

## Federal Communications Commission

## § 14.5

SOURCE: 76 FR 82389, Dec. 30, 2011, unless otherwise noted.

### Subpart A—Scope

#### § 14.1 Applicability.

Except as provided in §§ 14.2, 14.3, 14.4 and 14.5 of this chapter, the rules in this part apply to:

(a) Any manufacturer of equipment used for advanced communications services, including end user equipment, network equipment, and software, that such manufacturer offers for sale or otherwise distributes in interstate commerce;

(b) Any provider of advanced communications services that such provider offers in or affecting interstate commerce.

#### § 14.2 Limitations.

(a) Except as provided in paragraph (b) of this section no person shall be liable for a violation of the requirements of the rules in this part with respect to advanced communications services or equipment used to provide or access advanced communications services to the extent such person—

(1) Transmits, routes, or stores in intermediate or transient storage the communications made available through the provision of advanced communications services by a third party; or

(2) Provides an information location tool, such as a directory, index, reference, pointer, menu, guide, user interface, or hypertext link, through which an end user obtains access to such advanced communications services or equipment used to provide or access advanced communications services.

(b) The limitation on liability under paragraph (a) of this section shall not apply to any person who relies on third party applications, services, software, hardware, or equipment to comply with the requirements of the rules in this part with respect to advanced communications services or equipment used to provide or access advanced communications services.

(c) The requirements of this part shall not apply to any equipment or services, including interconnected VoIP service, that were subject to the

requirements of Section 255 of the Act on October 7, 2010, which remain subject to Section 255 of the Act, as 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

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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

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advanced communications services subject to a class waiver and made available to the public prior to the expiration of such waiver.

(d) *Public notice.* All petitions for waiver filed pursuant to this section shall be put on public notice, with a minimum of a 30-day period for comments and oppositions.

### Subpart B—Definitions

#### § 14.10 Definitions.

(a) The term *accessible* shall have the meaning provided in § 14.21(b).

(b) The term *achievable* shall mean with reasonable effort or expense, as determined by the Commission. In making such a determination, the Commission shall consider:

(1) The nature and cost of the steps needed to meet the requirements of section 716 of the Act and this part with respect to the specific equipment or service in question;

(2) The technical and economic impact on the operation of the manufacturer or provider and on the operation of the specific equipment or service in question, including on the development and deployment of new communications technologies;

(3) The type of operations of the manufacturer or provider; and

(4) The extent to which the service provider or manufacturer in question offers accessible services or equipment containing varying degrees of functionality and features, and offered at differing price points.

(c) The term *advanced communications services* shall mean:

(1) Interconnected VoIP service, as that term is defined in this section;

(2) Non-interconnected VoIP service, as that term is defined in this section;

(3) Electronic messaging service, as that term is defined in this section; and

(4) Interoperable video conferencing service, as that term is defined in this section.

(d) The term *application* shall mean software designed to perform or to help the user perform a specific task or specific tasks, such as communicating by voice, electronic text messaging, or video conferencing.