

§§ 301–11.100 through 301–11.102 of this title.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[FCC 03–48]

Amendment of the Commission's Rules Concerning Non-Discrimination on the Basis of Disability in the Commission's Programs and Activities

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends our rules, entitled “Enforcement of Non-discrimination on the Basis of Handicap in Programs or Activities Conducted by the Federal Communications Commission,” 47 CFR 1.1801 *et seq.*, to update the Commission's section 504 regulations. The rules modified by this document pertain to agency organization, procedure and practice. Consequently, the notice and comment provisions of the Administrative Procedure Act are inapplicable.

DATES: Effective April 28, 2003.

FOR FURTHER INFORMATION CONTACT: Susan Magnotti, 202/418–0871, Fax 202/418–4562, TTY 202/418–0538, smagnott@fcc.gov, Disability Rights Office, Consumer & Governmental Affairs Bureau.

SUPPLEMENTARY INFORMATION: This is the full text of the Commission's Order (Order) in the Amendment of Part 1, Subpart N of the Commission's Rules Concerning Non-Discrimination on the Basis of Disability in the Commission's Programs and Activities, FCC 03–48, adopted March 4, 2003 and released March 12, 2003, with the exception of Chairman's and Commissioners' separate statements, and Appendix B of the Order, which is the FCC Section 504 Programs and Activities Accessibility Handbook (Handbook). The full text of the Order, including the separate statements and the Handbook, is available for inspection and copying during the weekday hours of 9 a.m. to 4:30 p.m. in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554, or copies may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554 (202/863–2893), QUALEXINT@AOL.COM.

Text of the Report and Order

By the Commission: Chairman Powell and Commissioners Copps and Adelstein issuing separate statements.

1. As originally enacted, section 504 of the Rehabilitation Act of 1973 prohibited discrimination against individuals with disabilities under any “program or activity” receiving Federal financial assistance.¹ In 1978, Congress amended section 504 to cover any program or activity conducted by any Executive Branch agency or the United States Postal Service. The 1978 amendment required covered agencies to promulgate regulations enforcing section 504's prohibitions. On April 15, 1987, the Commission released a *Report and Order* that adopted with minor modifications the Department of Justice's prototype regulations for implementing and enforcing section 504.² The *Report and Order* noted that the legislative history of the 1978 amendments indicated that Congress intended the amendments to apply to all federal agencies, including independent regulatory agencies such as this Commission.³ Except for adding consumer complaint procedures, the Commission has not updated its section 504 regulations since 1987.

2. By this Order, we amend part 1, subpart N of our rules, entitled “Enforcement of Non-discrimination on the Basis of Handicap in Programs or Activities Conducted by the Federal Communications Commission,” 47 CFR 1.1801 *et seq.*, to update the Commission's section 504 regulations. Specifically, we amend subpart N throughout to replace the terms “handicap,” “individual with a handicap,” and “individuals with handicaps” with the terms “disability,” “individual with a disability,” and “individuals with disabilities,” respectively, in keeping with the most current statutory terms used in the Americans with Disabilities Act.⁴ We amend §§ 1.1803 and 1.1810 of the Commission's rules to specify filing and

signature formats for persons with disabilities who wish to file using alternative media. We add a new § 1.1805 to our rules to provide for the Federal Communications Commission Section 504 Programs and Activities Accessibility Handbook (Section 504 Handbook). The Section 504 Handbook is intended as a guide to implement the Commission's responsibilities under section 504 of the Rehabilitation Act.⁵ This handbook describes the methods and procedures for accommodation available at the Commission to achieve a consistent and complete accommodations policy. It is for internal staff use and public information only, and is not intended to create any rights, responsibilities, or independent causes of action against the Federal Government.

3. In addition, we amend § 1.1803 to define the term “programs or activities” as that term is used in subpart N. We amend § 1.1810 to require that the self-evaluation process be held every three years, during which time we will seek public comment on the accessibility of our programs and activities as required by section 504 of the Rehabilitation Act of 1973. Finally, we amend § 1.1849 to add a procedure for individuals who are requesting accessibility to the Commission's programs and facilities. We note that requests for accommodation requiring the assistance of other persons (e.g., an American Sign Language interpreter) can best be provided if the request is made five business days before a Commission event.⁶

4. The modifications to part 1, subpart N undertaken by this Order are rules that pertain to agency organization, procedure and practice. Consequently, the notice and comment provisions of the Administrative Procedure Act are inapplicable.⁷ The procedural rule modifications will be effective immediately upon publication in the **Federal Register**.⁸

5. Accordingly, *it is ordered that*, pursuant to section 5 of the

¹ The Rehabilitation Act of 1973, Pub. L. 93–112, 87 Stat. 394, 29 U.S.C. 794, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93–516, 88 Stat. 1617, and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, Pub. L. 95–602, 92 Stat. 2955, and the Rehabilitation Act Amendments of 1986, section 103(d), Pub. L. 99–506, 100 Stat. 1810, creates specific causes of action for persons who are aggrieved by discriminatory treatment as defined in the Act.

² *Amendment of Part 1 of the Commission's Rules to Implement Section 504 of the Rehabilitation Act of 1973, as amended*, 29 U.S.C. section 794, Gen. Docket No. 84–533, *Report and Order*, 2 FCC Rcd 2199 (1987) (*Report and Order*).

³ See *Report and Order* at 2199, paragraph 2.

⁴ 42 U.S.C. 12101 *et seq.*

⁵ The Rehabilitation Act of 1973, Pub. L. 93–112, 87 Stat. 394, 29 U.S.C. 794, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93–516, 88 Stat. 1617, and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, Pub. L. 95–602, 92 Stat. 2955, and the Rehabilitation Act Amendments of 1986, section 103(d), Pub. L. 99–506, 100 Stat. 1810, creates specific causes of action for persons who are aggrieved by discriminatory treatment as defined in the Act.

⁶ Even if the request for accommodation is made less than five days before the relevant event, the Commission will make every effort to secure the services of a person to provide the requested assistance.

⁷ 5 U.S.C. 553(b)(3)(A).

⁸ See 5 U.S.C. 553(d).