. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of interexchange services. The closest applicable definition under the SBA rules is for telephone communications companies except radiotelephone (wireless) companies. The most reliable source of information regarding the number of IXCs nationwide is the data that we collect annually in connection with the TRS Worksheet. According to our most recent data, 151 companies reported that they were engaged in the provision of interexchange services. We do not have information on the number of these carriers that are not independently owned and operated, or have more than 1,500 employees, and thus we are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA definition. Consequently, we estimate that there are equal to or fewer than 151 small entity IXCs.

105. Competitive Access Providers and Competitive Local Exchange Carriers. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of competitive access services (CAPs) and competitive local exchange

carriers (CLECs). The closest applicable definition under the SBA rules is for telephone communications companies except radiotelephone (wireless) companies. The most reliable source of information regarding the number of CAPs and CLECs nationwide is the data that we collect annually in connection with the TRS Worksheet. According to our most recent data, 129 companies reported that they were engaged in the provision of competitive access services. We do not have information on the number of these carriers that are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of CAPs and CLECs that would qualify as small business concerns under the SBA definition. Consequently, we estimate that there are equal to or fewer than 129 small CAPs and CLECs.

106. Operator Service Providers. Carriers engaged in providing interstate operator services from aggregator locations (OSPs) currently are required under section 226(b)(1)(D) of the Communications Act of 1934, as amended, 47 U.S.C. S 226, to ensure that each aggregator for which such provider is the presubscribed OSP is in compliance with the posting required of such aggregator. OSPs also are required under section 226 to file and maintain informational tariffs at the Commission. The number of such tariffs on file appears to be the most reliable source of information of which we are aware regarding the number of OSPs nationwide, including small business concerns, that will be affected by decisions and rules adopted in this Second Report and Order. As of July 12, 1999, approximately 760 carriers had informational tariffs on file at the Commission. The SBA has developed a definition of small entities for telecommunications companies other than radiotelephone (wireless) companies (Telephone Communications, Except Radiotelephone). According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons. Although it seems certain that some of these entities are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of OSPs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 760 small entity OSPs that may be affected by the decisions and rules adopted in this Report and Order.

107. Pay Telephone Providers. Neither the Commission, nor SBA has developed a definition of small entities specifically applicable to pay telephone providers. The closest applicable definition under SBA rules is for telephone communications companies except radiotelephone (wireless) companies. The most reliable source of information regarding the number of pay telephone providers nationwide is the data that we collect annually in connection with the TRS Worksheet. According to our most recent data, 509 companies reported that they were engaged in the provision of pay telephone services. We do not have information on the number of these carriers that are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of pay telephone providers that would qualify as small business concerns under SBA definition. Consequently, we estimate that there are equal to or fewer than 509 small pay telephone providers.

108. Resellers (Including Debit Card Providers). Neither the Commission, nor SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable SBA definition for a reseller is a telephone communications company except radiotelephone (wireless) companies. The most reliable source of information regarding the number of resellers nationwide is the data that the Commission collects annually in connection with the TRS Worksheet. According to our most recent data, 369 companies report that they are engaged in the resale of telephone service. We do not have information on the number of these carriers that are not independently owned and operated, or have more than 1,500 employees, and thus we are unable at this time to estimate with greater precision the number of resellers that would qualify as small entities or small incumbent LEC concerns under the SBA definition. Consequently, we estimate that there are equal to or fewer than 369 small entity resellers.

109. 800 and 800-Like Service Subscribers. Neither the Commission, nor the SBA has developed a definition of small entities specifically applicable to 800 and 800-like service (''toll free'') subscribers. The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, and 877 numbers in use. According to our most recent data, at the end of January 1999, the number of 800 numbers assigned was 7,692,955; the number of 888 numbers that had been assigned was 7,706,393; and the number of 877 numbers assigned was 1,946,538. We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 7,692,955 small entity 800 subscribers, fewer than 7,706,393 small entity 888 subscribers, and fewer than 1,946,538 small entity 877 subscribers.

110. International Service Providers. The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC). This definition provides that a small entity is one with $11.0 million or less in average annual receipts. According to the Census Bureau, there were a total of 848 communications services, NEC, in operation in 1992, and a total of 775 had annual receipts of less than $9.999 million. The Census report does not provide more precise data. Many of these services do not have specified uses and it is uncertain, at this point in time, whether they will ultimately provide telecommunications services.

111. International Public Fixed Radio (Public and Control Stations). Commission records show there are 3 licensees in this service. We do not request or collect annual revenue information, and thus are unable to estimate the number of international public fixed radio licensees that would constitute a small business under the SBA definition. Consequently, we estimate that there are equal to or fewer than 3 small entities that are international public fixed radio licensees.

112. Fixed Satellite Transmit/Receive Earth Stations and Fixed Satellite Small Transmit/Receive Earth Stations. Based on actual payments, there are approximately 3,100 earth station authorizations, a portion of which are Fixed Satellite Transmit/Receive Earth Stations and a portion of which are Fixed Satellite Small Transmit/Receive Earth Stations. We do not request or collect annual revenue information, and thus are unable to estimate the number of the earth stations of either category that would be owned by a small

business under the SBA definition. Consequently, we estimate that there are equal to or fewer than 3,100 small entities that hold such authorizations.

113. Fixed Satellite Very Small Aperture Terminal (VSAT) Systems. These stations operate on a primary basis, and frequency coordination with terrestrial microwave systems is not required. Thus, a single ''blanket'' application may be filed for a specified number of small antennas and one or more hub stations. The Commission has processed 377 applications. We do not request or collect annual revenue information, and thus are unable to estimate the number of VSAT systems that would be owned by a small business under the SBA definition. Consequently, we estimate that there are equal to or fewer than 377 small entities that hold such authorizations.

114. Mobile Satellite Earth Stations. There are 11 licensees. We do not request or collect annual revenue information, and thus are unable to estimate whether either of these licensees would constitute a small business under the SBA definition. Consequently, we estimate that there are 11 or less small entities that hold such licenses.

115. Space Stations (Geostationary). There are 43 space station licensees. We do not request or collect annual revenue information, and thus are unable to estimate the number of geostationary space stations that would be owned by a small business under the SBA definition. Consequently, we estimate that there are equal to or fewer than 43 small entities that hold such licenses.

116. Space Stations (Non-Geostationary). There are twelve Non-Geostationary Space Station licensees, of which only two systems are operational. We do not request or collect annual revenue information, and thus are unable to estimate the number of non-geostationary space stations that would be owned by a small business under the SBA definition. Consequently, we estimate that there are twelve or less small entities that hold such licenses.

117. Mobile Satellite Services (MSS). Mobile Satellite Services or Mobile Satellite Earth Stations are intended to be used while in motion or during halts at unspecified points. These stations operate as part of a network that includes a fixed hub or stations. The stations that are capable of transmitting while a platform is moving are included under section 20.7(c) of the Commission's rules as mobile services within the meaning of sections 3(27) and 332 of the Communications Act. Those MSS services are treated as CMRS if they connect to the Public Switched Network (PSN) and also satisfy other criteria in Section 332. Facilities provided through a transportable platform that cannot move when the communications service is offered are excluded from section 20.7(c) of the rules.

118. The MSS networks may provide a variety of land, maritime and aeronautical voice and data services. There are eight mobile satellite licensees. At this time, we are unable to make a precise estimate of the number of small businesses that are mobile satellite earth station licensees and could be considered CMRS providers of telecommunications service. Consequently, we estimate that there eight or less small entities that hold such licenses.

119. Wireless Telecommunications Service Providers. The Commission has not yet developed a definition of small entities with respect to the provision of CMRS services. Therefore, for CMRS providers not falling within any other established SBA category (i.e., Radiotelephone Communications or Telephone Communications, Except Radiotelephone), the applicable definition of a small entity would be the SBA definition applicable to the ''Communications Services, Not Elsewhere Classified.'' This definition provides that a small entity is one with $11.0 million or less in average annual receipts. The Census Bureau estimates indicate that of the 848 firms in the ''Communications Services, Not Elsewhere Classified'' category, 775 are small businesses. It is not possible to predict which of these would be small entities (in absolute terms or by percentage) or to classify the number of small entities by particular forms of service.

120. Cellular Radio Telephone Service. The Commission has not developed a definition of small entities specifically applicable to cellular licensees. Therefore, the applicable definition of a small entity is the SBA definition applicable to radiotelephone companies, which provides that a small entity is a radiotelephone company employing no more than 1,500 persons. The size data provided by SBA do not enable us to make a meaningful estimate of the number of cellular providers that are small entities because it combines all radiotelephone companies with 500 or more employees. We therefore have used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. That census shows that only 12 radiotelephone firms out of a total of 1,178 such firms operating during 1992 had 1,000 or more employees. Therefore, even if all 12 of these large firms were cellular telephone companies, all of the remainder would be small businesses under the SBA definition.

121. There are presently 1,758 cellular licenses. However, the number of cellular licensees is not known, since a single cellular licensee may own several licenses. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent Telecommunications Industry Revenue data, 732 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services, which are placed together in the data. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 732 or fewer small cellular service carriers that may be affected by the rules, herein adopted.

122. Broadband Personal Communications Service. The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F. Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small entity PCS providers

as defined by the SBA and the Commission's auction rules.

123. Narrowband PCS. The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions have not yet been scheduled, however. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

124. Specialized Mobile Radio. Pursuant to section 90.814(b)(1) of the Commission's Rules, the Commission has defined ''small entity'' for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average gross revenues of less than $15 million in the three previous calendar years. This regulation defining ''small entity'' in the context of 800 MHz and 900 MHz SMR has been approved by SBA. The rules promulgated in the Report and Order may apply to SMR providers in the 800 MHz and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service, or how many of these providers have average annual gross revenues of less than $15 million.

125. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities under the Commission's definition in the 900 MHz auction. Based on this information, we conclude that the number of geographic area SMR licensees affected by the rules promulgated in the Report and Order includes these 60 small entities.

126. Based on the auctions held for 800 MHz geographic area SMR licenses, there are 10 small entities currently holding 38 of the 524 licenses for the upper 200 channels of this service. However, the Commission has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis to estimate, moreover, how many small entities within the SBA definition will win these licenses. Given the facts that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz SMR licensees can be made, we assume, for purposes of our evaluations and conclusions in this FRFA, that all of the licenses will be awarded to small entities, as that term is defined by SBA.

127. 220 MHz Radio Service—Phase I Licensees. The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone Communications companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons. According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, if this general ratio continues in 1999 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

128. 220 MHz Radio Service—Phase II Licensees. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz Third Report and Order, we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these definitions. An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. Nine hundred and eight (908) licenses were auctioned in 3 different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business status won: one of the Nationwide licenses, 67% of the Regional licenses, and 54% of the EA licenses. As of January 22, 1999, the Commission announced that it was prepared to grant 654 of the Phase II licenses won at auction. A re-auction of the remaining, unsold licenses was completed on June 30, 1999, wherein 222 of the remaining licenses were sold, but have yet to be licensed.

129. Paging. To ensure the more meaningful participation of small business entities in the auctions, the Commission adopted a two-tiered definition of small businesses in the Paging Second Report and Order, stating that: (1) An entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $3 million; or (2) an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. In December 1998, the Small Business Administration approved the two-tiered size standards for paging services set forth in the Second Report and Order.

130. *MEA and EA Licenses.* In the Final Regulatory Flexibility Analysis incorporated in Appendix C of the Second Report and Order, the Commission anticipated that approximately 16,630 non-nationwide geographic area licenses will be auctioned. While we are unable to predict accurately how many paging licensees meeting one of the above definitions will participate in or be successful at auction, our Third CMRS Competition Report estimated that, as of January 1998, there were more than 600 paging companies in the United States. The Third CMRS Competition Report also indicates that at least ten of the top twelve publicly held paging companies had average gross revenues in excess of $15 million for the three years preceding 1998. The Commission expects that these ten companies will participate in the paging auction and may employ the partitioning or disaggregation rules. The Commission also expects, for purposes of the evaluations and conclusions in this Final Regulatory Flexibility Analysis, that a number of paging licenses will be awarded to small businesses, and at least some of those small business licensees will likely also take advantage of the partitioning and disaggregation rules. We are unable to predict accurately the number of small

businesses that may choose to acquire partitioned or disaggregated MEA or EA licenses. The Commission expects, however, that entities meeting one of the above definitions will use partitioning and disaggregation as a means to obtain a paging license from an MEA or EA licensee at a cost lower than the cost of the license for the entire MEA or EA.

131. *Nationwide Geographic Area Licenses.* The partitioning and disaggregation rules pertaining to nationwide geographic area licenses will affect the 26 licensees holding nationwide geographic area licenses to the extent they choose to partition or disaggregate, as well as any entity that enters into a partitioning or disaggregation agreement with a nationwide geographic area licensee. No parties, however, commented on the number of small business nationwide geographic area licensees that might elect to partition or disaggregate their licenses and no reasonable estimate can be made. While we are unable to state accurately how many nationwide geographic area licensees meet one of the above small business definitions, our Third CMRS Competition Report indicates that at least eight of the top twelve publicly held paging companies hold nationwide geographic area licenses and had average gross revenues in excess of $15 million for the three years preceding 1998. The Commission expects at least some of these eight companies to employ the partitioning or disaggregation rules, and also expects, for the purposes of evaluations and conclusions in this Final Regulatory Flexibility Analysis, that nationwide geographic area licensees meeting one of the above definitions may use the partitioning or disaggregation rules. While we are unable to predict accurately the number of small businesses that may choose to acquire partitioned or disaggregated licenses from nationwide geographic area licensees, the Commission expects, for purposes of the evaluations and conclusions in the Final Regulatory Flexibility Analysis, that entities meeting one of the above small business definitions will use partitioning and disaggregation as a means to obtain a paging license from a nationwide geographic area licensee.

132. Air-Ground Radiotelephone Service. The Commission has not adopted a definition of small business specific to the Air-Ground Radiotelephone Service, which is defined in Section 22.99 of the Commission's rules. Accordingly, we will use the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA definition.

133. Local Multipoint Distribution Service (LMDS). LMDS licensees may use spectrum for any number of services. We anticipate that the greatest intensity of use will be for either radio telephone or pay television services. SBA has developed definitions applicable to each of these services; however, because pay television is not a telecommunications service subject to section 255, that definition is not relevant to this FRFA. The Commission has adopted a definition of small entities applicable to LMDS licensees, which is a new service. In the LMDS Order we adopted criteria for defining small businesses for determining bidding credits in the auction, but we believe these criteria are applicable for evaluating the burdens imposed by section 255. We defined a small business as an entity that, together with affiliates and controlling principals, has average gross revenues not exceeding $40 million for the three preceding years. Additionally, small entities are those which together with their affiliates and controlling principals, have average gross revenues for the three preceding years of more than $40 million but not more than $75 million. This definition has been approved by the SBA. Upon completion of the LMDS auction, 93 of the 104 bidders qualified as small entities, smaller businesses, or very small businesses. These 93 bidders won 664 of the 864 licenses. We estimate that all of these 93 bidders would qualify as small under the SBA definitions, but cannot yet determine what percentage would be offering telecommunications services subject to the requirements of section 255.

134. Rural Radiotelephone Service. The Commission has not adopted a definition of a small entity specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS). Thus, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

135. Wireless Communications Services. This service can be used for fixed, mobile, radiolocation and digital audio broadcasting satellite uses. The Commission defined small business for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a very small business as an entity with average gross revenues of $15 million for each of the three preceding years. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees affected includes these eight entities.

136. 39 GHz Band. In the 39 GHz Band NPRM and Order, we proposed to define a small business as an entity that, together with its affiliates and attributable investors, has average gross revenues for the three preceding years of less than $40 million. We have not yet received approval by the SBA for this definition. Therefore, the applicable definition of a small entity is the SBA definition applicable to radiotelephone companies, which is a radiotelephone company employing no more than 1,500 persons. As noted previously, the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, shows that only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, a majority of 39 GHz entities providing radiotelephone services could be small businesses under the SBA definition, and we assume, for purposes of our evaluation here, that nearly all of the 39 GHz licensees will be small entities, as that term is defined by the SBA.

D. Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements

137. As we have noted, the objective of section 255 is to give persons with disabilities increased access to telecommunications. Both equipment manufacturers and telecommunications service providers are obligated to provide accessibility for persons with any one or more different disabilities to the extent that it is readily achievable for them to do so. In the broadest sense, compliance consists of an on-going, disciplined, and systematic effort to provide the greatest level of accessibility.

138. We have declined to adopt suggestions that we require manufacturers and service providers to establish specific internal systems and recordkeeping practices for purposes of responding to section 255 complaints and inquiries or require manufacturers to maintain public files recording their

compliance with section 255 and our rules. We see no need to burden manufacturers and service providers with detailed processing and reporting requirements which could hinder rather than hasten the resolution of accessibility disputes. The only reporting requirement imposed by the rules is that each covered entity designate an agent or contact whose principal function will be to ensure the manufacturer's or service provider's prompt receipt and handling of accessibility concerns raised by consumers or Commission staff. We proposed this requirement in the Notice, and it received universal support among the commenters.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities Consistent with Stated Objectives, and Significant Alternatives Considered

139. We noted in the IRFA that the resources of the regulated entity are taken into account in the determination of whether accessibility of a given product or service is readily achievable and that there is thus an inherent consideration of the financial burden on the entity in its obligation to provide accessibility: if not readily achievable, that obligation is removed. Nevertheless, we acknowledged that all regulated entities would be required to assess whether providing accessibility is readily achievable and that an important issue for RFA purposes is thus 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.

140. As early as the Notice of Inquiry, we sought comment on three possible approaches for implementing and enforcing the provisions of section 255: (1) Case-by-case determinations; (2) guidelines or a policy statement; or (3) rules setting forth procedural or performance requirements intended to promote accessibility. The Notice focused principally on procedural requirements as a practical, common sense means to ensure that consumers with disabilities would have access to telecommunications services and equipment. In the Notice we considered using case-by-case determinations exclusively, in lieu of any rules, but tentatively discarded this approach because we believed that in a rapidly changing market with unpredictable technological breakthroughs, the slow development of case law would be insufficient to guide covered entities and to provide an understanding of their accessibility obligations.

141. We also considered issuing guidelines or a policy statement, but tentatively discarded this approach, as well, because of our view that a greater degree of regulatory and administrative certainty would best serve the interests of both consumers and businesses that must comply with section 255. Although we acknowledged that a policy statement might serve the purpose of informing case-by-case determinations in complaint proceedings and lend some predictability to the process, we tentatively decided that, in order for accessibility to be addressed in a pro-active manner, equipment manufacturers and service providers should have clear expressions of the demands that section 255 places on their operations before the beginning of the design process. Therefore, we tentatively concluded that the potential drawbacks of exclusive reliance on case-by-case determinations as a means of implementing section 255 would not be sufficiently diminished by the adoption of guidelines or a policy statement.

142. We also considered and tentatively rejected the option of promulgating specific performance requirements. Such an approach, under which the Commission would attempt to establish an array of specific parameters for features and functions across a broad range of telecommunications services and equipment, was viewed as potentially burdensome to covered entities. We also considered it to be fraught with other potential problems, such as rapid changes in technology, that would require frequent revision of the performance requirements and could cause confusion in the telecommunications marketplace. We tentatively decided that the promulgation of specific rules governing the design process would also impose burdens on covered entities whose resources would be better spent in achieving and improving accessibility.

143. As a result of our tentative decision to rely primarily on procedural rules, we took several steps in the Notice to minimize the burdens on all regulated entities. First, we sought to provide incentives to industry for early and on-going consideration of accessibility issues by indicating that we would look favorably upon efforts to implement the Access Board's guidelines by such means as formalizing self-assessment, external outreach, internal management, and user information and support to address accessibility issues. Second, we attempted to unravel the statutory terminology to give guidance on the interpretation of key language within the telecommunications context. Third, we proposed a two-phase process for dealing with section 255 consumer complaints. In the first phase, which we referred to as the ''fast-track,'' we proposed that Commission staff be required to refer any complaint or inquiry to the manufacturer or service provider concerned, who would have a period of five business days to address the problem. Where fast-track efforts failed to produce a satisfactory solution, we proposed to apply complaint processes similar to those used in section 208 complaint proceedings.

144. Although we initially viewed the ''fast-track'' process as an efficient, consumer-friendly means of dealing with problems associated with accessibility compliance, parties representing both consumer and industry interests criticized the proposed mandatory ''fast-track'' mechanism as burdensome and confusing and agreed that our section 208 processes provide an appropriate model for section 255 enforcement. Hence, in the Report and Order, we decided to abandon the 5-day ''fast track'' proposal and to adopt rules modeled after our section 208 complaint rules, thus reducing the implicit burden placed on both consumers and industry alike.

145. Under the procedures adopted by the Report and Order, consumer complaints filed pursuant to section 255 will be handled through an informal complaint process where the staff refers complaints to the manufacturers or service providers involved. The focus at this stage will be on addressing the accessibility needs of the complainant. Because the nature or complexity of certain accessibility disputes may not be susceptible to informal resolution by the disputing parties, complainants have the option of seeking the formal adjudication of a problem or dispute with a manufacturer or service provider at any time pursuant to our existing section 208 complaint rules.

146. As outlined in the Report and Order we have declined to promulgate specific rules governing the design process, although certain of the Access Board Guidelines that we have may require manufacturers to include persons with disabilities in any group testing performed during the design process.

147. We believe we have reduced regulatory burdens wherever possible. For burdens imposed by achieving accessibility, the structure of the statute inherently acknowledges varying degrees of economic impact. The ''readily achievable'' standard is

proportional, not absolute, and adjusts the burden of providing accessible features commensurate with the resources of the covered entity. For burdens associated with enforcement, we anticipate that the informal complaint process will significantly reduce the number of complaints, thus minimizing the burden on all covered entities of providing a legal defense. Moreover, the range of choices for resolving complaints is designed to reduce costs to the opposing parties. Encouraging the use of streamlined, informal complaints or alternative dispute resolution primarily benefits individual plaintiffs who may be persons with disabilities with limited financial resources, but should also enable covered entities to defend themselves at a lower cost.

148. The Commission will forward a copy of the Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will forward a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy for the Small Business Administration. A copy of the Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

VII. Paperwork Reduction Act

149. The decision herein has been analyzed with respect to the Paperwork Reduction Act of 1995, Public Law 104–13, and the Office of Management and Budget (''OMB'') has approved some of its information collection requirements in OMB No. 3060–0833, dated August 4, 1998. This Order also contains some modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection contained in the Order as required by the Paperwork Reduction Act of 1995, public law 104–13. Public and agency comments are due December 20, 1999. Comments should address: (a) Whether the modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and the clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

VIII. Ordering Clauses

150. The authority contained in sections 1, 2, 4, 201(b), 208, 251(a)(2), 255, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154, 201(b), 208, 251(a)(2), 255, 303(r), this Order IS ADOPTED.

151. *It is ordered* That 47 C.F.R. part 1 is revised, and parts 6 and 7 are added as set forth below.

152. *It is ordered* That the Commission's Office of Public affairs SHALL SEND a copy of this Report and Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act 5 U.S.C. 601, *et seq.*

153. The Report and Order IS ADOPTED, and the requirements contained herein will become effective January 28, 2000, expect for §§ 6.18 and 7.18, which will become effective upon approval of OMB of the modified information requirements contained herein. Notice of that approval will be published in the **Federal Register**.

List of Subjects in 47 CFR Part 1, 6 and 7

Communications equipment, Individuals with disabilities, Telecommunications.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR chapter I as set forth below:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 is revised to read as follows:

Authority: 47 U.S.C. 1, 154(i), 154 (j), 208, and 255.

2. Section 1.1202 is amended by revising paragraph (d)(2) to read as follows:

§ 1.1202 Definitions.

* * * * *

(d) * * *

(2) Any person who files a complaint which shows that the complainant has served it on the subject of the complaint or which is a formal complaint under 47 U.S.C. 208 and § 1.721 or 47 U.S.C. 255 and either §§ 6.17 or 7.17 of this chapter, and the person who is the subject of such a complaint that shows service or is a formal complaint under 47 U.S.C. 208 and § 1.721 or 47 U.S.C. 255 and either §§ 6.17 or 7.17 of this chapter;

* * * * *

3. Section 1.1204 is amended by revising paragraph (b)(5) to read as follows:

§ 1.1204 Example ex parte presentations and proceedings.

* * * * *

(b) * * *

(5) An informal complaint proceeding under 47 U.S.C. 208 and § 1.717 of this chapter or 47 U.S.C. 255 and either §§ 6.17 or 7.17 of this chapter; and

* * * * *

4. Add part 6 to read as follows:

PART 6—ACCESS TO TELECOMMUNICATIONS SERVICE, TELECOMMUNICATIONS EQUIPMENT AND CUSTOMER PREMISES EQUIPMENT BY PERSONS WITH DISABILITIES

Subpart A—Scope—Who Must Comply With These Rules?

Subpart B—Definitions

Subpart C—Obligations—What Must Covered Entities Do?

Subpart D—Enforcement

Authority: 47 U.S.C. 154(i), 154(j), 208, 255.

Subpart A—Scope—Who Must Comply With These Rules?

§ 6.1 Applicability.

The rules in this part apply to:

(a) Any provider of telecommunications service;

(b) Any manufacturer of telecommunications equipment or customer premises equipment; and

(c) Any telecommunications carrier.

Subpart B—Definitions

§ 6.3 Definitions.

(a) The term *accessible* shall mean that:

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

(i) Operable without vision. Provide at least one mode that does not require user vision.

(ii) 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.

(iii) Operable with little or no color perception. Provide at least one mode that does not require user color perception.

(iv) Operable without hearing. Provide at least one mode that does not require user auditory perception.

(v) Operable with limited manual dexterity. Provide at least one mode that does not require user fine motor control or simultaneous actions.

(vi) Operable with limited reach and strength. Provide at least one mode that is operable with user limited reach and strength.

(vii) Operable with a Prosthetic Device. Controls shall be operable without requiring body contact or close body proximity.

(viii) Operable without time-dependent controls. Provide at least one mode that does not require a response time or allows response time to be by-passed or adjusted by the user over a wide range.

(ix) Operable without speech. Provide at least one mode that does not require user speech.

(x) Operable with limited cognitive skills. Provide at least one mode that minimizes the cognitive, memory, language, and learning skills required of the user.

(2) 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, comply with each of the following, assessed independently:

(i) Availability of visual information. Provide visual information through at least one mode in auditory form.

(ii) 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.

(iii) Access to moving text. Provide moving text in at least one static presentation mode at the option of the user.

(iv) Availability of auditory information. Provide auditory information through at least one mode in visual form and, where appropriate, in tactile form.

(v) 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).

(vi) Prevention of visually-induced seizures. Visual displays and indicators shall minimize visual flicker that might induce seizures in people with photosensitive epilepsy.

(vii) 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.

(viii) 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.

(ix) 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.

(b) The term *compatibility* shall mean compatible with peripheral devices and specialized customer premises equipment commonly used by individuals with disabilities to achieve accessibility to telecommunications services, and in compliance with the following provisions, as applicable:

(1) 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.

(2) 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.

(3) 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.

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

(c) The term *customer premises equipment* shall mean equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications.

(d) The term *disability* shall mean a physical or mental impairment that substantially limits one or more of the major life activities of an individual; a record of such an impairment; or being regarded as having such an impairment.

(e) The term *manufacturer* shall mean an entity that makes or produces a product.

(f) The term *peripheral devices* shall mean devices employed in connection with equipment covered by this part to translate, enhance, or otherwise transform telecommunications into a form accessible to individuals with disabilities.

(g) The term *readily achievable* shall mean, in general, easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable, factors to be considered include:

(1) The nature and cost of the action needed;

(2) The overall financial resources of the manufacturer or service provider involved in the action (the covered entity); the number of persons employed by such manufacturer or service provider; the effect on expenses and resources, or the impact otherwise of such action upon the operations of the manufacturer or service provider;

(3) If applicable, the overall financial resources of the parent of the entity; the overall size of the business of the parent entity with respect to the number of its employees; the number, type, and location of its facilities; and

(4) If applicable, the type of operation or operations of the covered entity, including the composition, structure and functions of the workforce of such entity; and the geographic separateness, administrative or fiscal relationship of the covered entity in question to the parent entity.

(h) The term *specialized customer premises equipment* shall mean

customer premise equipment which is commonly used by individuals with disabilities to achieve access.

(i) The term *telecommunications equipment* shall mean equipment, other than customer premises equipment, used by a carrier to provide telecommunications services, and includes software integral to such equipment (including upgrades).

(j) The term *telecommunications service* shall mean 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.

(k) The term *usable* shall mean that individuals with disabilities have access to the full functionality and documentation for the product, including instructions, product information (including accessible feature information), documentation, bills and technical support which is provided to individuals without disabilities.

Subpart C—Obligations—What Must Covered Entities Do?

§ 6.5 General obligations.

(a) *Obligation of Manufacturers.* (1) A manufacturer of telecommunications equipment or customer premises equipment shall ensure that the equipment is designed, developed and fabricated so that the telecommunications functions of the equipment are accessible to and usable by individuals with disabilities, if readily achievable.

(2) Whenever the requirements of paragraph (a)(1) of this section are not readily achievable, the manufacturer shall ensure that the equipment is compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access, if readily achievable.

(b) *Obligation of Service Providers.* (1) A provider of a telecommunications service shall ensure that the service is accessible to and usable by individuals with disabilities, if readily achievable.

(2) Whenever the requirements of paragraph (b)(1) of this section are not readily achievable, the service provider shall ensure that the service is compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access, if readily achievable.

(c) *Obligation of Telecommunications Carriers.* Each telecommunications carrier must not install network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to this part or part 7 of this chapter.

§ 6.7 Product design, development, and evaluation.

(a) Manufacturers and service providers shall evaluate the accessibility, usability, and compatibility of equipment and services covered by this part and shall incorporate such evaluation throughout product design, development, and fabrication, as early and consistently as possible. Manufacturers and service providers shall identify barriers to accessibility and usability as part of such a product design and development process.

(b) In developing such a process, manufacturers and service providers 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.

§ 6.9 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, if readily achievable. In particular, signal compression technologies shall not remove information needed for access or shall restore it upon decompression.

§ 6.11 Information, documentation, and training.

(a) Manufacturers and service providers shall ensure access to information and documentation it provides to its customers, if readily achievable. Such information and documentation includes user guides, bills, 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 readily achievable 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 and service providers shall include in general product information the contact method for obtaining the information required by paragraph (a) of this section.

(c) In developing, or incorporating existing training programs, manufacturers and service providers, shall consider the following topics:

(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.

Subpart D—Enforcement

§ 6.15 Generally.

(a) All manufacturers of telecommunications equipment or customer premise equipment (CPE) and all providers of telecommunications services, as defined under this subpart, are subject to the enforcement provisions specified in the Act and the Commission's rules.

(b) For purposes of §§ 6.15 through 6.23, the term ''manufacturers'' shall denote manufacturers of telecommunications equipment or CPE and the term ''providers'' shall denote providers of telecommunications services.

§ 6.16 Informal or formal complaints.

Complaints against manufacturers or providers, as defined under this subpart, for alleged violations of this subpart may be either informal or formal.

§ 6.17 Informal complaints; form and content.

(a) An informal complaint alleging a violation of section 255 of the Act or this subpart may be transmitted to the Commission by any reasonable means, *e.g.*, letter, facsimile transmission, telephone (voice/TRS/TTY), Internet e-mail, ASCII text, audio-cassette recording, and braille.

(b) An informal complaint shall include:

(1) The name and address of the complainant;

(2) The name and address of the manufacturer or provider against whom the complaint is made;

(3) A full description of the telecommunications equipment or CPE and/or the telecommunications service about which the complaint is made;

(4) The date or dates on which the complainant either purchased, acquired or used, or attempted to purchase, acquire or use the telecommunications equipment, CPE or telecommunications service about which the complaint is being made;

(5) A complete statement of the facts, including documentation where available, supporting the complainant's allegation that: such telecommunications service, or such telecommunications equipment or CPE, is not accessible to, or usable by, a person with a particular disability or persons with disabilities within the meaning of this subpart and section 255 of the Act; or that the defendant has otherwise failed to comply with the requirements of this subpart;

(6) The specific relief or satisfaction sought by the complainant, and

(7) The complainant's preferred format or method of response to the complaint by the Commission and defendant (*e.g.*, letter, facsimile transmission, telephone (voice/TRS/TTY), Internet e-mail, ASCII text, audio-cassette recording, braille; or some other method that will best accommodate the complainant's disability)

§ 6.18 Procedure; designation of agents for service.

(a) The Commission shall promptly forward any informal complaint meeting the requirements of § 6.17 to each manufacturer and provider named in or determined by the staff to be implicated by the complaint. Such manufacturer(s) or provider(s) shall be called on to satisfy or answer the complaint within the time specified by the Commission.

(b) To ensure prompt and effective service of informal and formal complaints filed under this subpart, every manufacturer and provider subject to the requirements of section 255 of the Act and this subpart, shall designate an agent, and may designate additional agents if it so chooses, upon whom service may be made of all notices, inquiries, orders, decisions, and other pronouncements of the Commission in any matter before the Commission. Such designation shall include, for both the manufacturer or the provider, a name or department designation, business address, telephone number, and, if available TTY number, facsimile number, and Internet e-mail address.

§ 6.19 Answers to informal complaints.

Any manufacturer or provider to whom an informal complaint is directed by the Commission under this subpart shall file an answer within the time specified by the Commission. The answer shall:

(a) Be prepared or formatted in the manner requested by the complainant pursuant to § 6.17, unless otherwise permitted by the Commission for good cause shown;

(b) Describe any actions that the defendant has taken or proposes to take to satisfy the complaint;

(c) Advise the complainant and the Commission of the nature of the defense(s) claimed by the defendant;

(d) Respond specifically to all material allegations of the complaint; and

(e) Provide any other information or materials specified by the Commission as relevant to its consideration of the complaint.

§ 6.20 Review and disposition of informal complaints.

(a) Where it appears from the defendant's answer, or from other communications with the parties, that an informal complaint has been satisfied, the Commission may, in its discretion, consider the informal complaint closed, without response to the complainant or defendant. In all other cases, the Commission shall inform the parties of its review and disposition of a complaint filed under this subpart. Where practicable, this information, the nature of which is specified in paragraphs (b) through (d) of this section, shall be transmitted to the complainant and defendant in the manner requested by the complainant, (*e.g.*, letter, facsimile transmission, telephone (voice/TRS/TTY), Internet e-mail, ASCII text, audio-cassette recording, or braille).

(b) In the event the Commission determines, based on a review of the information provided in the informal complaint and the defendant's answer thereto, that no further action is required by the Commission with respect to the allegations contained in the informal complaint, the informal complaint shall be closed and the complainant and defendant shall be duly informed of the reasons therefor. A complainant unsatisfied with the defendant's response to the informal complaint and the staff decision to terminate action on the informal complaint may file a formal complaint with the Commission, as specified in § 6.22.

(c) In the event the Commission determines, based on a review of the information presented in the informal complaint and the defendant's answer thereto, that a material and substantial question remains as to the defendant's compliance with the requirements of this subpart, the Commission may conduct such further investigation or such further proceedings as may be necessary to determine the defendant's compliance with the requirements of this subpart and to determine what, if any, remedial actions and/or sanctions are warranted.

(d) In the event that the Commission determines, based on a review of the information presented in the informal complaint and the defendant's answer thereto, that the defendant has failed to comply with or is presently not in compliance with the requirements of this subpart, the Commission may order or prescribe such remedial actions and/or sanctions as are authorized under the Act and the Commission's rules and which are deemed by the Commission to be appropriate under the facts and circumstances of the case.

§ 6.21 Formal complaints, applicability of §§ 1.720 through 1.736 of this chapter.

Formal complaints against a manufacturer or provider, as defined under this subpart, may be filed in the form and in the manner prescribed under §§ 1.720 through 1.736 of this chapter. Commission staff may grant waivers of, or exceptions to, particular requirements under §§ 1.720 through 1.736 of this chapter for good cause shown; provided, however, that such waiver authority may not be exercised in a manner that relieves, or has the effect of relieving, a complainant of the obligation under §§ 1.720 and 1.728 of this chapter to allege facts which, if true, are sufficient to constitute a violation or violations of section 255 of the Act or this subpart.

§ 6.22 Formal complaints based on unsatisfied informal complaints.

A formal complaint filing based on an unsatisfied informal complaint filed pursuant to § 4.16 of this chapter shall be deemed to relate back to the filing date of the informal complaint if it is filed within ninety days from the date that the Commission notifies the complainant of its disposition of the informal complaint and based on the same operative facts as those alleged in the informal complaint.

§ 6.23 Actions by the Commission on its own motion.

The Commission may on its own motion conduct such inquiries and hold such proceedings as it may deem necessary to enforce the requirements of this subpart and section 255 of the Communications Act. The procedures to be followed by the Commission shall, unless specifically prescribed in the Act and the Commission's rules, be such as in the opinion of the Commission will best serve the purposes of such inquiries and proceedings.

2. Add part 7 to read as follows:

PART 7—ACCESS TO VOICEMAIL AND INTERACTIVE MENU SERVICES AND EQUIPMENT BY PEOPLE WITH DISABILITIES

Subpart A—Scope—Who Must Comply With These Rules?

Subpart B—Definitions

Subpart C—Obligations—What Must Covered Entities Do?

Subpart D—Enforcement

Authority: 47 U.S.C. 1, 154(i), 154(j) 208, and 255.

Subpart A—Scope—Who Must Comply With These Rules?

§ 7.1 Who must comply with these rules?

The rules in this part apply to:

(a) Any provider of voicemail or interactive menu service;

(b) Any manufacturer of telecommunications equipment or customer premises equipment which performs a voicemail or interactive menu function.

Subpart B—Definitions

§ 7.3 Definitions.

(a) The term *accessible* shall mean that:

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

(i) Operable without vision. Provide at least one mode that does not require user vision.

(ii) 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.

(iii) Operable with little or no color perception. Provide at least one mode that does not require user color perception.

(iv) Operable without hearing. Provide at least one mode that does not require user auditory perception.

(v) Operable with limited manual dexterity. Provide at least one mode that does not require user fine motor control or simultaneous actions.

(vi) Operable with limited reach and strength. Provide at least one mode that is operable with user limited reach and strength.

(vii) Operable with a Prosthetic Device. Controls shall be operable without requiring body contact or close body proximity.

(viii) Operable without time-dependent controls. Provide at least one mode that does not require a response time or allows a response to be by-passed or adjusted by the user over a wide range.

(ix) Operable without speech. Provide at least one mode that does not require user speech.

(x) Operable with limited cognitive skills. Provide at least one mode that minimizes the cognitive, memory, language, and learning skills required of the user.

(2) 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, comply with each of the following, assessed independently:

(i) Availability of visual information. Provide visual information through at least one mode in auditory form.

(ii) 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.

(iii) Access to moving text. Provide moving text in at least one static presentation mode at the option of the user.

(iv) Availability of auditory information. Provide auditory information through at least one mode in visual form and, where appropriate, in tactile form.

(v) 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).

(vi) Prevention of visually-induced seizures. Visual displays and indicators shall minimize visual flicker that might induce seizures in people with photosensitive epilepsy.

(vii) 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.

(viii) 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.

(ix) 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.

(b) The term *compatibility* shall mean compatible with peripheral devices and specialized customer premises equipment commonly used by individuals with disabilities to achieve accessibility to voicemail and interactive menus, and in compliance with the following provisions, as applicable:

(1) 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.

(2) 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.

(3) 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.

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

(c) The term *customer premises equipment* shall mean equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications.

(d) The term *disability* shall mean a physical or mental impairment that substantially limits one or more of the major life activities of an individual; a record of such an impairment; or being regarded as having such an impairment.

(e) The term *interactive menu* shall mean a feature that allows a service provider or operator of CPE to transmit information to a caller in visual and/or audible format for the purpose of management, control, or operations of a telecommunications system or service; and/or to request information from the caller in visual and/or audible format for the purpose of management, control, or operations of a telecommunications system or service; and/or to receive information from the caller in visual and/or audible format in response to a request, for the purpose of management, control, or operations of a telecommunications system or service. This feature, however, does not include the capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications for any purpose other than management, control, or operations of a telecommunications system or service.

(f) The term *manufacturer* shall mean an entity that makes or produces a product.

(g) The term *peripheral devices* shall mean devices employed in connection with equipment covered by this part to translate, enhance, or otherwise transform telecommunications into a form accessible to individuals with disabilities.

(h) The term *readily achievable* shall mean, in general, easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable, factors to be considered include:

(1) The nature and cost of the action needed;

(2) The overall financial resources of the manufacturer or service provider involved in the action (the covered entity); the number of persons employed by such manufacturer or service provider; the effect on expenses and resources, or the impact otherwise of such action upon the operations of the manufacturer or service provider;

(3) If applicable, the overall financial resources of the parent of the covered entity; the overall size of the business of the parent of the covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

(4) If applicable, the type of operation or operations of the covered entity, including the composition, structure and functions of the workforce of such entity; and the geographic separateness, administrative or fiscal relationship of covered entity in question to the parent entity.

(i) The term *specialized customer premises equipment* shall mean customer premise equipment which is commonly used by individuals with disabilities to achieve access.

(j) The term *telecommunications equipment* shall mean equipment, other than customer premises equipment, used by a carrier to provide telecommunications services, and includes software integral to such equipment (including upgrades).

(k) The term *telecommunications service* shall mean 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.

(l) The term *usable* shall mean that individuals with disabilities have access to the full functionality and documentation for the product, including instructions, product information (including accessible feature information), documentation, bills and technical support which is provided to individuals without disabilities.

(m) The term *Voicemail* shall mean the capability of answering calls and recording incoming messages when a line is busy or does not answer within a pre-specified amount of time or number of rings; receiving those messages at a later time; and may also include the ability to determine the sender and time of transmission without hearing the entire message; the ability to forward the message to another voice massaging customer, with and/or without an appended new message; the ability for the sender to confirm receipt of a message; the ability to send, receive, and/or store facsimile messages; and possibly other features.

Subpart C—Obligations—What Must Covered Entities Do?

§ 7.5 General Obligations.

(a) Obligation of Manufacturers. (1) A manufacturer of telecommunications equipment or customer premises equipment covered by this part shall ensure that the equipment is designed, developed and fabricated so that the voicemail and interactive menu functions are accessible to and usable by individuals with disabilities, if readily achievable;

(2) Whenever the requirements of paragraph (a)(1) of this section are not readily achievable, the manufacturer shall ensure that the equipment is compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access, if readily achievable.

(b) Obligation of Service Providers. (1) A provider of voicemail or interactive menu shall ensure that the service is accessible to and usable by individuals with disabilities, if readily achievable.

(2) Whenever the requirements of paragraph (a)(1) of this section are not readily achievable, the service provider shall ensure that the service is compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access, if readily achievable.

§ 7.7 Product design, development, and evaluation.

(a) Manufacturers and service providers shall evaluate the accessibility, usability, and compatibility of equipment and services covered by this part and shall incorporate such evaluation throughout product design, development, and fabrication, as early and consistently as possible. Manufacturers and service providers shall identify barriers to accessibility and usability as part of such a product design and development process.

(b) In developing such a process, manufacturers and service providers 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.

§ 7.9 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, if readily achievable. In particular, signal compression technologies shall not remove information needed for access or shall restore it upon decompression.

§ 7.11 Information, documentation, and training.

(a) Manufacturers and service providers shall ensure access to information and documentation it provides to its customers, if readily achievable. Such information and documentation includes user guides, bills, 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 readily achievable 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 and service providers shall include in general product information the contact method for obtaining the information required by paragraph (a) of this section.

(c) In developing, or incorporating existing training programs, manufacturers and service providers shall consider the following topics:

(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.

Subpart D—Enforcement

§ 7.15 Generally.

(a) For purposes of §§ 7.15–7.23 of this subpart, the term ''manufacturers'' shall denote any manufacturer of telecommunications equipment or customer premises equipment which performs a voicemail or interactive menu function.

(b) All manufacturers of telecommunications equipment or customer premise equipment (CPE) and all providers of voicemail and interactive menu services, as defined under this subpart, are subject to the enforcement provisions specified in the Act and the Commission's rules.

(c) The term ''providers'' shall denote any provider of voicemail or interactive menu service.

§ 7.16 Informal or formal complaints.

Complaints against manufacturers or providers, as defined under this subpart, for alleged violations of this subpart may be either informal or formal.

§ 7.17 Informal complaints; form and content.

(a) An informal complaint alleging a violation of section 255 of the Act or this subpart may be transmitted to the Commission by any reasonable means, *e.g.*, letter, facsimile transmission, telephone (voice/TRS/TTY), Internet e-mail, ASCII text, Internet e-mail, audio-cassette recording, and braille.

(b) An informal complaint shall include:

(1) The name and address of the complainant;

(2) The name and address of the manufacturer or provider against whom the complaint is made;

(3) A full description of the telecommunications equipment or CPE and/or the telecommunications service about which the complaint is made;

(4) The date or dates on which the complainant either purchased, acquired or used, or attempted to purchase, acquire or use the telecommunications equipment, CPE or telecommunications service about which the complaint is being made;

(5) A complete statement of the facts, including documentation where available, supporting the complainant's allegation that: such telecommunications service, or such telecommunications equipment or CPE, is not accessible to, or usable by, a person with a particular disability or persons with disabilities within the meaning of this subpart and section 255 of the Act; or that the defendant has otherwise failed to comply with the requirements of this subpart.

(6) The specific relief or satisfaction sought by the complainant, and

(7) The complainant's preferred format or method of response to the complaint by the Commission and defendant (*e.g.*, letter, facsimile transmission, telephone (voice/TRS/TTY), Internet e-mail, ASCII text, audio-cassette recording, braille; or some other method that will best accommodate the complainant's disability).

§ 7.18 Procedure; designation of agents for service.

(a) The Commission shall promptly forward any informal complaint meeting the requirements of § 7.17 to each manufacturer and provider named in or determined by the staff to be implicated by the complaint. Such manufacturer(s) or provider(s) shall be called on to satisfy or answer the complaint within the time specified by the Commission.

(b) To ensure prompt and effective service of informal and formal complaints filed under this subpart, every manufacturer and provider subject to the requirements of section 255 of the Act and this subpart, shall designate an agent, and may designate additional agents if it so chooses, upon whom service may be made of all notices, inquiries, orders, decisions, and other pronouncements of the Commission in any matter before the Commission. Such designation shall include, for both the manufacturer or the provider, a name or department designation, business address, telephone number, and, if available TTY number, facsimile number, and Internet e-mail address.

§ 7.19 Answers to informal complaints.

Any manufacturer or provider to whom an informal complaint is directed by the Commission under this subpart shall file an answer within the time specified by the Commission. The answer shall:

(a) Be prepared or formatted in the manner requested by the complainant pursuant to § 7.17, unless otherwise permitted by the Commission for good cause shown;

(b) Describe any actions that the defendant has taken or proposes to take to satisfy the complaint;

(c) Advise the complainant and the Commission of the nature of the defense(s) claimed by the defendant;

(d) Respond specifically to all material allegations of the complaint; and

(e) Provide any other information or materials specified by the Commission as relevant to its consideration of the complaint.

§ 7.20 Review and disposition of informal complaints.

(a) Where it appears from the defendant's answer, or from other communications with the parties, that an informal complaint has been satisfied, the Commission may, in its discretion, consider the informal complaint closed, without response to the complainant or defendant. In all other cases, the Commission shall inform the parties of its review and disposition of a complaint filed under this subpart. Where practicable, this information, the nature of which is specified in paragraphs (b) through (d) of this section, shall be transmitted to the complainant and defendant in the manner requested by the complainant, (*e.g.*, letter, facsimile transmission, telephone (voice/TRS/TTY), Internet e-mail, ASCII text, audio-cassette recording, or braille).

(b) In the event the Commission determines, based on a review of the information provided in the informal complaint and the defendant's answer thereto, that no further action is required by the Commission with respect to the allegations contained in the informal complaint, the informal complaint shall be closed and the complainant and defendant shall be duly informed of the reasons therefor. A complainant unsatisfied with the defendant's response to the informal complaint and the staff decision to terminate action on the informal complaint may file a formal complaint with the Commission, as specified in § 7.22 of this subpart.

(c) In the event the Commission determines, based on a review of the information presented in the informal complaint and the defendant's answer thereto, that a material and substantial question remains as to the defendant's compliance with the requirements of this subpart, the Commission may conduct such further investigation or such further proceedings as may be necessary to determine the defendant's compliance with the requirements of this subpart and to determine what, if any, remedial actions and/or sanctions are warranted.

(d) In the event that the Commission determines, based on a review of the information presented in the informal complaint and the defendant's answer thereto, that the defendant has failed to comply with or is presently not in compliance with the requirements of this subpart, the Commission may order or prescribe such remedial actions and/or sanctions as are authorized under the Act and the Commission's rules and which are deemed by the Commission to be appropriate under the facts and circumstances of the case.

§ 7.21 Formal complaints, applicability of §§ 1.720 through 1.736 of this chapter.

Formal complaints against a manufacturer or provider, as defined under this subpart, may be filed in the form and in the manner prescribed under §§ 1.720 through 1.736 of this chapter. Commission staff may grant waivers of, or exceptions to, particular requirements under §§ 1.720 through 1.736 for good cause shown; provided, however, that such waiver authority may not be exercised in a manner that relieves, or has the effect of relieving, a complainant of the obligation under §§ 1.720 and 1.728 of this chapter to allege facts which, if true, are sufficient to constitute a violation or violations of section 255 of the Act or this chapter.

§ 7.22 Formal complaints based on unsatisfied informal complaints.

A formal complaint filing based on an unsatisfied informal complaint filed pursuant to § 4.16 of this chapter shall be deemed to relate back to the filing date of the informal complaint if it is filed within ninety days from the date that the Commission notifies the complainant of its disposition of the informal complaint and based on the same operative facts as those alleged in the informal complaint.

§ 7.23 Actions by the Commission on its own motion.

The Commission may on its own motion conduct such inquiries and hold such proceedings as it may deem necessary to enforce the requirements of this part and Section 255 of the Communications Act. The procedures to be followed by the Commission shall, unless specifically prescribed in the Act and the Commission's rules, be such as in the opinion of the Commission will best serve the purposes of such inquiries and proceedings.

[FR Doc. 99–30091 Filed 11–18–99; 8:45 am]
BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–2453; MM Docket No. 90–189; RM–6904; RM–7114; RM–7186; RM–7415; RM–7298]

Radio Broadcasting Services; Farmington, Grass Valley, Jackson, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule, petition for reconsideration.

SUMMARY: This document grants a Petition for Reconsideration filed by Gold Country Communications, Inc. directed to the *First Report and Order* in this proceeding. *See* 61 FR 42190, published August 14, 1996. Specifically, this document sets aside the upgrade of Station KNCO, Grass Valley, California, to Channel 232B1, the allotment of Channel 232A to Farmington, California, and the modification of the license of Station KNGT, Jackson, California, to Channel 259A. As a result of these actions, this document upgrades Station KNGT, Jackson, California, to Channel 232B1. To accommodate this upgrade, this document also modifies the license of Station KNCO, Grass Valley, California, to Channel 231A. The reference coordinates for Channel 232B1 at Jackson, California, are 38–24–44 and 120–35–32. The reference coordinates for Channel 231A at Grass Valley, California, are 39–14–44 and 120–57–52. With this action, the proceeding is terminated.

EFFECTIVE DATE: December 23, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order* in MM Docket No. 90–189, adopted October 27, 1999, and released November 5, 1999. The full text of this decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, D.C. 20036.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 232A at Farmington.