

## Implementation of Section 255 of the Telecommunications Act of 1996: Complaint Filings

## SUPPORTING STATEMENT

## A. Justification

1. Section 255 of the Communications Act of 1934 (the Act), as amended by the Telecommunications Act of 1996 (1996 Act), requires telecommunications equipment manufactures and service providers to ensure that their equipment and services are accessible to persons with disabilities, to the extent that is readily achievable to do so. Pursuant to section 255, in 1999 the Federal Communications Commission (Commission) adopted a *Report and Order and Further Notice of Inquiry (R&O/FNOI)* implementing the accessibility provisions of section 255.<sup>1</sup> The *R&O/FNOI* has been an important step in the Commission's efforts to increase the accessibility of telecommunications services and equipment to Americans with disabilities.

Among the rules adopted by the Commission in the *R&O/FNOI* were rules governing the filing of complaints by members of the public alleging violations of section 255 by telecommunications service providers and equipment manufacturers. The information collection burdens imposed in the *R&O/FNOI* chiefly concern these complaint procedures.

The "first phase" involves the voluntary reporting of an accessibility problem by the consumer. The rules adopted pursuant to the *R&O/FNOI*, 47 CFR § 6.17, permit a complainant to transmit an informal complaint to the Commission alleging a violation of section 255 by any reasonable means, including letter, facsimile transmission, telephone (voice/TRS/TTY), Internet e-mail, ASCII text, audio cassette recording, and Braille.

A complaint should include, at a minimum:

- (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, customer premises equipment (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 service complained of;
- (5) a complete statement of the facts, including documentation where available, supporting the complainant's allegation;
- (6) the specific relief sought by the complainant; and
- (7) the complainant's preferred format or method of response to the complaint by the Commission and the defendant (*e.g.*, letter, fax, audio cassette recording, Braille).

Upon receipt of a complaint, the Commission forwards it to the manufacturer(s) and/or service provider(s) named in the complaint, and specifies a time within which an answer must be filed with

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<sup>1</sup> *Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996; Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities*, WT Docket No. 96-198, Report and Order and Further Notice of Inquiry, 16 FCC Rcd 6417 (1999).

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the Commission, generally 30 days. During this period, the manufacturer or provider should attempt to solve the complainant's problem. By the end of this period, the manufacturer or service provider is expected to file an answer to the complaint which, pursuant to section 6.19 of the Commission's rules, shall:

- (1) be prepared or formatted in the manner requested by the complainant pursuant to section 6.17;
- (2) describe any actions that the defendant has taken or proposes to take to satisfy the complaint;
- (3) advise the complainant and the Commission of the nature of the defense(s) claimed;
- (4) respond specifically to all material allegations of the complaint; and
- (5) provide any other information or materials specified by the Commission as relevant to its consideration of the complaint.

The respondent manufacturer or service provider should also provide the complainant with a copy of its answer.

The Commission will then evaluate the answer and other pertinent material, including, if appropriate, additional information from the complainant, and either consider the matter closed and the problem resolved, or move forward to a "second phase" of dispute resolution, an investigation, which is exempt from the PRA.

The *R&O/FNOI* also, through section 6.11 of the Commission's rules, requires manufacturers and service providers to provide a description of the accessibility and compatibility features of the product and end-user product documentation, upon request in alternate formats or alternate modes at no additional charge. Manufacturers and service providers also must include in general product information the contact method for requesting this information.

The Commission is requesting an extension of this information collection in order to receive the full three-year OMB approval/clearance for this collection.

The statutory authority for this information collection is section 255 [47 U.S.C. § 255] Access By Persons With Disabilities, Public Law 104-104, 110 Stat. 56, added to the Communications Act by the Telecommunications Act of 1996; and section 4(i) (47 U.S.C. § 154(i)) of the Communications Act.

2. In general, the Commission will use the information provided in the complaint process to ascertain whether or not the relevant manufacturer and/or service provider is in compliance with section 255 of the Act, as implemented by the Commission.

The complaint procedures should provide interested parties with an opportunity to point out problems with accessibility to telecommunications services and equipment, and the procedures are intended to foster the quick resolution of such disputes.

Thus, the Commission believes that the rules contained in the *R&O/FNOI* are all intended: (a) to create greater public awareness of accessibility solutions, and (b) to encourage equipment manufacturers and service providers to take steps to ensure accessibility for persons with disabilities.

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The collection of information does contain personally identifiable information (PII) with respect to complainants.

(a) As required by OMB Memorandum M-03-22 (September 26, 2003), the FCC completed a Privacy Impact Assessment (PIA)<sup>2</sup> on June 28, 2007, that gives a full and complete explanation of how the FCC collects, stores, maintains, safeguards, and destroys the PII covered by these information collection requirements. The PIA may be viewed at:

[http://www.fcc.gov/omd/privacyact/Privacy\\_Impact\\_Assessment.html](http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html).

(b) Furthermore, as required by the Privacy Act, 5 U.S.C. § 552a, the FCC also published a system of records notice (SORN), FCC/CGB-1, "Informal Complaints and Inquiries," in the *Federal Register* on December 15, 2009 (74 FR 66356), which became effective on January 25, 2010.

3. Section 6.17(a) of the Commission's rules affords complainants several different ways to file complaints, including via Internet email. The Commission's overall purpose is to make the filing of complaints as simple as possible for consumers, and filing by email will facilitate the Commission's ability to gather the information relevant to identifying and resolving accessibility concerns.
4. The Commission does not at present impose any comparable information collection on the respondents. No comparable data are available.

Although the accessibility guidelines issued by the Architectural and Transportation Barriers Compliance Board (Access Board) published at 63 FR 5608, February 3, 1998, and codified at 36 CFR Part 1193 (OMB Control No. 3014-0010) are similar to the procedures in the attached Commission *R&O/FNOI*, the information burdens contained in the two documents are not duplicative.

5. There will not be a significant impact on a substantial number of small businesses/entities by this information being collected.
6. The complaint procedures set forth in the rules are necessary: (1) to implement section 255 effectively; (2) to provide both the Commission and the affected industries with feedback as to the nature of barriers to telecommunications accessibility, and (3) to afford consumers a process for identifying accessibility problems and providing consumers with avenues for relief. In the absence of the collection, or if the collection occurred less frequently, the Commission's efforts to implement and enforce section 255 would be hampered severely, to the detriment of consumers who rely on section 255's protections to enhance their accessibility to telecommunications equipment and services.
7. The collection is not conducted in any manner that is inconsistent with the guidelines in 5 CFR § 1320.
8. Pursuant to 5 CFR § 1320.8(d), the Commission published a notice in the *Federal Register* on January 21, 2011 (76 FR 3891) seeking comments from the public on the information collection requirements contained in this supporting statement. The Commission received no comments following publication of this notice.
9. No payment or gift will be provided to respondents.

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<sup>2</sup> The Commission is in the process of updating the PIA to incorporate various revisions to it as a result of revisions made to the SORN.

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10. Assurances of confidentiality are being provided to the respondents.

The PIA that the FCC completed on June 28, 2007 gives a full and complete explanation of how the FCC collects, stores, maintains, safeguards, and destroys the PII, as required by OMB regulations contained in Memorandum M-03-22 (September 22, 2003) and the Privacy Act, 5 U.S.C. § 552a. The PIA may be viewed at: [http://www.fcc.gov/omd/privacyact/Privacy\\_Impact\\_Assessment.html](http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html).

11. This information collection does not raise any questions or issues of a sensitive nature for respondents.

12. The Commission estimates that the potential respondent pool may include approximately 54,007,700 respondents; however, in any given year, only a portion of these potential respondents will be involved in the complaints process. Based on the actual number of section 255 complaints filed over the past three years, the Commission estimates that there will be approximately 120 complaints filed per year. Therefore, the Commission estimates that there will be up to 6,569 respondents subject to this collection.

**Total Number of Respondents:**

120 complaints + 5,354 service providers + 1,095 telecommunications equipment manufacturers =  
**6,569 Respondents**

**(I) Section 6.11: Information, documentation, and training.**

The Commission estimates that approximately 6,449 respondents<sup>3</sup> will be subject to the requirements.

(1)(a) Section 6.11(a). Respondents are required to (1) provide 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) provide end-user product documentation – *e.g.*, user guides, installation guides for end-user installable devices -- in alternate formats or alternate modes upon request at no additional charge. The required actions will take place on an occasional basis. The Commission estimates that each respondent may need to respond to up to 10 requests, and that it will take respondents an hour for each response.

**Annual Number of Responses:**

6,449 respondents x 10 responses/respondent = **64,490**

**Annual Burden Hours:**

6,449 respondents x 10 responses/respondent x 1 hour/response = **64,490 hours**

(b) Section 6.11(b). Respondents shall include in general product information the contact method for obtaining the information required by section 6.11(a). The required actions will take place on a one-time basis and respondents will expend approximately 15 minutes (.25 hours) in complying with this requirement.

**Annual Number of Responses:**

6,449 respondents x 1 response/respondent = **6,449**

<sup>3</sup> 5,324 service providers + 1,095 telecommunications equipment manufacturers = 6,449 respondents.

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6,449 respondents x 1 response/respondent x .25 hours/response = **1,612.25 (1,612 hours)**

**Annual “In-House Cost” for Section 6.11(a) and (b):** The Commission assumes that respondents will use “in-house” personnel whose pay is comparable to a mid-to-senior level federal employee (GS-13/5, plus 30% overhead), therefore, the Commission estimates respondents’ costs to be about \$62.86 per hour to comply with the requirements:

Section 6.11(a): 64,490 responses x 1 hour/response x \$62.86/hour = **\$4,053,841.40**

Section 6.11(b): 6,449 responses x .25 hours/response x \$62.86/hr. = **\$ 101,346.04**

**Total Section 6.11:** = **\$4,155,187.44**

**(II) Section 255 Accessibility Complaints.**

Based on the average annual number of section 255 accessibility complaints filed over the past three years, the Commission predicts, that of the estimated 54 million people with disabilities, only about 120 individuals (complainants) may report accessibility problems annually. The Commission also notes that in each instance, the burdens that are incurred to file and resolve the accessibility complaint is a “one time” burden.

- (1) Complainants may report accessibility problems using telephone, fax, electronic mail, text telephone (TTY),<sup>4</sup> or any other accessibility means. The Commission estimates that each accessibility complaint may require approximately 2 hours to prepare:

**Annual Number of Responses: 120**

**Annual Burden Hours:**

120 filed accessibility complaints (responses) x 2 hour/response = **240 hours**

- (2) As the complaint process evolves, the FCC may request that approximately 25% of these 120 individual complainants (*i.e.*, 30) provide the Commission with additional information to help the Commission staff evaluate the accessibility problem under review, which the Commission estimates may require approximately 1 hour to prepare a response to the Commission’s request for this information:

**Annual Number of Responses: 30**

**Annual Burden Hours:**

30 file additional information (responses) x 1 hour/response = **30 hours**

There will be no “in-house” personnel to comply with the requirement nor cost to respondents since all information is available on personal experiences.

**(III) Service Provider Respondents’ Responses to Complaints.**

<sup>4</sup> Text Telephone (TTY) is a machine that employs graphic communication in the transmission of coded signals through a wire or radio communication system. TTY supersedes the term “TDD” or “telecommunications device for the deaf,” and TT.

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The Commission expects that a maximum of 120 telecommunications equipment manufacturers and/or telecommunications service provider (EM/SP) respondents out of the 6,449 potential pool will be involved annually in responding to complaints in this process as required under section 225 of the Act and the *R&O/FNOI*.

(1) **Section 6.7: Product design, development, and evaluation.** The Commission estimates that all 120 potential EM/SP respondents may decide to prepare a demonstration of consideration of accessibility (demonstration):<sup>5</sup>

(a) 50% of the 120 potential EM/SP respondents (*i.e.*, 60) will utilize a staff engineer to prepare the demonstration, which will require approximately 5 hours of staff time per submission:

**Annual Number of Responses: 60**

**Annual Burden Hours:**

60 demonstrations (responses) x 5 hours/response = **300 hours**

(b) 50% of the 120 potential EM/SP respondents (*i.e.*, 60) will assign a staff engineer to meet with a contract engineer, who will prepare a demonstration for each response. The consultation will require one hour for each submission:

**Annual Number of Responses: 60**

**Annual Burden Hours:**

60 demonstration consultations (responses) x 1 hour/consultation = **60 hours**

**Annual “In-House Cost” for Section 6.7:** The Commission assumes that the “in house” cost for the EM/SP respondents to utilize a staff engineer is approximately \$80 per hour:

60 responses x 5 hours/demonstration x \$80/hour = **\$24,000**

60 responses x 1 hour/consultation x \$100/hour = **\$ 6,000**

**Total Section 6.7:** = **\$30,000**

(2) **Section 6.19: Answers to informal complaints.** Respondents to whom an informal accessibility complaint is directed by the Commission shall file an answer within the time specified by the Commission. Although this section warrants compliance with the requirements in section 6.18(a) of the Commission’s rules, the outside costs are incurred as a result of this section’s requirements. Specifically, in preparing and filing an answer to an accessibility complaint with the FCC, and sending a copy to the complainant:

(a) The Commission expects that 50% of the 120 potential EM/SP respondents (*i.e.*, 60) will assign a staff attorney, who requires 5 hours to prepare and file the answer (in addition to the time required to prepare the demonstration, discussed above):

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<sup>5</sup> A demonstration of consideration of accessibility is a demonstration by a company that it had considered accessibility throughout the development of a telecommunication product. This may be part of the response to a complaint and reviewed by the Commission as part of its assessment of whether service providers and equipment manufacturers have met their accessibility obligations under section 255. See *R&O/FNOI*, 16 FCC Rcd at 6444-45, 6479-80, paras. 60, 149-51. See also 47 CFR § 6.7.

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**Annual Number of Responses: 60**

**Annual Burden Hours:**

60 answers (responses) x 5 hours/answer = **300 hours**

- (b) The Commission expects that 50% of the 120 potential EM/SP respondents (*i.e.*, 60) will assign a staff attorney to meet for approximately 1 hour with outside counsel, who will draft the answer to the accessibility complaint:

**Annual Number of Responses: 60**

**Annual Burden Hours:**

60 answers (responses) x 1 hour/consultation = **60 hours**

**Annual “In-House Cost” for Section 6.19:** The Commission assumes that the “in house” cost for the EM/SP respondents to utilize a staff attorney is approximately \$100 per hour:

60 responses x 5 hours/demonstration x \$100/hour = **\$30,000**

60 responses x 1 hour/consultation x \$100/hour = **\$ 6,000**

**Total Section 6.19: = \$36,000**

Accessibility Complaint Resolution Respondents: Public Complainants + Equipment Manufacturer/Service Providers (EM/SPs)	Estimated Number of responses	Estimated Hours to Address Complaint	Annual Burden Hours	Hourly “In House” Cost	Total Annual “In House” Costs
I. Service Provider Respondents’ Provision of Information in Alternate Formats					
(1) Section 6.11: information and documentation					
(a) Provide materials in alternate formats	64,490	1	64,490	\$62.86	\$4,053,841.40
(b) Include contact method in general product information	6,449	.25	1,612	\$62.86	\$101,346.04
II. Section 255 Accessibility Complaints					
(1) Accessibility complainants	120	2	240		
(2) Accessibility complainants provide additional documentation to FCC	30	1	30		
III. Service Provider Respondents’ Responses to Complaints					
(1) Section 6.7: demonstration of consideration					
(a) EM/SPs staff engineers	60	5	300	\$80	\$24,000
(b) EM/SPs staff engineer consultations	60	1	60	\$100	\$6,000
(2) Section 6.19: answers to complaints					
(a) EM/SPs staff attorney	60	5	300	\$100	\$30,000
(b) EM/SPs staff engineer consultants	60	1	60	\$150	\$6,000
<b>Totals</b>	<b>71,329</b>	<b>16.25</b>	<b>67,092</b>		<b>\$4,221,187.44</b>

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13. The Commission estimates that the total annual costs include the cost to the equipment manufacturers and service provider respondents, based on the Commission's knowledge of the respondents facing the burdens required in the *R&O/FNOI*:

Cost to Equipment Manufacturers and Service Providers:

(1) The Commission estimates that 50% of the 120 potential EM/SP respondents (*i.e.*, 60) will hire a contract engineer to prepare a demonstration for each response, which will require approximately 5 hours for each response. The Commission expects the consulting engineer to charge approximately \$250 per hour:

$$60 \text{ contract engineers} \times 5 \text{ hours/demonstration document} \times \$250/\text{hour} = \mathbf{\$75,000}$$

(2) The Commission estimates that 50% of the 120 potential EM/SP respondents (*i.e.*, 60) will hire outside counsel to draft the answer to the accessibility complaint, which will require approximately 5 hours to prepare (in addition to the time required to prepare the demonstration, discussed above). The Commission estimates that the outside counsel will charge approximately \$300 per hour:

$$60 \text{ outside counsel} \times 5 \text{ hours/answer} \times \$300/\text{hour} = \mathbf{\$90,000}$$

Accessibility Complaint Resolution Respondents: Equipment Manufacturer/Service Providers	Estimated Number of Respondents	Estimated Hours to Address Complaint	Hourly Cost	Annual Cost Burden
(1) Demonstration of consideration of accessibility: engineer consultants	60	5	\$250	\$75,000
(2) Final Report: Attorney consultants	60	5	\$300	\$90,000
<b>Totals</b>	<b>120</b>			<b>\$165,000</b>

14. The costs to the Commission are estimated as:

GS-12/Step-5 staff (\$40.66/hour) to review, and forward to relevant service providers and manufacturers, approximately 120 accessibility complaints annually. This process takes approximately 1 hour per submission:

$$120 \text{ accessibility complaints annually} \times 1 \text{ hour/complaint} \times \$40.66/\text{hour} = \mathbf{\$4,879.20}$$

GS-13/Step 5 engineers (\$48.35/hour) review approximately 120 demonstration of consideration of accessibility submissions annually. The review takes approximately 1 hour per demonstration:

$$120 \text{ demonstrations annually} \times 1 \text{ hour/review} \times \$48.35/\text{hour} = \mathbf{\$5,802}$$

GS-14/Step 5 attorneys (\$57.13/hour) review approximately 120 answers to informal complaints annually. The review takes approximately 4 hours per answer:

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120 answers annually x 4 hours/review x \$57.13/hour = **\$27,422.40**

Review	FCC Staff Review Time	Reviewer	Hourly Salary	Number of Reviews	Cost to Federal Government
Accessibility complaints	1 hour	Analyst	\$40.66	120	<b>\$4,879.20</b>
Demonstrations of consideration of accessibility	1 hour	Engineer	\$48.35	120	<b>\$5,802</b>
Answers to Informal Complaints	4 hours	Attorney	\$57.13	120	<b>\$27,422.40</b>
<b>TOTALS</b>	<b>6</b>				<b>\$38,103.60</b>

15. The Commission has re-evaluated the assessment of the burdens for this information collection and determined there has been:

a decrease in the number of annual respondents of **-1,285 respondents**, from 7,854 respondents to 6,569 respondents; a decrease in the number of responses of **-13,825**, from 85,154 to 71,329; a decrease in annual hours of **-13,092 hours**, from 80,184 hours to 67,092, and an increase in the annual cost burden of **+\$5,000**, from \$160,000 to \$165,000.

With this submission, the Commission examined and evaluated the numbers that were accounted for in this supporting statement. Therefore, the Commission used more concrete and precise numbers based on the Commission's *September 2010 Trends in Telephone Report*. The decrease in the annual burden hours is due to the decrease in the number of annual respondents to this information collection. The increase to the annual cost burden is due to an increase in outside consulting fees.

There are no program changes.

16. There are no plans to publish the results of this collection of information. However, the Commission may post aggregate complaint information on its website, and will comply with all valid FOIA requests with regard to information sought pertaining to accessibility complaints.
17. The Commission is not seeking approval not to display the expiration date for OMB approval of this information, because the collection does not include a form number.
18. In the 60 day *Federal Register* Notice published on January 21, 2011 at 76 FR 3891, the Commission reported the total number of respondents as "7,854"; total number of annual responses as 85,154; total annual burden hours as "80,184"; and total annual cost as "\$160,000." The Commission revises these numbers to read as: total number of respondents – 6,569; total number of annual responses as 71,329; total annual burden hours – 67,092; and total annual cost -- \$165,000. There are no other exceptions to the certification statement.

## B. Collection of Information Employing Statistical Methods

This information collection does not employ any statistical methods.