

Federal Communications Commission

§ 14.5

amended, and subject to the rules in parts 6 and 7 of this chapter, as amended.

§ 14.3 Exemption for Customized Equipment or Services.

(a) The rules in this part shall not apply to customized equipment or services that are not offered directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

(b) A provider of advanced communications services or manufacturer of equipment used for advanced communications services may claim the exemption in paragraph (a) of this section as a defense in an enforcement proceeding pursuant to subpart D of this part, but is not otherwise required to seek such an affirmative determination from the Commission.

§ 14.4 Exemption for Small Entities.

(a) A provider of advanced communications services or a manufacturer of equipment used for advanced communications services to which this part applies is exempt from the obligations of this part if such provider or manufacturer, at the start of the design of a product or service:

(1) Qualifies as a business concern under 13 CFR 121.105; and

(2) Together with its affiliates, as determined by 13 CFR 121.103, meets the relevant small business size standard established in 13 CFR 121.201 for the primary industry in which it is engaged as determined by 13 CFR 121.107.

(b) A provider or manufacturer may claim this exemption as a defense in an enforcement proceeding pursuant to subpart D of this part, but is not otherwise required to seek such an affirmative determination from the Commission.

(c) This exemption will expire no later than October 8, 2013.

§ 14.5 Waivers—Multipurpose Services and Equipment.

(a) *Waiver.* (1) On its own motion or in response to a petition by a provider of advanced communications services, a manufacturer of equipment used for advanced communications services, or by any interested party, the Commission may waive the requirements of

this part for any feature or function of equipment used to provide or access advanced communications services, or for any class of such equipment, for any provider of advanced communications services, or for any class of such services, that—

(i) Is capable of accessing an advanced communications service; and

(ii) Is designed for multiple purposes, but is designed primarily for purposes other than using advanced communications services.

(2) For any waiver petition under this section, the Commission will examine on a case-by-case basis—

(i) Whether the equipment or service is designed to be used for advanced communications purposes by the general public; and

(ii) Whether and how the advanced communications functions or features are advertised, announced, or marketed.

(b) *Class Waiver.* For any petition for a waiver of more than one advanced communications service or one piece of equipment used for advanced communications services where the service or equipment share common defining characteristics, in addition to the requirements of §§14.5(a)(1) and (2), the Commission will examine the similarity of the service or equipment subject to the petition and the similarity of the advanced communications features or functions of such services or equipment.

(c) *Duration.* (1) A petition for a waiver of an individual advanced communications service or equipment used for advanced communications services may be granted for the life of the service or equipment as supported by evidence on the record, or for such time as the Commission determines based on evidence on the record.

(2) A petition for a class waiver may be granted for a time to be determined by the Commission based on evidence on the record, including the lifecycle of the equipment or service in the class. Any class waiver granted under this section will waive the obligations of this part for all advanced communications services and equipment used for advanced communications services subject to a class waiver and made