

ferred to in subsec. (c)(7), probably means section 158(f)(4) of title I of Pub. L. 102-538, which was formerly classified to section 942(f)(4) of this title and was omitted from the Code.

The Federal Advisory Committee Act, referred to in subsec. (f), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, which is set out in the Appendix to Title 5, Government Organization and Employees.

#### CODIFICATION

Section was enacted as part of the Twenty-First Century Communications and Video Accessibility Act of 2010, and not as part of the Communications Act of 1934 which comprises this chapter.

### § 616. Internet protocol-based relay services

Within one year after October 8, 2010, each interconnected VoIP service provider and each provider of non-interconnected VoIP service shall participate in and contribute to the Telecommunications Relay Services Fund established in section 64.604(c)(5)(iii) of title 47, Code of Federal Regulations, as in effect on October 8, 2010, in a manner prescribed by the Commission by regulation to provide for obligations of such providers that are consistent with and comparable to the obligations of other contributors to such Fund.

(June 19, 1934, ch. 652, title VII, § 715, as added Pub. L. 111-260, title I, § 103(b), Oct. 8, 2010, 124 Stat. 2755.)

### § 617. Access to advanced communications services and equipment

#### (a) Manufacturing

##### (1) In general

With respect to equipment manufactured after the effective date of the regulations established pursuant to subsection (e), and subject to those regulations, a manufacturer of equipment used for advanced communications services, including end user equipment, network equipment, and software, shall ensure that the equipment and software that such manufacturer offers for sale or otherwise distributes in interstate commerce shall be accessible to and usable by individuals with disabilities, unless the requirements of this subsection are not achievable.

##### (2) Industry flexibility

A manufacturer of equipment may satisfy the requirements of paragraph (1) with respect to such equipment by—

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

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

#### (b) Service providers

##### (1) In general

With respect to services provided after the effective date of the regulations established

pursuant to subsection (e), and subject to those regulations, a provider of advanced communications services shall ensure that such services offered by such provider in or affecting interstate commerce are accessible to and usable by individuals with disabilities, unless the requirements of this subsection are not achievable.

##### (2) Industry flexibility

A provider of services may satisfy the requirements of paragraph (1) with respect to such services by—

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

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

#### (c) Compatibility

Whenever the requirements of subsections<sup>1</sup> (a) or (b) are not achievable, a manufacturer or provider shall ensure that its equipment or service is compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access, unless the requirement of this subsection is not achievable.

#### (d) Network features, functions, and capabilities

Each provider of advanced communications services has the duty not to install network features, functions, or capabilities that impede accessibility or usability.

#### (e) Regulations

##### (1) In general

Within one year after October 8, 2010, the Commission shall promulgate such regulations as are necessary to implement this section. In prescribing the regulations, the Commission shall—

(A) include performance objectives to ensure the accessibility, usability, and compatibility of advanced communications services and the equipment used for advanced communications services by individuals with disabilities;

(B) provide that advanced communications services, the equipment used for advanced communications services, and networks used to provide advanced communications services may not impair or impede the accessibility of information content when accessibility has been incorporated into that content for transmission through advanced communications services, equipment used for advanced communications services, or networks used to provide advanced communications services;

(C) determine the obligations under this section of manufacturers, service providers, and providers of applications or services accessed over service provider networks; and

<sup>1</sup> So in original. Probably should be "subsection".

(D) not mandate technical standards, except that the Commission may adopt technical standards as a safe harbor for such compliance if necessary to facilitate the manufacturers' and service providers' compliance with sections<sup>2</sup> (a) through (c).

**(2) Prospective guidelines**

The Commission shall issue prospective guidelines for a manufacturer or provider regarding the requirements of this section.

**(f) Services and equipment subject to section 255 of this title**

The requirements of this section shall not apply to any equipment or services, including interconnected VoIP service, that are subject to the requirements of section 255 of this title on the day before October 8, 2010. Such services and equipment shall remain subject to the requirements of section 255 of this title.

**(g) Achievable defined**

For purposes of this section and section 619 of this title, the term "achievable" means with reasonable effort or expense, as determined by the Commission. In determining whether the requirements of a provision are achievable, the Commission shall consider the following factors:

- (1) The nature and cost of the steps needed to meet the requirements of this section 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.
- (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.

**(h) Commission flexibility**

**(1) Waiver**

The Commission shall have the authority, on its own motion or in response to a petition by a manufacturer or provider of advanced communications services or any interested party, to waive the requirements of this section 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—

- (A) is capable of accessing an advanced communications service; and
- (B) is designed for multiple purposes, but is designed primarily for purposes other than using advanced communications services.

**(2) Small entity exemption**

The Commission may exempt small entities from the requirements of this section.

**(i) Customized equipment or services**

The provisions of this section 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.

**(j) Rule of construction**

This section shall not be construed to require a manufacturer of equipment used for advanced communications or a provider of advanced communications services to make every feature and function of every device or service accessible for every disability.

(June 19, 1934, ch. 652, title VII, §716, as added Pub. L. 111-260, title I, §104(a), Oct. 8, 2010, 124 Stat. 2755; amended Pub. L. 111-265, §2(1), (2), Oct. 8, 2010, 124 Stat. 2795.)

AMENDMENTS

2010—Subsec. (d). Pub. L. 111-265, §2(1), struck out "do not" before "impede accessibility".

Subsec. (e)(1)(D). Pub. L. 111-265, §2(2), substituted "facilitate" for "facilities".

**§618. Enforcement and recordkeeping obligations**

**(a) Complaint and enforcement procedures**

Within one year after October 8, 2010, the Commission shall establish regulations that facilitate the filing of formal and informal complaints that allege a violation of section 255, 617, or 619 of this title, establish procedures for enforcement actions by the Commission with respect to such violations, and implement the recordkeeping obligations of paragraph (5) for manufacturers and providers subject to such sections. Such regulations shall include the following provisions:

**(1) No fee**

The Commission shall not charge any fee to an individual who files a complaint alleging a violation of section 255, 617, or 619 of this title.

**(2) Receipt of complaints**

The Commission shall establish separate and identifiable electronic, telephonic, and physical receptacles for the receipt of complaints filed under section 255, 617, or 619 of this title.

**(3) Complaints to the Commission**

**(A) In general**

Any person alleging a violation of section 255, 617, or 619 of this title by a manufacturer of equipment or provider of service subject to such sections may file a formal or informal complaint with the Commission.

**(B) Investigation of informal complaint**

The Commission shall investigate the allegations in an informal complaint and, within 180 days after the date on which such complaint was filed with the Commission, issue an order concluding the investigation, unless such complaint is resolved before such time. The order shall include a determination whether any violation occurred.

- (i) If the Commission determines that a violation has occurred, the Commission

<sup>2</sup>So in original. Probably should be "subsections".