

What Should I Know About the FCC's New Accessibility Rules?

By Elvis Stumbergs and Jake Baldwin

Got questions about how the FCC's updated communications accessibility rules affect your company? Read on for answers to some frequently asked questions.

Do I have to read this whole article? Can't you just give me an overview?

Sure thing. Here goes: Congress and the FCC want communications providers to make their services accessible to people with disabilities, such as the visually and hearing-impaired. The rules require communication providers to make their communications services accessible, keep certain records, and file an annual compliance certification, or face the possibility of large fines.

OK, but I need more than that.

OK. If you provide interconnected VoIP or telecommunications services, you've already had to comply with accessibility rules. Those don't change. But now you'll need to keep records related to your efforts to make those services accessible to people with disabilities. And you'll need to certify to the FCC that you're complying with the recordkeeping requirements.

What if my company provides some other type of communications services?

The rules might cover your services too. The rules extend obligations to providers of advanced communications services, or ACS. ACS providers now have to make their services accessible to people with disabilities. (More on that later.) They also have to comply with the recordkeeping and certification requirements we mentioned before.

Wait, what are ACS?

ACS include services such as:

- New VoIP services that were not available before October 8, 2010;
- Non-interconnected VoIP services;



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- Electronic messaging services (in other words, services that provide real time or near real time messages in text format, such as instant messaging); and
- Interoperable video conferencing services.

Got it. So who is covered by the new recordkeeping requirements?

The new recordkeeping requirements apply to your company if you provide telecommunications services, interconnected VoIP services, or ACS. Let's call these "covered providers."

It sounds like these requirements apply to my company. So, what records do we need to keep?

All covered providers are required to maintain certain records related to their compliance with the accessibility rules. The records must include:

- Information about your efforts to consult with individuals with disabilities;
- Descriptions of your products' and services' accessibility features;
- Information about your products' and services' compatibility with peripheral devices used to achieve access; and
- Records supporting any determination that accessibility is "not achievable."

So when do we have to comply with these rules?

If your company provides interconnected VoIP or telecommunications services, you should already be complying with the accessibility rules. If you provide ACS, the accessibility rules took effect January 30, 2013, except that certain providers of ACS are temporarily exempt from the new rules. (We'll cover the exemption shortly.)

For non-exempt covered providers, the recordkeeping part of the rules kicked in on January 30, 2013 and your first compliance certificate is due April 1, 2013.

What's this "compliance certificate" about?

All covered providers are required to file an annual certification on April 1 with the FCC, which has set up a filing site for the certifications at <https://apps.fcc.gov/rccci-registry/login!input.action>.

So you've told me when and where to file the annual certification. But what is the certification supposed to say – what am I certifying to?

Covered providers have to certify that they have:

- Established operating procedures that are adequate to ensure compliance with the recordkeeping rules and that the records are being kept according to the procedures;

- Designated a contact person authorized to resolve accessibility-related complaints; and
- Designated an agent to accept service of complaints.

If my company provides ACS, what accessibility rules apply to us?

The new rules require that providers of ACS make the services “accessible” to and usable by people with disabilities unless doing so is “not achievable.”

That sounds pretty vague. Help me out here: What does “accessible” mean?

For ACS, “accessible” means that input, control, and mechanical functions are locatable, identifiable, and operable by people with vision, hearing, physical, and cognitive disabilities.

The rules also require ACS providers to make bills, installation guides, software, and other documentation, available in alternate formats as needed. The requirement to provide access to information also means that ACS providers have to ensure that individuals with disabilities can access, at no extra cost, call centers and customer support regarding the product and its accessibility features.

OK, I understand what “accessible” means, but what about “achievable”?

Achievable means “with reasonable effort or expense.” ACS providers may determine for themselves whether accessibility is achievable for a new product or service.

So if it’s overly difficult, I can just say it’s “not achievable”?

Not quite. To help guide the determination of whether accessibility is achievable, the FCC identified four factors it will consider. They are:

- The nature and cost of steps needed to meet the accessibility requirements for a given product;
- The technical and economic impact on the provider’s operations and on the equipment or service;
- The type of operations; and
- The extent of accessible services or equipment the provider offers with various functions and features, and at different prices.

ACS providers are allowed to meet their accessibility requirements by relying on built-in and third-party solutions. They can even rely on external peripheral devices commonly used by the disabled and available at a small cost.

You said something about an exemption. What are the details on that?

The rules provide a temporary exemption—until October 8, 2013—from the accessibility and recordkeeping requirements for ACS providers that the SBA, defines as “small.”

How does the SBA define “small”?

Based on the SBA’s standards, telephone companies, VoIP providers, and cable operators that have fewer than 1,500 employees, including affiliates, are “small.”

What else do I need to know about the small-entity exemption? My company offers only interconnected VoIP and we have less than 30 employees, so we qualify, right?

No. The small-entity exemption applies only to providers as to their ACS offerings. It does not apply to telecommunications or interconnected VoIP offerings. Providers of telecommunication services or interconnected VoIP services were required to begin keeping accessibility-related records January 30, 2013, regardless of their size. They also have to file their first annual compliance certificates by April 1, 2013, regardless of size.

What if a company doesn’t comply?

Your customers can file formal and informal complaints with the FCC about a lack of compliance with the accessibility rules. The FCC can even initiate an investigation on its own. Either way, the FCC may take enforcement action.

“Enforcement action”? That sounds serious.

Yes, the penalties can be severe. If the FCC finds a violation of the rules, it may fine your company up to \$100,000 for each day of a continuing violation, or up to \$1 million for a single act.

Yikes! It sounds like it’s in our best interests to comply. So what do we do next?

If your company offers telecommunications or interconnected VoIP services, review your existing compliance procedures and update them if necessary. If your company offers ACS, you’ll probably want to draft compliance procedures. This is because the annual filing requires you to certify that you have operating procedures in place. All covered providers should ensure that they are beginning to keep appropriate records. And make sure to set a calendar reminder to file the April 1 annual certification! If you have other questions, be sure to contact an attorney familiar with the regulations. □