



DEPARTMENT OF THE AIR FORCE  
AIR FORCE LEGAL SERVICES AGENCY (AFLSA)

SEP 05 2002

MEMORANDUM FOR MR DAVE MATHEWS (HQ AFCESA/CES)

FROM: AFLSA/ULT

SUBJECT: Application of Americans with Disabilities Act (ADA) in Air Force Radio Transceiver Upgrade Projects

1. You have asked whether a requirement to bring older building fire alarm systems into compliance with the ADA when such a building is "improved" applies when the Air Force upgrades radio transceivers including antennas on buildings as mandated by the National Telecommunications and Information Administration. We believe, as long as the particular upgrade project is not accompanied by more substantial renovation or new construction on the building, the ADA requirement would not apply and the Air Force would not have to expend additional funds to upgrade the building's fire alarm system to include strobe lights. A full discussion of this issue follows.
2. The ADA accessibility guidelines for buildings and facilities is located at 28 CFR Part 36, Appendix A. Paragraph 1 of this document states that the guidelines "are to be applied during the design, construction, and **alteration** of such buildings and facilities to the extent required by regulations issued by Federal agencies, including the Department of Justice, under the Americans with Disabilities Act of 1990." (Emphasis added). The Department of the Air Force has, in fact, made these ADA guidelines fully applicable to itself via AFI 32-1032, para 6-7. A basic requirement in these ADA guidelines for alterations to existing buildings and facilities is that "[I]f existing elements, spaces, or common areas are altered, then each altered element, space, feature, or area shall comply with the applicable provision of 4.1.1 to 4.1.3, Minimum Requirements for New Construction. ¶ 4.1.6(1)(b). Paragraph 4.1.1(1) of these Minimum Requirements states that "altered portions of existing buildings and facilities required to be accessible by 4.1.6 shall comply with these guidelines, 4.1 through 4.35..." The relevant guideline in this case is at paragraph 4.28.3 which requires that visual alarm signal appliances be integrated into the building or facility alarm system. It is further required that a xenon strobe light or equivalent be used.
3. The key question in this matter is whether what you are contemplating doing, i.e., upgrading the radio transceivers which could involve replacing antennas, is considered an "alteration" as contemplated by the ADA guidelines. We do not believe that it is. Paragraph 3.5 of the guidelines contains a precise definition of the term: "An alteration is a change to a building or facility made by, on behalf of, or for the use of a public accommodation or commercial facility, that affects or could affect the usability of the building or facility or part thereof. Alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, changes or rearrangement of the structural parts or elements, and changes or rearrangement in the plan configuration

of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility.” The upgrades you propose seem to fall right into the type of work described in the last sentence of this definition as not being considered an alteration.

4. Relevant case law has emphasized that the accessibility requirements of the ADA for existing buildings or facilities worked on are triggered only when the work affects or could affect the usability of said building or facility. See Association for Disabled Americans v. City of Orlando, 153 F. Supp. 2d 1310, (2001). In Kinney v. Yerusalim, 9 F. 3d 1067, (1993), the court noted that Congressional intent on “affecting usability” extended almost exclusively to the “primary function” of the facility. In this matter, the primary function of the buildings in question is not to receive radio signals or operate an emergency alarm. It is apparent that the usability of the buildings would not be affected by the proposed upgrades.
5. In our opinion, the requirements of the ADA accessibility guidelines would not be triggered by your proposed upgrades to the radio transceivers on respective buildings because said upgrades are not alterations as contemplated by the ADA guidelines. The projects can proceed without budgeting for strobe lights and the like.



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