

within the meaning of the International Telecommunication Convention shall include a statement of the nature of the services to be provided and a statement that the party is aware that it is obligated under Article 6 of the ITU Constitution to obey the mandatory provisions thereof, and all regulations promulgated thereunder, and a pledge that it will engage in no conduct or operations that contravene such mandatory provisions and that it will otherwise obey the Convention and regulations in all respects. The party must also include a statement that it is aware that failure to comply will result in an order from the Federal Communications Commission to cease and desist from future violations of an ITU regulation and may result in revocation of its recognized operating agency status by the United States Department of State. Such statement must include the following information where applicable:

(a) The name and address of each applicant;

(b) The Government, State, or Territory under the laws of which each corporate applicant is organized;

(c) The name, title and post office address of the officer of a corporate applicant, or representative of a non-corporate applicant, to whom correspondence concerning the application is to be addressed;

(d) A statement of the ownership of a non-corporate applicant, or the ownership of the stock of a corporate applicant, including an indication whether the applicant or its stock is owned directly or indirectly by an alien;

(e) A copy of each corporate applicant's articles of incorporation (or its equivalent) and of its corporate bylaws;

(f) A statement whether the applicant is a carrier subject to section 214 of the Communications Act, an operator of broadcast or other radio facilities, licensed under title III of the Act, capable of causing harmful interference with the radio transmissions of other countries, or a non-carrier provider of services classed as "enhanced" under § 64.702(a);

(g) A statement that the services for which designated as a recognized private operating agency is sought will be

extended to a point outside the United States or are capable of causing harmful interference of other radio transmission and a statement of the nature of the services to be provided;

(h) A statement setting forth the points between which the services are to be provided; and

(i) A statement as to whether covered services are provided by facilities owned by the applicant, by facilities leased from another entity, or other arrangement and a description of the arrangement.

(j) Subject to the availability of electronic forms, all filings described in this section must be filed electronically through the International Bureau Filing System (IBFS). A list of forms that are available for electronic filing can be found on the IBFS homepage. For information on electronic filing requirements, see part 1, §§ 1.1000 through 1.10018 of this chapter and the IBFS homepage at <http://www.fcc.gov/ibfs>. See also §§ 63.20 and 63.53.

[51 FR 18448, May 20, 1986, as amended at 69 FR 29902, May 26, 2004; 70 FR 38800, July 6, 2005]

§ 63.702 Form.

Application under § 63.701 shall be submitted in the form specified in § 63.53 for applications under section 214 of the Communications Act.

[51 FR 18448, May 20, 1986]

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AUTHORITY: 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B),(c), Pub. L. 104-104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 228, and 254 (k) unless otherwise noted.

SOURCE: 28 FR 13239, Dec. 5, 1963, unless otherwise noted.

Subpart A—Traffic Damage Claims

§ 64.1 Traffic damage claims.

(a) Each carrier engaged in furnishing radio-telegraph, wire-telegraph, or ocean-cable service shall maintain separate files for each damage claim of a traffic nature filed with the carrier, showing the name, address, and nature of business of the claimant, the basis for the claim, disposition made, and all correspondence, reports, and records pertaining thereto. Such

files shall be preserved in accordance with existing rules of the Commission (part 42 of this chapter) and at points (one or more) to be specifically designated by each carrier.

(b) The aforementioned carriers shall make no payment as a result of any traffic damage claim if the amount of the payment would be in excess of the total amount collected by the carrier on the message or messages from which the claim arose unless such claim be presented to the carrier in writing signed by the claimant and setting forth the reason for the claim.

Subpart B—Restrictions on Indecent Telephone Message Services

§ 64.201 Restrictions on indecent telephone message services.

(a) It is a defense to prosecution for the provision of indecent communications under section 223(b)(2) of the Communications Act of 1934, as amended (the Act), 47 U.S.C. 223(b)(2), that the defendant has taken the action set forth in paragraph (a)(1) of this section and, in addition, has complied with the following: Taken one of the actions set forth in paragraphs (a)(2), (3), or (4) of this section to restrict access to prohibited communications to persons eighteen years of age or older, and has additionally complied with paragraph (a)(5) of this section, where applicable:

(1) Has notified the common carrier identified in section 223(c)(1) of the Act, in writing, that he or she is providing the kind of service described in section 223(b)(2) of the Act.

(2) Requires payment by credit card before transmission of the message; or

(3) Requires an authorized access or identification code before transmission of the message, and where the defendant has:

(i) Issued the code by mailing it to the applicant after reasonably ascertaining through receipt of a written application that the applicant is not under eighteen years of age; and

(ii) Established a procedure to cancel immediately the code of any person upon written, telephonic or other notice to the defendant's business office that such code has been lost, stolen, or used by a person or persons under the

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age of eighteen, or that such code is no longer desired; or

(4) Scrambles the message using any technique that renders the audio unintelligible and incomprehensible to the calling party unless that party uses a descrambler; and,

(5) Where the defendant is a message sponsor subscriber to mass announcement services tariffed at this Commission and such defendant prior to the transmission of the message has requested in writing to the carrier providing the public announcement service that calls to this message service be subject to billing notification as an adult telephone message service.

(b) A common carrier within the District of Columbia or within any State, or in interstate or foreign commerce, shall not, to the extent technically feasible, provide access to a communication described in section 223(b) of the Act from the telephone of any subscriber who has not previously requested in writing the carrier to provide access to such communication if the carrier collects from subscribers an identifiable charge for such communication that the carrier remits, in whole or in part, to the provider of such communication.

[52 FR 17761, May 12, 1987, as amended at 55 FR 28916, July 16, 1990]

Subpart C—Furnishing of Facilities to Foreign Governments for International Communications

§ 64.301 Furnishing of facilities to foreign governments for international communications.

Common carriers by wire and radio shall, in accordance with section 201 of the Communications Act, furnish services and facilities for communications to any foreign government upon reasonable demand therefor: *Provided, however,* That, if a foreign government fails or refuses, upon reasonable demand, to furnish particular services and facilities to the United States Government for communications between the territory of that government and the United States or any other point, such carriers shall, to the extent specifically ordered by the Commission,

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deny equivalent services or facilities in the United States to such foreign government for communications between the United States and the territory of that foreign government or any other point.

(Secs. 201, 214, 303, 308, 48 Stat. 1075, 1082, 1085; 47 U.S.C. 201, 214, 303, 308)

[28 FR 13242, Dec. 5, 1963]

Subpart D—Procedures for Handling Priority Services in Emergencies

§ 64.401 Policies and procedures for provisioning and restoring certain telecommunications services in emergencies.

The communications common carrier shall maintain and provision and, if disrupted, restore facilities and services in accordance with policies and procedures set forth in Appendix A to this part.

[65 FR 48396, Aug. 8, 2000]

§ 64.402 Policies and procedures for the provision of priority access service by commercial mobile radio service providers.

Commercial mobile radio service providers that elect to provide priority access service to National Security and Emergency Preparedness personnel shall provide priority access service in accordance with the policies and procedures set forth in Appendix B to this part.

[65 FR 48396, Aug. 8, 2000]

Subpart E—Use of Recording Devices by Telephone Companies

§ 64.501 Recording of telephone conversations with telephone companies.

No telephone common carrier, subject in whole or in part to the Communications Act of 1934, as amended, may use any recording device in connection with any interstate or foreign telephone conversation between any member of the public, on the one hand, and any officer, agent or other person acting for or employed by any such telephone common carrier, on the other

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hand, except under the following conditions:

(a) Where such use shall be preceded by verbal or written consent of all parties to the telephone conversation, or

(b) Where such use shall be preceded by verbal notification which is recorded at the beginning, and as part of the call, by the recording party, or

(c) Where such use shall be accompanied by an automatic tone warning device, which will automatically produce a distinct signal that is repeated at regular intervals during the course of the telephone conversation when the recording device is in use. *Provided That:*

(1) The characteristics of the warning tone shall be the same as those specified in the Orders of this Commission adopted by it in "Use of Recording Devices in Connection With Telephone Service," Docket 6787, 11 FCC 1033 (1947); 12 FCC 1005 (November 26, 1947); 12 FCC 1008 (May 20, 1948).

(d) That the characteristics of the warning tone shall be the same as those specified in the Orders of this Commission adopted by it in "Use of Recording Devices in Connection With Telephone Service," Docket 6787; 11 F.C.C. 1033 (1947); 12 F.C.C. 1005 (November 26, 1947); 12 F.C.C. 1008 (May 20, 1948);

(e) That no recording device shall be used unless it can be physically connected to and disconnected from the telephone line or switched on and off.

(Secs. 2, 3, 4, 5, 301, 303, 307, 308, 309, 315, 317; 48 Stat., as amended, 1064, 1065, 1066, 1068, 1081, 1082, 1083, 1084, 1085, 1089; 47 U.S.C. 152, 153, 154, 155, 301, 303, 307, 308, 309, 315, 317)

[32 FR 11275, Aug. 3, 1967, as amended at 46 FR 29480, June 2, 1981; 52 FR 3654, Feb. 5, 1987]

Subpart F—Telecommunications Relay Services and Related Customer Premises Equipment for Persons With Disabilities

AUTHORITY: 47 U.S.C. 151–154, 225, 255, and 303(r).

SOURCE: 56 FR 36731, Aug. 1, 1991, unless otherwise noted.

§ 64.601 Definitions and provisions of general applicability.

(a) For purposes of this subpart, the terms *Public Safety Answering Point (PSAP)*, *statewide default answering point*, and *appropriate local emergency authority* are defined in 47 CFR 64.3000; the terms *pseudo-ANI* and *Wireline E911 Network* are defined in 47 CFR 9.3; the term *affiliate* is defined in 47 CFR 52.12(a)(1)(i), and the terms *majority* and *debt* are defined in 47 CFR 52.12(a)(1)(ii).

(1) *711*. The abbreviated dialing code for accessing relay services anywhere in the United States.

(2) *American Sign Language (ASL)*. A visual language based on hand shape, position, movement, and orientation of the hands in relation to each other and the body.

(3) *ANI*. For 911 systems, the Automatic Number Identification (ANI) identifies the calling party and may be used as the callback number.

(4) *ASCII*. An acronym for American Standard Code for Information Interchange which employs an eight bit code and can operate at any standard transmission baud rate including 300, 1200, 2400, and higher.

(5) *Baudot*. A seven bit code, only five of which are information bits. Baudot is used by some text telephones to communicate with each other at a 45.5 baud rate.

(6) *Call release*. A TRS feature that allows the CA to sign-off or be "released" from the telephone line after the CA has set up a telephone call between the originating TTY caller and a called TTY party, such as when a TTY user must go through a TRS facility to contact another TTY user because the called TTY party can only be reached through a voice-only interface, such as a switchboard.

(7) *Common carrier or carrier*. Any common carrier engaged in interstate Communication by wire or radio as defined in section 3(h) of the Communications Act of 1934, as amended (the Act), and any common carrier engaged in intrastate communication by wire or radio, notwithstanding sections 2(b) and 221(b) of the Act.

(8) *Communications assistant (CA)*. A person who transliterates or interprets conversation between two or more end

users of TRS. CA supersedes the term “TDD operator.”

(9) *Hearing carry over (HCO)*. A form of TRS where the person with the speech disability is able to listen to the other end user and, in reply, the CA speaks the text as typed by the person with the speech disability. The CA does not type any conversation. Two-line HCO is an HCO service that allows TRS users to use one telephone line for hearing and the other for sending TTY messages. HCO-to-TTY allows a relay conversation to take place between an HCO user and a TTY user. HCO-to-HCO allows a relay conversation to take place between two HCO users.

(10) *Interconnected VoIP service*. An interconnected Voice over Internet protocol (VoIP) service is a service that:

- (i) Enables real-time, two-way voice communications;
- (ii) Requires a broadband connection from the user's location;
- (iii) Requires Internet protocol-compatible customer premises equipment (CPE); and
- (iv) Permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

(11) *Internet-based TRS*. A telecommunications relay service (TRS) in which an individual with a hearing or a speech disability connects to a TRS communications assistant using an Internet Protocol-enabled device via the Internet, rather than the public switched telephone network. Internet-based TRS does not include the use of a text telephone (TTY) over an interconnected voice over Internet Protocol service.

(12) *Internet Protocol Captioned Telephone Service (IP CTS)*. A telecommunications relay service that permits an individual who can speak but who has difficulty hearing over the telephone to use a telephone and an Internet Protocol-enabled device via the Internet to simultaneously listen to the other party and read captions of what the other party is saying. With IP CTS, the connection carrying the captions between the relay service provider and the relay service user is via the Inter-

net, rather than the public switched telephone network.

(13) *Internet Protocol Relay Service (IP Relay)*. A telecommunications relay service that permits an individual with a hearing or a speech disability to communicate in text using an Internet Protocol-enabled device via the Internet, rather than using a text telephone (TTY) and the public switched telephone network.

(14) *Non-English language relay service*. A telecommunications relay service that allows persons with hearing or speech disabilities who use languages other than English to communicate with voice telephone users in a shared language other than English, through a CA who is fluent in that language.

(15) *Numbering Partner*. Any entity with which an Internet-based TRS provider has entered into a commercial arrangement to obtain North American Numbering Plan telephone numbers.

(16) *Qualified interpreter*. An interpreter who is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.

(17) *Registered Location*. The most recent information obtained by a VRS or IP Relay provider that identifies the physical location of an end user.

(18) *Registered Internet-based TRS User*. An individual that has registered with a VRS or IP Relay provider as described in § 64.611 of this chapter.

(19) *Speech-to-speech relay service (STS)*. A telecommunications relay service that allows individuals with speech disabilities to communicate with voice telephone users through the use of specially trained CAs who understand the speech patterns of persons with speech disabilities and can repeat the words spoken by that person.

(20) *Speed dialing*. A TRS feature that allows a TRS user to place a call using a stored number maintained by the TRS facility. In the context of TRS, speed dialing allows a TRS user to give the CA a short-hand name or number for the user's most frequently called telephone numbers.

(21) *Telecommunications relay services (TRS)*. Telephone transmission services

that provide the ability for an individual who has a hearing or speech disability to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing or speech disability to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a text telephone or other nonvoice terminal device and an individual who does not use such a device, speech-to-speech services, video relay services and non-English relay services. TRS supersedes the terms “dual party relay system,” “message relay services,” and “TDD Relay.”

(22) *Text telephone (TTY)*. 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.

(23) *Three-way calling feature*. A TRS feature that allows more than two parties to be on the telephone line at the same time with the CA.

(24) *TRS Numbering Administrator*. The neutral administrator of the TRS Numbering Directory selected based on a competitive bidding process.

(25) *TRS Numbering Directory*. The database administered by the TRS Numbering Administrator, the purpose of which is to map each Registered Internet-based TRS User’s NANP telephone number to his or her end device.

(26) *Video relay service (VRS)*. A telecommunications relay service that allows people with hearing or speech disabilities who use sign language to communicate with voice telephone users through video equipment. The video link allows the CA to view and interpret the party’s signed conversation and relay the conversation back and forth with a voice caller.

(27) *Voice carry over (VCO)*. A form of TRS where the person with the hearing disability is able to speak directly to the other end user. The CA types the response back to the person with the hearing disability. The CA does not voice the conversation. Two-line VCO is a VCO service that allows TRS users

to use one telephone line for voicing and the other for receiving TTY messages. A VCO-to-TTY TRS call allows a relay conversation to take place between a VCO user and a TTY user. VCO-to-VCO allows a relay conversation to take place between two VCO users.

(b) For purposes of this subpart, all regulations and requirements applicable to common carriers shall also be applicable to providers of interconnected VoIP service.

[68 FR 50976, Aug. 25, 2003, as amended at 69 FR 53351, Sept. 1, 2004; 72 FR 43559, Aug. 6, 2007; 73 FR 41294, July 18, 2008]

§ 64.602 Jurisdiction.

Any violation of this subpart F by any common carrier engaged in intrastate communication shall be subject to the same remedies, penalties, and procedures as are applicable to a violation of the Act by a common carrier engaged in interstate communication.

[65 FR 38436, June 21, 2000]

§ 64.603 Provision of services.

Each common carrier providing telephone voice transmission services shall provide, not later than July 26, 1993, in compliance with the regulations prescribed herein, throughout the area in which it offers services, telecommunications relay services, individually, through designees, through a competitively selected vendor, or in concert with other carriers. Speech-to-speech relay service and interstate Spanish language relay service shall be provided by March 1, 2001. In addition, each common carrier providing telephone voice transmission services shall provide, not later than October 1, 2001, access via the 711 dialing code to all relay services as a toll free call. A common carrier shall be considered to be in compliance with these regulations:

(a) With respect to intrastate telecommunications relay services in any state that does not have a certified program under § 64.606 and with respect to interstate telecommunications relay services, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with § 64.604; or

(b) With respect to intrastate telecommunications relay services in any state that has a certified program under § 64.606 for such state, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with the program certified under § 64.606 for such state.

[65 FR 38436, June 21, 2000, as amended at 66 FR 67114, Dec. 28, 2001; 73 FR 21258, Apr. 21, 2008]

§ 64.604 Mandatory minimum standards.

The standards in this section are applicable December 18, 2000, except as stated in paragraphs (c)(2) and (c)(7) of this section.

(a) *Operational standards*—(1) *Communications assistant (CA)*. (i) TRS providers are responsible for requiring that all CAs be sufficiently trained to effectively meet the specialized communications needs of individuals with hearing and speech disabilities.

(ii) CAs must have competent skills in typing, grammar, spelling, interpretation of typewritten ASL, and familiarity with hearing and speech disability cultures, languages and etiquette. CAs must possess clear and articulate voice communications.

(iii) CAs must provide a typing speed of a minimum of 60 words per minute. Technological aids may be used to reach the required typing speed. Providers must give oral-to-type tests of CA speed.

(iv) TRS providers are responsible for requiring that VRS CAs are qualified interpreters. A “qualified interpreter” is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.

(v) CAs answering and placing a TTY-based TRS or VRS call must stay with the call for a minimum of ten minutes. CAs answering and placing an STS call must stay with the call for a minimum of fifteen minutes.

(vi) TRS providers must make best efforts to accommodate a TRS user’s requested CA gender when a call is initiated and, if a transfer occurs, at the time the call is transferred to another CA.

(vii) TRS shall transmit conversations between TTY and voice callers in real time.

(2) *Confidentiality and conversation content*. (i) Except as authorized by section 705 of the Communications Act, 47 U.S.C. 605, CAs are prohibited from disclosing the content of any relayed conversation regardless of content, and with a limited exception for STS CAs, from keeping records of the content of any conversation beyond the duration of a call, even if to do so would be inconsistent with state or local law. STS CAs may retain information from a particular call in order to facilitate the completion of consecutive calls, at the request of the user. The caller may request the STS CA to retain such information, or the CA may ask the caller if he wants the CA to repeat the same information during subsequent calls. The CA may retain the information only for as long as it takes to complete the subsequent calls.

(ii) CAs are prohibited from intentionally altering a relayed conversation and, to the extent that it is not inconsistent with federal, state or local law regarding use of telephone company facilities for illegal purposes, must relay all conversation verbatim unless the relay user specifically requests summarization, or if the user requests interpretation of an ASL call. An STS CA may facilitate the call of an STS user with a speech disability so long as the CA does not interfere with the independence of the user, the user maintains control of the conversation, and the user does not object. Appropriate measures must be taken by relay providers to ensure that confidentiality of VRS users is maintained.

(3) *Types of calls*. (i) Consistent with the obligations of telecommunications carrier operators, CAs are prohibited from refusing single or sequential calls or limiting the length of calls utilizing relay services.

(ii) Relay services shall be capable of handling any type of call normally provided by telecommunications carriers unless the Commission determines that it is not technologically feasible to do so. Relay service providers have the burden of proving the infeasibility of handling any type of call.

(iii) Relay service providers are permitted to decline to complete a call because credit authorization is denied.

(iv) Relay services shall be capable of handling pay-per-call calls.

(v) TRS providers are required to provide the following types of TRS calls: (1) Text-to-voice and voice-to-text; (2) VCO, two-line VCO, VCO-to-TTY, and VCO-to-VCO; (3) HCO, two-line HCO, HCO-to-TTY, HCO-to-HCO.

(vi) TRS providers are required to provide the following features: (1) Call release functionality; (2) speed dialing functionality; and (3) three-way calling functionality.

(vii) Voice mail and interactive menus. CAs must alert the TRS user to the presence of a recorded message and interactive menu through a hot key on the CA's terminal. The hot key will send text from the CA to the consumer's TTY indicating that a recording or interactive menu has been encountered. Relay providers shall electronically capture recorded messages and retain them for the length of the call. Relay providers may not impose any charges for additional calls, which must be made by the relay user in order to complete calls involving recorded or interactive messages.

(viii) TRS providers shall provide, as TRS features, answering machine and voice mail retrieval.

(4) Emergency call handling requirements for TTY-based TRS providers. TTY-based TRS providers must use a system for incoming emergency calls that, at a minimum, automatically and immediately transfers the caller to an appropriate Public Safety Answering Point (PSAP). An appropriate PSAP is either a PSAP that the caller would have reached if he had dialed 911 directly, or a PSAP that is capable of enabling the dispatch of emergency services to the caller in an expeditious manner.

(5) *STS called numbers*. Relay providers must offer STS users the option to maintain at the relay center a list of names and telephone numbers which the STS user calls. When the STS user requests one of these names, the CA must repeat the name and state the telephone number to the STS user. This information must be transferred to any new STS provider.

(b) *Technical standards*—(1) *ASCII and Baudot*. TRS shall be capable of communicating with ASCII and Baudot format, at any speed generally in use.

(2) *Speed of answer*. (i) TRS providers shall ensure adequate TRS facility staffing to provide callers with efficient access under projected calling volumes, so that the probability of a busy response due to CA unavailability shall be functionally equivalent to what a voice caller would experience in attempting to reach a party through the voice telephone network.

(ii) TRS facilities shall, except during network failure, answer 85% of all calls within 10 seconds by any method which results in the caller's call immediately being placed, not put in a queue or on hold. The ten seconds begins at the time the call is delivered to the TRS facility's network. A TRS facility shall ensure that adequate network facilities shall be used in conjunction with TRS so that under projected calling volume the probability of a busy response due to loop trunk congestion shall be functionally equivalent to what a voice caller would experience in attempting to reach a party through the voice telephone network.

(A) The call is considered delivered when the TRS facility's equipment accepts the call from the local exchange carrier (LEC) and the public switched network actually delivers the call to the TRS facility.

(B) Abandoned calls shall be included in the speed-of-answer calculation.

(C) A TRS provider's compliance with this rule shall be measured on a daily basis.

(D) The system shall be designed to a P.01 standard.

(E) A LEC shall provide the call attempt rates and the rates of calls blocked between the LEC and the TRS facility to relay administrators and TRS providers upon request.

(iii) *Speed of answer requirements for VRS providers* are phased-in as follows: by January 1, 2006, VRS providers must answer 80% of all calls within 180 seconds, measured on a monthly basis; by July 1, 2006, VRS providers must answer 80% of all calls within 150 seconds, measured on a monthly basis; and by January 1, 2007, VRS providers must answer 80% of all calls within 120 seconds,

measured on a monthly basis. Abandoned calls shall be included in the VRS speed of answer calculation.

(3) *Equal access to interexchange carriers.* TRS users shall have access to their chosen interexchange carrier through the TRS, and to all other operator services, to the same extent that such access is provided to voice users.

(4) *TRS facilities.* (i) TRS shall operate every day, 24 hours a day. Relay services that are not mandated by this Commission need not be provided every day, 24 hours a day, except VRS.

(ii) TRS shall have redundancy features functionally equivalent to the equipment in normal central offices, including uninterruptible power for emergency use.

(5) *Technology.* No regulation set forth in this subpart is intended to discourage or impair the development of improved technology that fosters the availability of telecommunications to person with disabilities. TRS facilities are permitted to use SS7 technology or any other type of similar technology to enhance the functional equivalency and quality of TRS. TRS facilities that utilize SS7 technology shall be subject to the Calling Party Telephone Number rules set forth at 47 CFR 64.1600 *et seq.*

(6) *Caller ID.* When a TRS facility is able to transmit any calling party identifying information to the public network, the TRS facility must pass through, to the called party, at least one of the following: the number of the TRS facility, 711, or the 10-digit number of the calling party.

(c) *Functional standards*—(1) *Consumer complaint logs.* (i) States and interstate providers must maintain a log of consumer complaints including all complaints about TRS in the state, whether filed with the TRS provider or the State, and must retain the log until the next application for certification is granted. The log shall include, at a minimum, the date the complaint was filed, the nature of the complaint, the date of resolution, and an explanation of the resolution.

(ii) Beginning July 1, 2002, states and TRS providers shall submit summaries of logs indicating the number of complaints received for the 12-month period ending May 31 to the Commission by July 1 of each year. Summaries of

logs submitted to the Commission on July 1, 2001 shall indicate the number of complaints received from the date of OMB approval through May 31, 2001.

(2) *Contact persons.* Beginning on June 30, 2000, State TRS Programs, interstate TRS providers, and TRS providers that have state contracts must submit to the Commission a contact person and/or office for TRS consumer information and complaints about a certified State TRS Program's provision of intrastate TRS, or, as appropriate, about the TRS provider's service. This submission must include, at a minimum, the following:

(i) The name and address of the office that receives complaints, grievances, inquiries, and suggestions;

(ii) Voice and TTY telephone numbers, fax number, e-mail address, and web address; and

(iii) The physical address to which correspondence should be sent.

(3) *Public access to information.* Carriers, through publication in their directories, periodic billing inserts, placement of TRS instructions in telephone directories, through directory assistance services, and incorporation of TTY numbers in telephone directories, shall assure that callers in their service areas are aware of the availability and use of all forms of TRS. Efforts to educate the public about TRS should extend to all segments of the public, including individuals who are hard of hearing, speech disabled, and senior citizens as well as members of the general population. In addition, each common carrier providing telephone voice transmission services shall conduct, not later than October 1, 2001, ongoing education and outreach programs that publicize the availability of 711 access to TRS in a manner reasonably designed to reach the largest number of consumers possible.

(4) *Rates.* TRS users shall pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from the point of origination to the point of termination.

(5) *Jurisdictional separation of costs*—(i) *General.* Where appropriate, costs of

providing TRS shall be separated in accordance with the jurisdictional separation procedures and standards set forth in the Commission's regulations adopted pursuant to section 410 of the Communications Act of 1934, as amended.

(ii) *Cost recovery.* Costs caused by interstate TRS shall be recovered from all subscribers for every interstate service, utilizing a shared-funding cost recovery mechanism. Except as noted in this paragraph, with respect to VRS, costs caused by intrastate TRS shall be recovered from the intrastate jurisdiction. In a state that has a certified program under § 64.606, the state agency providing TRS shall, through the state's regulatory agency, permit a common carrier to recover costs incurred in providing TRS by a method consistent with the requirements of this section. Costs caused by the provision of interstate and intrastate VRS shall be recovered from all subscribers for every interstate service, utilizing a shared-funding cost recovery mechanism.

(iii) *Telecommunications Relay Services Fund.* Effective July 26, 1993, an Interstate Cost Recovery Plan, hereinafter referred to as the TRS Fund, shall be administered by an entity selected by the Commission (administrator). The initial administrator, for an interim period, will be the National Exchange Carrier Association, Inc.

(A) *Contributions.* Every carrier providing interstate telecommunications services shall contribute to the TRS Fund on the basis of interstate end-user telecommunications revenues as described herein. Contributions shall be made by all carriers who provide interstate services, including, but not limited to, cellular telephone and paging, mobile radio, operator services, personal communications service (PCS), access (including subscriber line charges), alternative access and special access, packet-switched, WATS, 800, 900, message telephone service (MTS), private line, telex, telegraph, video, satellite, intraLATA, international and resale services.

(B) *Contribution computations.* Contributors' contribution to the TRS fund shall be the product of their subject revenues for the prior calendar

year and a contribution factor determined annually by the Commission. The contribution factor shall be based on the ratio between expected TRS Fund expenses to interstate end-user telecommunications revenues. In the event that contributions exceed TRS payments and administrative costs, the contribution factor for the following year will be adjusted by an appropriate amount, taking into consideration projected cost and usage changes. In the event that contributions are inadequate, the fund administrator may request authority from the Commission to borrow funds commercially, with such debt secured by future years' contributions. Each subject carrier must contribute at least \$25 per year. Carriers whose annual contributions total less than \$1,200 must pay the entire contribution at the beginning of the contribution period. Service providers whose contributions total \$1,200 or more may divide their contributions into equal monthly payments. Carriers shall complete and submit, and contributions shall be based on, a "Telecommunications Reporting Worksheet" (as published by the Commission in the FEDERAL REGISTER). The worksheet shall be certified to by an officer of the contributor, and subject to verification by the Commission or the administrator at the discretion of the Commission. Contributors' statements in the worksheet shall be subject to the provisions of section 220 of the Communications Act of 1934, as amended. The fund administrator may bill contributors a separate assessment for reasonable administrative expenses and interest resulting from improper filing or overdue contributions. The Chief of the Consumer & Governmental Affairs Bureau may waive, reduce, modify or eliminate contributor reporting requirements that prove unnecessary and require additional reporting requirements that the Bureau deems necessary to the sound and efficient administration of the TRS Fund.

(C) *Data collection from TRS providers.* TRS providers shall provide the administrator with true and adequate data, and other historical, projected and state rate related information reasonably requested by the administrator,

necessary to determine TRS Fund revenue requirements and payments. TRS providers shall provide the administrator with the following: total TRS minutes of use, total interstate TRS minutes of use, total TRS operating expenses and total TRS investment in general accordance with part 32 of this chapter, and other historical or projected information reasonably requested by the administrator for purposes of computing payments and revenue requirements. The administrator and the Commission shall have the authority to examine, verify and audit data received from TRS providers as necessary to assure the accuracy and integrity of TRS Fund payments.

(D) [Reserved]

(E) *Payments to TRS providers.* TRS Fund payments shall be distributed to TRS providers based on formulas approved or modified by the Commission. The administrator shall file schedules of payment formulas with the Commission. Such formulas shall be designed to compensate TRS providers for reasonable costs of providing interstate TRS, and shall be subject to Commission approval. Such formulas shall be based on total monthly interstate TRS minutes of use. TRS minutes of use for purposes of interstate cost recovery under the TRS Fund are defined as the minutes of use for completed interstate TRS calls placed through the TRS center beginning after call set-up and concluding after the last message call unit. In addition to the data required under paragraph (c)(5)(iii)(C) of this section, all TRS providers, including providers who are not interexchange carriers, local exchange carriers, or certified state relay providers, must submit reports of interstate TRS minutes of use to the administrator in order to receive payments. The administrator shall establish procedures to verify payment claims, and may suspend or delay payments to a TRS provider if the TRS provider fails to provide adequate verification of payment upon reasonable request, or if directed by the Commission to do so. The TRS Fund administrator shall make payments only to eligible TRS providers operating pursuant to the mandatory minimum standards as required in § 64.604, and after disbursements to the

administrator for reasonable expenses incurred by it in connection with TRS Fund administration. TRS providers receiving payments shall file a form prescribed by the administrator. The administrator shall fashion a form that is consistent with parts 32 and 36 procedures reasonably tailored to meet the needs of TRS providers. The Commission shall have authority to audit providers and have access to all data, including carrier specific data, collected by the fund administrator. The fund administrator shall have authority to audit TRS providers reporting data to the administrator. The formulas should appropriately compensate interstate providers for the provision of VRS, whether intrastate or interstate.

(F) TRS providers eligible for receiving payments from the TRS Fund are:

(1) TRS facilities operated under contract with and/or by certified state TRS programs pursuant to § 64.606; or

(2) TRS facilities owned by or operated under contract with a common carrier providing interstate services operated pursuant to § 64.604; or

(3) Interstate common carriers offering TRS pursuant to § 64.604; or

(4) Video Relay Service (VRS) and Internet Protocol (IP) Relay providers certified by the Commission pursuant to § 64.606.

(G) Any eligible TRS provider as defined in paragraph (c)(5)(iii)(F) of this section shall notify the administrator of its intent to participate in the TRS Fund thirty (30) days prior to submitting reports of TRS interstate minutes of use in order to receive payment settlements for interstate TRS, and failure to file may exclude the TRS provider from eligibility for the year.

(H) Administrator reporting, monitoring, and filing requirements. The administrator shall perform all filing and reporting functions required in paragraphs (c)(5)(iii)(A) through (c)(5)(iii)(J) of this section. TRS payment formulas and revenue requirements shall be filed with the Commission on May 1 of each year, to be effective the following July 1. The administrator shall report annually to the Commission an itemization of monthly

administrative costs which shall consist of all expenses, receipts, and payments associated with the administration of the TRS Fund. The administrator is required to keep the TRS Fund separate from all other funds administered by the administrator, shall file a cost allocation manual (CAM) and shall provide the Commission full access to all data collected pursuant to the administration of the TRS Fund. The administrator shall account for the financial transactions of the TRS Fund in accordance with generally accepted accounting principles for federal agencies and maintain the accounts of the TRS Fund in accordance with the United States Government Standard General Ledger. When the administrator, or any independent auditor hired by the administrator, conducts audits of providers of services under the TRS program or contributors to the TRS Fund, such audits shall be conducted in accordance with generally accepted government auditing standards. In administering the TRS Fund, the administrator shall also comply with all relevant and applicable federal financial management and reporting statutes. The administrator shall establish a non-paid voluntary advisory committee of persons from the hearing and speech disability community, TRS users (voice and text telephone), interstate service providers, state representatives, and TRS providers, which will meet at reasonable intervals (at least semi-annually) in order to monitor TRS cost recovery matters. Each group shall select its own representative to the committee. The administrator's annual report shall include a discussion of the advisory committee deliberations.

(I) *Information filed with the administrator.* The Chief Executive Officer (CEO), Chief Financial Officer (CFO), or other senior executive of a provider submitting minutes to the Fund for compensation must, in each instance, certify, under penalty of perjury, that the minutes were handled in compliance with section 225 and the Commission's rules and orders, and are not the result of impermissible financial incentives or payments to generate calls. The CEO, CFO, or other senior executive of a provider submitting cost and

demand data to the TRS Fund administrator shall certify under penalty of perjury that such information is true and correct. The administrator shall keep all data obtained from contributors and TRS providers confidential and shall not disclose such data in company-specific form unless directed to do so by the Commission. Subject to any restrictions imposed by the Chief of the Consumer and Governmental Affairs Bureau, the TRS Fund administrator may share data obtained from carriers with the administrators of the universal support mechanisms (*see* §54.701 of this chapter), the North American Numbering Plan administration cost recovery (*see* §52.16 of this chapter), and the long-term local number portability cost recovery (*see* §52.32 of this chapter). The TRS Fund administrator shall keep confidential all data obtained from other administrators. The administrator shall not use such data except for purposes of administering the TRS Fund, calculating the regulatory fees of interstate common carriers, and aggregating such fee payments for submission to the Commission. The Commission shall have access to all data reported to the administrator, and authority to audit TRS providers. Contributors may make requests for Commission nondisclosure of company-specific revenue information under §0.459 of this chapter by so indicating on the Telecommunications Reporting Worksheet at the time that the subject data are submitted. The Commission shall make all decisions regarding nondisclosure of company-specific information.

(J) The administrator's performance and this plan shall be reviewed by the Commission after two years.

(K) All parties providing services or contributions or receiving payments under this section are subject to the enforcement provisions specified in the Communications Act, the Americans with Disabilities Act, and the Commission's rules.

(6) *Complaints*—(i) *Referral of complaint.* If a complaint to the Commission alleges a violation of this subpart with respect to intrastate TRS within a state and certification of the program of such state under §64.606 is in

effect, the Commission shall refer such complaint to such state expeditiously.

(ii) Intrastate complaints shall be resolved by the state within 180 days after the complaint is first filed with a state entity, regardless of whether it is filed with the state relay administrator, a state PUC, the relay provider, or with any other state entity.

(iii) *Jurisdiction of Commission.* After referring a complaint to a state entity under paragraph (c)(6)(i) of this section, or if a complaint is filed directly with a state entity, the Commission shall exercise jurisdiction over such complaint only if:

(A) Final action under such state program has not been taken within:

(1) 180 days after the complaint is filed with such state entity; or

(2) A shorter period as prescribed by the regulations of such state; or

(B) The Commission determines that such state program is no longer qualified for certification under § 64.606.

(iv) The Commission shall resolve within 180 days after the complaint is filed with the Commission any interstate TRS complaint alleging a violation of section 225 of the Act or any complaint involving intrastate relay services in states without a certified program. The Commission shall resolve intrastate complaints over which it exercises jurisdiction under paragraph (c)(6)(iii) of this section within 180 days.

(v) *Complaint procedures.* Complaints against TRS providers for alleged violations of this subpart may be either informal or formal.

(A) *Informal complaints—(1) Form.* An informal complaint may be transmitted to the Consumer & Governmental Affairs Bureau by any reasonable means, such as letter, facsimile transmission, telephone (voice/TRS/TTY), Internet e-mail, or some other method that would best accommodate a complainant's hearing or speech disability.

(2) *Content.* An informal complaint shall include the name and address of the complainant; the name and address of the TRS provider against whom the complaint is made; a statement of facts supporting the complainant's allegation that the TRS provided it has violated or is violating section 225 of the

Act and/or requirements under the Commission's rules; the specific relief or satisfaction sought by the complainant; and the complainant's preferred format or method of response to the complaint by the Commission and the defendant TRS provider (such as letter, facsimile transmission, telephone (voice/TRS/TTY), Internet e-mail, or some other method that would best accommodate the complainant's hearing or speech disability).

(3) *Service; designation of agents.* The Commission shall promptly forward any complaint meeting the requirements of this subsection to the TRS provider named in the complaint. Such TRS provider shall be called upon to satisfy or answer the complaint within the time specified by the Commission. Every TRS provider shall file with the Commission a statement designating an agent or agents whose principal responsibility will be to receive all complaints, inquiries, orders, decisions, and notices and other pronouncements forwarded by the Commission. Such designation shall include a name or department designation, business address, telephone number (voice and TTY), facsimile number and, if available, internet e-mail address.

(B) *Review and disposition of informal complaints.* (1) Where it appears from the TRS provider's answer, or from other communications with the parties, that an informal complaint has been satisfied, the Commission may, in its discretion, consider the matter closed without response to the complainant or defendant. In all other cases, the Commission shall inform the parties of its review and disposition of a complaint filed under this subpart. Where practicable, this information shall be transmitted to the complainant and defendant in the manner requested by the complainant (e.g., letter, facsimile transmission, telephone (voice/TRS/TTY) or Internet e-mail).

(2) A complainant unsatisfied with the defendant's response to the informal complaint and the staff's decision to terminate action on the informal complaint may file a formal complaint with the Commission pursuant to paragraph (c)(6)(v)(C) of this section.

(C) *Formal complaints.* A formal complaint shall be in writing, addressed to

the Federal Communications Commission, Enforcement Bureau, Telecommunications Consumer Division, Washington, DC 20554 and shall contain:

(1) The name and address of the complainant,

(2) The name and address of the defendant against whom the complaint is made,

(3) A complete statement of the facts, including supporting data, where available, showing that such defendant did or omitted to do anything in contravention of this subpart, and

(4) The relief sought.

(D) *Amended complaints.* An amended complaint setting forth transactions, occurrences or events which have happened since the filing of the original complaint and which relate to the original cause of action may be filed with the Commission.

(E) *Number of copies.* An original and two copies of all pleadings shall be filed.

(F) *Service.* (1) Except where a complaint is referred to a state pursuant to § 64.604(c)(6)(i), or where a complaint is filed directly with a state entity, the Commission will serve on the named party a copy of any complaint or amended complaint filed with it, together with a notice of the filing of the complaint. Such notice shall call upon the defendant to satisfy or answer the complaint in writing within the time specified in said notice of complaint.

(2) All subsequent pleadings and briefs shall be served by the filing party on all other parties to the proceeding in accordance with the requirements of § 1.47 of this chapter. Proof of such service shall also be made in accordance with the requirements of said section.

(G) *Answers to complaints and amended complaints.* Any party upon whom a copy of a complaint or amended complaint is served under this subpart shall serve an answer within the time specified by the Commission in its notice of complaint. The answer shall advise the parties and the Commission fully and completely of the nature of the defense and shall respond specifically to all material allegations of the complaint. In cases involving allegations of harm, the answer shall indi-

cate what action has been taken or is proposed to be taken to stop the occurrence of such harm. Collateral or immaterial issues shall be avoided in answers and every effort should be made to narrow the issues. Matters alleged as affirmative defenses shall be separately stated and numbered. Any defendant failing to file and serve an answer within the time and in the manner prescribed may be deemed in default.

(H) *Replies to answers or amended answers.* Within 10 days after service of an answer or an amended answer, a complainant may file and serve a reply which shall be responsive to matters contained in such answer or amended answer and shall not contain new matter. Failure to reply will not be deemed an admission of any allegation contained in such answer or amended answer.

(I) *Defective pleadings.* Any pleading filed in a complaint proceeding that is not in substantial conformity with the requirements of the applicable rules in this subpart may be dismissed.

(7) *Treatment of TRS customer information.* Beginning on July 21, 2000, all future contracts between the TRS administrator and the TRS vendor shall provide for the transfer of TRS customer profile data from the outgoing TRS vendor to the incoming TRS vendor. Such data must be disclosed in usable form at least 60 days prior to the provider's last day of service provision. Such data may not be used for any purpose other than to connect the TRS user with the called parties desired by that TRS user. Such information shall not be sold, distributed, shared or revealed in any other way by the relay center or its employees, unless compelled to do so by lawful order.

[65 FR 38436, June 21, 2000]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 64.604, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

EFFECTIVE DATE NOTE: At 75 FR 39860, July 13, 2010, § 64.604 (c)(5)(iii)(I) was revised. This section contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 64.605 Emergency calling requirements.

(a) *Additional Emergency Calling Requirements Applicable to Internet-based TRS Providers.*

(1) As of December 31, 2008, the requirements of paragraphs (a)(2)(i) and (a)(2)(iv) of this section shall not apply to providers of VRS and IP Relay to which § 64.605(b) applies.

(2) Each provider of Internet-based TRS shall:

(i) Accept and handle emergency calls and access, either directly or via a third party, a commercially available database that will allow the provider to determine an appropriate PSAP, designated statewide default answering point, or appropriate local emergency authority that corresponds to the caller's location, and to relay the call to that entity;

(ii) Implement a system that ensures that the provider answers an incoming emergency call before other non-emergency calls (*i.e.*, prioritize emergency calls and move them to the top of the queue);

(iii) Request, at the beginning of each emergency call, the caller's name and location information, unless the Internet-based TRS provider already has, or has access to, a Registered Location for the caller;

(iv) Deliver to the PSAP, designated statewide default answering point, or appropriate local emergency authority, at the outset of the outbound leg of an emergency call, at a minimum, the name of the relay user and location of the emergency, as well as the name of the relay provider, the CA's callback number, and the CA's identification number, thereby enabling the PSAP, designated statewide default answering point, or appropriate local emergency authority to re-establish contact with the CA in the event the call is disconnected;

(v) In the event one or both legs of an emergency call are disconnected (*i.e.*, either the call between the TRS user and the CA, or the outbound voice telephone call between the CA and the PSAP, designated statewide default answering point, or appropriate local emergency authority), immediately re-establish contact with the TRS user and/or the appropriate PSAP, des-

ignated statewide default answering point, or appropriate local emergency authority and resume handling the call; and

(vi) Ensure that information obtained as a result of this section is limited to that needed to facilitate 911 services, is made available only to emergency call handlers and emergency response or law enforcement personnel, and is used for the sole purpose of ascertaining a user's location in an emergency situation or for other emergency or law enforcement purposes.

(b) *E911 Service for VRS and IP Relay—*

(1) *Scope.* The following requirements are only applicable to providers of VRS or IP Relay. Further, the following requirements apply only to 911 calls placed by registered users whose Registered Location is in a geographic area served by a Wireline E911 Network and is available to the provider handling the call.

(2) *E911 Service.* As of December 31, 2008:

(i) VRS or IP Relay providers must, as a condition of providing service to a user, provide that user with E911 service as described in this section;

(ii) VRS or IP Relay providers must transmit all 911 calls, as well as ANI, the caller's Registered Location, the name of the VRS or IP Relay provider, and the CA's identification number for each call, to the PSAP, designated statewide default answering point, or appropriate local emergency authority that serves the caller's Registered Location and that has been designated for telecommunications carriers pursuant to § 64.3001 of this chapter, provided that "all 911 calls" is defined as "any communication initiated by an VRS or IP Relay user dialing 911";

(iii) All 911 calls must be routed through the use of ANI and, if necessary, pseudo-ANI, via the dedicated Wireline E911 Network; and

(iv) The Registered Location, the name of the VRS or IP Relay provider, and the CA's identification number must be available to the appropriate PSAP, designated statewide default answering point, or appropriate local emergency authority from or through the appropriate automatic location information (ALI) database.

(3) *Service Level Obligation.* Notwithstanding the provisions in paragraph (b)(2) of this section, if a PSAP, designated statewide default answering point, or appropriate local emergency authority is not capable of receiving and processing either ANI or location information, a VRS or IP Relay provider need not provide such ANI or location information; however, nothing in this paragraph affects the obligation under paragraph (c) of this section of a VRS or IP Relay provider to transmit via the Wireline E911 Network all 911 calls to the PSAP, designated statewide default answering point, or appropriate local emergency authority that serves the caller's Registered Location and that has been designated for telecommunications carriers pursuant to § 64.3001 of this chapter.

(4) *Registered Location Requirement.* As of December 31, 2008, VRS and IP Relay providers must:

(i) Obtain from each Registered Internet-based TRS User, prior to the initiation of service, the physical location at which the service will first be utilized; and

(ii) If the VRS or IP Relay is capable of being used from more than one location, provide their Registered Internet-based TRS Users one or more methods of updating their Registered Location, including at least one option that requires use only of the CPE necessary to access the VRS or IP Relay. Any method utilized must allow a Registered Internet-based TRS User to update the Registered Location at will and in a timely manner.

[73 FR 41294, July 18, 2008, as amended at 73 FR 79696, Dec. 30, 2008]

§ 64.606 VRS and IP Relay provider and TRS program certification.

(a) *Documentation*—(1) *Certified state program.* Any state, through its office of the governor or other delegated executive office empowered to provide TRS, desiring to establish a state program under this section shall submit, not later than October 1, 1992, documentation to the Commission addressed to the Federal Communications Commission, Chief, Consumer & Governmental Affairs Bureau, TRS Certification Program, Washington, DC 20554, and captioned "TRS State Cer-

tification Application." All documentation shall be submitted in narrative form, shall clearly describe the state program for implementing intrastate TRS, and the procedures and remedies for enforcing any requirements imposed by the state program. The Commission shall give public notice of states filing for certification including notification in the FEDERAL REGISTER.

(2) *VRS and IP Relay provider.* Any entity desiring to provide VRS or IP Relay services, independent from any certified state TRS program or any TRS provider otherwise eligible for compensation from the Interstate TRS Fund, and to receive compensation from the Interstate TRS Fund, shall submit documentation to the Commission addressed to the Federal Communications Commission, Chief, Consumer & Governmental Affairs Bureau, TRS Certification Program, Washington, DC 20554, and captioned "VRS and IP Relay Certification Application." The documentation shall include, in narrative form:

(i) A description of the forms of TRS to be provided (*i.e.*, VRS and/or IP Relay);

(ii) A description of how the provider will meet all non-waived mandatory minimum standards applicable to each form of TRS offered;

(iii) A description of the provider's procedures for ensuring compliance with all applicable TRS rules;

(iv) A description of the provider's complaint procedures;

(v) A narrative describing any areas in which the provider's service will differ from the applicable mandatory minimum standards;

(vi) A narrative establishing that services that differ from the mandatory minimum standards do not violate applicable mandatory minimum standards;

(vii) Demonstration of status as a common carrier; and

(viii) A statement that the provider will file annual compliance reports demonstrating continued compliance with these rules.

(b)(1) *Requirements for state certification.* After review of state documentation, the Commission shall certify, by letter, or order, the state program if the Commission determines that the state certification documentation:

(i) Establishes that the state program meets or exceeds all operational, technical, and functional minimum standards contained in § 64.604;

(ii) Establishes that the state program makes available adequate procedures and remedies for enforcing the requirements of the state program, including that it makes available to TRS users informational materials on state and Commission complaint procedures sufficient for users to know the proper procedures for filing complaints; and

(iii) Where a state program exceeds the mandatory minimum standards contained in § 64.604, the state establishes that its program in no way conflicts with federal law.

(2) *Requirements for VRS and IP Relay Provider FCC Certification.* After review of certification documentation, the Commission shall certify, by Public Notice, that the VRS or IP Relay provider is eligible for compensation from the Interstate TRS Fund if the Commission determines that the certification documentation:

(i) Establishes that the provision of VRS and/or IP Relay will meet or exceed all non-waived operational, technical, and functional minimum standards contained in § 64.604;

(ii) Establishes that the VRS and/or IP Relay provider makes available adequate procedures and remedies for ensuring compliance with the requirements of this section and the mandatory minimum standards contained in § 64.604, including that it makes available for TRS users informational materials on complaint procedures sufficient for users to know the proper procedures for filing complaints; and

(iii) Where the TRS service differs from the mandatory minimum standards contained in § 64.604, the VRS and/or IP Relay provider establishes that its service does not violate applicable mandatory minimum standards.

(c)(1) *State certification period.* State certification shall remain in effect for five years. One year prior to expiration

of certification, a state may apply for renewal of its certification by filing documentation as prescribed by paragraphs (a) and (b) of this section.

(2) *VRS and IP Relay Provider FCC certification period.* Certification granted under this section shall remain in effect for five years. A VRS or IP Relay provider may apply for renewal of its certification by filing documentation with the Commission, at least 90 days prior to expiration of certification, containing the information described in paragraph (a)(2) of this section.

(d) *Method of funding.* Except as provided in § 64.604, the Commission shall not refuse to certify a state program based solely on the method such state will implement for funding intrastate TRS, but funding mechanisms, if labeled, shall be labeled in a manner that promote national understanding of TRS and do not offend the public.

(e)(1) *Suspension or revocation of state certification.* The Commission may suspend or revoke such certification if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted. In a state whose program has been suspended or revoked, the Commission shall take such steps as may be necessary, consistent with this subpart, to ensure continuity of TRS. The Commission may, on its own motion, require a certified state program to submit documentation demonstrating ongoing compliance with the Commission's minimum standards if, for example, the Commission receives evidence that a state program may not be in compliance with the minimum standards.

(2) *Suspension or revocation of VRS and IP Relay Provider FCC certification.* The Commission may suspend or revoke the certification of a VRS or IP Relay provider if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted. The Commission may, on its own motion, require a certified VRS or IP Relay provider to submit documentation demonstrating ongoing compliance with the Commission's minimum standards if, for example, the Commission receives evidence

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that a certified VRS or IP Relay provider may not be in compliance with the minimum standards.

(f) *Notification of substantive change.*

(1) States must notify the Commission of substantive changes in their TRS programs within 60 days of when they occur, and must certify that the state TRS program continues to meet federal minimum standards after implementing the substantive change.

(2) VRS and IP Relay providers certified under this section must notify the Commission of substantive changes in their TRS programs, services, and features within 60 days of when such changes occur, and must certify that the interstate TRS provider continues to meet federal minimum standards after implementing the substantive change.

(g) VRS and IP Relay providers certified under this section shall file with the Commission, on an annual basis, a report providing evidence that they are in compliance with § 64.604.

[70 FR 76215, Dec. 23, 2005. Redesignated at 73 FR 21259, Apr. 21, 2008]

§ 64.607 Furnishing related customer premises equipment.

(a) Any communications common carrier may provide, under tariff, customer premises equipment (other than hearing aid compatible telephones as defined in part 68 of this chapter, needed by persons with hearing, speech, vision or mobility disabilities. Such equipment may be provided to persons with those disabilities or to associations or institutions who require such equipment regularly to communicate with persons with disabilities. Examples of such equipment include, but are not limited to, artificial larynxes, bone conductor receivers and TTs.

(b) Any carrier which provides telecommunications devices for persons with hearing and/or speech disabilities, whether or not pursuant to tariff, shall respond to any inquiry concerning:

(1) The availability (including general price levels) of TTs using ASCII, Baudot, or both formats; and

(2) The compatibility of any TT with other such devices and computers.

[56 FR 36731, Aug. 1, 1991, as amended at 72 FR 43560, Aug. 6, 2007; 73 FR 21252, Apr. 21, 2008. Redesignated at 73 FR 21259, Apr. 21, 2008]

§ 64.608 Provision of hearing aid compatible telephones by exchange carriers.

In the absence of alternative suppliers in an exchange area, an exchange carrier must provide a hearing aid compatible telephone, as defined in § 68.316 of this chapter, and provide related installation and maintenance services for such telephones on a detariffed basis to any customer with a hearing disability who requests such equipment or services.

[61 FR 42185, Aug. 14, 1996. Redesignated at 73 FR 21259, Apr. 21, 2008]

§ 64.609 Enforcement of related customer premises equipment rules.

Enforcement of §§ 64.607 and 64.608 is delegated to those state public utility or public service commissions which adopt those sections and provide for their enforcement. Subpart G—Furnishing of Enhanced Services and Customer-Premises Equipment by Communications Common Carriers

[56 FR 36731, Aug. 1, 1991. Redesignated and amended at 73 FR 21259, Apr. 21, 2008]

§ 64.611 Internet-based TRS registration.

(a) *Default provider registration.* Every provider of VRS or IP Relay must, no later than December 31, 2008, provide users with the capability to register with that VRS or IP Relay provider as a “default provider.” Upon a user’s registration, the VRS or IP Relay provider shall:

(1) Either:

(i) Facilitate the user’s valid number portability request as set forth in 47 CFR 52.34; or, if the user does not wish to port a number,

(ii) Assign that user a geographically appropriate North American Numbering Plan telephone number; and

(2) Route and deliver all of that user’s inbound and outbound calls unless the user chooses to place a call with, or receives a call from, an alternate provider.

(b) *Mandatory registration of new users.* As of December 31, 2008, VRS and IP Relay providers must, prior to the initiation of service for an individual that has not previously utilized VRS or IP Relay, register that new user as described in paragraph (a) of this section.

(c) *Obligations of default providers and former default providers.* (1) Default providers must:

- (i) Obtain current routing information, including IP addresses or domain names and user names, from their Registered Internet-based TRS Users;
- (ii) Provision such information to the TRS Numbering Directory; and
- (iii) Maintain such information in their internal databases and in the TRS Numbering Directory.

(2) Internet-based TRS providers (and, to the extent necessary, their Numbering Partners) must:

- (i) Take such steps as are necessary to cease acquiring routing information from any VRS or IP Relay user that ports his or her number to another VRS or IP Relay provider or otherwise selects a new default provider;
- (ii) Communicate among themselves as necessary to ensure that:

(A) Only the default provider provisions routing information to the central database; and

(B) VRS and IP Relay providers other than the default provider are aware that they must query the TRS Numbering Directory in order to obtain accurate routing information for a particular user of VRS or IP Relay.

(d) *Proxy numbers.* After December 31, 2008, a VRS or IP Relay provider:

(1) May not assign or issue a proxy or alias for a NANP telephone number to any user; and

(2) Must cease to use any proxy or alias for a NANP telephone number assigned or issued to any Registered Internet-based TRS User.

(e) *CPE.* (1) Every VRS or IP Relay provider must ensure that all CPE they have issued, leased, or otherwise provided to VRS or IP Relay users delivers routing information or other information only to the user's default provider, except as is necessary to complete or receive "dial around" calls on a case-by-case basis.

(2) All CPE issued, leased, or otherwise provided to VRS or IP Relay users

by Internet-based TRS providers must be capable of facilitating the requirements of this section.

(f) *User notification.* Every VRS or IP Relay provider must include an advisory on its website and in any promotional materials addressing numbering or E911 services for VRS or IP Relay.

(1) At a minimum, the advisory must address the following issues:

(i) The process by which VRS or IP Relay users may obtain ten-digit telephone numbers, including a brief summary of the numbering assignment and administration processes adopted herein;

(ii) The portability of ten-digit telephone numbers assigned to VRS or IP Relay users;

(iii) The process by which persons using VRS or IP Relay may submit, update, and confirm receipt by the provider of their Registered Location information; and

(iv) An explanation emphasizing the importance of maintaining accurate, up-to-date Registered Location information with the user's default provider in the event that the individual places an emergency call via an Internet-based relay service.

(2) VRS and IP Relay providers must obtain and keep a record of affirmative acknowledgment by every Registered Internet-based TRS User of having received and understood the advisory described in this subsection.

[73 FR 41295, July 18, 2008]

§ 64.613 Numbering directory for internet-based TRS users.

(a) *TRS Numbering Directory.* (1) The TRS Numbering Directory shall contain records mapping the NANP telephone number of each Registered Internet-based TRS User to a unique Uniform Resource Identifier (URI).

(2) For each record associated with a VRS user, the URI shall contain the user's Internet Protocol (IP) address. For each record associated with an IP Relay user, the URI shall contain the user's user name and domain name that can be subsequently resolved to reach the user.

(3) Only the TRS Numbering Administrator and Internet-based TRS providers may access the TRS Numbering Directory.

(b) *Administration*—(1) *Neutrality*. (i) The TRS Numbering Administrator shall be a non-governmental entity that is impartial and not an affiliate of any Internet-based TRS provider.

(ii) Neither the TRS Numbering Administrator nor any affiliate may issue a majority of its debt to, nor derive a majority of its revenues from, any Internet-based TRS provider.

(iii) Nor may the TRS Numbering Administrator nor any affiliate be unduly influenced, as determined by the North American Numbering Council, by parties with a vested interest in the outcome of TRS-related numbering administration and activities.

(iv) Any subcontractor that performs any function of the TRS Numbering Administrator must also meet these neutrality criteria.

(2) *Terms of Administration*. The TRS Numbering Administrator shall administer the TRS Numbering Directory pursuant to the terms of its contract.

(3) *Compensation*. The TRS Fund, as defined by 47 CFR 64.604(a)(5)(iii), may compensate the TRS Numbering Administrator for the reasonable costs of administration pursuant to the terms of its contract.

[73 FR 41296, July 18, 2008]

Subpart G—Furnishing of Enhanced Services and Customer-Premises Equipment by Bell Operating Companies; Telephone Operator Services

§ 64.702 Furnishing of enhanced services and customer-premises equipment.

(a) For the purpose of this subpart, the term *enhanced service* shall refer to services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with

stored information. Enhanced services are not regulated under title II of the Act.

(b) Bell Operating Companies common carriers subject, in whole or in part, to the Communications Act may directly provide enhanced services and customer-premises equipment; provided, however, that the Commission may prohibit any such common carrier from engaging directly or indirectly in furnishing enhanced services or customer-premises equipment to others except as provided for in paragraph (c) of this section, or as otherwise authorized by the Commission.

(c) A Bell Operating Company common carrier prohibited by the Commission pursuant to paragraph (b) of this section from engaging in the furnishing of enhanced services or customer-premises equipment may, subject to other provisions of law, have a controlling or lesser interest in, or be under common control with, a separate corporate entity that furnishes enhanced services or customer-premises equipment to others provided the following conditions are met:

(1) Each such separate corporation shall obtain all transmission facilities necessary for the provision of enhanced services pursuant to tariff, and may not own any network or local distribution transmission facilities or equipment.

(2) Each such separate corporation shall operate independently in the furnishing of enhanced services and customer-premises equipment. It shall maintain its own books of account, have separate officers, utilize separate operating, marketing, installation, and maintenance personnel, and utilize separate computer facilities in the provision of enhanced services.

(3) Each such separate corporation which provides customer-premises equipment or enhanced services shall deal with any affiliated manufacturing entity only on an arm's length basis.

(4) Any research or development performed on a joint or separate basis for the subsidiary must be done on a compensatory basis. Except for generic software within equipment, manufactured by an affiliate, that is sold "off the shelf" to any interested purchaser, the separate corporation must develop

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its own software, or contract with non-affiliated vendors.

(5) All transactions between the separate corporation and the carrier or its affiliates which involve the transfer, either direct or by accounting or other record entries, of money, personnel, resources, other assets or anything of value, shall be reduced to writing. A copy of any contract, agreement, or other arrangement entered into between such entities shall be filed with the Commission within 30 days after the contract, agreement, or other arrangement is made. This provision shall not apply to any transaction governed by the provision of an effective state or federal tariff.

(d) A carrier subject to the proscription set forth in paragraph (c) of this section:

(1) Shall not engage in the sale or promotion of enhanced services or customer-premises equipment, on behalf of the separate corporation, or sell, lease or otherwise make available to the separate corporation any capacity or computer system component on its computer system or systems which are used in any way for the provision of its common carrier communications services. (This does not apply to communications services offered the separate subsidiary pursuant to tariff);

(2) Shall disclose to the public all information relating to network design and technical standards and information affecting changes to the telecommunications network which would affect either intercarrier interconnection or the manner in which customer-premises equipment is attached to the interstate network prior to implementation and with reasonable advance notification. Such information shall be disclosed in compliance with the procedures set forth in 47 CFR 51.325 through 51.335.

(3) [Reserved]

(4) Must obtain Commission approval as to the manner in which the separate corporation is to be capitalized, prior to obtaining any interest in the separate corporation or transferring any assets, and must obtain Commission approval of any modification to a Commission approved capitalization plan.

(e) Except as otherwise ordered by the Commission, the carrier provision

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of customer premises equipment used in conjunction with the interstate telecommunications network may be offered in combination with the provision of common carrier communications services, except that the customer premises equipment shall not be offered on a tariffed basis.

[45 FR 31364, May 13, 1980, as amended at 46 FR 6008, Jan. 21, 1981; 63 FR 20338, Apr. 24, 1998; 64 FR 14148, Mar. 24, 1999; 66 FR 19402, Apr. 16, 2001]

EFFECTIVE DATE NOTE: At 64 FR 14148, Mar. 24, 1999, § 64.702(b), (c) and (d)(2) were amended. These paragraphs contain information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 64.703 Consumer information.

(a) Each provider of operator services shall:

(1) Identify itself, audibly and distinctly, to the consumer at the beginning of each telephone call and before the consumer incurs any charge for the call;

(2) Permit the consumer to terminate the telephone call at no charge before the call is connected;

(3) Disclose immediately to the consumer, upon request and at no charge to the consumer—

(i) A quotation of its rates or charges for the call;

(ii) The methods by which such rates or charges will be collected; and

(iii) The methods by which complaints concerning such rates, charges, or collection practices will be resolved; and

(4) Disclose, audibly and distinctly to the consumer, at no charge and before connecting any interstate non-access code operator service call, how to obtain the total cost of the call, including any aggregator surcharge, or the maximum possible total cost of the call, including any aggregator surcharge, before providing further oral advice to the consumer on how to proceed to make the call. The oral disclosure required in this subsection shall instruct consumers that they may obtain applicable rate and surcharge quotations either, at the option of the

provider of operator services, by dialing no more than two digits or by remaining on the line. The phrase “total cost of the call” as used in this paragraph means both the variable (duration-based) charges for the call and the total per-call charges, exclusive of taxes, that the carrier, or its billing agent, may collect from the consumer for the call. It does not include additional charges that may be assessed and collected without the involvement of the carrier, such as a hotel surcharge billed by a hotel. Such charges are addressed in paragraph (b) of this section.

(b) Each aggregator shall post on or near the telephone instrument, in plain view of consumers:

(1) The name, address, and toll-free telephone number of the provider of operator services;

(2) Except for CMRS aggregators, a written disclosure that the rates for all operator-assisted calls are available on request, and that consumers have a right to obtain access to the interstate common carrier of their choice and may contact their preferred interstate common carriers for information on accessing that carrier’s service using that telephone;

(3) In the case of a pay telephone, the local coin rate for the pay telephone location; and

(4) The name and address of the Consumer Information Bureau of the Commission (Federal Communications Commission, Consumer Information Bureau, Consumer Complaints—Telephone, Washington, D.C. 20554), to which the consumer may direct complaints regarding operator services. An existing posting that displays the address that was required prior to the amendment of this rules (*i.e.*, the address of the Common Carrier Bureau’s Enforcement Division, which no longer exists) may remain until such time as the posting is replaced for any other purpose. Any posting made after the effective date of this amendment must display the updated address (*i.e.*, the address of the Consumer Information Bureau).

(c) *Updating of postings.* The posting required by this section shall be updated as soon as practicable following any change of the carrier presubscribed

to provide interstate service at an aggregator location, but no later than 30 days following such change. This requirement may be satisfied by applying to a payphone a temporary sticker displaying the required posting information, provided that any such temporary sticker shall be replaced with permanent signage during the next regularly scheduled maintenance visit.

(d) *Effect of state law or regulation.* The requirements of paragraph (b) of this section shall not apply to an aggregator in any case in which State law or State regulation requires the aggregator to take actions that are substantially the same as those required in paragraph (b) of this section.

(e) Each provider of operator services shall ensure, by contract or tariff, that each aggregator for which such provider is the presubscribed provider of operator services is in compliance with the requirements of paragraph (b) of this section.

[56 FR 18523, Apr. 23, 1991, as amended at 61 FR 14981, Apr. 4, 1996; 61 FR 52323, Oct. 7, 1996; 63 FR 11617, Mar. 10, 1998; 63 FR 43041, Aug. 11, 1998; 64 FR 47119, Aug. 30, 1999; 67 FR 2819, Jan. 22, 2002]

§ 64.704 Call blocking prohibited.

(a) Each aggregator shall ensure that each of its telephones presubscribed to a provider of operator services allows the consumer to use “800” and “950” access code numbers to obtain access to the provider of operator services desired by the consumer.

(b) Each provider of operator services shall:

(1) Ensure, by contract or tariff, that each aggregator for which such provider is the presubscribed provider of operator services is in compliance with the requirements of paragraphs (a) and (c) of this section; and

(2) Withhold payment (on a location-by-location basis) of any compensation, including commissions, to aggregators if such provider reasonably believes that the aggregator is blocking access to interstate common carriers in violation of paragraphs (a) or (c) of this section.

(c) Each aggregator shall, by the earliest applicable date set forth in this paragraph, ensure that any of its equipment presubscribed to a provider

of operator services allows the consumer to use equal access codes to obtain access to the consumer's desired provider of operator services.

(1) Each pay telephone shall, within six (6) months of the effective date of this paragraph, allow the consumer to use equal access codes to obtain access to the consumer's desired provider of operator services.

(2) All equipment that is technologically capable of identifying the dialing of an equal access code followed by any sequence of numbers that will result in billing to the originating telephone and that is technologically capable of blocking access through such dialing sequences without blocking access through other dialing sequences involving equal access codes, shall, within six (6) months of the effective date of this paragraph or upon installation, whichever is sooner, allow the consumer to use equal access codes to obtain access to the consumer's desired provider of operator services.

(3) All equipment or software that is manufactured or imported on or after April 17, 1992, and installed by any aggregator shall, immediately upon installation by the aggregator, allow the consumer to use equal access codes to obtain access to the consumer's desired provider of operator services.

(4) All equipment that can be modified at a cost of no more than \$15.00 per line to be technologically capable of identifying the dialing of an equal access code followed by any sequence of numbers that will result in billing to the originating telephone and to be technologically capable of blocking access through such dialing sequences without blocking access through other dialing sequences involving equal access codes, shall, within eighteen (18) months of the effective date of this paragraph, allow the consumer to use equal access codes to obtain access to the consumer's desired provider of operator services.

(5) All equipment not included in paragraphs (c)(1), (c)(2), (c)(3), or (c)(4) of this section shall, no later than April 17, 1997, allow the consumer to use equal access codes to obtain access to the consumer's desired provider of operator services.

(6) This paragraph does not apply to the use by consumers of equal access code dialing sequences that result in billing to the originating telephone.

(d) All providers of operator services, except those employing a store-and-forward device that serves only consumers at the location of the device, shall establish an "800" or "950" access code number within six (6) months of the effective date of this paragraph.

(e) The requirements of this section shall not apply to CMRS aggregators and providers of CMRS operator services.

[56 FR 18523, Apr. 23, 1991, as amended at 56 FR 40799, Aug. 16, 1991; 57 FR 34260, Aug. 4, 1992; 63 FR 43041, Aug. 11, 1998]

§ 64.705 Restrictions on charges related to the provision of operator services.

(a) A provider of operator services shall:

(1) Not bill for unanswered telephone calls in areas where equal access is available;

(2) Not knowingly bill for unanswered telephone calls where equal access is not available;

(3) Not engage in call splashing, unless the consumer requests to be transferred to another provider of operator services, the consumer is informed prior to incurring any charges that the rates for the call may not reflect the rates from the actual originating location of the call, and the consumer then consents to be transferred;

(4) Except as provided in paragraph (a)(3) of this section, not bill for a call that does not reflect the location of the origination of the call; and

(5) Ensure, by contract or tariff, that each aggregator for which such provider is the presubscribed provider of operator services is in compliance with the requirements of paragraph (b) of this section.

(b) An aggregator shall ensure that no charge by the aggregator to the consumer for using an "800" or "950" access code number, or any other access code number, is greater than the amount the aggregator charges for calls placed using the presubscribed provider of operator services.

(c) The requirements of paragraphs (a)(5) and (b) of this section shall not

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apply to CMRS aggregators and providers of CMRS operator services.

[56 FR 18523, Apr. 23, 1991, as amended at 63 FR 43041, Aug. 11, 1998]

§ 64.706 Minimum standards for the routing and handling of emergency telephone calls.

Upon receipt of any emergency telephone call, providers of operator services and aggregators shall ensure immediate connection of the call to the appropriate emergency service of the reported location of the emergency, if known, and, if not known, of the originating location of the call.

[61 FR 14981, Apr. 4, 1996]

§ 64.707 Public dissemination of information by providers of operator services.

Providers of operator services shall regularly publish and make available at no cost to inquiring consumers written materials that describe any recent changes in operator services and in the choices available to consumers in that market.

[56 FR 18524, Apr. 23, 1991]

§ 64.708 Definitions.

As used in §§ 64.703 through 64.707 of this part and § 68.318 of this chapter (47 CFR 64.703–64.707, 68.318):

(a) *Access code* means a sequence of numbers that, when dialed, connect the caller to the provider of operator services associated with that sequence;

(b) *Aggregator* means any person that, in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises, for interstate telephone calls using a provider of operator services;

(c) *Call splashing* means the transfer of a telephone call from one provider of operator services to another such provider in such a manner that the subsequent provider is unable or unwilling to determine the location of the origination of the call and, because of such inability or unwillingness, is prevented from billing the call on the basis of such location;

(d) *CMRS aggregator* means an aggregator that, in the ordinary course of its operations, makes telephones available to the public or to transient

users of its premises for interstate telephone calls using a provider of CMRS operator services;

(e) *CMRS operator services* means operator services provided by means of a commercial mobile radio service as defined in section 20.3 of this chapter.

(f) *Consumer* means a person initiating any interstate telephone call using operator services. In collect calling arrangements handled by a provider of operator services, the term consumer also includes the party on the terminating end of the call. For bill-to-third-party calling arrangements handled by a provider of operator services, the term consumer also includes the party to be billed for the call if the latter is contacted by the operator service provider to secure billing approval.

(g) *Equal access* has the meaning given that term in Appendix B of the Modification of Final Judgment entered by the United States District Court on August 24, 1982, in *United States v. Western Electric*, Civil Action No. 82-0192 (D.D.C. 1982), as amended by the Court in its orders issued prior to October 17, 1990;

(h) *Equal access code* means an access code that allows the public to obtain an equal access connection to the carrier associated with that code;

(i) *Operator services* means any interstate telecommunications service initiated from an aggregator location that includes, as a component, any automatic or live assistance to a consumer to arrange for billing or completion, or both, of an interstate telephone call through a method other than:

(1) Automatic completion with billing to the telephone from which the call originated; or

(2) Completion through an access code used by the consumer, with billing to an account previously established with the carrier by the consumer;

(j) *Presubscribed provider of operator services* means the interstate provider of operator services to which the consumer is connected when the consumer places a call using a provider of operator services without dialing an access code;

(k) *Provider of CMRS operator services* means a provider of operator services that provides CMRS operator services;

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(1) *Provider of operator services* means any common carrier that provides operator services or any other person determined by the Commission to be providing operator services.

[56 FR 18524, Apr. 23, 1991; 56 FR 25721, June 5, 1991, as amended at 61 FR 14981, Apr. 4, 1996; 63 FR 43041, Aug. 11, 1998; 67 FR 2820, Jan. 22, 2002]

§ 64.709 Informational tariffs.

(a) Informational tariffs filed pursuant to 47 U.S.C. 226(h)(1)(A) shall contain specific rates expressed in dollars and cents for each interstate operator service of the carrier and shall also contain applicable per call aggregator surcharges or other per-call fees, if any, collected from consumers by, or on behalf of, the carrier.

(b) Per call fees, if any, billed on behalf of aggregators or others, shall be specified in informational tariffs in dollars and cents.

(c) In order to remove all doubt as to their proper application, all informational tariffs must contain clear and explicit explanatory statements regarding the rates, *i.e.*, the tariffed price per unit of service, and the regulations governing the offering of service in that tariff.

(d) Informational tariffs shall be accompanied by a cover letter, addressed to the Secretary of the Commission, explaining the purpose of the filing.

(1) The original of the cover letter shall be submitted to the Secretary without attachments, along with FCC Form 159, and the appropriate fee to the U.S. Bank, St. Louis, Missouri.

(2) Copies of the cover letter and the attachments shall be submitted to the Secretary's Office, the Commission's contractor for public records duplication, and the Chief, Tariff and Price Analysis Branch, Competitive Pricing Division.

(e) Any changes to the tariff shall be submitted under a new cover letter with a complete copy of the tariff, including changes.

(1) Changes to a tariff shall be explained in the cover letter but need not be symbolized on the tariff pages.

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(2) Revised tariffs shall be filled pursuant to the procedures specified in this section.

[63 FR 11617, Mar. 10, 1998; 63 FR 15316, Mar. 31, 1998, as amended at 67 FR 2820, Jan. 22, 2002; 73 FR 9031, Feb. 19, 2008]

§ 64.710 Operator services for prison inmate phones.

(a) Each provider of inmate operator services shall:

(1) Identify itself and disclose, audibly and distinctly to the consumer, at no charge and before connecting any interstate, non-access code operator service call, how to obtain the total cost of the call, including any surcharge or premises-imposed-fee. The oral disclosure required in this paragraph shall instruct consumers that they may obtain applicable rate and surcharge quotations either, at the option of the provider of inmate operator services, by dialing no more than two digits or by remaining on the line. The phrase “total cost of the call,” as used in this paragraph, means both the variable (duration-based) charges for the call and the total per-call charges, exclusive of taxes, that the carrier, or its billing agent, may collect from the consumer for the call. Such phrase shall include any per-call surcharge imposed by the correctional institution, unless it is subject to regulation itself as a common carrier for imposing such surcharges, if the contract between the carrier and the correctional institution prohibits both resale and the use of pre-paid calling card arrangements.

(2) Permit the consumer to terminate the telephone call at no charge before the call is connected; and

(3) Disclose immediately to the consumer, upon request and at no charge to the consumer—

(i) The methods by which its rates or charges for the call will be collected; and

(ii) The methods by which complaints concerning such rates, charges or collection practices will be resolved.

(b) As used in this subpart:

(1) *Consumer* means the party to be billed for any interstate call from an inmate telephone;

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(2) *Inmate telephone* means a telephone instrument set aside by authorities of a prison or other correctional institution for use by inmates.

(3) *Inmate operator services* means any interstate telecommunications service initiated from an inmate telephone that includes, as a component, any automatic or live assistance to a consumer to arrange for billing or completion, or both, of an interstate telephone call through a method other than:

(i) Automatic completion with billing to the telephone from which the call originated; or

(ii) Completion through an access code used by the consumer, with billing to an account previously established with the carrier by the consumer;

(4) *Provider of inmate operator services* means any common carrier that provides outbound interstate operator services from inmate telephones.

[63 FR 11617, Mar. 10, 1998, as amended at 67 FR 2820, Jan. 22, 2002]

Subpart H—Extension of Unsecured Credit for Interstate and Foreign Communications Services to Candidates for Federal Office

AUTHORITY: Secs. 4, 201, 202, 203, 218, 219, 48 Stat. 1066, 1070, 1077; 47 U.S.C. 154, 201, 202, 203, 218, 219; sec. 401, 86 Stat. 19; 2 U.S.C. 451.

SOURCE: 37 FR 9393, May 10, 1972, unless otherwise noted.

§ 64.801 Purpose.

Pursuant to section 401 of the Federal Election Campaign Act of 1971, Public Law 92-225, these rules prescribe the general terms and conditions for the extension of unsecured credit by a communication common carrier to a candidate or person on behalf of such candidate for Federal office.

§ 64.802 Applicability.

These rules shall apply to each communication common carrier subject to the whole or part of the Communications Act of 1934, as amended.

§ 64.803 Definitions.

For the purposes of this subpart:

(a) *Candidate* means an individual who seeks nomination for election, or election, to Federal office, whether or not such individual is elected, and an individual shall be deemed to seek nomination for election, or election, if he has (1) taken the action necessary under the law of a State to qualify himself for nomination for election, or election, to Federal office, or (2) received contributions or made expenditures, or has given his consent for any other person to receive contributions or make expenditures, with a view to bringing about his nomination for election, or election, to such office.

(b) *Election* means (1) a general, special, primary, or runoff election, (2) a convention or caucus of a political party held to nominate a candidate, (3) a primary election held for the selection of delegates to a national nominating convention of a political party, and (4) a primary election held for the expression of a preference for the nomination of persons for election to the office of President.

(c) *Federal office* means the office of President or Vice President of the United States; or of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States.

(d) *Person* means an individual, partnership, committee, association, corporation, labor organization, and any other organization or group of persons.

(e) *Unsecured credit* means the furnishing of service without maintaining on a continuing basis advance payment, deposit, or other security, that is designed to assure payment of the estimated amount of service for each future 2 months period, with revised estimates to be made on at least a monthly basis.

§ 64.804 Rules governing the extension of unsecured credit to candidates or persons on behalf of such candidates for Federal office for interstate and foreign common carrier communication services.

(a) There is no obligation upon a carrier to extend unsecured credit for interstate and foreign communication services to a candidate or person on behalf of such candidate for Federal office. However, if the carrier chooses to extend such unsecured credit, it shall

comply with the requirements set forth in paragraphs (b) through (g) of this section.

(b) If a carrier decides to extend unsecured credit to any candidate for Federal office or any person on behalf of such candidate, then unsecured credit shall be extended on substantially equal terms and conditions to all candidates and all persons on behalf of all candidates for the same office, with due regard for differences in the estimated quantity of service to be furnished each such candidate or person.

(c) Before extending unsecured credit, a carrier shall obtain a signed written application for service which shall identify the applicant and the candidate and state whether or not the candidate assumes responsibility for the charges, and which shall also expressly state as follows:

(1) That service is being requested by the applicant or applicants and that the person or persons making the application will be individually, jointly and severally liable for the payment of all charges; and

(2) That the applicant(s) understands that the carrier will (under the provisions of paragraph (d) of this section) discontinue service upon written notice if any amount due is not paid upon demand.

(d) If charges for services rendered are not paid to the carrier within 15 days from rendition of a bill therefor, the carrier shall forthwith at the end of the 15-day period serve written notice on the applicant of intent to discontinue service within 7 days of date of such notice for nonpayment and shall discontinue service at the end of the 7-day period unless all such sums due are paid in full within such 7-day period.

(e) Each carrier shall take appropriate action at law to collect any unpaid balance on an account for interstate and foreign communication services rendered to a candidate or person on behalf of such candidate prior to the expiration of the statute of limitations under section 415(a) of the Communications Act of 1934, as amended.

(f) The records of each account, involving the extension by a carrier of unsecured credit to a candidate or person on behalf of such candidate for

common carrier communications services shall be maintained by the carrier so as to show separately, for interstate and foreign communication services all charges, credits, adjustments, and security, if any, and balance receivable.

(g) On or before January 31, 1973, and on corresponding dates of each year thereafter, each carrier which had operating revenues in the preceding year in excess of \$1 million shall file with the Commission a report by account of any amount due and unpaid, as of the end of the month prior to the reporting date, for interstate and foreign communications services to a candidate or person on behalf of such candidate when such amount results from the extension of unsecured credit. Each report shall include the following information:

- (1) Name of candidate.
- (2) Name and address of person or persons applying for service.
- (3) Balance due carrier.
- (4) Reason for nonpayment.
- (5) Payment arrangements, if any.
- (6) Date service discontinued.
- (7) Date, nature and status of any action taken at law in compliance with paragraph (e) of this section.

[37 FR 9393, May 10, 1972, as amended at 62 FR 5166, Feb. 4, 1997]

Subpart I—Allocation of Costs

§ 64.901 Allocation of costs.

(a) Carriers required to separate their regulated costs from nonregulated costs shall use the attributable cost method of cost allocation for such purpose.

(b) In assigning or allocating costs to regulated and nonregulated activities, carriers shall follow the principles described herein.

(1) Tariffed services provided to a nonregulated activity will be charged to the nonregulated activity at the tariffed rates and credited to the regulated revenue account for that service. Nontariffed services, offered pursuant to a section 252(e) agreement, provided to a nonregulated activity will be charged to the nonregulated activity at the amount set forth in the applicable interconnection agreement approved

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by a state commission pursuant to section 252(e) and credited to the regulated revenue account for that service.

(2) Costs shall be directly assigned to either regulated or nonregulated activities whenever possible.

(3) Costs which cannot be directly assigned to either regulated or nonregulated activities will be described as common costs. Common costs shall be grouped into homogeneous cost categories designed to facilitate the proper allocation of costs between a carrier's regulated and nonregulated activities. Each cost category shall be allocated between regulated and nonregulated activities in accordance with the following hierarchy:

(i) Whenever possible, common cost categories are to be allocated based upon direct analysis of the origin of the cost themselves.

(ii) When direct analysis is not possible, common cost categories shall be allocated based upon an indirect, cost-causative linkage to another cost category (or group of cost categories) for which a direct assignment or allocation is available.

(iii) When neither direct nor indirect measures of cost allocation can be found, the cost category shall be allocated based upon a general allocator computed by using the ratio of all expenses directly assigned or attributed to regulated and nonregulated activities.

(4) The allocation of central office equipment and outside plant investment costs between regulated and nonregulated activities shall be based upon the relative regulated and nonregulated usage of the investment during the calendar year when nonregulated usage is greatest in comparison to regulated usage during the three calendar years beginning with the calendar year during which the investment usage forecast is filed.

(c) A telecommunications carrier may not use services that are not competitive to subsidize services subject to competition. Services included in the definition of universal service shall bear no more than a reasonable share

of the joint and common costs of facilities used to provide those services.

[52 FR 6560, Mar. 4, 1987, as amended at 52 FR 39534, Oct. 22, 1987; 54 FR 49762, Dec. 1, 1989; 62 FR 45588, Aug. 28, 1997; 67 FR 5702, Feb. 6, 2002]

§ 64.902 Transactions with affiliates.

Except for carriers which employ average schedules in lieu of determining their costs, all carriers subject to § 64.901 are also subject to the provisions of § 32.27 of this chapter concerning transactions with affiliates.

[55 FR 30461, July 26, 1990]

§ 64.903 Cost allocation manuals.

(a) Each incumbent local exchange carrier having annual revenues from regulated telecommunications operations that are equal to or above the indexed revenue threshold (as defined in § 32.9000 of this chapter) except mid-sized incumbent local exchange carriers is required to file a cost allocation manual describing how it separates regulated from nonregulated costs. The manual shall contain the following information regarding the carrier's allocation of costs between regulated and nonregulated activities:

(1) A description of each of the carrier's nonregulated activities;

(2) A list of all the activities to which the carrier now accords incidental accounting treatment and the justification therefor;

(3) A chart showing all of the carrier's corporate affiliates;

(4) A statement identifying each affiliate that engages in or will engage in transactions with the carrier and describing the nature, terms and frequency of each transaction;

(5) A cost apportionment table showing, for each account containing costs incurred in providing regulated services, the cost pools with that account, the procedures used to place costs into each cost pool, and the method used to apportion the costs within each cost pool between regulated and nonregulated activities; and

(6) A description of the time reporting procedures that the carrier uses, including the methods or studies designed to measure and allocate non-productive time.

(b) Each carrier shall ensure that the information contained in its cost allocation manual is accurate. Carriers must update their cost allocation manuals at least annually, except that changes to the cost apportionment table and to the description of time reporting procedures must be filed at the time of implementation. Annual cost allocation manual updates shall be filed on or before the last working day of each calendar year. Proposed changes in the description of time reporting procedures, the statement concerning affiliate transactions, and the cost apportionment table must be accompanied by a statement quantifying the impact of each change on regulated operations. Changes in the description of time reporting procedures and the statement concerning affiliate transactions must be quantified in \$100,000 increments at the account level. Changes in cost apportionment tables must be quantified in \$100,000 increments at the cost pool level. The Chief, Wireline Competition Bureau may suspend any such changes for a period not to exceed 180 days, and may thereafter allow the change to become effective or prescribe a different procedure.

(c) The Commission may by order require any other communications common carrier to file and maintain a cost allocation manual as provided in this section.

[57 FR 4375, Feb. 5, 1992, as amended at 59 FR 46358, Sept. 8, 1994; 61 FR 50246, Sept. 25, 1996; 62 FR 39779, July 24, 1997; 65 FR 16335, Mar. 28, 2000; 67 FR 5702, Feb. 6, 2002; 67 FR 13229, Mar. 21, 2002]

§ 64.904 Independent audits.

(a) Each carrier required to file a cost allocation manual shall elect to either have an attest engagement performed by an independent auditor every two years, covering the prior two year period, or have a financial audit performed by an independent auditor every two years, covering the prior two year period. In either case, the initial engagement shall be performed in the calendar year after the carrier is first required to file a cost allocation manual.

(b) The attest engagement shall be an examination engagement and shall provide a written communication that ex-

presses an opinion that the systems, processes, and procedures applied by the carrier to generate the results reported pursuant to § 43.21(e)(2) of this chapter comply with the Commission's Joint Cost Orders issued in conjunction with CC Docket No. 86–111, the Commission's Accounting Safeguards proceeding in CC Docket No. 96–150, and the Commission's rules and regulations including §§ 32.23 and 32.27 of this chapter, and § 64.901, and § 64.903 in force as of the date of the auditor's report. At least 30 days prior to beginning the attestation engagement, the independent auditors shall provide the Commission with the audit program. The attest engagement shall be conducted in accordance with the attestation standards established by the American Institute of Certified Public Accountants, except as otherwise directed by the Chief, Enforcement Bureau.

(c) The biennial financial audit shall provide a positive opinion on whether the applicable date shown in the carrier's annual report required by § 43.21(e)(2) of this chapter present fairly, in all material respects, the information of the Commission's Joint Cost Orders issued in conjunction with CC Docket No. 86–111, the Commission's Accounting Safeguards proceeding in CC Docket No. 96–150, and the Commission's rules and regulations including §§ 32.23 and 32.27 of this chapter, and § 64.901, and § 64.903 in force as of the date of the auditor's report. The audit shall be conducted in accordance with generally accepted auditing standards, except as otherwise directed by the Chief, Enforcement Bureau. The report of the independent auditor shall be filed at the time that the carrier files the annual reports required by § 43.21(e)(2) of this chapter.

[67 FR 5702, Feb. 6, 2002, as amended at 67 FR 13229, Mar. 21, 2002]

§ 64.905 Annual certification.

A mid-sized incumbent local exchange carrier, as defined in § 32.9000 of this chapter, shall file a certification with the Commission stating that it is complying with § 64.901. The certification must be signed, under oath, by an officer of the mid-sized incumbent LEC, and filed with the Commission on an annual basis at the time that the

mid-sized incumbent LEC files the annual reports required by § 43.21(e)(2) of this chapter.

[67 FR 5702, Feb. 6, 2002]

Subpart J—International Settlements Policy and Modification Requests

§ 64.1001 Requests to modify international settlements arrangements.

(a) The procedures set forth in this rule apply to carriers that are required to file with the International Bureau, pursuant to § 43.51(e) of this chapter, requests to modify international settlement arrangements. Any operating agreement or amendment for which a modification request is required to be filed cannot become effective until the modification request has been granted under paragraph (e) of this section.

(b) A modification request must contain the following information:

- (1) The applicable international service;
- (2) The name of the foreign telecommunications administration;
- (3) The present accounting rate (including any surcharges);
- (4) The new accounting rate (including any surcharges);
- (5) The effective date;
- (6) The division of the accounting rate; and
- (7) An explanation of any proposed modification(s) in the operating agreement with the foreign correspondent.

(c) A modification request must contain a notarized statement that the filing carrier:

- (1) Has not bargained for, nor has knowledge of, exclusive availability of the new accounting rate;
- (2) Has not bargained for, nor has any indication that it will receive, more than its proportionate share of return traffic; and
- (3) Has informed the foreign administration that U.S. policy requires that competing U.S. carriers have access to accounting rates negotiated by the filing carrier with the foreign administration on a nondiscriminatory basis.

(d) Carriers must serve a copy of the modification request on all carriers providing the same or similar service to the foreign administration identi-

fied in the filing on the same day a modification request is filed.

(e) All modification requests will be subject to a twenty-one (21) day pleading period for objections or comments, commencing the date after the request is filed. If the modification request is not complete when filed, the carrier will be notified that additional information is to be submitted, and a new 21 day pleading period will begin when the additional information is filed. The modification request will be deemed granted as of the twenty-second (22nd) day without any formal staff action being taken: provided

- (1) No objections have been filed, and
- (2) The International Bureau has not notified the carrier that grant of the modification request may not serve the public interest and that implementation of the proposed modification must await formal staff action on the modification request. If objections or comments are filed, the carrier requesting the modification request may file a response pursuant to § 1.45 of this chapter. Modification requests that are formally opposed must await formal action by the International Bureau before the proposed modification can be implemented.

(f) Subject to the availability of electronic forms, all modifications and related submissions described in this section must be filed electronically through the International Bureau Filing System (IBFS). A list of forms that are available for electronic filing can be found on the IBFS homepage. For information on electronic filing requirements, see part 1, §§ 1.1000 through 1.10018 of this chapter and the IBFS homepage at <http://www.fcc.gov/ibfs>. See also §§ 63.20 and 63.53.

[56 FR 25372, June 4, 1991, as amended at 58 FR 4354, Jan. 14, 1993; 60 FR 5333, Jan. 27, 1995; 62 FR 5541, Feb. 6, 1997; 62 FR 64758, Dec. 9, 1997; 64 FR 34742, June 29, 1999; 66 FR 16882, Mar. 28, 2001; 69 FR 23154, Apr. 28, 2004; 69 FR 29903, May 26, 2004; 69 FR 40327, July 2, 2004; 70 FR 38800, July 6, 2005]

§ 64.1002 International settlements policy.

(a) Except as provided in paragraph (b) of this section, a common carrier that is authorized pursuant to part 63 of this chapter to provide facilities-

based switched voice, telex, telegraph, or packet-switched service on a U.S. international route, and that enters into an operating or other agreement to provide any such service in correspondence with a foreign carrier that does not qualify for the presumption that it lacks market power on the foreign end of the route, must comply with the following requirements:

(1) The terms and conditions of the carrier's operating or other agreement relating to the exchange of services, interchange or routing of traffic and matters concerning rates, accounting rates, division of tolls, the allocation of return traffic, or the basis of settlement of traffic balances, are identical to the equivalent terms and conditions in the operating agreement of another carrier providing the same or similar service between the United States and the same foreign point.

(2) The carrier shall not bargain for or agree to accept more than its proportionate share of return traffic.

(3) The division of tolls shall be evenly-divided between the U.S. carrier and foreign carrier.

(4) The carrier must also duly comply with the requirements in § 43.51 and § 64.1001 of this chapter.

NOTE TO PARAGRAPH (a): Carriers shall rely on the Commission's list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points for purposes of determining which of their foreign carrier correspondent agreements are subject to the requirements of this paragraph. This list is available on the International Bureau's World Wide Web site at <http://www.fcc.gov/ib>.

(b) A carrier that enters into an operating or other agreement with a foreign carrier for the provision of a common carrier service on an international route is not subject to the requirements of paragraph (a) of this section if the route appears on the Commission's list of international routes that the Commission has exempted from the international settlements policy. This list is available on the International Bureau's World Wide Web site at <http://www.fcc.gov/ib>.

(c) A carrier that seeks to add a U.S. international route to the list of routes that are exempt from the international settlements policy must make its re-

quest to the International Bureau, accompanied by a showing that a U.S. carrier has entered into a benchmark-compliant settlement rate agreement with a foreign carrier that possesses market power in the country at the foreign end of the U.S. international route that is the subject of the request. The required showing shall consist of an effective accounting rate modification, filed pursuant to § 64.1001, that includes a settlement rate that is at or below the Commission's benchmark settlement rate adopted for that country in IB Docket No. 96-261, Report and Order, 12 FCC Rcd 19,806, 62 FR 45758, Aug. 29, 1997, available on the International Bureau's World Wide Web site at <http://www.fcc.gov/ib>.

(d) A carrier or other party may request Commission intervention on a route that the Commission has exempted from the international settlements policy by filing with the International Bureau a petition, pursuant to this section, demonstrating anticompetitive behavior that is harmful to U.S. customers. Carriers and other parties filing complaints must support their petitions with evidence, including an affidavit and relevant commercial agreements. The International Bureau will review complaints on a case-by-case basis and take appropriate action on delegated authority pursuant to § 0.261 of this chapter. Interested parties will have 10 days from the date of issuance of a public notice of the petition to file comments or oppositions to such petitions and subsequently 7 days for replies. In the event significant, immediate harm to the public interest is likely to occur that cannot be addressed through *post facto* remedies, the International Bureau may impose temporary requirements on carriers authorized pursuant to § 63.18 of this chapter without prejudice to its findings on such petitions.

NOTE 1 TO § 64.1002: For purposes of this section, *foreign carrier* is defined in § 63.09 of this chapter.

NOTE 2 TO § 64.1002: For purposes of this section, a *foreign carrier* shall be considered to possess market power if it appears on the Commission's list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign

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points. This list is available on the International Bureau's World Wide Web site at <http://www.fcc.gov/ib>.

(e) Subject to the availability of electronic forms, all filings described in this section must be filed electronically through the International Bureau Filing System (IBFS). A list of forms that are available for electronic filing can be found on the IBFS homepage. For information on electronic filing requirements, see part 1, §§ 1.1000 through 1.10018 of this chapter and the IBFS homepage at <http://www.fcc.gov/ibfs>. See also §§ 63.20 and 63.53.

[69 FR 23155, Apr. 28, 2004, as amended at 70 FR 38800, July 6, 2005]

Subpart K—Changes in Preferred Telecommunications Service Providers

§ 64.1100 Definitions.

(a) The term *submitting carrier* is generally any telecommunications carrier that requests on the behalf of a subscriber that the subscriber's telecommunications carrier be changed, and seeks to provide retail services to the end user subscriber. A carrier may be treated as a submitting carrier, however, if it is responsible for any unreasonable delays in the submission of carrier change requests or for the submission of unauthorized carrier change requests, including fraudulent authorizations.

(b) The term *executing carrier* is generally any telecommunications carrier that effects a request that a subscriber's telecommunications carrier be changed. A carrier may be treated as an executing carrier, however, if it is responsible for any unreasonable delays in the execution of carrier changes or for the execution of unauthorized carrier changes, including fraudulent authorizations.

(c) The term *authorized carrier* is generally any telecommunications carrier that submits a change, on behalf of a subscriber, in the subscriber's selection of a provider of telecommunications service with the subscriber's authorization verified in accordance with the procedures specified in this part.

(d) The term *unauthorized carrier* is generally any telecommunications car-

rier that submits a change, on behalf of a subscriber, in the subscriber's selection of a provider of telecommunications service but fails to obtain the subscriber's authorization verified in accordance with the procedures specified in this part.

(e) The term *unauthorized change* is a change in a subscriber's selection of a provider of telecommunications service that was made without authorization verified in accordance with the verification procedures specified in this part.

(f) The term *state commission* shall include any state entity with the state-designated authority to resolve the complaints of such state's residents arising out of an allegation that an unauthorized change of a telecommunications service provider has occurred that has elected, in accordance with the requirements of § 64.1110(a), to administer the Federal Communications Commission's slamming rules and remedies, as enumerated in §§ 64.1100 through 64.1190.

(g) The term *relevant governmental agency* shall be the state commission if the complainant files a complaint with the state commission or if the complaint is forwarded to the state commission by the Federal Communications Commission, and the Federal Communications Commission if the complainant files a complaint with the Federal Communications Commission, and the complaint is not forwarded to a state commission.

(h) The term *subscriber* is any one of the following:

(1) The party identified in the account records of a common carrier as responsible for payment of the telephone bill;

(2) Any adult person authorized by such party to change telecommunications services or to charge services to the account; or

(3) Any person contractually or otherwise lawfully authorized to represent such party.

[65 FR 47690, Aug. 3, 2000, as amended at 66 FR 12892, Mar. 1, 2001]

§ 64.1110 State notification of election to administer FCC rules.

(a) *Initial Notification.* State notification of an intention to administer the

Federal Communications Commission's unauthorized carrier change rules and remedies, as enumerated in §§64.1100 through 64.1190, shall be filed with the Commission Secretary in CC Docket No. 94–129 with a copy of such notification provided to the Consumer & Governmental Affairs Bureau Chief. Such notification shall contain, at a minimum, information on where consumers should file complaints, the type of documentation, if any, that must accompany a complaint, and the procedures the state will use to adjudicate complaints.

(b) *Withdrawal of Notification.* State notification of an intention to discontinue administering the Federal Communications Commission's unauthorized carrier change rules and remedies, as enumerated in §§64.1100 through 64.1190, shall be filed with the Commission Secretary in CC Docket No. 94–129 with a copy of such amended notification provided to the Consumer & Governmental Affairs Bureau Chief. Such discontinuance shall become effective 60 days after the Commission's receipt of the state's letter.

[65 FR 47691, Aug. 3, 2000, as amended at 73 FR 13149, Mar. 12, 2008]

§ 64.1120 Verification of orders for telecommunications service.

(a) No telecommunications carrier shall submit or execute a change on the behalf of a subscriber in the subscriber's selection of a provider of telecommunications service except in accordance with the procedures prescribed in this subpart. Nothing in this section shall preclude any State commission from enforcing these procedures with respect to intrastate services.

(1) No submitting carrier shall submit a change on the behalf of a subscriber in the subscriber's selection of a provider of telecommunications service prior to obtaining:

- (i) Authorization from the subscriber, and
- (ii) Verification of that authorization in accordance with the procedures prescribed in this section. The submitting carrier shall maintain and preserve records of verification of subscriber authorization for a minimum period of

two years after obtaining such verification.

(2) An executing carrier shall not verify the submission of a change in a subscriber's selection of a provider of telecommunications service received from a submitting carrier. For an executing carrier, compliance with the procedures described in this part shall be defined as prompt execution, without any unreasonable delay, of changes that have been verified by a submitting carrier.

(3) Commercial mobile radio services (CMRS) providers shall be excluded from the verification requirements of this part as long as they are not required to provide equal access to common carriers for the provision of telephone toll services, in accordance with 47 U.S.C. 332(c)(8).

(b) Where a telecommunications carrier is selling more than one type of telecommunications service (*e.g.*, local exchange, intraLATA toll, and interLATA toll), that carrier must obtain separate authorization from the subscriber for each service sold, although the authorizations may be obtained within the same solicitation. Each authorization must be verified separately from any other authorizations obtained in the same solicitation. Each authorization must be verified in accordance with the verification procedures prescribed in this part.

(c) No telecommunications carrier shall submit a preferred carrier change order unless and until the order has been confirmed in accordance with one of the following procedures:

(1) The telecommunications carrier has obtained the subscriber's written or electronically signed authorization in a form that meets the requirements of § 64.1130; or

(2) The telecommunications carrier has obtained the subscriber's electronic authorization to submit the preferred carrier change order. Such authorization must be placed from the telephone number(s) on which the preferred carrier is to be changed and must confirm the information in paragraph (a)(1) of this section. Telecommunications carriers electing to confirm sales electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s)

will connect a subscriber to a voice response unit, or similar mechanism, that records the required information regarding the preferred carrier change, including automatically recording the originating automatic number identification; or

(3) An appropriately qualified independent third party has obtained, in accordance with the procedures set forth in paragraphs (c)(3)(i) through (c)(3)(iv) of this section, the subscriber's oral authorization to submit the preferred carrier change order that confirms and includes appropriate verification data (*e.g.*, the subscriber's date of birth or social security number). The independent third party must not be owned, managed, controlled, or directed by the carrier or the carrier's marketing agent; must not have any financial incentive to confirm preferred carrier change orders for the carrier or the carrier's marketing agent; and must operate in a location physically separate from the carrier or the carrier's marketing agent.

(i) *Methods of third party verification.* Automated third party verification systems and three-way conference calls may be used for verification purposes so long as the requirements of paragraphs (c)(3)(ii) through (c)(3)(iv) of this section are satisfied.

(ii) *Carrier initiation of third party verification.* A carrier or a carrier's sales representative initiating a three-way conference call or a call through an automated verification system must drop off the call once the three-way connection has been established.

(iii) *Requirements for content and format of third party verification.* Any description of the carrier change transaction by a third party verifier must not be misleading, and all third party verification methods shall elicit, at a minimum: The date of the verification; the identity of the subscriber; confirmation that the person on the call is authorized to make the carrier change; confirmation that the person on the call wants to make the carrier change; confirmation that the person on the call understands that a carrier change, not an upgrade to existing service, bill consolidation, or any other misleading description of the transaction, is being authorized; the names of the carriers

affected by the change (not including the name of the displaced carrier); the telephone numbers to be switched; and the types of service involved (including a brief description of a service about which the subscriber demonstrates confusion regarding the nature of that service). Except in Hawaii, any description of interLATA or long distance service shall convey that it encompasses both international and state-to-state calls, as well as some intrastate calls where applicable. If the subscriber has additional questions for the carrier's sales representative during the verification, the verifier shall indicate to the subscriber that, upon completion of the verification process, the subscriber will have authorized a carrier change. Third party verifiers may not market the carrier's services by providing additional information, including information regarding preferred carrier freeze procedures.

(iv) *Other requirements for third party verification.* All third party verifications shall be conducted in the same language that was used in the underlying sales transaction and shall be recorded in their entirety. In accordance with the procedures set forth in 64.1120(a)(1)(ii), submitting carriers shall maintain and preserve audio records of verification of subscriber authorization for a minimum period of two years after obtaining such verification. Automated systems must provide consumers with an option to speak with a live person at any time during the call.

(4) Any State-enacted verification procedures applicable to intrastate preferred carrier change orders only.

(d) Telecommunications carriers must provide subscribers the option of using one of the authorization and verification procedures specified in § 64.1120(c) in addition to an electronically signed authorization and verification procedure under 64.1120(c)(1).

(e) A telecommunications carrier may acquire, through a sale or transfer, either part or all of another telecommunications carrier's subscriber base without obtaining each subscriber's authorization and verification in accordance with § 64.1120(c), provided that the acquiring

carrier complies with the following streamlined procedures. A telecommunications carrier may not use these streamlined procedures for any fraudulent purpose, including any attempt to avoid liability for violations under part 64, subpart K of the Commission rules.

(1) No later than 30 days before the planned transfer of the affected subscribers from the selling or transferring carrier to the acquiring carrier, the acquiring carrier shall file with the Commission's Office of the Secretary a letter notification in CC Docket No. 00–257 providing the names of the parties to the transaction, the types of telecommunications services to be provided to the affected subscribers, and the date of the transfer of the subscriber base to the acquiring carrier. In the letter notification, the acquiring carrier also shall certify compliance with the requirement to provide advance subscriber notice in accordance with § 64.1120(e)(3), with the obligations specified in that notice, and with other statutory and Commission requirements that apply to this streamlined process. In addition, the acquiring carrier shall attach a copy of the notice sent to the affected subscribers.

(2) If, subsequent to the filing of the letter notification with the Commission required by § 64.1120(e)(1), any material changes to the required information should develop, the acquiring carrier shall file written notification of these changes with the Commission no more than 10 days after the transfer date announced in the prior notification. The Commission reserves the right to require the acquiring carrier to send an additional notice to the affected subscribers regarding such material changes.

(3) Not later than 30 days before the transfer of the affected subscribers from the selling or transferring carrier to the acquiring carrier, the acquiring carrier shall provide written notice to each affected subscriber of the information specified. The acquiring carrier is required to fulfill the obligations set forth in the advance subscriber notice. The advance subscriber notice shall be provided in a manner consistent with 47 U.S.C. 255 and the Commission's rules regarding accessibility to blind

and visually-impaired consumers, 47 CFR 6.3, 6.5 of this chapter. The following information must be included in the advance subscriber notice:

(i) The date on which the acquiring carrier will become the subscriber's new provider of telecommunications service,

(ii) The rates, terms, and conditions of the service(s) to be provided by the acquiring carrier upon the subscriber's transfer to the acquiring carrier, and the means by which the acquiring carrier will notify the subscriber of any change(s) to these rates, terms, and conditions.

(iii) The acquiring carrier will be responsible for any carrier change charges associated with the transfer, except where the carrier is acquiring customers by default, other than through bankruptcy, and state law requires the exiting carrier to pay these costs;

(iv) The subscriber's right to select a different preferred carrier for the telecommunications service(s) at issue, if an alternative carrier is available,

(v) All subscribers receiving the notice, even those who have arranged preferred carrier freezes through their local service providers on the service(s) involved in the transfer, will be transferred to the acquiring carrier, unless they have selected a different carrier before the transfer date; existing preferred carrier freezes on the service(s) involved in the transfer will be lifted; and the subscribers must contact their local service providers to arrange a new freeze.

(vi) Whether the acquiring carrier will be responsible for handling any complaints filed, or otherwise raised, prior to or during the transfer against the selling or transferring carrier, and

(vii) The toll-free customer service telephone number of the acquiring carrier.

[65 FR 47691, Aug. 3, 2000, as amended at 66 FR 12892, Mar. 1, 2001; 66 FR 28124, May 22, 2001; 68 FR 19159, Apr. 18, 2003; 70 FR 12611, Mar. 15, 2005; 73 FR 13149, Mar. 12, 2008]

§ 64.1130 Letter of agency form and content.

(a) A telecommunications carrier may use a written or electronically

signed letter of agency to obtain authorization and/or verification of a subscriber's request to change his or her preferred carrier selection. A letter of agency that does not conform with this section is invalid for purposes of this part.

(b) The letter of agency shall be a separate document (or an easily separable document) or located on a separate screen or webpage containing only the authorizing language described in paragraph (e) of this section having the sole purpose of authorizing a telecommunications carrier to initiate a preferred carrier change. The letter of agency must be signed and dated by the subscriber to the telephone line(s) requesting the preferred carrier change.

(c) The letter of agency shall not be combined on the same document, screen, or webpage with inducements of any kind.

(d) Notwithstanding paragraphs (b) and (c) of this section, the letter of agency may be combined with checks that contain only the required letter of agency language as prescribed in paragraph (e) of this section and the necessary information to make the check a negotiable instrument. The letter of agency check shall not contain any promotional language or material. The letter of agency check shall contain in easily readable, bold-face type on the front of the check, a notice that the subscriber is authorizing a preferred carrier change by signing the check. The letter of agency language shall be placed near the signature line on the back of the check.

(e) At a minimum, the letter of agency must be printed with a type of sufficient size and readable type to be clearly legible and must contain clear and unambiguous language that confirms:

(1) The subscriber's billing name and address and each telephone number to be covered by the preferred carrier change order;

(2) The decision to change the preferred carrier from the current telecommunications carrier to the soliciting telecommunications carrier;

(3) That the subscriber designates [insert the name of the submitting carrier] to act as the subscriber's agent for the preferred carrier change;

(4) That the subscriber understands that only one telecommunications carrier may be designated as the subscriber's interstate or interLATA preferred interexchange carrier for any one telephone number. To the extent that a jurisdiction allows the selection of additional preferred carriers (*e.g.*, local exchange, intraLATA toll, interLATA toll, or international interexchange), the letter of agency must contain separate statements regarding those choices, although a separate letter of agency for each choice is not necessary; and

(5) That the subscriber may consult with the carrier as to whether a fee will apply to the change in the subscriber's preferred carrier.

(f) Any carrier designated in a letter of agency as a preferred carrier must be the carrier directly setting the rates for the subscriber.

(g) Letters of agency shall not suggest or require that a subscriber take some action in order to retain the subscriber's current telecommunications carrier.

(h) If any portion of a letter of agency is translated into another language then all portions of the letter of agency must be translated into that language. Every letter of agency must be translated into the same language as any promotional materials, oral descriptions or instructions provided with the letter of agency.

(i) Letters of agency submitted with an electronically signed authorization must include the consumer disclosures required by Section 101(c) of the Electronic Signatures in Global and National Commerce Act.

(j) A telecommunications carrier shall submit a preferred carrier change order on behalf of a subscriber within no more than 60 days of obtaining a written or electronically signed letter of agency. However, letters of agency for multi-line and/or multi-location business customers that have entered into negotiated agreements with carriers to add presubscribed lines to their business locations during the course of

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a term agreement shall be valid for the period specified in the term agreement.

[64 FR 7760, Feb. 16, 1999. Redesignated at 65 FR 47692, Aug. 3, 2000, as amended at 66 FR 12893, Mar. 1, 2001; 66 FR 16151, Mar. 23, 2001; 68 FR 19159, Apr. 18, 2003; 73 FR 13149, Mar. 12, 2008]

§ 64.1140 Carrier liability for slamming.

(a) *Carrier Liability for Charges.* Any submitting telecommunications carrier that fails to comply with the procedures prescribed in this part shall be liable to the subscriber's properly authorized carrier in an amount equal to 150% of all charges paid to the submitting telecommunications carrier by such subscriber after such violation, as well as for additional amounts as prescribed in § 64.1170. The remedies provided in this part are in addition to any other remedies available by law.

(b) *Subscriber Liability for Charges.* Any subscriber whose selection of telecommunications services provider is changed without authorization verified in accordance with the procedures set for in this part is liable for charges as follows:

(1) If the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change. Upon being informed by a subscriber that an unauthorized change has occurred, the authorized carrier, the unauthorized carrier, or the executing carrier shall inform the subscriber of this 30-day absolution period. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change in accordance with the provisions of § 64.1160(e).

(2) If the subscriber has already paid charges to the unauthorized carrier, and the authorized carrier receives payment from the unauthorized carrier as provided for in paragraph (a) of this section, the authorized carrier shall refund or credit to the subscriber any

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amounts determined in accordance with the provisions of § 64.1170(c).

(3) If the subscriber has been absolved of liability as prescribed by this section, the unauthorized carrier shall also be liable to the subscriber for any charge required to return the subscriber to his or her properly authorized carrier, if applicable.

[65 FR 47691, Aug. 3, 2000]

§ 64.1150 Procedures for resolution of unauthorized changes in preferred carrier.

(a) *Notification of alleged unauthorized carrier change.* Executing carriers who are informed of an unauthorized carrier change by a subscriber must immediately notify both the authorized and allegedly unauthorized carrier of the incident. This notification must include the identity of both carriers.

(b) *Referral of complaint.* Any carrier, executing, authorized, or allegedly unauthorized, that is informed by a subscriber or an executing carrier of an unauthorized carrier change shall direct that subscriber either to the state commission or, where the state commission has not opted to administer these rules, to the Federal Communications Commission's Consumer & Governmental Affairs Bureau, for resolution of the complaint. Carriers shall also inform the subscriber that he or she may contact and seek resolution from the alleged unauthorized carrier and, in addition, may contact the authorized carrier.

(c) *Notification of receipt of complaint.* Upon receipt of an unauthorized carrier change complaint, the relevant governmental agency will notify the allegedly unauthorized carrier of the complaint and order that the carrier remove all unpaid charges for the first 30 days after the slam from the subscriber's bill pending a determination of whether an unauthorized change, as defined by § 64.1100(e), has occurred, if it has not already done so.

(d) *Proof of verification.* Not more than 30 days after notification of the complaint, or such lesser time as is required by the state commission if a matter is brought before a state commission, the alleged unauthorized carrier shall provide to the relevant government agency a copy of any valid

proof of verification of the carrier change. This proof of verification must contain clear and convincing evidence of a valid authorized carrier change, as that term is defined in §§64.1120 through 64.1130. The relevant governmental agency will determine whether an unauthorized change, as defined by §64.1100(e), has occurred using such proof and any evidence supplied by the subscriber. Failure by the carrier to respond or provide proof of verification will be presumed to be clear and convincing evidence of a violation.

(e) *Election of forum.* The Federal Communications Commission will not adjudicate a complaint filed pursuant to §1.719 or §§1.720 through 1.736 of this chapter, involving an alleged unauthorized change, as defined by §64.1100(e), while a complaint based on the same set of facts is pending with a state commission.

[65 FR 47692, Aug. 3, 2000, as amended at 68 FR 19159, Apr. 18, 2003; 73 FR 13149, Mar. 12, 2008]

§ 64.1160 Absolution procedures where the subscriber has not paid charges.

(a) This section shall only apply after a subscriber has determined that an unauthorized change, as defined by §64.1100(e), has occurred and the subscriber has not paid charges to the allegedly unauthorized carrier for service provided for 30 days, or a portion thereof, after the unauthorized change occurred.

(b) An allegedly unauthorized carrier shall remove all charges incurred for service provided during the first 30 days after the alleged unauthorized change occurred, as defined by §64.1100(e), from a subscriber's bill upon notification that such unauthorized change is alleged to have occurred.

(c) An allegedly unauthorized carrier may challenge a subscriber's allegation that an unauthorized change, as defined by §64.1100(e), occurred. An allegedly unauthorized carrier choosing to challenge such allegation shall immediately notify the complaining subscriber that: The complaining subscriber must file a complaint with a State commission that has opted to administer the FCC's rules, pursuant to §64.1110, or the FCC within 30 days of

either the date of removal of charges from the complaining subscriber's bill in accordance with paragraph (b) of this section, or the date the allegedly unauthorized carrier notifies the complaining subscriber of the requirements of this paragraph, whichever is later; and a failure to file such a complaint within this 30-day time period will result in the charges removed pursuant to paragraph (b) of this section being reinstated on the subscriber's bill and, consequently, the complaining subscriber will only be entitled to remedies for the alleged unauthorized change other than those provided for in §64.1140(b)(1). No allegedly unauthorized carrier shall reinstate charges to a subscriber's bill pursuant to the provisions of this paragraph without first providing such subscriber with a reasonable opportunity to demonstrate that the requisite complaint was timely filed within the 30-day period described in this paragraph.

(d) If the relevant governmental agency determines after reasonable investigation that an unauthorized change, as defined by §64.1100(e), has occurred, an order shall be issued providing that the subscriber is entitled to absolution from the charges incurred during the first 30 days after the unauthorized carrier change occurred, and neither the authorized or unauthorized carrier may pursue any collection against the subscriber for those charges.

(e) If the subscriber has incurred charges for more than 30 days after the unauthorized carrier change, the unauthorized carrier must forward the billing information for such services to the authorized carrier, which may bill the subscriber for such services using either of the following means:

(1) The amount of the charge may be determined by a re-rating of the services provided based on what the authorized carrier would have charged the subscriber for the same services had an unauthorized change, as described in §64.1100(e), not occurred; or

(2) The amount of the charge may be determined using a 50% Proxy Rate as follows: Upon receipt of billing information from the unauthorized carrier,

the authorized carrier may bill the subscriber for 50% of the rate the unauthorized carrier would have charged the subscriber for the services provided. However, the subscriber shall have the right to reject use of this 50% proxy method and require that the authorized carrier perform a re-rating of the services provided, as described in paragraph (e)(1) of this section.

(f) If the unauthorized carrier received payment from the subscriber for services provided after the first 30 days after the unauthorized change occurred, the obligations for payments and refunds provided for in § 64.1170 shall apply to those payments. If the relevant governmental agency determines after reasonable investigation that the carrier change was authorized, the carrier may re-bill the subscriber for charges incurred.

(g) When a LEC has assigned a subscriber to a carrier without authorization, and where the subscriber has not paid the unauthorized charges, the LEC shall switch the subscriber to the desired carrier at no cost to the subscriber, and shall also secure the removal of the unauthorized charges from the subscriber's bill in accordance with the procedures specified in paragraphs (a) through (f) of this section.

[65 FR 47692, Aug. 3, 2000, as amended at 68 FR 19159, Apr. 18, 2003; 73 FR 13149, Mar. 12, 2008]

§ 64.1170 Reimbursement procedures where the subscriber has paid charges.

(a) The procedures in this section shall only apply after a subscriber has determined that an unauthorized change, as defined by § 64.1100(e), has occurred and the subscriber has paid charges to an allegedly unauthorized carrier.

(b) If the relevant governmental agency determines after reasonable investigation that an unauthorized change, as defined by § 64.1100(e), has occurred, it shall issue an order directing the unauthorized carrier to forward to the authorized carrier the following, in addition to any appropriate state remedies:

(1) An amount equal to 150% of all charges paid by the subscriber to the unauthorized carrier; and

(2) Copies of any telephone bills issued from the unauthorized carrier to the subscriber. This order shall be sent to the subscriber, the unauthorized carrier, and the authorized carrier.

(c) Within ten days of receipt of the amount provided for in paragraph (b)(1) of this section, the authorized carrier shall provide a refund or credit to the subscriber in the amount of 50% of all charges paid by the subscriber to the unauthorized carrier. The subscriber has the option of asking the authorized carrier to re-rate the unauthorized carrier's charges based on the rates of the authorized carrier and, on behalf of the subscriber, seek an additional refund from the unauthorized carrier, to the extent that the re-rated amount exceeds the 50% of all charges paid by the subscriber to the unauthorized carrier. The authorized carrier shall also send notice to the relevant governmental agency that it has given a refund or credit to the subscriber.

(d) If an authorized carrier incurs billing and collection expenses in collecting charges from the unauthorized carrier, the unauthorized carrier shall reimburse the authorized carrier for reasonable expenses.

(e) If the authorized carrier has not received payment from the unauthorized carrier as required by paragraph (c) of this section, the authorized carrier is not required to provide any refund or credit to the subscriber. The authorized carrier must, within 45 days of receiving an order as described in paragraph (b) of this section, inform the subscriber and the relevant governmental agency that issued the order if the unauthorized carrier has failed to forward to it the appropriate charges, and also inform the subscriber of his or her right to pursue a claim against the unauthorized carrier for a refund of all charges paid to the unauthorized carrier.

(f) Where possible, the properly authorized carrier must reinstate the subscriber in any premium program in which that subscriber was enrolled prior to the unauthorized change, if the subscriber's participation in that program was terminated because of the unauthorized change. If the subscriber has paid charges to the unauthorized carrier, the properly authorized carrier

shall also provide or restore to the subscriber any premiums to which the subscriber would have been entitled had the unauthorized change not occurred. The authorized carrier must comply with the requirements of this section regardless of whether it is able to recover from the unauthorized carrier any charges that were paid by the subscriber.

(g) When a LEC has assigned a subscriber to a non-affiliated carrier without authorization, and when a subscriber has paid the non-affiliated carrier the charges for the billed service, the LEC shall reimburse the subscriber for all charges paid by the subscriber to the unauthorized carrier and shall switch the subscriber to the desired carrier at no cost to the subscriber. When a LEC makes an unauthorized carrier change to an affiliated carrier, and when the customer has paid the charges, the LEC must pay to the authorized carrier 150% of the amounts collected from the subscriber in accordance with paragraphs (a) through (f) of this section.

[65 FR 47693, Aug. 3, 2000, as amended at 68 FR 19159, Apr. 18, 2003]

§ 64.1190 Preferred carrier freezes.

(a) A preferred carrier freeze (or freeze) prevents a change in a subscriber's preferred carrier selection unless the subscriber gives the carrier from whom the freeze was requested his or her express consent. All local exchange carriers who offer preferred carrier freezes must comply with the provisions of this section.

(b) All local exchange carriers who offer preferred carrier freezes shall offer freezes on a nondiscriminatory basis to all subscribers, regardless of the subscriber's carrier selections.

(c) Preferred carrier freeze procedures, including any solicitation, must clearly distinguish among telecommunications services (*e.g.*, local exchange, intraLATA toll, and interLATA toll) subject to a preferred carrier freeze. The carrier offering the freeze must obtain separate authorization for each service for which a preferred carrier freeze is requested.

(d) *Solicitation and imposition of preferred carrier freezes.* (1) All carrier-provided solicitation and other materials

regarding preferred carrier freezes must include:

(i) An explanation, in clear and neutral language, of what a preferred carrier freeze is and what services may be subject to a freeze;

(ii) A description of the specific procedures necessary to lift a preferred carrier freeze; an explanation that these steps are in addition to the Commission's verification rules in §§ 64.1120 and 64.1130 for changing a subscriber's preferred carrier selections; and an explanation that the subscriber will be unable to make a change in carrier selection unless he or she lifts the freeze.

(iii) An explanation of any charges associated with the preferred carrier freeze.

(2) No local exchange carrier shall implement a preferred carrier freeze unless the subscriber's request to impose a freeze has first been confirmed in accordance with one of the following procedures:

(i) The local exchange carrier has obtained the subscriber's written or electronically signed authorization in a form that meets the requirements of § 64.1190(d)(3); or

(ii) The local exchange carrier has obtained the subscriber's electronic authorization, placed from the telephone number(s) on which the preferred carrier freeze is to be imposed, to impose a preferred carrier freeze. The electronic authorization should confirm appropriate verification data (*e.g.*, the subscriber's date of birth or social security number) and the information required in §§ 64.1190(d)(3)(ii)(A) through (D). Telecommunications carriers electing to confirm preferred carrier freeze orders electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a subscriber to a voice response unit, or similar mechanism that records the required information regarding the preferred carrier freeze request, including automatically recording the originating automatic numbering identification; or

(iii) An appropriately qualified independent third party has obtained the subscriber's oral authorization to submit the preferred carrier freeze and confirmed the appropriate verification

data (e.g., the subscriber's date of birth or social security number) and the information required in § 64.1190(d)(3)(ii)(A) through (D). The independent third party must not be owned, managed, or directly controlled by the carrier or the carrier's marketing agent; must not have any financial incentive to confirm preferred carrier freeze requests for the carrier or the carrier's marketing agent; and must operate in a location physically separate from the carrier or the carrier's marketing agent. The content of the verification must include clear and conspicuous confirmation that the subscriber has authorized a preferred carrier freeze.

(3) *Written authorization to impose a preferred carrier freeze.* A local exchange carrier may accept a subscriber's written and signed authorization to impose a freeze on his or her preferred carrier selection. Written authorization that does not conform with this section is invalid and may not be used to impose a preferred carrier freeze.

(i) The written authorization shall comply with §§ 64.1130(b), (c), and (h) of the Commission's rules concerning the form and content for letters of agency.

(ii) At a minimum, the written authorization must be printed with a readable type of sufficient size to be clearly legible and must contain clear and unambiguous language that confirms:

(A) The subscriber's billing name and address and the telephone number(s) to be covered by the preferred carrier freeze;

(B) The decision to place a preferred carrier freeze on the telephone number(s) and particular service(s). To the extent that a jurisdiction allows the imposition of preferred carrier freezes on additional preferred carrier selections (e.g., for local exchange, intraLATA toll, and interLATA toll), the authorization must contain separate statements regarding the particular selections to be frozen;

(C) That the subscriber understands that she or he will be unable to make a change in carrier selection unless she or he lifts the preferred carrier freeze; and

(D) That the subscriber understands that any preferred carrier freeze may involve a charge to the subscriber.

(e) *Procedures for lifting preferred carrier freezes.* All local exchange carriers who offer preferred carrier freezes must, at a minimum, offer subscribers the following procedures for lifting a preferred carrier freeze:

(1) A local exchange carrier administering a preferred carrier freeze must accept a subscriber's written or electronically signed authorization stating his or her intent to lift a preferred carrier freeze; and

(2) A local exchange carrier administering a preferred carrier freeze must accept a subscriber's oral authorization stating her or his intent to lift a preferred carrier freeze and must offer a mechanism that allows a submitting carrier to conduct a three-way conference call with the carrier administering the freeze and the subscriber in order to lift a freeze. When engaged in oral authorization to lift a preferred carrier freeze, the carrier administering the freeze shall confirm appropriate verification data (e.g., the subscriber's date of birth or social security number) and the subscriber's intent to lift the particular freeze.

[64 FR 7762, Feb. 16, 1999, as amended at 66 FR 12893, Mar. 1, 2001; 73 FR 13150, Mar. 12, 2008]

§ 64.1195 Registration requirement.

(a) *Applicability.* A telecommunications carrier that will provide interstate telecommunications service shall file the registration information described in paragraph (b) of this section in accordance with the procedures described in paragraphs (c) and (g) of this section. Any telecommunications carrier already providing interstate telecommunications service on the effective date of these rules shall submit the relevant portion of its FCC Form 499-A in accordance with paragraphs (b) and (c) of this section.

(b) *Information required for purposes of part 64.* A telecommunications carrier that is subject to the registration requirement pursuant to paragraph (a) of this section shall provide the following information:

(1) The carrier's business name(s) and primary address;

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(2) The names and business addresses of the carrier's chief executive officer, chairman, and president, or, in the event that a company does not have such executives, three similarly senior-level officials of the company;

(3) The carrier's regulatory contact and/or designated agent;

(4) All names that the carrier has used in the past; and

(5) The state(s) in which the carrier provides telecommunications service.

(c) *Submission of registration.* A carrier that is subject to the registration requirement pursuant to paragraph (a) of this section shall submit the information described in paragraph (b) of this section in accordance with the Instructions to FCC Form 499-A. FCC Form 499-A must be submitted under oath and penalty of perjury.

(d) *Rejection of registration.* The Commission may reject or suspend a carrier's registration for any of the reasons identified in paragraphs (e) or (f) of this section.

(e) *Revocation or suspension of operating authority.* After notice and opportunity to respond, the Commission may revoke or suspend the authorization of a carrier to provide service if the carrier provides materially false or incomplete information in its FCC Form 499-A or otherwise fails to comply with paragraphs (a), (b), and (c) of this section.

(f) *Imposition of fine.* After notice and opportunity to respond, the Commission may impose a fine on a carrier that is subject to the registration requirement pursuant to paragraph (a) of this section if that carrier fails to submit an FCC Form 499-A in accordance with paragraphs (a), (b), and (c) of this section.

(g) *Changes in information.* A carrier must notify the Commission of any changes to the information provided pursuant to paragraph (b) of this section within no more than one week of the change. Carriers may satisfy this requirement by filing the relevant portion of FCC Form 499-A in accordance with the Instructions to such form.

(h) *Duty to confirm registration of other carriers.* The Commission shall make available to the public a comprehensive listing of registrants and the information that they have provided pursuant

to paragraph (b) of this section. A telecommunications carrier providing telecommunications service for resale shall have an affirmative duty to ascertain whether a potential carrier-customer (*i.e.*, reseller) that is subject to the registration requirement pursuant to paragraph (a) of this section has filed an FCC Form 499-A with the Commission prior to offering service to that carrier-customer. After notice and opportunity to respond, the Commission may impose a fine on a carrier for failure to confirm the registration status of a potential carrier-customer before providing that carrier-customer with service.

[66 FR 12894, Mar. 1, 2001]

Subpart L—Restrictions on Telemarketing, Telephone Solicitation, and Facsimile Advertising

§ 64.1200 Delivery restrictions.

(a) No person or entity may: (1) Initiate any telephone call (other than a call made for emergency purposes or made with the prior express consent of the called party) using an automatic telephone dialing system or an artificial or prerecorded voice;

(i) To any emergency telephone line, including any 911 line and any emergency line of a hospital, medical physician or service office, health care facility, poison control center, or fire protection or law enforcement agency;

(ii) To the telephone line of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment; or

(iii) To any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call.

(iv) A person will not be liable for violating the prohibition in paragraph (a)(1)(iii) of this section when the call is placed to a wireless number that has been ported from wireline service and such call is a voice call; not knowingly made to a wireless number; and made within 15 days of the porting of the

number from wireline to wireless service, provided the number is not already on the national do-not-call registry or caller's company-specific do-not-call list.

(2) Initiate any telephone call to any residential line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call;

(i) Is made for emergency purposes;

(ii) Is not made for a commercial purpose;

(iii) Is made for a commercial purpose but does not include or introduce an unsolicited advertisement or constitute a telephone solicitation;

(iv) Is made to any person with whom the caller has an established business relationship at the time the call is made; or

(v) Is made by or on behalf of a tax-exempt nonprofit organization.

(3) Use a telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine, unless—

(i) The unsolicited advertisement is from a sender with an established business relationship, as defined in paragraph (f)(5) of this section, with the recipient; and

(ii) The sender obtained the number of the telephone facsimile machine through—

(A) The voluntary communication of such number by the recipient directly to the sender, within the context of such established business relationship; or

(B) A directory, advertisement, or site on the Internet to which the recipient voluntarily agreed to make available its facsimile number for public distribution. If a sender obtains the facsimile number from the recipient's own directory, advertisement, or Internet site, it will be presumed that the number was voluntarily made available for public distribution, unless such materials explicitly note that unsolicited advertisements are not accepted at the specified facsimile number. If a sender obtains the facsimile number from other sources, the sender must take reasonable steps to verify that the recipient agreed to make the number available for public distribution.

(C) This clause shall not apply in the case of an unsolicited advertisement that is sent based on an established business relationship with the recipient that was in existence before July 9, 2005 if the sender also possessed the facsimile machine number of the recipient before July 9, 2005. There shall be a rebuttable presumption that if a valid established business relationship was formed prior to July 9, 2005, the sender possessed the facsimile number prior to such date as well; and

(iii) The advertisement contains a notice that informs the recipient of the ability and means to avoid future unsolicited advertisements. A notice contained in an advertisement complies with the requirements under this paragraph only if—

(A) The notice is clear and conspicuous and on the first page of the advertisement;

(B) The notice states that the recipient may make a request to the sender of the advertisement not to send any future advertisements to a telephone facsimile machine or machines and that failure to comply, within 30 days, with such a request meeting the requirements under paragraph (a)(3)(v) of this section is unlawful;

(C) The notice sets forth the requirements for an opt-out request under paragraph (a)(3)(v) of this section;

(D) The notice includes—

(1) A domestic contact telephone number and facsimile machine number for the recipient to transmit such a request to the sender; and

(2) If neither the required telephone number nor facsimile machine number is a toll-free number, a separate cost-free mechanism including a Web site address or e-mail address, for a recipient to transmit a request pursuant to such notice to the sender of the advertisement. A local telephone number also shall constitute a cost-free mechanism so long as recipients are local and will not incur any long distance or other separate charges for calls made to such number; and

(E) The telephone and facsimile numbers and cost-free mechanism identified in the notice must permit an individual or business to make an opt-out request 24 hours a day, 7 days a week.

(iv) A facsimile advertisement that is sent to a recipient that has provided prior express invitation or permission to the sender must include an opt-out notice that complies with the requirements in paragraph (a)(3)(iii) of this section.

(v) A request not to send future unsolicited advertisements to a telephone facsimile machine complies with the requirements under this subparagraph only if—

(A) The request identifies the telephone number or numbers of the telephone facsimile machine or machines to which the request relates;

(B) The request is made to the telephone number, facsimile number, Web site address or e-mail address identified in the sender's facsimile advertisement; and

(C) The person making the request has not, subsequent to such request, provided express invitation or permission to the sender, in writing or otherwise, to send such advertisements to such person at such telephone facsimile machine.

(vi) A sender that receives a request not to send future unsolicited advertisements that complies with paragraph (a)(3)(v) of this section must honor that request within the shortest reasonable time from the date of such request, not to exceed 30 days, and is prohibited from sending unsolicited advertisements to the recipient unless the recipient subsequently provides prior express invitation or permission to the sender. The recipient's opt-out request terminates the established business relationship exemption for purposes of sending future unsolicited advertisements. If such requests are recorded or maintained by a party other than the sender on whose behalf the unsolicited advertisement is sent, the sender will be liable for any failures to honor the opt-out request.

(vii) A facsimile broadcaster will be liable for violations of paragraph (a)(3) of this section, including the inclusion of opt-out notices on unsolicited advertisements, if it demonstrates a high degree of involvement in, or actual notice of, the unlawful activity and fails to take steps to prevent such facsimile transmissions.

(4) Use an automatic telephone dialing system in such a way that two or more telephone lines of a multi-line business are engaged simultaneously.

(5) Disconnect an unanswered telemarketing call prior to at least 15 seconds or four (4) rings.

(6) Abandon more than three percent of all telemarketing calls that are answered live by a person, or measured over a 30-day period. A call is "abandoned" if it is not connected to a live sales representative within two (2) seconds of the called person's completed greeting. Whenever a sales representative is not available to speak with the person answering the call, that person must receive, within two (2) seconds after the called person's completed greeting, a prerecorded identification message that states only the name and telephone number of the business, entity, or individual on whose behalf the call was placed, and that the call was for "telemarketing purposes." The telephone number so provided must permit any individual to make a do-not-call request during regular business hours for the duration of the telemarketing campaign. The telephone number may not be a 900 number or any other number for which charges exceed local or long distance transmission charges. The seller or telemarketer must maintain records establishing compliance with paragraph (a)(6) of this section.

(i) A call for telemarketing purposes that delivers an artificial or prerecorded voice message to a residential telephone line that is assigned to a person who either has granted prior express consent for the call to be made or has an established business relationship with the caller shall not be considered an abandoned call if the message begins within two (2) seconds of the called person's completed greeting.

(ii) Calls made by or on behalf of tax-exempt nonprofit organizations are not covered by paragraph (a)(6) of this section.

(7) Use any technology to dial any telephone number for the purpose of determining whether the line is a facsimile or voice line.

(b) All artificial or prerecorded telephone messages shall:

(1) At the beginning of the message, state clearly the identity of the business, individual, or other entity that is responsible for initiating the call. If a business is responsible for initiating the call, the name under which the entity is registered to conduct business with the State Corporation Commission (or comparable regulatory authority) must be stated, and

(2) During or after the message, state clearly the telephone number (other than that of the autodialer or prerecorded message player that placed the call) of such business, other entity, or individual. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges. For telemarketing messages to residential telephone subscribers, such telephone number must permit any individual to make a do-not-call request during regular business hours for the duration of the telemarketing campaign.

(c) No person or entity shall initiate any telephone solicitation, as defined in paragraph (f)(12) of this section, to:

(1) Any residential telephone subscriber before the hour of 8 a.m. or after 9 p.m. (local time at the called party's location), or

(2) A residential telephone subscriber who has registered his or her telephone number on the national do-not-call registry of persons who do not wish to receive telephone solicitations that is maintained by the Federal Government. Such do-not-call registrations must be honored indefinitely, or until the registration is cancelled by the consumer or the telephone number is removed by the database administrator. Any person or entity making telephone solicitations (or on whose behalf telephone solicitations are made) will not be liable for violating this requirement if:

(i) It can demonstrate that the violation is the result of error and that as part of its routine business practice, it meets the following standards:

(A) *Written procedures.* It has established and implemented written procedures to comply with the national do-not-call rules;

(B) *Training of personnel.* It has trained its personnel, and any entity

assisting in its compliance, in procedures established pursuant to the national do-not-call rules;

(C) *Recording.* It has maintained and recorded a list of telephone numbers that the seller may not contact;

(D) *Accessing the national do-not-call database.* It uses a process to prevent telephone solicitations to any telephone number on any list established pursuant to the do-not-call rules, employing a version of the national do-not-call registry obtained from the administrator of the registry no more than 31 days prior to the date any call is made, and maintains records documenting this process.

NOTE TO PARAGRAPH (c)(2)(i)(D): The requirement in paragraph 64.1200(c)(2)(i)(D) for persons or entities to employ a version of the national do-not-call registry obtained from the administrator no more than 31 days prior to the date any call is made is effective January 1, 2005. Until January 1, 2005, persons or entities must continue to employ a version of the registry obtained from the administrator of the registry no more than three months prior to the date any call is made.

(E) *Purchasing the national do-not-call database.* It uses a process to ensure that it does not sell, rent, lease, purchase or use the national do-not-call database, or any part thereof, for any purpose except compliance with this section and any such state or federal law to prevent telephone solicitations to telephone numbers registered on the national database. It purchases access to the relevant do-not-call data from the administrator of the national database and does not participate in any arrangement to share the cost of accessing the national database, including any arrangement with telemarketers who may not divide the costs to access the national database among various client sellers; or

(ii) It has obtained the subscriber's prior express invitation or permission. Such permission must be evidenced by a signed, written agreement between the consumer and seller which states that the consumer agrees to be contacted by this seller and includes the telephone number to which the calls may be placed; or

(iii) The telemarketer making the call has a personal relationship with the recipient of the call.

(d) No person or entity shall initiate any call for telemarketing purposes to a residential telephone subscriber unless such person or entity has instituted procedures for maintaining a list of persons who request not to receive telemarketing calls made by or on behalf of that person or entity. The procedures instituted must meet the following minimum standards:

(1) *Written policy.* Persons or entities making calls for telemarketing purposes must have a written policy, available upon demand, for maintaining a do-not-call list.

(2) *Training of personnel engaged in telemarketing.* Personnel engaged in any aspect of telemarketing must be informed and trained in the existence and use of the do-not-call list.

(3) *Recording, disclosure of do-not-call requests.* If a person or entity making a call for telemarketing purposes (or on whose behalf such a call is made) receives a request from a residential telephone subscriber not to receive calls from that person or entity, the person or entity must record the request and place the subscriber's name, if provided, and telephone number on the do-not-call list at the time the request is made. Persons or entities making calls for telemarketing purposes (or on whose behalf such calls are made) must honor a residential subscriber's do-not-call request within a reasonable time from the date such request is made. This period may not exceed thirty days from the date of such request. If such requests are recorded or maintained by a party other than the person or entity on whose behalf the telemarketing call is made, the person or entity on whose behalf the telemarketing call is made will be liable for any failures to honor the do-not-call request. A person or entity making a call for telemarketing purposes must obtain a consumer's prior express permission to share or forward the consumer's request not to be called to a party other than the person or entity on whose behalf a telemarketing call is made or an affiliated entity.

(4) *Identification of sellers and telemarketers.* A person or entity making a call for telemarketing purposes must provide the called party with the name of the individual caller, the name of

the person or entity on whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges.

(5) *Affiliated persons or entities.* In the absence of a specific request by the subscriber to the contrary, a residential subscriber's do-not-call request shall apply to the particular business entity making the call (or on whose behalf a call is made), and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the caller and the product being advertised.

(6) *Maintenance of do-not-call lists.* A person or entity making calls for telemarketing purposes must maintain a record of a consumer's request not to receive further telemarketing calls. A do-not-call request must be honored for 5 years from the time the request is made.

(7) Tax-exempt nonprofit organizations are not required to comply with 64.1200(d).

(e) The rules set forth in paragraph (c) and (d) of this section are applicable to any person or entity making telephone solicitations or telemarketing calls to wireless telephone numbers to the extent described in the Commission's Report and Order, CG Docket No. 02-278, FCC 03-153, "Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991."

(f) As used in this section: (1) The terms *automatic telephone dialing system* and *autodialer* mean equipment which has the capacity to store or produce telephone numbers to be called using a random or sequential number generator and to dial such numbers.

(2) The term *clear and conspicuous* for purposes of paragraph (a)(3)(iii)(A) of this section means a notice that would be apparent to the reasonable consumer, separate and distinguishable from the advertising copy or other disclosures, and placed at either the top or bottom of the facsimile.

(3) The term *emergency purposes* means calls made necessary in any situation affecting the health and safety of consumers.

(4) The term *established business relationship* for purposes of telephone solicitations means a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of the subscriber's purchase or transaction with the entity within the eighteen (18) months immediately preceding the date of the telephone call or on the basis of the subscriber's inquiry or application regarding products or services offered by the entity within the three months immediately preceding the date of the call, which relationship has not been previously terminated by either party.

(i) The subscriber's seller-specific do-not-call request, as set forth in paragraph (d)(3) of this section, terminates an established business relationship for purposes of telemarketing and telephone solicitation even if the subscriber continues to do business with the seller.

(ii) The subscriber's established business relationship with a particular business entity does not extend to affiliated entities unless the subscriber would reasonably expect them to be included given the nature and type of goods or services offered by the affiliate and the identity of the affiliate.

(5) The term *established business relationship* for purposes of paragraph (a)(3) of this section on the sending of facsimile advertisements means a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a business or residential subscriber with or without an exchange of consideration, on the basis of an inquiry, application, purchase or transaction by the business or residential subscriber regarding products or services offered by such person or entity, which relationship has not been previously terminated by either party.

(6) The term *facsimile broadcaster* means a person or entity that transmits messages to telephone facsimile machines on behalf of another person or entity for a fee.

(7) The term *seller* means the person or entity on whose behalf a telephone call or message is initiated for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.

(8) The term *sender* for purposes of paragraph (a)(3) of this section means the person or entity on whose behalf a facsimile unsolicited advertisement is sent or whose goods or services are advertised or promoted in the unsolicited advertisement.

(9) The term *telemarketer* means the person or entity that initiates a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.

(10) The term *telemarketing* means the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.

(11) The term *telephone facsimile machine* means equipment which has the capacity to transcribe text or images, or both, from paper into an electronic signal and to transmit that signal over a regular telephone line, or to transcribe text or images (or both) from an electronic signal received over a regular telephone line onto paper.

(12) The term *telephone solicitation* means the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person, but such term does not include a call or message:

(i) To any person with that person's prior express invitation or permission;

(ii) To any person with whom the caller has an established business relationship; or

(iii) By or on behalf of a tax-exempt nonprofit organization.

(13) The term *unsolicited advertisement* means any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission, in writing or otherwise.

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(14) The term *personal relationship* means any family member, friend, or acquaintance of the telemarketer making the call.

(g) Beginning January 1, 2004, common carriers shall:

(1) When providing local exchange service, provide an annual notice, via an insert in the subscriber's bill, of the right to give or revoke a notification of an objection to receiving telephone solicitations pursuant to the national do-not-call database maintained by the federal government and the methods by which such rights may be exercised by the subscriber. The notice must be clear and conspicuous and include, at a minimum, the Internet address and toll-free number that residential telephone subscribers may use to register on the national database.

(2) When providing service to any person or entity for the purpose of making telephone solicitations, make a one-time notification to such person or entity of the national do-not-call requirements, including, at a minimum, citation to 47 CFR 64.1200 and 16 CFR 310. Failure to receive such notification will not serve as a defense to any person or entity making telephone solicitations from violations of this section.

(h) The administrator of the national do-not-call registry that is maintained by the federal government shall make the telephone numbers in the database available to the States so that a State may use the telephone numbers that relate to such State as part of any database, list or listing system maintained by such State for the regulation of telephone solicitations.

[68 FR 44177, July 25, 2003, as amended at 68 FR 59131, Oct. 14, 2003; 69 FR 60316, Oct. 8, 2004; 70 FR 19337, Apr. 13, 2005; 71 FR 25977, May 3, 2006; 71 FR 56893, Sept. 28, 2006; 71 FR 75122, Dec. 14, 2006; 73 FR 40185, July 14, 2008]

§ 64.1201 Restrictions on billing name and address disclosure.

(a) As used in this section:

(1) The term *billing name and address* means the name and address provided to a local exchange company by each of its local exchange customers to which the local exchange company directs bills for its services.

(2) The term "telecommunications service provider" means interexchange

carriers, operator service providers, enhanced service providers, and any other provider of interstate telecommunications services.

(3) The term *authorized billing agent* means a third party hired by a telecommunications service provider to perform billing and collection services for the telecommunications service provider.

(4) The term *bulk basis* means billing name and address information for all the local exchange service subscribers of a local exchange carrier.

(5) The term *LEC joint use card* means a calling card bearing an account number assigned by a local exchange carrier, used for the services of the local exchange carrier and a designated interexchange carrier, and validated by access to data maintained by the local exchange carrier.

(b) No local exchange carrier providing billing name and address shall disclose billing name and address information to any party other than a telecommunications service provider or an authorized billing and collection agent of a telecommunications service provider.

(c)(1) No telecommunications service provider or authorized billing and collection agent of a telecommunications service provider shall use billing name and address information for any purpose other than the following:

(i) Billing customers for using telecommunications services of that service provider and collecting amounts due;

(ii) Any purpose associated with the "equal access" requirement of *United States v. AT&T* 552 F.Supp. 131 (D.D.C. 1982); and

(iii) Verification of service orders of new customers, identification of customers who have moved to a new address, fraud prevention, and similar nonmarketing purposes.

(2) In no case shall any telecommunications service provider or authorized billing and collection agent of a telecommunications service provider disclose the billing name and address information of any subscriber to any third party, except that a telecommunications service provider may

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disclose billing name and address information to its authorized billing and collection agent.

(d) [Reserved]

(e)(1) All local exchange carriers providing billing name and address information shall notify their subscribers that:

(i) The subscriber's billing name and address will be disclosed, pursuant to Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, CC Docket No. 91-115, FCC 93-254, adopted May 13, 1993, whenever the subscriber uses a LEC joint use card to pay for services obtained from the telecommunications service provider, and

(ii) The subscriber's billing name and address will be disclosed, pursuant to Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, CC Docket No. 91-115, FCC 93-254, adopted May 13, 1993, whenever the subscriber accepts a third party or collect call to a telephone station provided by the LEC to the subscriber.

(2) In addition to the notification specified in paragraph (e)(1) of this section, all local exchange carriers providing billing name and address information shall notify their subscribers with unlisted or nonpublished telephone numbers that:

(i) Customers have a right to request that their BNA not be disclosed, and that customers may prevent BNA disclosure for third party and collect calls as well as calling card calls;

(ii) LECs will presume that unlisted and nonpublished end users consent to disclosure and use of their BNA if customers do not affirmatively request that their BNA not be disclosed; and

(iii) The presumption in favor of consent for disclosure will begin 30 days after customers receive notice.

(3) No local exchange carrier shall disclose the billing name and address information associated with any calling card call made by any subscriber who has affirmatively withheld consent for disclosure of BNA information, or for any third party or collect call charged to any subscriber who has af-

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firmatively withheld consent for disclosure of BNA information.

[53 FR 36145, July 6, 1993, as amended at 58 FR 65671, Dec. 16, 1993; 61 FR 8880, Mar. 6, 1996]

Subpart M—Provision of Payphone Service

§ 64.1300 Payphone compensation obligation.

(a) For purposes of this subpart, a Completing Carrier is a long distance carrier or switch-based long distance reseller that completes a coinless access code or subscriber toll-free payphone call or a local exchange carrier that completes a local, coinless access code or subscriber toll-free payphone call.

(b) Except as provided herein, a Completing Carrier that completes a coinless access code or subscriber toll-free payphone call from a switch that the Completing Carrier either owns or leases shall compensate the payphone service provider for that call at a rate agreed upon by the parties by contract.

(c) The compensation obligation set forth herein shall not apply to calls to emergency numbers, calls by hearing disabled persons to a telecommunications relay service or local calls for which the caller has made the required coin deposit.

(d) In the absence of an agreement as required by paragraph (b) of this section, the carrier is obligated to compensate the payphone service provider at a per-call rate of \$.494.

[71 FR 3014, Jan. 19, 2006]

§ 64.1301 Per-payphone compensation.

(a) *Interim access code and subscriber 800 calls.* In the absence of a negotiated agreement to pay a different amount, each entity listed in Appendix A of the *Fifth Order on Reconsideration and Order on Remand* in CC Docket No. 96-128, FCC 02-292, must pay default compensation to payphone service providers for payphone access code calls and payphone subscriber 800 calls for the period beginning November 7, 1996, and ending October 6, 1997, in the amount listed in Appendix A per payphone per month. A complete copy

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of Appendix A is available at www.fcc.gov.

(b) *Interim payphone compensation for inmate calls.* In the absence of a negotiated agreement to pay a different amount, if a payphone service provider providing inmate service was not compensated for calls originating at an inmate telephone during the period starting on November 7, 1996, and ending on October 6, 1997, an interexchange carrier to which the inmate telephone was presubscribed during this same time period must compensate the payphone service provider providing inmate service at the default rate of \$0.238 per inmate call originating during the same time period, except that a payphone service provider that is affiliated with a local exchange carrier is not eligible to receive payphone compensation prior to April 16, 1997, or, in the alternative, the first day following both the termination of subsidies and payphone reclassification and transfer, whichever date is latest.

(c) *Interim compensation for 0+ payphone calls.* In the absence of a negotiated agreement to pay a different amount, if a payphone service provider was not compensated for 0+ calls originating during the period starting on November 7, 1996, and ending on October 6, 1997, an interexchange carrier to which the payphone was presubscribed during this same time period must compensate the payphone service provider in the default amount of \$4.2747 per payphone per month during the same time period, except that a payphone service provider that is affiliated with a local exchange carrier is not eligible to receive payphone compensation prior to April 16, 1997, or, in the alternative, the first day following both the termination of subsidies and payphone reclassification and transfer, whichever date is latest.

(d) *Intermediate access code and subscriber 800 calls.* In the absence of a negotiated agreement to pay a different amount, each entity listed in Appendix B of the *Fifth Order on Reconsideration and Order on Remand* in CC Docket No. 96-128, FCC 02-292, must pay default compensation to payphone service providers for access code calls and payphone subscriber 800 calls for the period beginning October 7, 1997, and

ending April 20, 1999, in the amount listed in Appendix B for any payphone for any month during which per-call compensation for that payphone for that month was not paid by the listed entity. A complete copy of Appendix B is available at www.fcc.gov.

(e) *Post-intermediate access code and subscriber 800 calls.* In the absence of a negotiated agreement to pay a different amount, each entity listed in Appendix C of the *Fifth Order on Reconsideration and Order on Remand* in CC Docket No. 96-128, FCC 02-292, must pay default compensation to payphone service providers for access code calls and payphone subscriber 800 calls for the period beginning April 21, 1999, in the amount listed in Appendix C for any payphone for any month during which per-call compensation for that payphone for that month was or is not paid by the listed entity. A complete copy of Appendix C is available at www.fcc.gov.

[67 FR 71890, Dec. 3, 2002]

§ 64.1310 Payphone compensation procedures.

(a) Unless the payphone service provider consents to an alternative compensation arrangement, each Completing Carrier identified in § 64.1300(a) shall compensate the payphone service provider in accordance with paragraphs (a)(1) through (a)(4) of this section. A payphone service provider may not unreasonably withhold its consent to an alternative compensation arrangement.

(1) Each Completing Carrier shall establish a call tracking system that accurately tracks coinless access code or subscriber toll-free payphone calls to completion.

(2) Each Completing Carrier shall pay compensation to payphone service providers on a quarterly basis for each completed payphone call identified in the Completing Carrier's quarterly report required by paragraph (a)(4) of this section.

(3) When payphone compensation is tendered for a quarter, the chief financial officer of the Completing Carrier shall submit to each payphone service

provider to which compensation is tendered a sworn statement that the payment amount for that quarter is accurate and is based on 100% of all completed calls that originated from that payphone service provider's payphones. Instead of transmitting individualized statements to each payphone service provider, a Completing Carrier may provide a single, blanket sworn statement addressed to all payphone service providers to which compensation is tendered for that quarter and may notify the payphone service providers of the sworn statement through any electronic method, including transmitting the sworn statement with the § 64.1310(a)(4) quarterly report, or posting the sworn statement on the Completing Carrier or clearinghouse website. If a Completing Carrier chooses to post the sworn statement on its website, the Completing Carrier shall state in its § 64.1310(a)(4) quarterly report the web address of the sworn statement.

(4) At the conclusion of each quarter, the Completing Carrier shall submit to the payphone service provider, in computer readable format, a report on that quarter that includes:

(i) A list of the toll-free and access numbers dialed and completed by the Completing Carrier from each of that payphone service provider's payphones and the ANI for each payphone;

(ii) The volume of calls for each number identified in paragraph (a)(4)(i) of this section that were completed by the Completing Carrier;

(iii) The name, address, and phone number of the person or persons responsible for handling the Completing Carrier's payphone compensation; and

(iv) The carrier identification code ("CIC") of all facilities-based long distance carriers that routed calls to the Completing Carrier, categorized according to the list of toll-free and access code numbers identified in paragraph (a)(4)(i) of this section.

(b) For purposes of this subpart, an Intermediate Carrier is a facilities-based long distance carrier that switches payphone calls to other facilities-based long distance carriers.

(c) Unless the payphone service provider agrees to other reporting arrangements, each Intermediate Carrier

shall provide the payphone service provider with quarterly reports, in computer readable format, that include:

(1) A list of all the facilities-based long distance carriers to which the Intermediate Carrier switched toll-free and access code calls dialed from each of that payphone service provider's payphones;

(2) For each facilities-based long distance carrier identified in paragraph (c)(1) of this section, a list of the toll-free and access code numbers dialed from each of that payphone service provider's payphones that all local exchange carriers have delivered to the Intermediate Carrier and that the Intermediate Carrier switched to the identified facilities-based long distance carrier;

(3) The volume of calls for each number identified in paragraph (c)(2) of this section that the Intermediate Carrier has received from each of that payphone service provider's payphones, identified by their ANIs, and switched to each facilities-based long distance carrier identified in paragraph (c)(1) of this section; and

(4) The name, address and telephone number and other identifying information of the person or persons for each facilities-based long distance carrier identified in paragraph (c)(1) of this section who serves as the Intermediate Carrier's contact at each identified facilities-based long distance carrier.

(d) Local Exchange Carriers must provide to carriers required to pay compensation pursuant to § 64.1300(a) a list of payphone numbers in their service areas. The list must be provided on a quarterly basis. Local Exchange Carriers must verify disputed numbers in a timely manner, and must maintain verification data for 18 months after close of the compensation period.

(e) Local Exchange Carriers must respond to all carrier requests for payphone number verification in connection with the compensation requirements herein, even if such verification is a negative response.

(f) A payphone service provider that seeks compensation for payphones that are not included on the Local Exchange Carrier's list satisfies its obligation to provide alternative reasonable

verification to a payor carrier if it provides to that carrier:

(1) A notarized affidavit attesting that each of the payphones for which the payphone service provider seeks compensation is a payphone that was in working order as of the last day of the compensation period; and

(2) Corroborating evidence that each such payphone is owned by the payphone service provider seeking compensation and was in working order on the last day of the compensation period. Corroborating evidence shall include, at a minimum, the telephone bill for the last month of the billing quarter indicating use of a line screening service.

(g) Each Completing Carrier and each Intermediate Carrier must maintain verification data to support the quarterly reports submitted pursuant to paragraphs (a)(4) and (c) of this section for 27 months after the close of that quarter. This data must include the time and date that each call identified in paragraphs (a)(4) and (c) of this section was made. This data must be provided to the payphone service provider upon request.

[68 FR 62755, Nov. 6, 2003, as amended at 70 FR 722, Jan. 5, 2005]

EFFECTIVE DATE NOTE: At 70 FR 722, Jan. 5, 2005, § 64.1310(g) was revised. This paragraph contains information collection and record-keeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 64.1320 Payphone call tracking system audits.

(a) Unless it has entered into an alternative compensation arrangement pursuant to § 64.1310(a) that relieves it of its § 64.1310(a)(1) tracking system obligation, each Completing Carrier must undergo an audit of its § 64.1310(a)(1) tracking system by an independent third party auditor whose responsibility shall be, using audit methods approved by the American Institute for Certified Public Accountants, to determine whether the call tracking system accurately tracks payphone calls to completion.

(b) By the effective date of these rules, each Completing Carrier in paragraph (a) of this section must file an audit report from the auditor (the

“System Audit Report”) regarding the Completing Carrier’s compliance with § 64.1310(a)(1) as of the date of the audit:

(1) With the Commission’s Secretary in CC Docket No. 96-128;

(2) With each payphone service provider for which it completes calls and a Completing Carrier may comply with this paragraph’s requirement to file copies of the System Audit Report with each payphone service provider by posting the System Audit Report on its website or a clearinghouse website; and

(3) With each facilities-based long distance carrier from which it receives payphone calls.

(c) The Completing Carrier must comply with, and the third-party auditor must verify, the Completing Carrier’s compliance with the following factors in establishing a call tracking system pursuant to § 64.1310(a)(1):

(1) Whether the Completing Carrier’s procedures accurately track calls to completion;

(2) Whether the Completing Carrier has a person or persons responsible for tracking, compensating, and resolving disputes concerning payphone completed calls;

(3) Whether the Completing Carrier has effective data monitoring procedures;

(4) Whether the Completing Carrier adheres to established protocols to ensure that any software, personnel or any other network changes do not adversely affect its payphone call tracking ability;

(5) Whether the Completing Carrier has created a compensable payphone call file by matching call detail records against payphone identifiers;

(6) Whether the Completing Carrier has procedures to incorporate call data into required reports;

(7) Whether the Completing Carrier has implemented procedures and controls needed to resolve payphone compensation disputes;

(8) Whether the independent third-party auditor can test all critical controls and procedures to verify that errors are insubstantial; and

(9) Whether the Completing Carriers has in place adequate and effective business rules for implementing and paying payphone compensation, including rules used to:

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(i) Identify calls originated from payphones;

(ii) Identify compensable payphone calls;

(iii) Identify incomplete or otherwise noncompensable calls; and

(iv) Determine the identities of the payphone service providers to which the Completing Carrier owes compensation.

(d) Consistent with standards established by the American Institute of Certified Public Accountants for attestation engagements, the System Audit Report shall consist of:

(1) The Completing Carrier's representation concerning its compliance; and

(2) The independent auditor's opinion concerning the Completing Carrier's representation of compliance. The Completing Carrier's representation must disclose

(i) Its criteria for identifying calls originating from payphones;

(ii) Its criteria for identifying compensable payphone calls;

(iii) Its criteria for identifying incomplete or otherwise noncompensable calls;

(iv) Its criteria used to determine the identities of the payphone service providers to which the completing carrier owes compensation;

(v) The identity of any clearinghouses the Completing Carrier uses; and

(vi) The types of information that the Completing Carrier needs from the payphone service providers in order to compensate them.

(e) At the time of filing of a System Audit Report with the Commission, the Completing Carrier shall file with the Commission's Secretary, the payphone service providers and the facilities-based long distance carriers identified in paragraph (b) of this section, a statement that includes the name of the Completing Carrier, and the name, address and phone number for the person or persons responsible for handling the Completing Carrier's payphone compensation and for resolving disputes with payphone service providers over compensation, and this statement shall be updated within 60 days of any changes of such persons. If a Completing Carrier chooses to notify

payphone service providers of this statement and its System Audit Report by posting these two documents on its website or a clearinghouse website, then this statement shall include the web address for these two documents.

(f) One year after the filing of the System Audit Report, and annually thereafter, the Completing Carrier shall engage an independent third-party auditor to:

(1) Verify that no material changes have occurred concerning the Completing Carrier's compliance with the criteria of the prior year's System Audit Report; or

(2) If a material change has occurred concerning the Completing Carrier's compliance with the prior year's System Audit Report, verify that the material changes do not affect compliance with the audit criteria set forth in paragraph (c) of this section. The Completing Carrier must fully disclose any material changes concerning its call tracking system in its representation to the auditor. The Completing Carrier shall file and provide copies of all System Audit Reports pursuant to the procedures set forth in paragraph (b) of this section.

(g) Subject to protections safeguarding the auditor's and the Completing Carrier's confidential and proprietary information, the Completing Carrier shall provide, upon request, to the payphone service provider for inspection any documents, including working papers, underlying the System Audit Report.

[68 FR 62756, Nov. 6, 2003, as amended at 70 FR 723, Jan. 5, 2005]

§ 64.1330 State review of payphone entry and exit regulations and public interest payphones.

(a) Each state must review and remove any of its regulations applicable to payphones and payphone service providers that impose market entry or exit requirements.

(b) Each state must ensure that access to dialtone, emergency calls, and telecommunications relay service calls for the hearing disabled is available from all payphones at no charge to the caller.

(c) Each state must review its rules and policies to determine whether it

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has provided for public interest payphones consistent with applicable Commission guidelines, evaluate whether it needs to take measures to ensure that such payphones will continue to exist in light of the Commission's implementation of Section 276 of the Communications Act, and administer and fund such programs so that such payphones are supported fairly and equitably.

[61 FR 52323, Oct. 7, 1996, as amended at 71 FR 65751, Nov. 9, 2006]

§ 64.1340 Right to negotiate.

Unless prohibited by Commission order, payphone service providers have the right to negotiate with the location provider on the location provider's selecting and contracting with, and, subject to the terms of any agreement with the location provider, to select and contract with, the carriers that carry interLATA and intraLATA calls from their payphones.

[61 FR 52323, Oct. 7, 1996]

Subpart N—Expanded Interconnection

§ 64.1401 Expanded interconnection.

(a) Every local exchange carrier that is classified as a Class A company under § 32.11 of this chapter and that is not a National Exchange Carrier Association interstate tariff participant, as provided in part 69, subpart G of this chapter, shall offer expanded interconnection for interstate special access services at their central offices that are classified as end offices or serving wire centers, and at other rating points used for interstate special access.

(b) The local exchange carriers specified in paragraph (a) of this section shall offer expanded interconnection for interstate switched transport services:

(1) In their central offices that are classified as end offices or serving wire centers, as well as at all tandem offices housed in buildings containing such carriers' end offices or serving wire centers for which interstate switched transport expanded interconnection has been tariffed;

(2) Upon *bona fide* request, in tandem offices housed in buildings not con-

taining such carriers' end offices or serving wire centers, or in buildings containing the carriers' end offices or serving wire centers for which interstate switched transport expanded interconnection has not been tariffed; and

(3) Upon *bona fide* request, at remote nodes/switches that serve as rating points for interstate switched transport and that are capable of routing outgoing interexchange access traffic to interconnectors and in which interconnectors can route terminating traffic to such carriers. No such carrier is required to enhance remote nodes/switches or to build additional space to accommodate interstate switched transport expanded interconnection at these locations.

(c) The local exchange carriers specified in paragraph (a) of this section shall offer expanded interconnection for interstate special access and switched transport services through virtual collocation, except that they may offer physical collocation, instead of virtual collocation, in specific central offices, as a service subject to non-streamlined communications common carrier regulation under Title II of the Communications Act (47 U.S.C. 201–228).

(d) For the purposes of this subpart, physical collocation means an offering that enables interconnectors:

(1) To place their own equipment needed to terminate basic transmission facilities, including optical terminating equipment and multiplexers, within or upon the local exchange carrier's central office buildings;

(2) To use such equipment to connect interconnectors' fiber optic systems or microwave radio transmission facilities (where reasonably feasible) with the local exchange carrier's equipment and facilities used to provide interstate special access services;

(3) To enter the local exchange carrier's central office buildings, subject to reasonable terms and conditions, to install, maintain, and repair the equipment described in paragraph (d)(1) of this section; and

(4) To obtain reasonable amounts of space in central offices for the equipment described in paragraph (d)(1) of

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this section, allocated on a first-come, first-served basis.

(e) For purposes of this subpart, virtual collocation means an offering that enables interconnectors:

(1) To designate or specify equipment needed to terminate basic transmission facilities, including optical terminating equipment and multiplexers, to be located within or upon the local exchange carrier's buildings, and dedicated to such interconnectors' use,

(2) To use such equipment to connect interconnectors' fiber optic systems or microwave radio transmission facilities (where reasonably feasible) with the local exchange carrier's equipment and facilities used to provide interstate special and switched access services, and

(3) To monitor and control their communications channels terminating in such equipment.

(f) Under both physical collocation offering and virtual collocation offerings for expanded interconnection of fiber optic facilities, local exchange carriers shall provide:

(1) An interconnection point or points at which the fiber optic cable carrying an interconnectors' circuits can enter each local exchange carrier location, provided that the local exchange carrier shall designate interconnection points as close as reasonably possible to each location; and

(2) At least two such interconnection points at any local exchange carrier location at which there are at least two entry points for the local exchange carrier's cable facilities, and space is available for new facilities in at least two of those entry points.

(g) The local exchange carriers specified in paragraph (a) of this section shall offer signalling for tandem switching, as defined in § 69.2(vv) of this chapter, at central offices that are classified as equal office end offices or serving wire centers, or at signal transfer points if such information is offered via common channel signalling.

[57 FR 54331, Nov. 18, 1992, as amended at 58 FR 48762, Sept. 17, 1993; 59 FR 32930, June 27, 1994; 59 FR 38930, Aug. 1, 1994]

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§ 64.1402 Rights and responsibilities of interconnectors.

(a) For the purposes of this subpart, an interconnector means a party taking expanded interconnection offerings. Any party shall be eligible to be an interconnector.

(b) Interconnectors shall have the right, under expanded interconnection, to interconnect their fiber optic systems and, where reasonably feasible, their microwave transmission facilities.

(c) Interconnectors shall not be allowed to use interstate special access expanded interconnection offerings to connect their transmission facilities with the local exchange carrier's interstate switched services until that local exchange carrier's tariffs implementing expanded interconnection for switched transport have become effective.

[57 FR 54331, Nov. 18, 1992, as amended at 61 FR 43160, Aug. 21, 1996]

Subpart O—Interstate Pay-Per-Call and Other Information Services

SOURCE: 58 FR 44773, Aug. 25, 1993, unless otherwise noted.

§ 64.1501 Definitions.

For purposes of this subpart, the following definitions shall apply:

(a) *Pay-per-call service* means any service:

(1) In which any person provides or purports to provide:

(i) Audio information or audio entertainment produced or packaged by such person;

(ii) Access to simultaneous voice conversation services; or

(iii) Any service, including the provision of a product, the charges for which are assessed on the basis of the completion of the call;

(2) For which the caller pays a per-call or per-time-interval charge that is greater than, or in addition to, the charge for transmission of the call; and

(3) Which is accessed through use of a 900 number;

(4) Provided, however, such term does not include directory services provided by a common carrier or its affiliate or

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by a local exchange carrier or its affiliate, or any service for which users are assessed charges only after entering into a presubscription or comparable arrangement with the provider of such service.

(b) *Presubscription or comparable arrangement* means a contractual agreement in which:

(1) The service provider clearly and conspicuously discloses to the consumer all material terms and conditions associated with the use of the service, including the service provider's name and address, a business telephone number which the consumer may use to obtain additional information or to register a complaint, and the rates for the service;

(2) The service provider agrees to notify the consumer of any future rate changes;

(3) The consumer agrees to use the service on the terms and conditions disclosed by the service provider; and

(4) The service provider requires the use of an identification number or other means to prevent unauthorized access to the service by nonsubscribers;

(5) Provided, however, that disclosure of a credit, prepaid account, debit, charge, or calling card number, along with authorization to bill that number, made during the course of a call to an information service shall constitute a presubscription or comparable arrangement if an introductory message containing the information specified in § 64.1504(c)(2) is provided prior to, and independent of, assessment of any charges. No other action taken by a consumer during the course of a call to an information service, for which charges are assessed, can create a presubscription or comparable arrangement.

(6) Provided, that a presubscription arrangement to obtain information services provided by means of a toll-free number shall conform to the requirements of § 64.1504(c).

(c) *Calling card* means an identifying number or code unique to the individual, that is issued to the individual by a common carrier and enables the individual to be charged by means of a phone bill for charges incurred independent of where the call originates.

[61 FR 39087, July 26, 1996]

§ 64.1502 Limitations on the provision of pay-per-call services.

Any common carrier assigning a telephone number to a provider of interstate pay-per-call service shall require, by contract or tariff, that such provider comply with the provisions of this subpart and of titles II and III of the Telephone Disclosure and Dispute Resolution Act (Pub. L. No. 102-556) (TDDRA) and the regulations prescribed by the Federal Trade Commission pursuant to those titles.

§ 64.1503 Termination of pay-per-call and other information programs.

(a) Any common carrier assigning a telephone number to a provider of interstate pay-per-call service shall specify by contract or tariff that pay-per-call programs not in compliance with § 64.1502 shall be terminated following written notice to the information provider. The information provider shall be afforded a period of no less than seven and no more than 14 days during which a program may be brought into compliance. Programs not in compliance at the expiration of such period shall be terminated immediately.

(b) Any common carrier providing transmission or billing and collection services to a provider of interstate information service through any 800 telephone number, or other telephone number advertised or widely understood to be toll-free, shall promptly investigate any complaint that such service is not provided in accordance with § 64.1504 or § 64.1510(c), and, if the carrier reasonably determines that the complaint is valid, may terminate the provision of service to an information provider unless the provider supplies evidence of a written agreement that meets the requirements of this § 64.1504(c)(1).

[61 FR 39087, July 26, 1996]

§ 64.1504 Restrictions on the use of toll-free numbers.

A common carrier shall prohibit by tariff or contract the use of any 800 telephone number, or other telephone number advertised or widely understood to be toll-free, in a manner that would result in:

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(a) The calling party or the subscriber to the originating line being assessed, by virtue of completing the call, a charge for a call;

(b) The calling party being connected to a pay-per-call service;

(c) The calling party being charged for information conveyed during the call unless:

(1) The calling party has a written agreement (including an agreement transmitted through electronic medium) that specifies the material terms and conditions under which the information is offered and includes:

(i) The rate at which charges are assessed for the information;

(ii) The information provider's name;

(iii) The information provider's business address;

(iv) The information provider's regular business telephone number;

(v) The information provider's agreement to notify the subscriber at least one billing cycle in advance of all future changes in the rates charged for the information;

(vi) The subscriber's choice of payment method, which may be by direct remit, debit, prepaid account, phone bill, or credit or calling card and, if a subscriber elects to pay by means of phone bill, a clear explanation that the subscriber will be assessed for calls made to the information service from the subscriber's phone line;

(vii) A unique personal identification number or other subscriber-specific identifier that must be used to obtain access to the information service and instructions on its use, and, in addition, assures that any charges for services accessed by use of the subscriber's personal identification number or subscriber-specific identifier be assessed to subscriber's source of payment elected pursuant to paragraph (c)(1)(vi) of this section; or

(2) The calling party is charged for the information by means of a credit, prepaid, debit, charge, or calling card and the information service provider includes in response to each call an introductory message that:

(i) Clearly states that there is a charge for the call;

(ii) Clearly states the service's total cost per minute and any other fees for

the service or for any service to which the caller may be transferred;

(iii) Explains that the charges must be billed on either a credit, prepaid, debit, charge, or calling card;

(iv) Asks the caller for the card number;

(v) Clearly states that charges for the call begin at the end of the introductory message; and

(vi) Clearly states that the caller can hang up at or before the end of the introductory message without incurring any charge whatsoever.

(d) The calling party being called back collect for the provision of audio or data information services, simultaneous voice conversation services, or products; and

(e) The calling party being assessed by virtue of the caller being asked to connect or otherwise transfer to a pay-per-call service, a charge for the call.

(f) Provided, however, that:

(1) Notwithstanding paragraph (c)(1) of this section, a written agreement that meets the requirements of that paragraph is not required for:

(i) Calls utilizing telecommunications devices for the deaf;

(ii) Directory services provided by a common carrier or its affiliate or by a local exchange carrier or its affiliate; or

(iii) Any purchase of goods or of services that are not information services.

(2) The requirements of paragraph (c)(2) of this section shall not apply to calls from repeat callers using a bypass mechanism to avoid listening to the introductory message: *Provided*, That information providers shall disable such a bypass mechanism after the institution of any price increase for a period of time determined to be sufficient by the Federal Trade Commission to give callers adequate and sufficient notice of a price increase.

[61 FR 39087, July 26, 1996, as amended at 69 FR 61154, Oct. 15, 2004]

§ 64.1505 Restrictions on collect telephone calls.

(a) No common carrier shall provide interstate transmission or billing and collection services to an entity offering any service within the scope of § 64.1501(a)(1) that is billed to a subscriber on a collect basis at a per-call

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or per-time-interval charge that is greater than, or in addition to, the charge for transmission of the call.

(b) No common carrier shall provide interstate transmission services for any collect information services billed to a subscriber at a tariffed rate unless the called party has taken affirmative action clearly indicating that it accepts the charges for the collect service.

§ 64.1506 Number designation.

Any interstate service described in § 64.1501(a)(1)–(2), and not subject to the exclusions contained in § 64.1501(a)(4), shall be offered only through telephone numbers beginning with a 900 service access code.

[59 FR 46770, Sept. 12, 1994]

§ 64.1507 Prohibition on disconnection or interruption of service for failure to remit pay-per-call and similar service charges.

No common carrier shall disconnect or interrupt in any manner, or order the disconnection or interruption of, a telephone subscriber's local exchange or long distance telephone service as a result of that subscriber's failure to pay:

(a) Charges for interstate pay-per-call service;

(b) Charges for interstate information services provided pursuant to a presubscription or comparable arrangement; or

(c) Charges for interstate information services provided on a collect basis which have been disputed by the subscriber.

[58 FR 44773, Aug. 25, 1993, as amended at 59 FR 46770, Sept. 12, 1994]

§ 64.1508 Blocking access to 900 service.

(a) Local exchange carriers must offer to their subscribers, where technically feasible, an option to block access to services offered on the 900 service access code. Blocking is to be offered at no charge, on a one-time basis, to:

(1) All telephone subscribers during the period from November 1, 1993 through December 31, 1993; and

(2) Any subscriber who subscribes to a new telephone number for a period of

60 days after the new number is effective.

(b) For blocking requests not within the one-time option or outside the time frames specified in paragraph (a) of this section, and for unblocking requests, local exchange carriers may charge a reasonable one-time fee. Requests by subscribers to remove 900 services blocking must be in writing.

(c) The terms and conditions under which subscribers may obtain 900 services blocking are to be included in tariffs filed with this Commission.

§ 64.1509 Disclosure and dissemination of pay-per-call information.

(a) Any common carrier assigning a telephone number to a provider of interstate pay-per-call services shall make readily available, at no charge, to Federal and State agencies and all other interested persons:

(1) A list of the telephone numbers for each of the pay-per-call services it carries;

(2) A short description of each such service;

(3) A statement of the total cost or the cost per minute and any other fees for each such service; and

(4) A statement of the pay-per-call service provider's name, business address, and business telephone number.

(b) Any common carrier assigning a telephone number to a provider of interstate pay-per-call services and offering billing and collection services to such provider shall:

(1) Establish a local or toll-free telephone number to answer questions and provide information on subscribers' rights and obligations with regard to their use of pay-per-call services and to provide to callers the name and mailing address of any provider of pay-per-call services offered by that carrier; and

(2) Provide to all its telephone subscribers, either directly or through contract with any local exchange carrier providing billing and collection services to that carrier, a disclosure statement setting forth all rights and obligations of the subscriber and the carrier with respect to the use and payment of pay-per-call services. Such statement must include the prohibition

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against disconnection of basic communications services for failure to pay pay-per-call charges established by § 64.1507, the right of a subscriber to obtain blocking in accordance with § 64.1508, the right of a subscriber not to be billed for pay-per-call services not offered in compliance with federal laws and regulations established by § 64.1510(a)(1), and the possibility that a subscriber's access to 900 services may be involuntarily blocked pursuant to § 64.1512 for failure to pay legitimate pay-per-call charges. Disclosure statements must be forwarded to:

- (i) All telephone subscribers no later than 60 days after these regulations take effect;
- (ii) All new telephone subscribers no later than 60 days after service is established;
- (iii) All telephone subscribers requesting service at a new location no later than 60 days after service is established; and
- (iv) Thereafter, to all subscribers at least once per calendar year, at intervals of not less than 6 months nor more than 18 months.

[58 FR 44773, Aug. 25, 1993, as amended at 61 FR 55582, Oct. 28, 1996]

§ 64.1510 Billing and collection of pay-per-call and similar service charges.

(a) Any common carrier assigning a telephone number to a provider of interstate pay-per-call services and offering billing and collection services to such provider shall:

- (1) Ensure that a subscriber is not billed for interstate pay-per-call services that such carrier knows or reasonably should know were provided in violation of the regulations set forth in this subpart or prescribed by the Federal Trade Commission pursuant to titles II or III of the TDDRA or any other federal law;
- (2) In any billing to telephone subscribers that includes charges for any interstate pay-per-call service:
 - (i) Include a statement indicating that:
 - (A) Such charges are for non-communications services;
 - (B) Neither local nor long distances services can be disconnected for non-payment although an information pro-

vider may employ private entities to seek to collect such charges;

(C) 900 number blocking is available upon request; and

(D) Access to pay-per-call services may be involuntarily blocked for failure to pay legitimate charges;

(ii) Display any charges for pay-per-call services in a part of the bill that is identified as not being related to local and long distance telephone charges;

(iii) Specify, for each pay-per-call charge made, the type of service, the amount of the charge, and the date, time, and, for calls billed on a time-sensitive basis, the duration of the call; and

(iv) Identify the local or toll-free number established in accordance with § 64.1509(b)(1).

(b) Any common carrier offering billing and collection services to an entity providing interstate information services on a collect basis shall, to the extent possible, display the billing information in the manner described in paragraphs (a)(2)(i), (A), (B), (D) and (a)(2)(ii) of this section.

(c) If a subscriber elects, pursuant to § 64.1504(c)(1)(vi), to pay by means of a phone bill for any information service provided by through any 800 telephone number, or other telephone number advertised or widely understood to be toll-free, the phone bill shall:

(1) Include, in prominent type, the following disclaimer: "Common carriers may not disconnect local or long distance telephone service for failure to pay disputed charges for information services;" and

(2) Clearly list the 800 or other toll-free number dialed.

[58 FR 44773, Aug. 25, 1993, as amended at 59 FR 46771, Sept. 12, 1994; 61 FR 39088, July 26, 1996]

§ 64.1511 Forgiveness of charges and refunds.

(a) Any carrier assigning a telephone number to a provider of interstate pay-per-call services or providing transmission for interstate information services provided pursuant to a presubscription or comparable arrangement or on a collect basis, and providing billing and collection for such services, shall establish procedures for the handling of subscriber complaints

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regarding charges for those services. A billing carrier is afforded discretion to set standards for determining when a subscriber's complaint warrants forgiveness, refund or credit of interstate pay-per-call or information services charges provided that such charges must be forgiven, refunded, or credited when a subscriber has complained about such charges and either this Commission, the Federal Trade Commission, or a court of competent jurisdiction has found or the carrier has determined, upon investigation, that the service has been offered in violation of federal law or the regulations that are either set forth in this subpart or prescribed by the Federal Trade Commission pursuant to titles II or III of the TDDRA. Carriers shall observe the record retention requirements set forth in § 42.6 of this chapter except that relevant records shall be retained by carriers beyond the requirements of part 42 of this chapter when a complaint is pending at the time the specified retention period expires.

(b) Any carrier assigning a telephone number to a provider of interstate pay-per-call services but not providing billing and collection services for such services, shall, by tariff or contract, require that the provider and/or its billing and collection agents have in place procedures whereby, upon complaint, pay-per-call charges may be forgiven, refunded, or credited, provided that such charges must be forgiven, refunded, or credited when a subscriber has complained about such charges and either this Commission, the Federal Trade Commission, or a court of competent jurisdiction has found or the carrier has determined, upon investigation, that the service has been offered in violation of federal law or the regulations that are either set forth in this subpart or prescribed by the Federal Trade Commission pursuant to titles II or III of the TDDRA.

[58 FR 44773, Aug. 25, 1993, as amended at 59 FR 46771, Sept. 12, 1994]

§ 64.1512 Involuntary blocking of pay-per-call services.

Nothing in this subpart shall preclude a common carrier or information provider from blocking or ordering the blocking of its interstate pay-per-call

programs from numbers assigned to subscribers who have incurred, but not paid, legitimate pay-per-call charges, except that a subscriber who has filed a complaint regarding a particular pay-per-call program pursuant to procedures established by the Federal Trade Commission under title III of the TDDRA shall not be involuntarily blocked from access to that program while such a complaint is pending. This restriction is not intended to preclude involuntary blocking when a carrier or IP has decided in one instance to sustain charges against a subscriber but that subscriber files additional separate complaints.

§ 64.1513 Verification of charitable status.

Any common carrier assigning a telephone number to a provider of interstate pay-per-call services that the carrier knows or reasonably should know is engaged in soliciting charitable contributions shall obtain verification that the entity or individual for whom contributions are solicited has been granted tax exempt status by the Internal Revenue Service.

§ 64.1514 Generation of signalling tones.

No common carrier shall assign a telephone number for any pay-per-call service that employs broadcast advertising which generates the audible tones necessary to complete a call to a pay-per-call service.

§ 64.1515 Recovery of costs.

No common carrier shall recover its cost of complying with the provisions of this subpart from local or long distance ratepayers.

Subpart P—Calling Party Telephone Number; Privacy

SOURCE: 59 FR 18319, Apr. 18, 1994, unless otherwise noted.

§ 64.1600 Definitions.

(a) *Aggregate information.* The term "aggregate information" means collective data that relate to a group or category of services or customers, from which individual customer identities or characteristics have been removed.

(b) *ANI*. The term “ANI” (automatic number identification) refers to the delivery of the calling party’s billing number by a local exchange carrier to any interconnecting carrier for billing or routing purposes, and to the subsequent delivery of such number to end users.

(c) *Calling party number*. The term “Calling Party Number” refers to the subscriber line number or the directory number contained in the calling party number parameter of the call set-up message associated with an interstate call on a Signaling System 7 network.

(d) *Charge number*. The term “charge number” refers to the delivery of the calling party’s billing number in a Signaling System 7 environment by a local exchange carrier to any interconnecting carrier for billing or routing purposes, and to the subsequent delivery of such number to end users.

(e) *Privacy indicator*. The term “Privacy Indicator” refers to information, contained in the calling party number parameter of the call set-up message associated with an interstate call on a Signaling System 7 network, that indicates whether the calling party authorizes presentation of the calling party number to the called party.

(f) *Signaling System 7*. The term “Signaling System 7” (SS7) refers to a carrier to carrier out-of-band signaling network used for call routing, billing and management.

[60 FR 29490, June 5, 1995]

§ 64.1601 Delivery requirements and privacy restrictions.

(a) *Delivery*. Except as provided in paragraph (d) of this section, common carriers using Signaling System 7 and offering or subscribing to any service based on Signaling System 7 functionality are required to transmit the calling party number (CPN) associated with an interstate call to interconnecting carriers.

(b) *Privacy*. Except as provided in paragraph (d) of this section, originating carriers using Signaling System 7 and offering or subscribing to any service based on Signaling System 7 functionality will recognize *67 dialed as the first three digits of a call (or 1167 for rotary or pulse dialing phones) as a caller’s request that the CPN not

be passed on an interstate call. Such carriers providing line blocking services will recognize *82 as a caller’s request that the CPN be passed on an interstate call. No common carrier subscribing to or offering any service that delivers CPN may override the privacy indicator associated with an interstate call. Carriers must arrange their CPN-based services, and billing practices, in such a manner that when a caller requests that the CPN not be passed, a carrier may not reveal that caller’s number or name, nor may the carrier use the number or name to allow the called party to contact the calling party. The terminating carrier must act in accordance with the privacy indicator unless the call is made to a called party that subscribes to an ANI or charge number based service and the call is paid for by the called party.

(c) *Charges*. No common carrier subscribing to or offering any service that delivers calling party number may

(1) Impose on the calling party charges associated with per call blocking of the calling party’s telephone number, or

(2) Impose charges upon connecting carriers for the delivery of the calling party number parameter or its associated privacy indicator.

(d) *Exemptions*. Section 64.1601(a) and (b) shall not apply when:

(1) A call originates from a payphone.

(2) A local exchange carrier with Signaling System 7 capability does not have the software to provide *67 or *82 functionalities. Such carriers are prohibited from passing CPN.

(3) A Private Branch Exchange or Centrex system does not pass end user CPN. Centrex systems that rely on *6 or *8 for a function other than CPN blocking or unblocking, respectively, are also exempt if they employ alternative means of blocking or unblocking.

(4) CPN delivery—

(i) Is used solely in connection with calls within the same limited system, including (but not limited to) a Centrex system, virtual private network, or Private Branch Exchange;

(ii) Is used on a public agency’s emergency telephone line or in conjunction with 911 emergency services, or on any

entity's emergency assistance poison control telephone line; or

(iii) Is provided in connection with legally authorized call tracing or trapping procedures specifically requested by a law enforcement agency.

(e) Any person or entity that engages in telemarketing, as defined in section 64.1200(f)(10) must transmit caller identification information.

(1) For purposes of this paragraph, caller identification information must include either CPN or ANI, and, when available by the telemarketer's carrier, the name of the telemarketer. It shall not be a violation of this paragraph to substitute (for the name and phone number used in, or billed for, making the call) the name of the seller on behalf of which the telemarketing call is placed and the seller's customer service telephone number. The telephone number so provided must permit any individual to make a do-not-call request during regular business hours.

(2) Any person or entity that engages in telemarketing is prohibited from blocking the transmission of caller identification information.

(3) Tax-exempt nonprofit organizations are not required to comply with this paragraph.

[60 FR 29490, June 5, 1995; 60 FR 54449, Oct. 24, 1995, as amended at 62 FR 34015, June 24, 1997; 68 FR 44179, July 25, 2003; 71 FR 75122, Dec. 14, 2006]

§ 64.1602 Restrictions on use and sale of telephone subscriber information provided pursuant to automatic number identification or charge number services.

(a) Any common carrier providing Automatic Number Identification or charge number services on interstate calls to any person shall provide such services under a contract or tariff containing telephone subscriber information requirements that comply with this subpart. Such requirements shall:

(1) Permit such person to use the telephone number and billing information for billing and collection, routing, screening, and completion of the originating telephone subscriber's call or transaction, or for services directly related to the originating telephone subscriber's call or transaction;

(2) Prohibit such person from reusing or selling the telephone number or billing information without first

(i) Notifying the originating telephone subscriber and,

(ii) Obtaining the affirmative consent of such subscriber for such reuse or sale; and,

(3) Prohibit such person from disclosing, except as permitted by paragraphs (a) (1) and (2) of this section, any information derived from the automatic number identification or charge number service for any purpose other than

(i) Performing the services or transactions that are the subject of the originating telephone subscriber's call,

(ii) Ensuring network performance security, and the effectiveness of call delivery,

(iii) Compiling, using, and disclosing aggregate information, and

(iv) Complying with applicable law or legal process.

(b) The requirements imposed under paragraph (a) of the section shall not prevent a person to whom automatic number identification or charge number services are provided from using

(1) The telephone number and billing information provided pursuant to such service, and

(2) Any information derived from the automatic number identification or charge number service, or from the analysis of the characteristics of a telecommunications transmission, to offer a product or service that is directly related to the products or services previously acquired by that customer from such person. Use of such information is subject to the requirements of 47 CFR 64.1200 and 64.1504(c).

[60 FR 29490, June 5, 1995]

§ 64.1603 Customer notification.

Any common carrier participating in the offering of services providing calling party number, ANI, or charge number on interstate calls must notify its subscribers, individually or in conjunction with other carriers, that their telephone numbers may be identified to a called party. Such notification must be made not later than December 1, 1995, and at such times thereafter as

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to ensure notice to subscribers. The notification must be effective in informing subscribers how to maintain privacy by dialing *67 (or 1167 for rotary or pulse-dialing phones) on interstate calls. The notice shall inform subscribers whether dialing *82 (or 1182 for rotary or pulse-dialing phones) on interstate calls is necessary to present calling party number to called parties. For ANI or charge number services for which such privacy is not provided, the notification shall inform subscribers of the restrictions on the reuse or sale of subscriber information.

[60 FR 29491, June 5, 1995; 60 FR 54449, Oct. 24, 1995]

§ 64.1604 Effective date.

The provisions of §§ 64.1600 and 64.1602 are effective April 12, 1995. The provisions of §§ 64.1601 and 64.1603 are effective December 1, 1995, except §§ 64.1601 and 64.1603 do not apply to public payphones and partylines until January 1, 1997.

[60 FR 29491, June 5, 1995; 60 FR 54449, Oct. 24, 1995]

Subpart Q—Implementation of Section 273(d)(5) of the Communications Act: Dispute Resolution Regarding Equipment Standards

SOURCE: 61 FR 24903, May 17, 1996, unless otherwise noted.

§ 64.1700 Purpose and scope.

The purpose of this subpart is to implement the Telecommunications Act of 1996 which amended the Communications Act by creating section 273(d)(5), 47 U.S.C. 273(d)(5). Section 273(d) sets forth procedures to be followed by non-accredited standards development organizations when these organizations set industry-wide standards and generic requirements for telecommunications equipment or customer premises equipment. The statutory procedures allow outside parties to fund and participate in setting the organization's standards and require the organization and the parties to develop a process for resolving any technical disputes. In cases where all parties cannot agree to a mutually satisfactory dis-

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pute resolution process, section 273(d)(5) requires the Commission to prescribe a dispute resolution process.

§ 64.1701 Definitions.

For purposes of this subpart, the terms *accredited standards development organization*, *funding party*, *generic requirement*, and *industry-wide* have the same meaning as found in 47 U.S.C. 273.

§ 64.1702 Procedures.

If a non-accredited standards development organization (NASDO) and the funding parties are unable to agree unanimously on a dispute resolution process prior to publishing a text for comment pursuant to 47 U.S.C. 273(d)(4)(A)(v), a funding party may use the default dispute resolution process set forth in section 64.1703.

§ 64.1703 Dispute resolution default process.

(a) *Tri-Partite Panel*. Technical disputes governed by this section shall be resolved in accordance with the recommendation of a three-person panel, subject to a vote of the funding parties in accordance with paragraph (b) of this section. Persons who participated in the generic requirements or standards development process are eligible to serve on the panel. The panel shall be selected and operate as follows:

(1) Within two (2) days of the filing of a dispute with the NASDO invoking the dispute resolution default process, both the funding party seeking dispute resolution and the NASDO shall select a representative to sit on the panel;

(2) Within four (4) days of their selection, the two panelists shall select a neutral third panel member to create a tri-partite panel;

(3) The tri-partite panel shall, at a minimum, review the proposed text of the NASDO and any explanatory material provided to the funding parties by the NASDO, the comments and any alternative text provided by the funding party seeking dispute resolution, any relevant standards which have been established or which are under development by an accredited-standards development organization, and any comments submitted by other funding parties;

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(4) Any party in interest submitting information to the panel for consideration (including the NASDO, the party seeking dispute resolution and the other funding parties) shall be asked by the panel whether there is knowledge of patents, the use of which may be essential to the standard or generic requirement being considered. The fact that the question was asked along with any affirmative responses shall be recorded, and considered, in the panel's recommendation; and

(5) The tri-partite panel shall, within fifteen (15) days after being established, decide by a majority vote, the issue or issues raised by the party seeking dispute resolution and produce a report of their decision to the funding parties. The tri-partite panel must adopt one of the five options listed below:

(i) The NASDO's proposal on the issue under consideration;

(ii) The position of the party seeking dispute resolution on the issue under consideration;

(iii) A standard developed by an accredited standards development organization that addresses the issue under consideration;

(iv) A finding that the issue is not ripe for decision due to insufficient technical evidence to support the soundness of any one proposal over any other proposal; or

(v) Any other resolution that is consistent with the standard described in section 64.1703(a)(6).

(6) The tri-partite panel must choose, from the five options outlined above, the option that they believe provides the most technically sound solution and base its recommendation upon the substantive evidence presented to the panel. The panel is not precluded from taking into account complexity of implementation and other practical considerations in deciding which option is most technically sound. Neither of the disputants (i.e., the NASDO and the funding party which invokes the dispute resolution process) will be permitted to participate in any decision to reject the mediation panel's recommendation.

(b) The tri-partite panel's recommendation(s) must be included in the final industry-wide standard or industry-wide generic requirement, unless three-fourths of the funding parties who vote decide within thirty (30) days of the filing of the dispute to reject the recommendation and accept one of the options specified in paragraphs (a)(5) (i) through (v) of this section. Each funding party shall have one vote.

(c) All costs sustained by the tri-partite panel will be incorporated into the cost of producing the industry-wide standard or industry-wide generic requirement.

§ 64.1704 Frivolous disputes/penalties.

(a) No person shall willfully refer a dispute to the dispute resolution process under this subpart unless to the best of his knowledge, information and belief there is good ground to support the dispute and the dispute is not interposed for delay.

(b) Any person who fails to comply with the requirements in paragraph (a) of this section, may be subject to forfeiture pursuant to section 503(b) of the Communications Act, 47 U.S.C. 503(b).

Subpart R—Geographic Rate Averaging and Rate Integration

AUTHORITY: 47 U.S.C. §§151, 154(i), 201–205, 214(e), 215 and 254(g).

§ 64.1801 Geographic rate averaging and rate integration.

(a) The rates charged by providers of interexchange telecommunications services to subscribers in rural and high-cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas.

(b) A provider of interstate interexchange telecommunications services shall provide such services to its subscribers in each U.S. state at rates no higher than the rates charged to its subscribers in any other state.

[61 FR 42564, Aug. 16, 1996]

Subpart S—Nondominant Interexchange Carrier Certifications Regarding Geographic Rate Averaging and Rate Integration Requirements

§ 64.1900 Nondominant interexchange carrier certifications regarding geographic rate averaging and rate integration requirements.

(a) A nondominant provider of interexchange telecommunications services, which provides detariffed interstate, domestic, interexchange services, shall file with the Commission, on an annual basis, a certification that it is providing such services in compliance with its geographic rate averaging and rate integration obligations pursuant to section 254(g) of the Communications Act of 1934, as amended.

(b) The certification filed pursuant to paragraph (a) of this section shall be signed by an officer of the company under oath.

[61 FR 59366, Nov. 22, 1996]

Subpart T—Separate Affiliate Requirements for Incumbent Independent Local Exchange Carriers That Provide In-Region, Interstate Domestic Interexchange Services or In-Region International Interexchange Services

SOURCE: 62 FR 36017, July 3, 1997, unless otherwise noted.

§ 64.1901 Basis and purpose.

(a) *Basis.* These rules are issued pursuant to the Communications Act of 1934, as amended.

(b) *Purpose.* The purpose of these rules is to regulate the provision of in-region, interstate, domestic, interexchange services and in-region international interexchange services by incumbent independent local exchange carriers.

§ 64.1902 Terms and definitions.

Terms used in this part have the following meanings:

Books of account. Books of account refer to the financial accounting sys-

tem a company uses to record, in monetary terms, the basic transactions of a company. These books of account reflect the company's assets, liabilities, and equity, and the revenues and expenses from operations. Each company has its own separate books of account.

Incumbent Independent Local Exchange Carrier (Incumbent Independent LEC). The term incumbent independent local exchange carrier means, with respect to an area, the independent local exchange carrier that:

(1) On February 8, 1996, provided telephone exchange service in such area; and

(2)(i) On February 8, 1996, was deemed to be a member of the exchange carrier association pursuant to § 69.601(b) of this title; or

(ii) Is a person or entity that, on or after February 8, 1996, became a successor or assign of a member described in paragraph (2)(i) of this section. The Commission may also, by rule, treat an independent local exchange carrier as an incumbent independent local exchange carrier pursuant to section 251(h)(2) of the Communications Act of 1934, as amended.

Independent Local Exchange Carrier (Independent LEC). Independent local exchange carriers are local exchange carriers, including GTE, other than the BOCs.

Independent Local Exchange Carrier Affiliate (Independent LEC Affiliate). An independent local exchange carrier affiliate is a carrier that is owned (in whole or in part) or controlled by, or under common ownership (in whole or in part) or control with, an independent local exchange carrier.

In-region service. In-region service means telecommunications service originating in an independent local exchange carrier's local service areas or 800 service, private line service, or their equivalents that:

(1) Terminate in the independent LEC's local exchange areas; and

(2) Allow the called party to determine the interexchange carrier, even if the service originates outside the independent LEC's local exchange areas.

Local Exchange Carrier. The term local exchange carrier means any person that is engaged in the provision of

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telephone exchange service or exchange access. Such term does not include a person insofar as such person is engaged in the provision of a commercial mobile service under section 332(c), except to the extent that the Commission finds that such service should be included in the definition of that term.

[64 FR 44425, Aug. 16, 1999]

§ 64.1903 Obligations of all incumbent independent local exchange carriers.

(a) An incumbent independent LEC providing in-region, interstate, interexchange services or in-region international interexchange services shall provide such services through an affiliate that satisfies the following requirements:

(1) The affiliate shall maintain separate books of account from its affiliated exchange companies. Nothing in this section requires the affiliate to maintain separate books of account that comply with Part 32 of this title;

(2) The affiliate shall not jointly own transmission or switching facilities with its affiliated exchange companies. Nothing in this section prohibits an affiliate from sharing personnel or other resources or assets with an affiliated exchange company; and

(3) The affiliate shall acquire any services from its affiliated exchange companies for which the affiliated exchange companies are required to file a tariff at tariffed rates, terms, and conditions. Nothing in this section shall prohibit the affiliate from acquiring any unbundled network elements or exchange services for the provision of a telecommunications service from its affiliated exchange companies, subject to the same terms and conditions as provided in an agreement approved under section 252 of the Communications Act of 1934, as amended.

(b) Except as provided in paragraph (b)(1) of this section, the affiliate required in paragraph (a) of this section shall be a separate legal entity from its affiliated exchange companies. The affiliate may be staffed by personnel of its affiliated exchange companies, housed in existing offices of its affiliated exchange companies, and use its affiliated exchange companies' mar-

keting and other services, subject to paragraph (a)(3) of this section.

(1) For an incumbent independent LEC that provides in-region, interstate domestic interexchange services or in-region international interexchange services using no interexchange switching or transmission facilities or capability of the LEC's own (i.e., "independent LEC reseller,") the affiliate required in paragraph (a) of this section may be a separate corporate division of such incumbent independent LEC. All other provisions of this Subpart applicable to an independent LEC affiliate shall continue to apply, as applicable, to such separate corporate division.

(2) [Reserved]

[64 FR 44425, Aug. 16, 1999, as amended at 71 FR 65751, Nov. 9, 2006]

Subpart U—Customer Proprietary Network Information

SOURCE: 63 FR 20338, Apr. 24, 1998, unless otherwise noted.

§ 64.2001 Basis and purpose.

(a) *Basis.* The rules in this subpart are issued pursuant to the Communications Act of 1934, as amended.

(b) *Purpose.* The purpose of the rules in this subpart is to implement section 222 of the Communications Act of 1934, as amended, 47 U.S.C. 222.

§ 64.2003 Definitions.

(a) *Account information.* "Account information" is information that is specifically connected to the customer's service relationship with the carrier, including such things as an account number or any component thereof, the telephone number associated with the account, or the bill's amount.

(b) *Address of record.* An "address of record," whether postal or electronic, is an address that the carrier has associated with the customer's account for at least 30 days.

(c) *Affiliate.* The term "affiliate" has the same meaning given such term in section 3(1) of the Communications Act of 1934, as amended, 47 U.S.C. 153(1).

(d) *Call detail information.* Any information that pertains to the transmission of specific telephone calls, including, for outbound calls, the number

called, and the time, location, or duration of any call and, for inbound calls, the number from which the call was placed, and the time, location, or duration of any call.

(e) *Communications-related services.* The term “communications-related services” means telecommunications services, information services typically provided by telecommunications carriers, and services related to the provision or maintenance of customer premises equipment.

(f) *Customer.* A customer of a telecommunications carrier is a person or entity to which the telecommunications carrier is currently providing service.

(g) *Customer proprietary network information (CPNI).* The term “customer proprietary network information (CPNI)” has the same meaning given to such term in section 222(h)(1) of the Communications Act of 1934, as amended, 47 U.S.C. 222(h)(1).

(h) *Customer premises equipment (CPE).* The term “customer premises equipment (CPE)” has the same meaning given to such term in section 3(14) of the Communications Act of 1934, as amended, 47 U.S.C. 153(14).

(i) *Information services typically provided by telecommunications carriers.* The phrase “information services typically provided by telecommunications carriers” means only those information services (as defined in section 3(20) of the Communications Act of 1934, as amended, 47 U.S.C. 153(20)) that are typically provided by telecommunications carriers, such as Internet access or voice mail services. Such phrase “information services typically provided by telecommunications carriers,” as used in this subpart, shall not include retail consumer services provided using Internet Web sites (such as travel reservation services or mortgage lending services), whether or not such services may otherwise be considered to be information services.

(j) *Local exchange carrier (LEC).* The term “local exchange carrier (LEC)” has the same meaning given to such term in section 3(26) of the Communications Act of 1934, as amended, 47 U.S.C. 153(26).

(k) *Opt-in approval.* The term “opt-in approval” refers to a method for ob-

taining customer consent to use, disclose, or permit access to the customer’s CPNI. This approval method requires that the carrier obtain from the customer affirmative, express consent allowing the requested CPNI usage, disclosure, or access after the customer is provided appropriate notification of the carrier’s request consistent with the requirements set forth in this subpart.

(l) *Opt-out approval.* The term “opt-out approval” refers to a method for obtaining customer consent to use, disclose, or permit access to the customer’s CPNI. Under this approval method, a customer is deemed to have consented to the use, disclosure, or access to the customer’s CPNI if the customer has failed to object thereto within the waiting period described in § 64.2008(d)(1) after the customer is provided appropriate notification of the carrier’s request for consent consistent with the rules in this subpart.

(m) *Readily available biographical information.* “Readily available biographical information” is information drawn from the customer’s life history and includes such things as the customer’s social security number, or the last four digits of that number; mother’s maiden name; home address; or date of birth.

(n) *Subscriber list information (SLI).* The term “subscriber list information (SLI)” has the same meaning given to such term in section 222(h)(3) of the Communications Act of 1934, as amended, 47 U.S.C. 222(h)(3).

(o) *Telecommunications carrier or carrier.* The terms “telecommunications carrier” or “carrier” shall have the same meaning as set forth in section 3(44) of the Communications Act of 1934, as amended, 47 U.S.C. 153(44). For the purposes of this subpart, the term “telecommunications carrier” or “carrier” shall include an entity that provides interconnected VoIP service, as that term is defined in section 9.3 of these rules.

(p) *Telecommunications service.* The term “telecommunications service” has the same meaning given to such term in section 3(46) of the Communications Act of 1934, as amended, 47 U.S.C. 153(46).

(q) *Telephone number of record.* The telephone number associated with the underlying service, not the telephone number supplied as a customer's "contact information."

(r) *Valid photo ID.* A "valid photo ID" is a government-issued means of personal identification with a photograph such as a driver's license, passport, or comparable ID that is not expired.

[72 FR 31961, June 8, 2007]

§ 64.2005 Use of customer proprietary network information without customer approval.

(a) Any telecommunications carrier may use, disclose, or permit access to CPNI for the purpose of providing or marketing service offerings among the categories of service (*i.e.*, local, interexchange, and CMRS) to which the customer already subscribes from the same carrier, without customer approval.

(1) If a telecommunications carrier provides different categories of service, and a customer subscribes to more than one category of service offered by the carrier, the carrier is permitted to share CPNI among the carrier's affiliated entities that provide a service offering to the customer.

(2) If a telecommunications carrier provides different categories of service, but a customer does not subscribe to more than one offering by the carrier, the carrier is not permitted to share CPNI with its affiliates, except as provided in § 64.2007(b).

(b) A telecommunications carrier may not use, disclose, or permit access to CPNI to market to a customer service offerings that are within a category of service to which the subscriber does not already subscribe from that carrier, unless that carrier has customer approval to do so, except as described in paragraph (c) of this section.

(1) A wireless provider may use, disclose, or permit access to CPNI derived from its provision of CMRS, without customer approval, for the provision of CPE and information service(s). A wireline carrier may use, disclose or permit access to CPNI derived from its provision of local exchange service or interexchange service, without customer approval, for the provision of CPE and call answering, voice mail or

messaging, voice storage and retrieval services, fax store and forward, and protocol conversion.

(2) A telecommunications carrier may not use, disclose or permit access to CPNI to identify or track customers that call competing service providers. For example, a local exchange carrier may not use local service CPNI to track all customers that call local service competitors.

(c) A telecommunications carrier may use, disclose, or permit access to CPNI, without customer approval, as described in this paragraph (c).

(1) A telecommunications carrier may use, disclose, or permit access to CPNI, without customer approval, in its provision of inside wiring installation, maintenance, and repair services.

(2) CMRS providers may use, disclose, or permit access to CPNI for the purpose of conducting research on the health effects of CMRS.

(3) LECs, CMRS providers, and entities that provide interconnected VoIP service as that term is defined in § 9.3 of this chapter, may use CPNI, without customer approval, to market services formerly known as adjunct-to-basic services, such as, but not limited to, speed dialing, computer-provided directory assistance, call monitoring, call tracing, call blocking, call return, repeat dialing, call tracking, call waiting, caller I.D., call forwarding, and certain centrex features.

(d) A telecommunications carrier may use, disclose, or permit access to CPNI to protect the rights or property of the carrier, or to protect users of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services.

[63 FR 20338, Apr. 24, 1998, as amended at 64 FR 53264, Oct. 1, 1999; 67 FR 59211, Sept. 20, 2002; 72 FR 31962, June 8, 2007]

§ 64.2007 Approval required for use of customer proprietary network information.

(a) A telecommunications carrier may obtain approval through written, oral or electronic methods.

(1) A telecommunications carrier relying on oral approval shall bear the burden of demonstrating that such approval has been given in compliance

with the Commission's rules in this part.

(2) Approval or disapproval to use, disclose, or permit access to a customer's CPNI obtained by a telecommunications carrier must remain in effect until the customer revokes or limits such approval or disapproval.

(3) A telecommunications carrier must maintain records of approval, whether oral, written or electronic, for at least one year.

(b) *Use of Opt-Out and Opt-In Approval Processes.* A telecommunications carrier may, subject to opt-out approval or opt-in approval, use its customer's individually identifiable CPNI for the purpose of marketing communications-related services to that customer. A telecommunications carrier may, subject to opt-out approval or opt-in approval, disclose its customer's individually identifiable CPNI, for the purpose of marketing communications-related services to that customer, to its agents and its affiliates that provide communications-related services. A telecommunications carrier may also permit such persons or entities to obtain access to such CPNI for such purposes. Except for use and disclosure of CPNI that is permitted without customer approval under section § 64.2005, or that is described in this paragraph, or as otherwise provided in section 222 of the Communications Act of 1934, as amended, a telecommunications carrier may only use, disclose, or permit access to its customer's individually identifiable CPNI subject to opt-in approval.

[67 FR 59212, Sept. 20, 2002, as amended at 72 FR 31962, June 8, 2007]

§ 64.2008 Notice required for use of customer proprietary network information.

(a) *Notification, Generally.* (1) Prior to any solicitation for customer approval, a telecommunications carrier must provide notification to the customer of the customer's right to restrict use of, disclosure of, and access to that customer's CPNI.

(2) A telecommunications carrier must maintain records of notification, whether oral, written or electronic, for at least one year.

(b) Individual notice to customers must be provided when soliciting approval to use, disclose, or permit access to customers' CPNI.

(c) *Content of Notice.* Customer notification must provide sufficient information to enable the customer to make an informed decision as to whether to permit a carrier to use, disclose, or permit access to, the customer's CPNI.

(1) The notification must state that the customer has a right, and the carrier has a duty, under federal law, to protect the confidentiality of CPNI.

(2) The notification must specify the types of information that constitute CPNI and the specific entities that will receive the CPNI, describe the purposes for which CPNI will be used, and inform the customer of his or her right to disapprove those uses, and deny or withdraw access to CPNI at any time.

(3) The notification must advise the customer of the precise steps the customer must take in order to grant or deny access to CPNI, and must clearly state that a denial of approval will not affect the provision of any services to which the customer subscribes. However, carriers may provide a brief statement, in clear and neutral language, describing consequences directly resulting from the lack of access to CPNI.

(4) The notification must be comprehensible and must not be misleading.

(5) If written notification is provided, the notice must be clearly legible, use sufficiently large type, and be placed in an area so as to be readily apparent to a customer.

(6) If any portion of a notification is translated into another language, then all portions of the notification must be translated into that language.

(7) A carrier may state in the notification that the customer's approval to use CPNI may enhance the carrier's ability to offer products and services tailored to the customer's needs. A carrier also may state in the notification that it may be compelled to disclose CPNI to any person upon affirmative written request by the customer.

(8) A carrier may not include in the notification any statement attempting to encourage a customer to freeze third-party access to CPNI.

(9) The notification must state that any approval, or denial of approval for the use of CPNI outside of the service to which the customer already subscribes from that carrier is valid until the customer affirmatively revokes or limits such approval or denial.

(10) A telecommunications carrier's solicitation for approval must be proximate to the notification of a customer's CPNI rights.

(d) *Notice Requirements Specific to Opt-Out.* A telecommunications carrier must provide notification to obtain opt-out approval through electronic or written methods, but not by oral communication (except as provided in paragraph (f) of this section). The contents of any such notification must comply with the requirements of paragraph (c) of this section.

(1) Carriers must wait a 30-day minimum period of time after giving customers notice and an opportunity to opt-out before assuming customer approval to use, disclose, or permit access to CPNI. A carrier may, in its discretion, provide for a longer period. Carriers must notify customers as to the applicable waiting period for a response before approval is assumed.

(i) In the case of an electronic form of notification, the waiting period shall begin to run from the date on which the notification was sent; and

(ii) In the case of notification by mail, the waiting period shall begin to run on the third day following the date that the notification was mailed.

(2) Carriers using the opt-out mechanism must provide notices to their customers every two years.

(3) Telecommunications carriers that use e-mail to provide opt-out notices must comply with the following requirements in addition to the requirements generally applicable to notification:

(i) Carriers must obtain express, verifiable, prior approval from consumers to send notices via e-mail regarding their service in general, or CPNI in particular;

(ii) Carriers must allow customers to reply directly to e-mails containing CPNI notices in order to opt-out;

(iii) Opt-out e-mail notices that are returned to the carrier as undeliverable must be sent to the customer in an-

other form before carriers may consider the customer to have received notice;

(iv) Carriers that use e-mail to send CPNI notices must ensure that the subject line of the message clearly and accurately identifies the subject matter of the e-mail; and

(v) Telecommunications carriers must make available to every customer a method to opt-out that is of no additional cost to the customer and that is available 24 hours a day, seven days a week. Carriers may satisfy this requirement through a combination of methods, so long as all customers have the ability to opt-out at no cost and are able to effectuate that choice whenever they choose.

(e) *Notice Requirements Specific to Opt-In.* A telecommunications carrier may provide notification to obtain opt-in approval through oral, written, or electronic methods. The contents of any such notification must comply with the requirements of paragraph (c) of this section.

(f) *Notice Requirements Specific to One-Time Use of CPNI.* (1) Carriers may use oral notice to obtain limited, one-time use of CPNI for inbound and outbound customer telephone contacts for the duration of the call, regardless of whether carriers use opt-out or opt-in approval based on the nature of the contact.

(2) The contents of any such notification must comply with the requirements of paragraph (c) of this section, except that telecommunications carriers may omit any of the following notice provisions if not relevant to the limited use for which the carrier seeks CPNI:

(i) Carriers need not advise customers that if they have opted-out previously, no action is needed to maintain the opt-out election;

(ii) Carriers need not advise customers that they may share CPNI with their affiliates or third parties and need not name those entities, if the limited CPNI usage will not result in use by, or disclosure to, an affiliate or third party;

(iii) Carriers need not disclose the means by which a customer can deny or withdraw future access to CPNI, so long as carriers explain to customers

that the scope of the approval the carrier seeks is limited to one-time use; and

(iv) Carriers may omit disclosure of the precise steps a customer must take in order to grant or deny access to CPNI, as long as the carrier clearly communicates that the customer can deny access to his CPNI for the call.

[67 FR 59212, Sept. 20, 2002]

§ 64.2009 Safeguards required for use of customer proprietary network information.

(a) Telecommunications carriers must implement a system by which the status of a customer's CPNI approval can be clearly established prior to the use of CPNI.

(b) Telecommunications carriers must train their personnel as to when they are and are not authorized to use CPNI, and carriers must have an express disciplinary process in place.

(c) All carriers shall maintain a record, electronically or in some other manner, of their own and their affiliates' sales and marketing campaigns that use their customers' CPNI. All carriers shall maintain a record of all instances where CPNI was disclosed or provided to third parties, or where third parties were allowed access to CPNI. The record must include a description of each campaign, the specific CPNI that was used in the campaign, and what products and services were offered as a part of the campaign. Carriers shall retain the record for a minimum of one year.

(d) Telecommunications carriers must establish a supervisory review process regarding carrier compliance with the rules in this subpart for outbound marketing situations and maintain records of carrier compliance for a minimum period of one year. Specifically, sales personnel must obtain supervisory approval of any proposed outbound marketing request for customer approval.

(e) A telecommunications carrier must have an officer, as an agent of the carrier, sign and file with the Commission a compliance certificate on an annual basis. The officer must state in the certification that he or she has personal knowledge that the company has established operating procedures that

are adequate to ensure compliance with the rules in this subpart. The carrier must provide a statement accompanying the certificate explaining how its operating procedures ensure that it is or is not in compliance with the rules in this subpart. In addition, the carrier must include an explanation of any actions taken against data brokers and a summary of all customer complaints received in the past year concerning the unauthorized release of CPNI. This filing must be made annually with the Enforcement Bureau on or before March 1 in EB Docket No. 06–36, for data pertaining to the previous calendar year.

(f) Carriers must provide written notice within five business days to the Commission of any instance where the opt-out mechanisms do not work properly, to such a degree that consumers' inability to opt-out is more than an anomaly.

(1) The notice shall be in the form of a letter, and shall include the carrier's name, a description of the opt-out mechanism(s) used, the problem(s) experienced, the remedy proposed and when it will be/was implemented, whether the relevant state commission(s) has been notified and whether it has taken any action, a copy of the notice provided to customers, and contact information.

(2) Such notice must be submitted even if the carrier offers other methods by which consumers may opt-out.

[63 FR 20338, Apr. 24, 1998, as amended at 64 FR 53264, Oct. 1, 1999; 67 FR 59213, Sept. 20, 2002; 72 FR 31962, June 8, 2007]

§ 64.2010 Safeguards on the disclosure of customer proprietary network information.

(a) *Safeguarding CPNI.* Telecommunications carriers must take reasonable measures to discover and protect against attempts to gain unauthorized access to CPNI. Telecommunications carriers must properly authenticate a customer prior to disclosing CPNI based on customer-initiated telephone contact, online account access, or an in-store visit.

(b) *Telephone access to CPNI.* Telecommunications carriers may only disclose call detail information over the telephone, based on customer-initiated

telephone contact, if the customer first provides the carrier with a password, as described in paragraph (e) of this section, that is not prompted by the carrier asking for readily available biographical information, or account information. If the customer does not provide a password, the telecommunications carrier may only disclose call detail information by sending it to the customer's address of record, or by calling the customer at the telephone number of record. If the customer is able to provide call detail information to the telecommunications carrier during a customer-initiated call without the telecommunications carrier's assistance, then the telecommunications carrier is permitted to discuss the call detail information provided by the customer.

(c) *Online access to CPNI.* A telecommunications carrier must authenticate a customer without the use of readily available biographical information, or account information, prior to allowing the customer online access to CPNI related to a telecommunications service account. Once authenticated, the customer may only obtain online access to CPNI related to a telecommunications service account through a password, as described in paragraph (e) of this section, that is not prompted by the carrier asking for readily available biographical information, or account information.

(d) *In-store access to CPNI.* A telecommunications carrier may disclose CPNI to a customer who, at a carrier's retail location, first presents to the telecommunications carrier or its agent a valid photo ID matching the customer's account information.

(e) *Establishment of a Password and Back-up Authentication Methods for Lost or Forgotten Passwords.* To establish a password, a telecommunications carrier must authenticate the customer without the use of readily available biographical information, or account information. Telecommunications carriers may create a back-up customer authentication method in the event of a lost or forgotten password, but such back-up customer authentication method may not prompt the customer for readily available biographical information, or account information. If a

customer cannot provide the correct password or the correct response for the back-up customer authentication method, the customer must establish a new password as described in this paragraph.

(f) *Notification of account changes.* Telecommunications carriers must notify customers immediately whenever a password, customer response to a back-up means of authentication for lost or forgotten passwords, online account, or address of record is created or changed. This notification is not required when the customer initiates service, including the selection of a password at service initiation. This notification may be through a carrier-originated voicemail or text message to the telephone number of record, or by mail to the address of record, and must not reveal the changed information or be sent to the new account information.

(g) *Business customer exemption.* Telecommunications carriers may bind themselves contractually to authentication regimes other than those described in this section for services they provide to their business customers that have both a dedicated account representative and a contract that specifically addresses the carriers' protection of CPNI.

[72 FR 31962, June 8, 2007]

§ 64.2011 Notification of customer proprietary network information security breaches.

(a) A telecommunications carrier shall notify law enforcement of a breach of its customers' CPNI as provided in this section. The carrier shall not notify its customers or disclose the breach publicly, whether voluntarily or under state or local law or these rules, until it has completed the process of notifying law enforcement pursuant to paragraph (b) of this section.

(b) As soon as practicable, and in no event later than seven (7) business days, after reasonable determination of the breach, the telecommunications carrier shall electronically notify the United States Secret Service (USSS) and the Federal Bureau of Investigation (FBI) through a central reporting facility. The Commission will maintain

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a link to the reporting facility at <http://www.fcc.gov/eb/cpni>.

(1) Notwithstanding any state law to the contrary, the carrier shall not notify customers or disclose the breach to the public until 7 full business days have passed after notification to the USSS and the FBI except as provided in paragraphs (b)(2) and (b)(3) of this section.

(2) If the carrier believes that there is an extraordinarily urgent need to notify any class of affected customers sooner than otherwise allowed under paragraph (b)(1) of this section, in order to avoid immediate and irreparable harm, it shall so indicate in its notification and may proceed to immediately notify its affected customers only after consultation with the relevant investigating agency. The carrier shall cooperate with the relevant investigating agency's request to minimize any adverse effects of such customer notification.

(3) If the relevant investigating agency determines that public disclosure or notice to customers would impede or compromise an ongoing or potential criminal investigation or national security, such agency may direct the carrier not to so disclose or notify for an initial period of up to 30 days. Such period may be extended by the agency as reasonably necessary in the judgment of the agency. If such direction is given, the agency shall notify the carrier when it appears that public disclosure or notice to affected customers will no longer impede or compromise a criminal investigation or national security. The agency shall provide in writing its initial direction to the carrier, any subsequent extension, and any notification that notice will no longer impede or compromise a criminal investigation or national security and such writings shall be contemporaneously logged on the same reporting facility that contains records of notifications filed by carriers.

(c) *Customer notification.* After a telecommunications carrier has completed the process of notifying law enforcement pursuant to paragraph (b) of this section, it shall notify its customers of a breach of those customers' CPNI.

(d) *Recordkeeping.* All carriers shall maintain a record, electronically or in

some other manner, of any breaches discovered, notifications made to the USSS and the FBI pursuant to paragraph (b) of this section, and notifications made to customers. The record must include, if available, dates of discovery and notification, a detailed description of the CPNI that was the subject of the breach, and the circumstances of the breach. Carriers shall retain the record for a minimum of 2 years.

(e) *Definitions.* As used in this section, a "breach" has occurred when a person, without authorization or exceeding authorization, has intentionally gained access to, used, or disclosed CPNI.

(f) This section does not supersede any statute, regulation, order, or interpretation in any State, except to the extent that such statute, regulation, order, or interpretation is inconsistent with the provisions of this section, and then only to the extent of the inconsistency.

[72 FR 31963, June 8, 2007]

Subparts V–W [Reserved]

Subpart X—Subscriber List Information

SOURCE: 64 FR 53947, Oct. 5, 2000, unless otherwise noted.

§ 64.2301 Basis and purpose.

(a) *Basis.* These rules are issued pursuant to the Communications Act of 1934, as amended.

(b) *Purpose.* The purpose of these rules is to implement section 222(e) of the Communications Act of 1934, as amended, 47 U.S.C. 222. Section 222(e) requires that "a telecommunications carrier that provides telephone exchange service shall provide subscriber list information gathered in its capacity as a provider of such service on a timely and unbundled basis, under non-discriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format."

§ 64.2305 Definitions.

Terms used in this subpart have the following meanings:

(a) *Base file subscriber list information.* A directory publisher requests base file subscriber list information when the publisher requests, as of a given date, all of a carrier's subscriber list information that the publisher wishes to include in one or more directories.

(b) *Business subscriber.* Business subscriber refers to a subscriber to telephone exchange service for businesses.

(c) *Primary advertising classification.* A primary advertising classification is the principal business heading under which a subscriber to telephone exchange service for businesses chooses to be listed in the yellow pages, if the carrier either assigns that heading or is obligated to provide yellow pages listings as part of telephone exchange service to businesses. In other circumstances, a primary advertising classification is the classification of a subscriber to telephone exchange service as a business subscriber.

(d) *Residential subscriber.* Residential subscriber refers to a subscriber to telephone exchange service that is not a business subscriber.

(e) *Subscriber list information.* Subscriber list information is any information:

(1) Identifying the listed names of subscribers of a carrier and such subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses, or classifications; and

(2) That the carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format.

(f) *Telecommunications carrier.* A telecommunications carrier is any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in 47 U.S.C. 226(a)(2)).

(g) *Telephone exchange service.* Telephone exchange service means:

(1) Service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily fur-

nished by a single exchange, and which is covered by the exchange service charge, or

(B) Comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.

(h) *Updated subscriber list information.* A directory publisher requests updated subscriber list information when the publisher requests changes to all or any part of a carrier's subscriber list information occurring between specified dates.

§ 64.2309 Provision of subscriber list information.

(a) A telecommunications carrier that provides telephone exchange service shall provide subscriber list information gathered in its capacity as a provider of such service on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format.

(b) The obligation under paragraph (a) to provide a particular telephone subscriber's subscriber list information extends only to the carrier that provides that subscriber with telephone exchange service.

§ 64.2313 Timely basis.

(a) For purposes of § 64.2309, a telecommunications carrier provides subscriber list information on a timely basis only if the carrier provides the requested information to the requesting directory publisher either:

(1) At the time at which, or according to the schedule under which, the directory publisher requests that the subscriber list information be provided;

(2) When the carrier does not receive at least thirty days advance notice of the time the directory publisher requests that subscriber list information be provided, on the first business day that is at least thirty days from date the carrier receives that request; or

(3) At a time determined in accordance with paragraph (b) of this section.

(b) If a carrier's internal systems do not permit the carrier to provide subscriber list information within either

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of the time frames specified in paragraph (a)(1) of this section, the carrier shall:

(1) Within thirty days of receiving the publisher's request, inform the directory publisher that the requested schedule cannot be accommodated and tell the directory publisher which schedules can be accommodated; and

(2) Adhere to the schedule the directory publisher chooses from among the available schedules.

§ 64.2317 Unbundled basis.

(a) A directory publisher may request that a carrier unbundle subscriber list information on any basis for the purpose of publishing one or more directories.

(b) For purposes of § 64.2309, a telecommunications carrier provides subscriber list information on an unbundled basis only if the carrier provides:

(1) The listings the directory publisher requests and no other listings, products, or services; or

(2) Subscriber list information on a basis determined in accordance with paragraph (c) of this section.

(c) If the carrier's internal systems do not permit it unbundle subscriber list information on the basis a directory publisher requests, the carrier must:

(1) Within thirty days of receiving the publisher's request, inform the directory publisher that it cannot unbundle subscriber list information on the requested basis and tell the directory publisher the bases on which the carrier can unbundle subscriber list information; and

(2) In accordance with paragraph (d) of this section, provide subscriber list information to the directory publisher unbundled on the basis the directory publisher chooses from among the available bases.

(d) If a carrier provides a directory publisher listings in addition to those the directory publisher requests, the carrier may impose charges for, and the directory publisher may publish, only the requested listings.

(e) A carrier must not require directory publishers to purchase any product or service other than subscriber

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list information as a condition of obtaining subscriber list information.

§ 64.2321 Nondiscriminatory rates, terms, and conditions.

For purposes of § 64.2309, a telecommunications carrier provides subscriber list information under nondiscriminatory rates, terms, and conditions only if the carrier provides subscriber list information gathered in its capacity as a provider of telephone exchange service to a requesting directory publisher at the same rates, terms, and conditions that the carrier provides the information to its own directory publishing operation, its directory publishing affiliate, or other directory publishers.

§ 64.2325 Reasonable rates, terms, and conditions.

(a) For purposes of § 64.2309, a telecommunications carrier will be presumed to provide subscriber list information under reasonable rates if its rates are no more than \$0.04 a listing for base file subscriber list information and no more than \$0.06 a listing for updated subscriber list information.

(b) For purposes of § 64.2309, a telecommunications carrier provides subscriber list information under reasonable terms and conditions only if the carrier does not restrict a directory publisher's choice of directory format.

§ 64.2329 Format.

(a) A carrier shall provide subscriber list information obtained in its capacity as a provider of telephone exchange service to a requesting directory publisher in the format the publisher specifies, if the carrier's internal systems can accommodate that format.

(b) If a carrier's internal systems do not permit the carrier to provide subscriber list information in the format the directory publisher specifies, the carrier shall:

(1) Within thirty days of receiving the publisher's request, inform the directory publisher that the requested format cannot be accommodated and tell the directory publisher which formats can be accommodated; and

(2) Provide the requested subscriber list information in the format the directory publisher chooses from among the available formats.

§ 64.2333 Burden of proof.

(a) In any future proceeding arising under section 222(e) of the Communications Act or § 64.2309, the burden of proof will be on the carrier to the extent it claims its internal subscriber list information systems cannot accommodate the delivery time, delivery schedule, unbundling level, or format requested by a directory publisher.

(b) In any future proceeding arising under section 222(e) of the Communications Act or § 64.2309, the burden of proof will be on the carrier to the extent it seeks a rate exceeding \$0.04 per listing for base file subscriber list information or \$0.06 per listing for updated subscriber list information.

§ 64.2337 Directory publishing purposes.

(a) Except to the extent the carrier and directory publisher otherwise agree, a directory publisher shall use subscriber list information obtained pursuant to section 222(e) of the Communications Act or § 64.2309 only for the purpose of publishing directories.

(b) A directory publisher uses subscriber list information “for the purpose of publishing directories” if the publisher includes that information in a directory, or uses that information to determine what information should be included in a directory, solicit advertisers for a directory, or deliver directories.

(c) A telecommunications carrier may require any person requesting subscriber list information pursuant to section 222(e) of the Communications Act or § 64.2309 to certify that the publisher will use the information only for purposes of publishing a directory.

(d) A carrier must provide subscriber list information to a requesting directory publisher even if the carrier believes that the directory publisher will use that information for purposes other than or in addition to directory publishing.

§ 64.2341 Record keeping.

(a) A telecommunications carrier must retain, for at least one year after its expiration, each written contract that it has executed for the provision of subscriber list information for directory publishing purposes to itself, an affiliate, or an entity that publishes directories on the carrier's behalf.

(b) A telecommunications carrier must maintain, for at least one year after the carrier provides subscriber list information for directory publishing purposes to itself, an affiliate, or an entity that publishes directories on the carrier's behalf, records of any of its rates, terms, and conditions for providing that subscriber list information which are not set forth in a written contract.

(c) Except to the extent specified in paragraph (d), a carrier shall make the contracts and records described in paragraphs (a) and (b) available, upon request, to the Commission and to any directory publisher that requests those contracts and records for the purpose of publishing a directory.

(d) A carrier need not disclose to a directory publisher pursuant to paragraph (c) portions of requested contracts that are wholly unrelated to the rates, terms, or conditions under which the carrier provides subscriber list information to itself, an affiliate, or an entity that publishes directories on the carrier's behalf.

(e) A carrier may subject its disclosure of subscriber list information contracts or records to a directory publisher pursuant to paragraph (c) to a confidentiality agreement that limits access to and use of the information to the purpose of determining the rates, terms, and conditions under which the carrier provides subscriber list information to itself, an affiliate, or an entity that publishes directories on the carrier's behalf.

[28 FR 13239, Dec. 5, 1963, as amended at 69 FR 62816, Oct. 28, 2004]

§ 64.2345 Primary advertising classification.

A primary advertising classification is assigned at the time of the establishment of telephone exchange service if

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the carrier that provides telephone exchange service assigns the classification or if a tariff or State requirement obligates the carrier to provide yellow pages listings as part of telephone exchange service to businesses.

Subpart Y—Truth-in-Billing Requirements for Common Carriers

SOURCE: 64 FR 34497, June 25, 1999, unless otherwise noted.

§ 64.2400 Purpose and scope.

(a) The purpose of these rules is to reduce slamming and other telecommunications fraud by setting standards for bills for telecommunications service. These rules are also intended to aid customers in understanding their telecommunications bills, and to provide them with the tools they need to make informed choices in the market for telecommunications service.

(b) These rules shall apply to all telecommunications common carriers, except that § 64.2401(a)(2) and 64.2401(c) shall not apply to providers of Commercial Mobile Radio Service as defined in § 20.9 of this chapter, or to other providers of mobile service as defined in § 20.7 of this chapter, unless the Commission determines otherwise in a further rulemaking.

(c) *Preemptive effect of rules.* The requirements contained in this subpart are not intended to preempt the adoption or enforcement of consistent truth-in-billing requirements by the states.

[64 FR 34497, June 25, 1999; 64 FR 56177, Oct. 18, 1999; 65 FR 36637, June 9, 2000, as amended at 65 FR 43258, July 13, 2000; 69 FR 34950, June 23, 2004; 70 FR 29983, May 25, 2005]

§ 64.2401 Truth-in-Billing Requirements.

(a) *Bill organization.* Telephone bills shall be clearly organized, and must comply with the following requirements:

(1) The name of the service provider associated with each charge must be clearly and conspicuously identified on the telephone bill.

(2) Where charges for two or more carriers appear on the same telephone bill, the charges must be separated by service provider.

(3) The telephone bill must clearly and conspicuously identify any change in service provider, including identification of charges from any new service provider. For purpose of this subparagraph “new service provider” means a service provider that did not bill the subscriber for service during the service provider’s last billing cycle. This definition shall include only providers that have continuing relationships with the subscriber that will result in periodic charges on the subscriber’s bill, unless the service is subsequently canceled.

(b) *Descriptions of billed charges.* Charges contained on telephone bills must be accompanied by a brief, clear, non-misleading, plain language description of the service or services rendered. The description must be sufficiently clear in presentation and specific enough in content so that customers can accurately assess that the services for which they are billed correspond to those that they have requested and received, and that the costs assessed for those services conform to their understanding of the price charged.

(c) *“Deniable” and “Non-Deniable” Charges.* Where a bill contains charges for basic local service, in addition to other charges, the bill must distinguish between charges for which non-payment will result in disconnection of basic, local service, and charges for which non-payment will not result in such disconnection. The carrier must explain this distinction to the customer, and must clearly and conspicuously identify on the bill those charges for which non-payment will not result in disconnection of basic, local service. Carriers may also elect to devise other methods of informing consumers on the bill that they may contest charges prior to payment.

(d) *Clear and conspicuous disclosure of inquiry contacts.* Telephone bills must contain clear and conspicuous disclosure of any information that the subscriber may need to make inquiries about, or contest, charges on the bill. Common carriers must prominently

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display on each bill a toll-free number or numbers by which subscribers may inquire or dispute any charges on the bill. A carrier may list a toll-free number for a billing agent, clearinghouse, or other third party, provided such party possesses sufficient information to answer questions concerning the subscriber's account and is fully authorized to resolve the consumer's complaints on the carrier's behalf. Where the subscriber does not receive a paper copy of his or her telephone bill, but instead accesses that bill only by e-mail or internet, the carrier may comply with this requirement by providing on the bill an e-mail or web site address. Each carrier must make a business address available upon request from a consumer.

(e) *Definition of clear and conspicuous.* For purposes of this section, "clear and conspicuous" means notice that would be apparent to the reasonable consumer.

NOTE TO § 64.2401: The following provisions, for which compliance would have been required as of April 1, 2000, have been stayed until such time as the amendments to § 64.2401(a), (d), and (e) become effective (following their approval by the Office of Management and Budget and the publication by the Commission of a document in the FEDERAL REGISTER announcing the effective date of these amended rules) and will be superceded by the amended rules: (1) That portion of § 64.2401(a)(2) that requires that each carrier's "telephone bill must provide clear and conspicuous notification of any change in service provider, including notification to the customer that a new provider has begun providing service," (2) § 64.2401(a)(2)(ii), and (3) § 64.2401(d).

[64 FR 34497, June 25, 1999, as amended at 65 FR 43258, July 13, 2000]

Subpart Z—Prohibition on Exclusive Telecommunications Contracts

SOURCE: 66 FR 2334, Jan. 11, 2001, unless otherwise noted.

§ 64.2500 Prohibited agreements.

(a) No common carrier shall enter into any contract, written or oral, that would in any way restrict the right of any commercial multiunit premises owner, or any agent or representative thereof, to permit any other common

carrier to access and serve commercial tenants on that premises.

(b) No common carrier shall enter into or enforce any contract, written or oral, that would in any way restrict the right of any residential multiunit premises owner, or any agent or representative thereof, to permit any other common carrier to access and serve residential tenants on that premises.

[73 FR 28057, May 15, 2008]

§ 64.2501 Scope of limitation.

For the purposes of this subpart, a multiunit premises is any contiguous area under common ownership or control that contains two or more distinct units. A commercial multiunit premises is any multiunit premises that is predominantly used for non-residential purposes, including for-profit, non-profit, and governmental uses. A residential multiunit premises is any multiunit premises that is predominantly used for residential purposes.

73 FR 28057, May 15, 2008]

§ 64.2502 Effect of state law or regulation.

This subpart shall not preempt any state law or state regulation that requires a governmental entity to enter into a contract or understanding with a common carrier which would restrict such governmental entity's right to obtain telecommunications service from another common carrier.

Subpart AA—Universal Emergency Telephone Number

SOURCE: 67 FR 1649, Jan. 14, 2002, unless otherwise noted.

AUTHORITY: 47 U.S.C. 151, 154(i), 154(j), 157, 160, 210, 202, 208, 214, 251(e), 301, 303, 308, 309(j), and 310.

§ 64.3000 Definitions.

(a) *911 calls.* Any call initiated by an end user by dialing 911 for the purpose of accessing an emergency service provider. For wireless carriers, all 911 calls include those they are required to transmit pursuant to § 20.18 of the Commission's rules.

(b) *Appropriate local emergency authority.* An emergency answering point that

has not been officially designated as a Public Safety Answering Point (PSAP), but has the capability of receiving 911 calls and either dispatching emergency services personnel or, if necessary, relaying the call to another emergency service provider. An appropriate local emergency authority may include, but is not limited to, an existing local law enforcement authority, such as the police, county sheriff, local emergency medical services provider, or fire department.

(c) *Public Safety Answering Point (PSAP).* A facility that has been designated to receive 911 calls and route them to emergency services personnel.

(d) *Statewide default answering point.* An emergency answering point designated by the State to receive 911 calls for either the entire State or those portions of the State not otherwise served by a local PSAP.

§ 64.3001 Obligation to transmit 911 calls.

All telecommunications carriers shall transmit all 911 calls to a PSAP, to a designated statewide default answering point, or to an appropriate local emergency authority as set forth in § 64.3002.

§ 64.3002 Transition to 911 as the universal emergency telephone number.

As of December 11, 2001, except where 911 is already established as the exclusive emergency number to reach a PSAP within a given jurisdiction, telecommunications carriers shall comply with the following transition periods:

(a) Where a PSAP has been designated, telecommunications carriers shall complete all translation and routing necessary to deliver 911 calls to a PSAP no later than September 11, 2002.

(b) Where no PSAP has been designated, telecommunications carriers shall complete all translation and routing necessary to deliver 911 calls to the statewide default answering point no later than September 11, 2002.

(c) Where neither a PSAP nor a statewide default answering point has been designated, telecommunications carriers shall complete the translation and routing necessary to deliver 911 calls to an appropriate local emergency

authority, within nine months of a request by the State or locality.

(d) Where no PSAP nor statewide default answering point has been designated, and no appropriate local emergency authority has been selected by an authorized state or local entity, telecommunications carriers shall identify an appropriate local emergency authority, based on the exercise of reasonable judgment, and complete all translation and routing necessary to deliver 911 calls to such appropriate local emergency authority no later than September 11, 2002.

(e) Once a PSAP is designated for an area where none had existed as of December 11, 2001, telecommunications carriers shall complete the translation and routing necessary to deliver 911 calls to that PSAP within nine months of that designation.

§ 64.3003 Obligation for providing a permissive dialing period.

Upon completion of translation and routing of 911 calls to a PSAP, a statewide default answering point, to an appropriate local emergency authority, or, where no PSAP nor statewide default answering point has been designated and no appropriate local emergency authority has been selected by an authorized state or local entity, to an appropriate local emergency authority, identified by a telecommunications carrier based on the exercise of reasonable judgment, the telecommunications carrier shall provide permissive dialing between 911 and any other seven- or ten-digit emergency number or an abbreviated dialing code other than 911 that the public has previously used to reach emergency service providers until the appropriate State or local jurisdiction determines to phase out the use of such seven- or ten-digit number entirely and use 911 exclusively.

§ 64.3004 Obligation for providing an intercept message.

Upon termination of permissive dialing, as provided under § 64.3003, telecommunications carriers shall provide a standard intercept message announcement that interrupts calls placed to the emergency service provider using either a seven- or ten-digit

emergency number or an abbreviated dialing code other than 911 and informs the caller of the dialing code change.

Subpart BB—Restrictions on Unwanted Mobile Service Commercial Messages

AUTHORITY: 15 U.S.C. 7701–7713, Public Law 108–187, 117 Stat. 2699.

§ 64.3100 Restrictions on mobile service commercial messages.

(a) No person or entity may initiate any mobile service commercial message, as those terms are defined in paragraph (c)(7) of this section, unless:

(1) That person or entity has the express prior authorization of the addressee;

(2) That person or entity is forwarding that message to its own address;

(3) That person or entity is forwarding to an address provided that

(i) The original sender has not provided any payment, consideration or other inducement to that person or entity; and

(ii) That message does not advertise or promote a product, service, or Internet website of the person or entity forwarding the message; or

(4) The address to which that message is sent or directed does not include a reference to a domain name that has been posted on the FCC's wireless domain names list for a period of at least 30 days before that message was initiated, provided that the person or entity does not knowingly initiate a mobile service commercial message.

(b) Any person or entity initiating any mobile service commercial message must:

(1) Cease sending further messages within ten (10) days after receiving such a request by a subscriber;

(2) Include a functioning return electronic mail address or other Internet-based mechanism that is clearly and conspicuously displayed for the purpose of receiving requests to cease the initiating of mobile service commercial messages and/or commercial electronic mail messages, and that does not require the subscriber to view or hear further commercial content other than institutional identification;

(3) Provide to a recipient who electronically grants express prior authorization to send commercial electronic mail messages with a functioning option and clear and conspicuous instructions to reject further messages by the same electronic means that was used to obtain authorization;

(4) Ensure that the use of at least one option provided in paragraphs (b)(2) and (b)(3) of this section does not result in additional charges to the subscriber;

(5) Identify themselves in the message in a form that will allow a subscriber to reasonably determine that the sender is the authorized entity; and

(6) For no less than 30 days after the transmission of any mobile service commercial message, remain capable of receiving messages or communications made to the electronic mail address, other Internet-based mechanism or, if applicable, other electronic means provided by the sender as described in paragraph (b)(2) and (b)(3) of this section.

(c) *Definitions.* For the purpose of this subpart:

(1) *Commercial Mobile Radio Service Provider* means any provider that offers the services defined in 47 CFR Section 20.9.

(2) *Commercial electronic mail message* means the term as defined in the CAN-SPAM Act, 15 U.S.C 7702 and as further defined under 16 CFR 316.3. The term is defined as “an electronic message for which the primary purpose is commercial advertisement or promotion of a commercial product or service (including content on an Internet Web site operated for a commercial purpose).” The term “commercial electronic mail message” does not include a transactional or relationship message.

(3) *Domain name* means any alphanumeric designation which is registered with or assigned by any domain name registrar, domain name registry, or other domain name registration authority as part of an electronic address on the Internet.

(4) *Electronic mail address* means a destination, commonly expressed as a string of characters, consisting of a unique user name or mailbox and a reference to an Internet domain, whether

or not displayed, to which an electronic mail message can be sent or delivered.

(5) *Electronic mail message* means a message sent to a unique electronic mail address.

(6) *Initiate*, with respect to a commercial electronic mail message, means to originate or transmit such messages or to procure the origination or transmission of such message, but shall not include actions that constitute routine conveyance of such message. For purposes of this paragraph, more than one person may be considered to have initiated a message. “Routine conveyance” means the transmission, routing, relaying, handling, or storing, through an automatic technical process, or an electronic mail message for which another person has identified the recipients or provided the recipient addresses.

(7) *Mobile Service Commercial Message* means a commercial electronic mail message that is transmitted directly to a wireless device that is utilized by a subscriber of a commercial mobile service (as such term is defined in section 332(d) of the Communications Act of 1934 (47 U.S.C. 332(d)) in connection with such service. A commercial message is presumed to be a mobile service commercial message if it is sent or directed to any address containing a reference, whether or not displayed, to an Internet domain listed on the FCC’s wireless domain names list. The FCC’s wireless domain names list will be available on the FCC’s website and at the Commission headquarters, 445 12th St., SW., Washington, DC 20554.

(8) *Transactional or relationship message* means the following and is further defined under 16 CFR 316.3 as any electronic mail message the primary purpose of which is:

(i) To facilitate, complete, or confirm a commercial transaction that the recipient has previously agreed to enter into with the sender;

(ii) To provide warranty information, product recall information, or safety or security information with respect to a commercial product or service used or purchased by the recipient;

(iii) To provide:

(A) Notification concerning a change in the terms or features of;

(B) Notification of a change in the recipient’s standing or status with respect to; or

(C) At regular periodic intervals, account balance information or other type of account statement with respect to a subscription, membership, account, loan, or comparable ongoing commercial relationship involving the ongoing purchase or use by the recipient of products or services offered by the sender;

(D) To provide information directly related to an employment relationship or related benefit plan in which the recipient is currently involved, participating, or enrolled; or

(E) To deliver goods or services, including product updates or upgrades, that the recipient is entitled to receive under the terms of a transaction that the recipient has previously agreed to enter into with the sender.

(d) *Express Prior Authorization* may be obtained by oral or written means, including electronic methods.

(1) Written authorization must contain the subscriber’s signature, including an electronic signature as defined by 15 U.S.C. 7001 (E-Sign Act).

(2) All authorizations must include the electronic mail address to which mobile service commercial messages can be sent or directed. If the authorization is made through a website, the website must allow the subscriber to input the specific electronic mail address to which commercial messages may be sent.

(3) Express Prior Authorization must be obtained by the party initiating the mobile service commercial message. In the absence of a specific request by the subscriber to the contrary, express prior authorization shall apply only to the particular person or entity seeking the authorization and not to any affiliated entities unless the subscriber expressly agrees to their being included in the express prior authorization.

(4) Express Prior Authorization may be revoked by a request from the subscriber, as noted in paragraph (b)(2) and (b)(3) of this section.

(5) All requests for express prior authorization must include the following disclosures:

(i) That the subscriber is agreeing to receive mobile service commercial

messages sent to his/her wireless device from a particular sender. The disclosure must state clearly the identity of the business, individual, or other entity that will be sending the messages;

(ii) That the subscriber may be charged by his/her wireless service provider in connection with receipt of such messages; and

(iii) That the subscriber may revoke his/her authorization to receive MSCMs at any time.

(6) All notices containing the required disclosures must be clearly legible, use sufficiently large type or, if audio, be of sufficiently loud volume, and be placed so as to be readily apparent to a wireless subscriber. Any such disclosures must be presented separately from any other authorizations in the document or oral presentation. If any portion of the notice is translated into another language, then all portions of the notice must be translated into the same language.

(e) All CMRS providers must identify all electronic mail domain names used to offer subscribers messaging specifically for wireless devices in connection with commercial mobile service in the manner and time-frame described in a public notice to be issued by the Consumer & Governmental Affairs Bureau.

(f) Each CMRS provider is responsible for the continuing accuracy and completeness of information furnished for the FCC's wireless domain names list. CMRS providers must:

(1) File any future updates to listings with the Commission not less than 30 days before issuing subscribers any new or modified domain name;

(2) Remove any domain name that has not been issued to subscribers or is no longer in use within 6 months of placing it on the list or last date of use; and

(3) Certify that any domain name placed on the FCC's wireless domain names list is used for mobile service messaging.

[69 FR 55779, Sept. 16, 2004, as amended at 70 FR 34666, June 15, 2005]

Subpart CC—Customer Account Record Exchange Requirements

AUTHORITY: 47 U.S.C. 154, 201, 202, 222, 258 unless otherwise noted.

SOURCE: 70 FR 32263, June 2, 2005, unless otherwise noted.

§ 64.4000 Basis and purpose.

(a) *Basis*. The rules in this subpart are issued pursuant to the Communications Act of 1934, as amended.

(b) *Purpose*. The purpose of these rules is to facilitate the timely and accurate establishment, termination, and billing of customer telephone service accounts.

§ 64.4001 Definitions.

Terms in this subpart have the following meanings:

(a) *Automatic number identification (ANI)*. The term automatic number identification refers to the delivery of the calling party's billing telephone number by a local exchange carrier to any interconnecting carrier for billing or routing purposes.

(b) *Billing name and address (BNA)*. The term billing name and address means the name and address provided to a [LEC] by each of its local exchange customers to which the [LEC] directs bills for its services.

(c) *Customer*. The term customer means the end user to whom a local exchange carrier or interexchange carrier is providing local exchange or telephone toll service.

(d) *Interexchange carrier (IXC)*. The term interexchange carrier means a telephone company that provides telephone toll service. An interexchange carrier does not include commercial mobile radio service providers as defined by federal law.

(e) *Local exchange carrier (LEC)*. The term local exchange carrier means any person that is engaged in the provision of telephone exchange service or exchange access. Such term does not include a person insofar as such person is engaged in the provision of a commercial mobile service under § 332(c), except to the extent that the Commission finds that such service should be included in the definition of that term.

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(f) *Preferred interexchange carrier (PIC)*. The term preferred interexchange carrier means the carrier to which a customer chooses to be presubscribed for purposes of receiving intraLATA and/or interLATA and/or international toll services.

§ 64.4002 Notification obligations of LECs.

To the extent that the information is reasonably available to a LEC, the LEC shall provide to an IXC the customer account information described in this section consistent with § 64.4004. Nothing in this section shall prevent a LEC from providing additional customer account information to an IXC to the extent that such additional information is necessary for billing purposes or to properly execute a customer's PIC order.

(a) *Customer-submitted PIC order*. Upon receiving and processing a PIC selection submitted by a customer and placing the customer on the network of the customer's preferred interexchange carrier at the LEC's local switch, the LEC must notify the IXC of this event. The notification provided by the LEC to the IXC must contain all of the customer account information necessary to allow for proper billing of the customer by the IXC including but not limited to:

(1) The customer's billing telephone number, working telephone number, and billing name and address;

(2) The effective date of the PIC change;

(3) A statement describing the customer type (i.e., business or residential);

(4) A statement indicating, to the extent appropriate, that the customer's telephone service listing is not printed in a directory and is not available from directory assistance or is not printed in a directory but is available from directory assistance;

(5) The jurisdictional scope of the PIC installation (i.e., intraLATA and/or interLATA and/or international);

(6) The carrier identification code of the IXC; and

(7) If relevant, a statement indicating that the customer's account is subject to a PIC freeze. The notification also must contain information, if relevant

and to the extent that it is available, reflecting the fact that a customer's PIC selection was the result of:

(i) A move (an end user customer has moved from one location to another within a LEC's service territory);

(ii) A change in responsible billing party; or

(iii) The resolution of a PIC dispute.

(b) *Confirmation of IXC-submitted PIC order*. When a LEC has placed a customer on an IXC's network at the local switch in response to an IXC-submitted PIC order, the LEC must send a confirmation to the submitting IXC. The confirmation provided by the LEC to the IXC must include:

(1) The customer's billing telephone number, working telephone number, and billing name and address;

(2) The effective date of the PIC change;

(3) A statement describing the customer type (i.e., business or residential);

(4) A statement indicating, to the extent appropriate, if the customer's telephone service listing is not printed in a directory and is not available from directory assistance, or is not printed in a directory but is available from directory assistance;

(5) The jurisdictional scope of the PIC installation (i.e., intraLATA and/or interLATA and/or international); and

(6) The carrier identification code of the IXC. If the PIC order at issue originally was submitted by an underlying IXC on behalf of a toll reseller, the confirmation provided by the LEC to the IXC must indicate, to the extent that this information is known, a statement indicating that the customer's PIC is a toll reseller.

(c) *Rejection of IXC-submitted PIC order*. When a LEC rejects or otherwise does not act upon a PIC order submitted to it by an IXC, the LEC must notify the IXC and provide the reason(s) why the PIC order could not be processed. The notification provided by the LEC to the IXC must state that it has rejected the IXC-submitted PIC order and specify the reason(s) for the rejection (e.g., due to a lack of information, incorrect information, or a PIC freeze on the customer's account). The notification must contain the

identical data elements that were provided to the LEC in the original IXC-submitted PIC order (i.e., mirror image of the original order), unless otherwise specified by this paragraph. If a LEC rejects an IXC-submitted PIC order for a multi-line account (i.e., the customer has selected the IXC as his PIC for two or more lines or terminals associated with his billing telephone number), the notification provided by the LEC rejecting that order must explain the effect of the rejection with respect to each line (working telephone number or terminal) associated with the customer's billing telephone number. A LEC is not required to generate a line-specific or terminal-specific response, however, and may communicate the rejection at the billing telephone level, when the LEC is unable to process an entire order, including all working telephone numbers and terminals associated with a particular billing telephone number. In addition, the notification must indicate the jurisdictional scope of the PIC order rejection (i.e., intraLATA and/or interLATA and/or international). If a LEC rejects a PIC order because:

(1) The customer's telephone number has been ported to another LEC; or

(2) The customer has otherwise changed local service providers, the LEC must include in its notification, to the extent that it is available, the identity of the customer's new LEC.

(d) *Customer contacts LEC or new IXC to change PIC(s) or customer contacts LEC or current IXC to change PIC to No-PIC.* When a LEC has removed at its local switch a presubscribed customer from an IXC's network in response to a customer order, upon receipt of a properly verified PIC order submitted by another IXC, or in response to a notification from the customer's current IXC relating to the customer's request to change his or her PIC to No-PIC, the LEC must notify the customer's former IXC of this event. The LEC must provide to the IXC the customer account information that is necessary to allow for proper final billing of the customer by the IXC including but not limited to:

(1) The customer's billing telephone number, working telephone number, and billing name and address;

(2) The effective date of the PIC change;

(3) A description of the customer type (i.e., business or residential);

(4) The jurisdictional scope of the lines or terminals affected (i.e., intraLATA and/or interLATA and/or international); and

(5) The carrier identification code of the IXC. If a customer changes PICs but retains the same LEC, the LEC is responsible for notifying both the old PIC and new PIC of the PIC change. The notification also must contain information, if relevant and to the extent that it is available, reflecting the fact that a customer's PIC removal was the result of:

(i) The customer moving from one location to another within the LEC's service territory, but where there is no change in local service provider;

(ii) A change of responsible party on an account; or

(iii) A disputed PIC selection.

(e) *Particular changes to customer's local service account.* When, according to a LEC's records, certain account or line information changes occur on a presubscribed customer's account, the LEC must communicate this information to the customer's PIC. For purposes of this paragraph, the LEC must provide to the appropriate IXC account change information that is necessary for the IXC to issue timely and accurate bills to its customers including but not limited to:

(1) The customer's billing telephone number, working telephone number, and billing name and address;

(2) The customer code assigned to that customer by the LEC;

(3) The type of customer account (i.e., business or residential);

(4) The status of the customer's telephone service listing, to the extent appropriate, as not printed in a directory and not available from directory assistance, or not printed in a directory but available from directory assistance; and

(5) The jurisdictional scope of the PIC installation (i.e., intraLATA and/or interLATA and/or international);

(6) The effective date of any change to a customer's local service account; and

(7) The carrier identification code of the IXC. If there are changes to the customer's billing or working telephone number, customer code, or customer type, the LEC must supply both the old and new information for each of these categories.

(f) *Local service disconnection.* Upon receipt of an end user customer's request to terminate his entire local service account or disconnect one or more lines (but not all lines) of a multi-line account, the LEC must notify the PIC(s) for the billing telephone number or working telephone number on the account of the account termination or lines disconnected. In conjunction with this notification requirement, the LEC must provide to a customer's PIC(s) all account termination or single/multi-line disconnection change information necessary for the PIC(s) to maintain accurate billing and PIC records, including but not limited to:

- (1) The effective date of the termination/disconnection; and
- (2) The customer's working and billing telephone numbers and billing name and address;
- (3) The type of customer account (i.e., business or residential);
- (4) The jurisdictional scope of the PIC installation (i.e., intraLATA and/or interLATA and/or international); and
- (5) The carrier identification code of the IXC.

(g) *Change of local service provider.* When a customer changes LECs, the customer's former LEC must notify the customer's PIC(s) of the customer's change in LEC and, if known, the identity of the customer's new LEC. If the customer also makes a PIC change, the customer's former LEC must also notify the customer's former PIC(s) of the change. When a customer only changes LECs, the new LEC must notify the customer's current PIC(s) that the customer's PIC selection has not changed. If the customer also makes a PIC change, the new LEC must notify the customer's new PIC of the customer's PIC selection. If the customer's former LEC is unable to identify the customer's new LEC, the former LEC must notify the customer's PIC(s) of a local

service disconnection as described in paragraph (f).

(1) The required notifications also must contain information, if relevant and to the extent that it is available, reflecting the fact that an account change was the result of:

- (i) The customer porting his number to a new LEC;
 - (ii) A local resale arrangement (customer has transferred to local reseller); or
 - (iii) The discontinuation of a local resale arrangement;
- (2) The notification provided by the LEC to the IXC must include:
- (i) The customer's billing telephone number, working telephone number, and, billing name and address;
 - (ii) The effective date of the change of local service providers or PIC change;
 - (iii) A description of the customer type (i.e., business or residential);
 - (iv) The jurisdictional scope of the lines or terminals affected (i.e., intraLATA and/or interLATA and/or international); and
 - (v) The carrier identification code of the IXC.

(h) *IXC requests for customer BNA information.* Upon the request of an IXC, a LEC must provide the billing name and address information necessary to facilitate a customer's receipt of a timely, accurate bill for services rendered and/or to prevent fraud, regardless of the type of service the end user receives/has received from the requesting carrier (i.e., presubscribed, dial-around, casual). In response to an IXC's BNA request for ANI, a LEC must provide the BNA for the submitted ANI along with:

- (1) The working telephone number for the ANI;
- (2) The date of the BNA response;
- (3) The carrier identification code of the submitting IXC; and
- (4) A statement indicating, to the extent appropriate, if the customer's telephone service listing is not printed in a directory and is not available from directory assistance, or is not printed in a directory but is available from directory assistance. A LEC that is unable to provide the BNA requested must provide the submitting carrier

with the identical information contained in the original BNA request (i.e., the mirror image of the original request), along with the specific reason(s) why the requested information could not be provided. If the BNA is not available because the customer has changed local service providers or ported his telephone number, the LEC must include the identity of the new provider when this information is available.

[71 FR 74821, Dec. 13, 2006]

§ 64.4003 Notification obligations of IXC.

To the extent that the information is reasonably available to an IXC, the IXC shall provide to a LEC the customer account information described in this section consistent with § 64.4004. Nothing in this section shall prevent an IXC from providing additional customer account information to a LEC to the extent that such additional information is necessary for billing purposes or to properly execute a customer's PIC Order.

(a) *IXC-submitted PIC Order.* When a customer contacts an IXC to establish interexchange service on a presubscribed basis, the IXC selected must submit the customer's properly verified PIC Order (see 47 CFR 64.1120(a)) to the customer's LEC, instructing the LEC to install or change the PIC for the customer's line(s) to that IXC. The notification provided by the IXC to the LEC must contain all of the information necessary to properly execute the Order including but not limited to:

(1) The customer's billing telephone number or working telephone number associated with the lines or terminals that are to be presubscribed to the IXC;

(2) The date of the IXC-submitted PIC Order;

(3) The jurisdictional scope of the PIC Order (i.e., intraLATA and/or interLATA and/or international); and

(4) The carrier identification code of the submitting IXC.

(b) *Customer contacts IXC to cancel PIC and to select no-PIC status.* When an end user customer contacts an IXC to discontinue interexchange service on a presubscribed basis, the IXC must confirm that it is the customer's desire to

have no PIC and, if that is the case, the IXC must notify the customer's LEC. The IXC also is encouraged to instruct the customer to notify his LEC. An IXC may satisfy this requirement by establishing a three-way call with the customer and the customer's LEC to confirm that it is the customer's desire to have no PIC and, where appropriate, to provide the customer the opportunity to withdraw any PIC freeze that may be in place. The notification provided by the IXC to the LEC must contain the customer account information necessary to properly execute the cancellation Order including but not limited to:

(1) The customer's billing telephone number or working telephone number associated with the lines or terminals that are affected;

(2) The date of the IXC-submitted PIC removal Order;

(3) The jurisdictional scope of the PIC removal Order (i.e., intraLATA and/or interLATA and/or international); and

(4) The carrier identification code of the submitting IXC.

[70 FR 32263, June 2, 2005; 70 FR 54301, Sept. 14, 2005]

EFFECTIVE DATE NOTES: 1. At 70 FR 32263, June 2, 2005, § 64.4003, was added. This text contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

2. At 70 FR 54301, Sept. 14, 2005, in § 64.4003, the introductory text, (a) introductory text, (a)(2), (a)(3), (b) introductory text, (b)(2) and (b)(3) were corrected. This text contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 64.4004 Timeliness of required notifications.

Carriers subject to the requirements of this section shall provide the required notifications promptly and without unreasonable delay.

§ 64.4005 Unreasonable terms or conditions on the provision of customer account information.

To the extent that a carrier incurs costs associated with providing the notifications required by this section, the

carrier may recover such costs, consistent with federal and state laws, through the filing of tariffs, via negotiated agreements, or by other appropriate mechanisms. Any cost recovery method must be reasonable and must recover only costs that are associated with providing the particular information. The imposition of unreasonable terms or conditions on the provision of information required by this section may be considered an unreasonable carrier practice under section 201(b) of the Communications Act of 1934, as amended, and may subject the carrier to appropriate enforcement action.

§ 64.4006 Limitations on use of customer account information.

A carrier that receives customer account information under this section shall use such information to ensure timely and accurate billing of a customer's account and to ensure timely and accurate execution of a customer's preferred interexchange carrier instructions. Such information shall not be used for marketing purposes without the express consent of the customer.

Subpart DD—Prepaid Calling Card Providers

SOURCE: 71 FR 43673, Aug. 2, 2006, unless otherwise noted.

§ 64.5000 Definitions.

(a) *Prepaid calling card.* The term “prepaid calling card” means a card or similar device that allows users to pay in advance for a specified amount of calling, without regard to additional features, functions, or capabilities available in conjunction with the calling service.

(b) *Prepaid calling card provider.* The term “prepaid calling card provider” means any entity that provides telecommunications service to consumers through the use of a prepaid calling card.

§ 64.5001 Reporting and certification requirements.

(a) All prepaid calling card providers must report prepaid calling card percentage of interstate use (PIU) factors, and call volumes from which these fac-

tors were calculated, based on not less than a one-day representative sample, to those carriers from which they purchase transport services. Such reports must be provided no later than the 45th day of each calendar quarter for the previous quarter.

(b) If a prepaid calling card provider fails to provide the appropriate PIU information to a transport provider in the time allowed, the transport provider may apply a 50 percent default PIU factor to the prepaid calling card provider's traffic.

(c) On a quarterly basis, every prepaid calling card provider must submit to the Commission a certification, signed by an officer of the company under penalty of perjury, providing the following information with respect to the prior quarter:

(1) The percentage of intrastate, interstate, and international calling card minutes for that reporting period;

(2) The percentage of total prepaid calling card service revenue (excluding revenue from prepaid calling cards sold by, to, or pursuant to contract with the Department of Defense (DoD) or a DoD entity) attributable to interstate and international calls for that reporting period;

(3) A statement that it is making the required Universal Service Fund contribution based on the reported information; and

(4) A statement that it has complied with the reporting requirements described in paragraph (a) of this section.

EFFECTIVE DATE NOTE: At 71 FR 43673, Aug. 2, 2006, part 64 was amended by adding subpart DD, effective Oct. 31, 2006. Section 64.5001(a), (b) and (c) contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

APPENDIX A TO PART 64—TELECOMMUNICATIONS SERVICE PRIORITY (TSP) SYSTEM FOR NATIONAL SECURITY EMERGENCY PREPAREDNESS (NSEP)

1. Purpose and Authority

a. This appendix establishes policies and procedures and assigns responsibilities for the National Security Emergency Preparedness (NSEP) Telecommunications Service Priority (TSP) System. The NSEP TSP System authorizes priority treatment to certain

domestic telecommunications services (including portions of U.S. international telecommunication services provided by U.S. service vendors) for which provisioning or restoration priority (RP) levels are requested, assigned, and approved in accordance with this appendix.

b. This appendix is issued pursuant to sections 1, 4(i), 201 through 205 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201 through 205 and 303(r). These sections grant to the Federal Communications Commission (FCC) the authority over the assignment and approval of priorities for provisioning and restoration of common carrier-provided telecommunications services. Under section 706 of the Communications Act, this authority may be superseded, and expanded to include non-common carrier telecommunication services, by the war emergency powers of the President of the United States. This appendix provides the Commission's Order to telecommunication service vendors and users to comply with policies and procedures establishing the NSEP TSP System, until such policies and procedures are superseded by the President's war emergency powers. This appendix is intended to be read in conjunction with regulations and procedures that the Executive Office of the President issues (1) to implement responsibilities assigned in section 6(b) of this appendix, or (2) for use in the event this appendix is superseded by the President's war emergency powers.

c. Together, this appendix and the regulations and procedures issued by the Executive Office of the President establish one uniform system of priorities for provisioning and restoration of NSEP telecommunication services both before and after invocation of the President's war emergency powers. In order that government and industry resources may be used effectively under all conditions, a single set of rules, regulations, and procedures is necessary, and they must be applied on a day-to-day basis to all NSEP services so that the priorities they establish can be implemented at once when the need arises.

*In sections 2(a)(2) and 2(b)(2) of Executive Order No. 12472, "Assignment of National Security and Emergency Preparedness Telecommunications Functions" April 3, 1984 (49 FR 13471 (1984)), the President assigned to the Director, Office of Science and Technology Policy, certain NSEP telecommunication resource management responsibilities. The term "Executive Office of the President" as used in this appendix refers to the official or organization designated by the President to act on his behalf.

2. Applicability and Revocation

a. This appendix applies to NSEP telecommunications services:

(1) For which initial or revised priority level assignments are requested pursuant to section 8 of this appendix.

(2) Which were assigned restoration priorities under the provision of FCC Order 80-581; 81 FCC 2d 441 (1980); 47 CFR part 64, appendix A, "Priority System for the Restoration of Common Carrier Provided Intercity Private Line Services"; and are being resubmitted for priority level assignments pursuant to section 10 of this appendix. (Such services will retain assigned restoration priorities until a resubmission for a TSP assignment is completed or until the existing RP rules are terminated.)

b. FCC Order 80-581 will continue to apply to all other intercity, private line circuits assigned restoration priorities thereunder until the fully operating capability date of this appendix, 30 months after the initial operating capability date referred to in subsection d of this section.

c. In addition, FCC Order, "Precedence System for Public Correspondence Services Provided by the Communications Common Carriers" (34 FR 17292 (1969)); (47 CFR part 64, appendix B), is revoked as of the effective date of this appendix.

d. The initial operating capability (IOC) date for NSEP TSP will be nine months after release in the FEDERAL REGISTER of the FCC's order following review of procedures submitted by the Executive Office of the President. On this IOC date requests for priority assignments generally will be accepted only by the Executive Office of the President.

3. Definitions

As used in this part:

a. *Assignment* means the designation of priority level(s) for a defined NSEP telecommunications service for a specified time period.

b. *Audit* means a quality assurance review in response to identified problems.

c. *Government* refers to the Federal government or any foreign, state, county, municipal or other local government agency or organization. Specific qualifications will be supplied whenever reference to a particular level of government is intended (e.g., "Federal government", "state government"). "Foreign government" means any sovereign empire, kingdom, state, or independent political community, including foreign diplomatic and consular establishments and coalitions or associations of governments (e.g., North Atlantic Treaty Organization (NATO), Southeast Asian Treaty Organization (SEATO), Organization of American States (OAS), and government agencies or organization (e.g., Pan American Union, International Postal Union, and International Monetary Fund)).

d. *National Communications System (NCS)* refers to that organization established by the

President in Executive Order No. 12472, “Assignment of National Security and Emergency Preparedness Telecommunications Functions,” April 3, 1984, 49 FR 13471 (1984).

e. *National Coordinating Center (NCC)* refers to the joint telecommunications industry-Federal government operation established by the National Communications System to assist in the initiation, coordination, restoration, and reconstitution of NSEP telecommunication services or facilities.

f. *National Security Emergency Preparedness (NSEP)* telecommunications services, or “NSEP services,” means telecommunication services which are used to maintain a state of readiness or to respond to and manage any event or crisis (local, national, or international), which causes or could cause injury or harm to the population, damage to or loss of property, or degrades or threatens the NSEP posture of the United States. These services fall into two specific categories, Emergency NSEP and Essential NSEP, and are assigned priority levels pursuant to section 9 of this appendix.

g. *NSEP treatment* refers to the provisioning of a telecommunication service before others based on the provisioning priority level assigned by the Executive Office of the President.

h. *Priority action* means assignment, revision, revocation, or revalidation by the Executive Office of the President of a priority level associated with an NSEP telecommunications service.

i. *Priority level* means the level that may be assigned to an NSEP telecommunications service specifying the order in which provisioning or restoration of the service is to occur relative to other NSEP and/or non-NSEP telecommunication services. Priority levels authorized by this appendix are designated (highest to lowest) “E,” “1,” “2,” “3,” “4,” and “5,” for provisioning and “1,” “2,” “3,” “4,” and “5,” for restoration.

j. *Priority level assignment* means the priority level(s) designated for the provisioning and/or restoration of a particular NSEP telecommunications service under section 9 of this appendix.

k. *Private NSEP telecommunications services* include non-common carrier telecommunications services including private line, virtual private line, and private switched network services.

l. *Provisioning* means the act of supplying telecommunications service to a user, including all associated transmission, wiring and equipment. As used herein, “provisioning” and “initiation” are synonymous and include altering the state of an existing priority service or capability.

m. *Public switched NSEP telecommunications services* include those NSEP telecommunications services utilizing public switched networks. Such services may include both interexchange and intraexchange network

facilities (e.g., switching systems, interoffice trunks and subscriber loops).

n. *Reconciliation* means the comparison of NSEP service information and the resolution of identified discrepancies.

o. *Restoration* means the repair or returning to service of one or more telecommunications services that have experienced a service outage or are unusable for any reason, including a damaged or impaired telecommunications facility. Such repair or returning to service may be done by patching, rerouting, substitution of component parts or pathways, and other means, as determined necessary by a service vendor.

p. *Revalidation* means the rejustification by a service user of a priority level assignment. This may result in extension by the Executive Office of the President of the expiration date associated with the priority level assignment.

q. *Revision* means the change of priority level assignment for an NSEP telecommunications service. This includes any extension of an existing priority level assignment to an expanded NSEP service.

r. *Revocation* means the elimination of a priority level assignment when it is no longer valid. All priority level assignments for an NSEP service are revoked upon service termination.

s. *Service identification* refers to the information uniquely identifying an NSEP telecommunications service to the service vendor and/or service user.

t. *Service user* refers to any individual or organization (including a service vendor) supported by a telecommunications service for which a priority level has been requested or assigned pursuant to section 8 or 9 of this appendix.

u. *Service vendor* refers to any person, association, partnership, corporation, organization, or other entity (including common carriers and government organizations) that offers to supply any telecommunications equipment, facilities, or services (including customer premises equipment and wiring) or combination thereof. The term includes resale carriers, prime contractors, subcontractors, and interconnecting carriers.

v. *Spare circuits or services* refers to those not being used or contracted for by any customer.

w. *Telecommunication services* means the transmission, emission, or reception of signals, signs, writing, images, sounds, or intelligence of any nature, by wire, cable, satellite, fiber optics, laser, radio, visual or other electronic, electric, electromagnetic, or acoustically coupled means, or any combination thereof. The term can include necessary telecommunication facilities.

x. *Telecommunications Service Priority (TSP) system user* refers to any individual, organization, or activity that interacts with the NSEP TSP System.

4. Scope

a. *Domestic NSEP services.* The NSEP TSP System and procedures established by this appendix authorize priority treatment to the following domestic telecommunication services (including portions of U.S. international telecommunication services provided by U.S. vendors) for which provisioning or restoration priority levels are requested, assigned, and approved in accordance with this appendix:

(1) Common carrier services which are:

(a) Interstate or foreign telecommunication services,

(b) Intrastate telecommunication services inseparable from interstate or foreign telecommunications services, and intrastate telecommunication services to which priority levels are assigned pursuant to section 9 of this appendix.

NOTE: Initially, the NSEP TSP System's applicability to public switched services is limited to (a) provisioning of such services (e.g., business, centrex, cellular, foreign exchange, Wide Area Telephone Service (WATS) and other services that the selected vendor is able to provision) and (b) restoration of services that the selected vendor is able to restore.

(2) Services which are provided by government and/or non-common carriers and are interconnected to common carrier services assigned a priority level pursuant to section 9 of this appendix.

b. *Control services and orderwires.* The NSEP TSP System and procedures established by this appendix are not applicable to authorize priority treatment to control services or orderwires owned by a service vendor and needed for provisioning, restoration, or maintenance of other services owned by that service vendor. Such control services and orderwires shall have priority provisioning and restoration over all other telecommunication services (including NSEP services) and shall be exempt from preemption. However, the NSEP TSP System and procedures established by this appendix are applicable to control services or orderwires leased by a service vendor.

c. *Other services.* The NSEP TSP System may apply, at the discretion of and upon special arrangements by the NSEP TSP System users involved, to authorize priority treatment to the following telecommunication services:

(1) Government or non-common carrier services which are not connected to common carrier provided services assigned a priority level pursuant to section 9 of this appendix.

(2) Portions of U.S. international services which are provided by foreign correspondents. (U.S. telecommunication service vendors are encouraged to ensure that relevant operating arrangements are consistent to

the maximum extent practicable with the NSEP TSP System. If such arrangements do not exist, U.S. telecommunication service vendors should handle service provisioning and/or restoration in accordance with any system acceptable to their foreign correspondents which comes closest to meeting the procedures established in this appendix.)

5. Policy

The NSEP TSP System is the regulatory, administrative, and operational system authorizing and providing for priority treatment, *i.e.*, provisioning and restoration, of NSEP telecommunication services. As such, it establishes the framework for telecommunication service vendors to provision, restore, or otherwise act on a priority basis to ensure effective NSEP telecommunication services. The NSEP TSP System allows the assignment of priority levels to any NSEP service across three time periods, or stress conditions: Peacetime/Crisis/Mobilizations, Attack/War, and Post-Attack/Recovery. Although priority levels normally will be assigned by the Executive Office of the President and retained by service vendors only for the current time period, they may be pre-assigned for the other two time periods at the request of service users who are able to identify and justify in advance, their wartime or post-attack NSEP telecommunication requirements. Absent such pre-assigned priority levels for the Attack/War and Post-Attack/Recovery periods, priority level assignments for the Peacetime/Crisis/Mobilization period will remain in effect. At all times, priority level assignments will be subject to revision by the FCC or (on an interim basis) the Executive Office of the President, based upon changing NSEP needs. No other system of telecommunication service priorities which conflicts with the NSEP TSP System is authorized.

6. Responsibilities

a. The FCC will:

(1) Provide regulatory oversight of implementation of the NSEP TSP System.

(2) Enforce NSEP TSP System rules and regulations, which are contained in this appendix.

(3) Act as final authority for approval, revision, or disapproval of priority actions by the Executive Office of the President and adjudicate disputes regarding either priority actions or denials of requests for priority actions by the Executive Office of the President, until superseded by the President's war emergency powers under section 706 of the Communications Act.

(4) Function (on a discretionary basis) as a sponsoring Federal organization. (See section 6(c) below.)

b. The Executive Office of the President will:

(1) During exercise of the President's war emergency powers under section 706 of the Communications Act, act as the final approval authority for priority actions or denials of requests for priority actions, adjudicating any disputes.

(2) Until the exercise of the President's war emergency powers, administer the NSEP TSP System which includes:

(a) Receiving, processing, and evaluating requests for priority actions from service users, or sponsoring Federal government organizations on behalf of service users (e.g., Department of State or Defense on behalf of foreign governments, Federal Emergency Management Agency on behalf of state and local governments, and any Federal organization on behalf of private industry entities). Action on such requests will be completed within 30 days of receipt.

(b) Assigning, revising, revalidating, or revoking priority levels as necessary or upon request of service users concerned, and denying requests for priority actions as necessary, using the categories and criteria specified in section 12 of this appendix. Action on such requests will be completed within 30 days of receipt.

(c) Maintaining data on priority level assignments.

(d) Periodically forwarding to the FCC lists of priority actions by the Executive Office of the President for review and approval.

(e) Periodically initiating reconciliation.

(f) Testing and evaluating the NSEP TSP System for effectiveness.

(g) Conducting audits as necessary. Any Telecommunications Service Priority (TSP) System user may request the Executive Office of the President to conduct an audit.

(h) Issuing, subject to review by the FCC, regulations and procedures supplemental to and consistent with this appendix regarding operation and use of the NSEP TSP System.

(i) Serving as a centralized point-of-contact for collecting and disseminating to all interested parties (consistent with requirements for treatment of classified and proprietary material) information concerning use and abuse of the NSEP TSP System.

(j) Establishing and assisting a TSP System Oversight Committee to identify and review any problems developing in the system and recommend actions to correct them or prevent recurrence. In addition to representatives of the Executive Office of the President, representatives from private industry (including telecommunication service vendors), state and local governments, the FCC, and other organizations may be appointed to that Committee.

(k) Reporting at least quarterly to the FCC and TSP System Oversight Committee, together with any recommendations for action, the operational status of and trends in the NSEP TSP System, including:

(i) Numbers of requests processed for the various priority actions, and the priority levels assigned.

(ii) Relative percentages of services assigned to each priority level under each NSEP category and subcategory.

(iii) Any apparent serious misassignment or abuse of priority level assignments.

(iv) Any existing or developing problem.

(l) Submitting semi-annually to the FCC and TSP System Oversight Committee a summary report identifying the time and event associated with each invocation of NSEP treatment under section 9(c) of this appendix, whether the NSEP service requirement was adequately handled, and whether any additional charges were incurred. These reports will be due by April 30th for the preceding July through December and by October 31 for the preceding January through June time periods.

(m) All reports submitted to the FCC should be directed to Chief, Public Safety and Homeland Security Bureau, Washington, DC 20554.

(3) Function (on a discretionary basis) as a sponsoring Federal organization. (See section 6(c) below.)

c. Sponsoring Federal organizations will:

(1) Review and decide whether to sponsor foreign, state, and local government and private industry (including telecommunication service vendors) requests for priority actions. Federal organizations will forward sponsored requests with recommendations for disposition to the Executive Office of the President. Recommendations will be based on the categories and criteria in section 12 of this appendix.

(2) Forward notification of priority actions or denials of requests for priority actions from the Executive Office of the President to the requesting foreign, state, and local government and private industry entities.

(3) Cooperate with the Executive Office of the President during reconciliation, revalidation, and audits.

(4) Comply with any regulations and procedures supplemental to and consistent with this appendix which are issued by the Executive Office of the President.

d. Service users will:

(1) Identify services requiring priority level assignments and request and justify priority level assignments in accordance with this appendix and any supplemental regulations and procedures issued by the Executive Office of the President that are consistent with this appendix.

(2) Request and justify revalidation of all priority level assignments at least every three years.

(3) For services assigned priority levels, ensure (through contractual means or otherwise) availability of customer premises equipment and wiring necessary for end-to-end service operation by the service due

date, and continued operation; and, for such services in the Emergency NSEP category, by the time that vendors are prepared to provide the services. Additionally, designate the organization responsible for the service on an end-to-end basis.

(4) Be prepared to accept services assigned priority levels by the service due dates or, for services in the Emergency NSEP category, when they are available.

(5) Pay vendors any authorized costs associated with services that are assigned priority levels.

(6) Report to vendors any failed or unusable services that are assigned priority levels.

(7) Designate a 24-hour point-of-contact for matters concerning each request for priority action and apprise the Executive Office of the President thereof.

(8) Upon termination of services that are assigned priority levels, or circumstances warranting revisions in priority level assignment (e.g., expansion of service), request and justify revocation or revision.

(9) When NSEP treatment is invoked under section 9(c) of this appendix, within 90 days following provisioning of the service involved, forward to the National Coordinating Center (see section 3(e) of this appendix) complete information identifying the time and event associated with the invocation and regarding whether the NSEP service requirement was adequately handled and whether any additional charges were incurred.

(10) Cooperate with the Executive Office of the President during reconciliation, revalidation, and audits.

(11) Comply with any regulations and procedures supplemental to and consistent with this appendix that are issued by the Executive Office of the President.

e. Non-federal service users, in addition to responsibilities prescribed above in section 6(d), will obtain a sponsoring Federal organization for all requests for priority actions. If unable to find a sponsoring Federal organization, a non-federal service user may submit its request, which must include documentation of attempts made to obtain a sponsor and reasons given by the sponsor for its refusal, directly to the Executive Office of the President.

f. Service vendors will:

(1) When NSEP treatment is invoked by service users, provision NSEP telecommunication services before non-NSEP services, based on priority level assignments made by the Executive Office of the President. Provisioning will require service vendors to:

(a) Allocate resources to ensure best efforts to provide NSEP services by the time required. When limited resources constrain response capability, vendors will address conflicts for resources by:

(i) Providing NSEP services in order of provisioning priority level assignment (i.e., "E", "1", "2", "3", "4", or "5");

(ii) Providing Emergency NSEP services (i.e., those assigned provisioning priority level "E") in order of receipt of the service requests;

(iii) Providing Essential NSEP services (i.e., those assigned priority levels "1", "2", "3", "4", or "5") that have the same provisioning priority level in order of service due dates; and

(iv) Referring any conflicts which cannot be resolved (to the mutual satisfaction of servicer vendors and users) to the Executive Office of the President for resolution.

(b) Comply with NSEP service requests by:

(i) Allocating resources necessary to provide Emergency NSEP services as soon as possible, dispatching outside normal business hours when necessary;

(ii) Ensuring best efforts to meet requested service dates for Essential NSEP services, negotiating a mutually (customer and vendor) acceptable service due date when the requested service due date cannot be met; and

(iii) Seeking National Coordinating Center (NCC) assistance as authorized under the NCC Charter (see section 1.3, NCC Charter, dated October 9, 1985).

(2) Restore NSEP telecommunications services which suffer outage, or are reported as unusable or otherwise in need of restoration, before non-NSEP services, based on restoration priority level assignments. (NOTE: For broadband or multiple service facilities, restoration is permitted even though it might result in restoration of services assigned no or lower priority levels along with, or sometimes ahead of, some higher priority level services.) Restoration will require service vendors to restore NSEP services in order of restoration priority level assignment (i.e., "1", "2", "3", "4", or "5") by:

(a) Allocating available resources to restore NSEP services as quickly as practicable, dispatching outside normal business hours to restore services assigned priority levels "1", "2", and "3" when necessary, and services assigned priority level "4" and "5" when the next business day is more than 24 hours away;

(b) Restoring NSEP services assigned the same restoration priority level based upon which can be first restored. (However, restoration actions in progress should not normally be interrupted to restore another NSEP service assigned the same restoration priority level);

(c) Patching and/or rerouting NSEP services assigned restoration priority levels from "1" through "5," when use of patching and/or rerouting will hasten restoration;

(d) Seeking National Coordinating Center (NCC) assistance authorized under the NCC Charter; and

(e) Referring any conflicts which cannot be resolved (to the mutual satisfaction of service vendors and users) to the Executive Office of the President for resolution.

(3) Respond to provisioning requests of customers and/or other service vendors, and to restoration priority level assignments when an NSEP service suffers an outage or is reported as unusable, by:

(a) Ensuring that vendor personnel understand their responsibilities to handle NSEP provisioning requests and to restore NSEP service; and

(b) Providing a 24-hour point-of-contact for receiving provisioning requests for Emergency NSEP services and reports of NSEP service outages or unusability.

(c) Seek verification from an authorized entity if legitimacy of a priority level assignment or provisioning request for an NSEP service is in doubt. However, processing of Emergency NSEP service requests will not be delayed for verification purposes.

(4) Cooperate with other service vendors involved in provisioning or restoring a portion of an NSEP service by honoring provisioning or restoration priority level assignments, or requests for assistance to provision or restore NSEP services, as detailed in sections 6(f)(1), (2), and (3) above.

(5) All service vendors, including resale carriers, are required to ensure that service vendors supplying underlying facilities are provided information necessary to implement priority treatment of facilities that support NSEP services.

(6) Preempt, when necessary, existing services to provide an NSEP service as authorized in section 7 of this appendix.

(7) Assist in ensuring that priority level assignments of NSEP services are accurately identified “end-to-end” by:

(a) Seeking verification from an authorized Federal government entity if the legitimacy of the restoration priority level assignment is in doubt;

(b) Providing to subcontractors and/or interconnecting carriers the restoration priority level assigned to a service;

(c) Supplying, to the Executive Office of the President, when acting as a prime contractor to a service user, confirmation information regarding NSEP service completion for that portion of the service they have contracted to supply;

(d) Supplying, to the Executive Office of the President, NSEP service information for the purpose of reconciliation.

(e) Cooperating with the Executive Office of the President during reconciliation.

(f) Periodically initiating reconciliation with their subcontractors and arranging for subsequent subcontractors to cooperate in the reconciliation process.

(8) Receive compensation for costs authorized through tariffs or contracts by:

(a) Provisions contained in properly filed state or Federal tariffs; or

(b) Provisions of properly negotiated contracts where the carrier is not required to file tariffs.

(9) Provision or restore only the portions of services for which they have agreed to be responsible (i.e., have contracted to supply), unless the President’s war emergency powers under section 706 of the Communications Act are in effect.

(10) Cooperate with the Executive Office of the President during audits.

(11) Comply with any regulations or procedures supplemental to and consistent with this appendix that are issued by the Executive Office of the President and reviewed by the FCC.

(12) Insure that at all times a reasonable number of public switched network services are made available for public use.

(13) Not disclose information concerning NSEP services they provide to those not having a need-to-know or might use the information for competitive advantage.

7. Preemption of Existing Services

When necessary to provision or restore NSEP services, service vendors may preempt services they provide as specified below. “User” as used in this Section means any user of a telecommunications service, including both NSEP and non-NSEP services. Prior consent by a preempted user is not required.

a. The sequence in which existing services may be preempted to provision NSEP services assigned a provisioning priority level “E” or restore NSEP services assigned a restoration priority level from “1” through “5”:

(1) Non-NSEP services: If suitable spare services are not available, then, based on the considerations in this appendix and the service vendor’s best judgment, non-NSEP services will be preempted. After ensuring a sufficient number of public switched services are available for public use, based on the service vendor’s best judgment, such services may be used to satisfy a requirement for provisioning or restoring NSEP services.

(2) NSEP services: If no suitable spare or non-NSEP services are available, then existing NSEP services may be preempted to provision or restore NSEP services with higher priority level assignments. When this is necessary, NSEP services will be selected for preemption in the inverse order of priority level assignment.

(3) Service vendors who are preempting services will ensure their best effort to notify the service user of the preempted service and state the reason for and estimated duration of the preemption.

b. Service vendors may, based on their best judgment, determine the sequence in which existing services may be preempted to provision NSEP services assigned a provisioning

priority of “1” through “5”. Preemption is not subject to the consent of the user whose service will be preempted.

8. Requests for Priority Assignments.

All service users are required to submit requests for priority actions through the Executive Office of the President in the format and following the procedures prescribed by that Office.

9. Assignment, Approval, Use, and Invocation of Priority Levels

a. *Assignment and approval of priority levels.* Priority level assignments will be based upon the categories and criteria specified in section 12 of this appendix. A priority level assignment made by the Executive Office of the President will serve as that Office’s recommendation to the FCC. Until the President’s war emergency powers are invoked, priority level assignments must be approved by the FCC. However, service vendors are ordered to implement any priority level assignments that are pending FCC approval.

After invocation of the President’s war emergency powers, these requirements may be superseded by other procedures issued by the Executive Office of the President.

b. Use of Priority Level Assignments.

(1) All provisioning and restoration priority level assignments for services in the Emergency NSEP category will be included in initial service orders to vendors. Provisioning priority level assignments for Essential NSEP services, however, will not usually be included in initial service orders to vendors. NSEP treatment for Essential NSEP services will be invoked and provisioning priority level assignments will be conveyed to service vendors only if the vendors cannot meet needed service dates through the normal provisioning process.

(2) Any revision or revocation of either provisioning or restoration priority level assignments will also be transmitted to vendors.

(3) Service vendors shall accept priority levels and/or revisions only after assignment by the Executive Office of the President.

NOTE: Service vendors acting as prime contractors will accept assigned NSEP priority levels only when they are accompanied by the Executive Office of the President designated service identification, *i.e.*, TSP Authorization Code. However, service vendors are authorized to accept priority levels and/or revisions from users and contracting activities before assignment by the Executive Office of the President when service vendor, user, and contracting activities are unable to communicate with either the Executive Office of the President or the FCC. Processing of Emergency NSEP service requests will not be delayed for verification purposes.

c. *Invocation of NSEP treatment.* To invoke NSEP treatment for the priority provisioning of an NSEP telecommunications service, an authorized Federal official either within, or acting on behalf of, the service user’s organization must make a written or oral declaration to concerned service vendor(s) and the Executive Office of the President that NSEP treatment is being invoked. Authorized Federal officials include the head or director of a Federal agency, commander of a unified/specified military command, chief of a military service, or commander of a major military command; the delegates of any of the foregoing; or any other officials as specified in supplemental regulations or procedures issued by the Executive Office of the President. The authority to invoke NSEP treatment may be delegated only to a general or flag officer of a military service, civilian employee of equivalent grade (e.g., Senior Executive Service member), Federal Coordinating Officer or Federal Emergency Communications Coordinator/Manager, or any other such officials specified in supplemental regulations or procedures issued by the Executive Office of the President. Delegates must be designated as such in writing, and written or oral invocations must be accomplished, in accordance with supplemental regulations or procedures issued by the Executive Office of the President.

10. Resubmission of Circuits Presently Assigned Restoration Priorities

All circuits assigned restoration priorities must be reviewed for eligibility for initial restoration priority level assignment under the provisions of this appendix. Circuits currently assigned restoration priorities, and for which restoration priority level assignments are requested under section 8 of this appendix, will be resubmitted to the Executive Office of the President. To resubmit such circuits, service users will comply with applicable provisions of section 6(d) of this appendix.

11. Appeal

Service users or sponsoring Federal organizations may appeal any priority level assignment, denial, revision, revocation, approval, or disapproval to the Executive Office of the President within 30 days of notification to the service user. The appellant must use the form or format required by the Executive Office of the President and must serve the FCC with a copy of its appeal. The Executive Office of the President will act on the appeal within 90 days of receipt. Service users and sponsoring Federal organizations may only then appeal directly to the FCC. Such FCC appeal must be filed within 30 days of notification of the Executive Office of the President’s decision on appeal. Additionally, the Executive Office of the President may appeal

any FCC revisions, approvals, or disapprovals to the FCC. All appeals to the FCC must be submitted using the form or format required. The party filing its appeal with the FCC must include factual details supporting its claim and must serve a copy on the Executive Office of the President and any other party directly involved. Such party may file a response within 20 days, and replies may be filed within 10 days thereafter. The Commission will not issue public notices of such submissions. The Commission will provide notice of its decision to the parties of record. Any appeals to the Executive Office of the President that include a claim of new information that has not been presented before for consideration may be submitted at any time.

12. NSEP TSP System Categories, Criteria, and Priority Levels

a. *General.* NSEP TSP System categories and criteria, and permissible priority level assignments, are defined and explained below.

(1) The Essential NSEP category has four subcategories: National Security Leadership; National Security Posture and U.S. Population Attack Warning; Public Health, Safety, and Maintenance of Law and Order; and Public Welfare and Maintenance of National Economic Posture. Each subcategory has its own criteria. Criteria are also shown for the Emergency NSEP category, which has no sub-categories.

(2) Priority levels of “1,” “2,” “3,” “4,” and “5” may be assigned for provisioning and/or restoration of Essential NSEP telecommunication services. However, for Emergency NSEP telecommunications services, a priority level “E” is assigned for provisioning. A restoration priority level from “1” through “5” may be assigned if an Emergency NSEP service also qualifies for such a restoration priority level under the Essential NSEP category.

(3) The NSEP TSP System allows the assignment of priority levels to any NSEP telecommunications service across three time periods, or stress conditions: Peacetime/Crisis/Mobilization, Attack/War, and Post-Attack/Recovery. Priority levels will normally be assigned only for the first time period. These assigned priority levels will apply through the onset of any attack, but it is expected that they would later be revised by surviving authorized telecommunication resource managers within the Executive Office of the President based upon specific facts and circumstances arising during the Attack/War and Post-Attack/Recovery time periods.

(4) Service users may, for their own internal use, assign subpriorities to their services assigned priority levels. Receipt of and response to any such subpriorities is optional for service vendors.

(5) The following paragraphs provide a detailed explanation of the categories, subcategories, criteria, and priority level assignments, beginning with the Emergency NSEP category.

b. *Emergency NSEP.* Telecommunications services in the Emergency NSEP category are those new services so critical as to be required to be provisioned at the earliest possible time, without regard to the costs of obtaining them.

(1) *Criteria.* To qualify under the Emergency NSEP category, the service must meet criteria directly supporting or resulting from at least one of the following NSEP functions:

(a) Federal government activity responding to a Presidentially declared disaster or emergency as defined in the Disaster Relief Act (42 U.S.C. 5122).

(b) State or local government activity responding to a Presidentially declared disaster or emergency.

(c) Response to a state of crisis declared by the National Command Authorities (e.g., exercise of Presidential war emergency powers under section 706 of the Communications Act.)

(d) Efforts to protect endangered U.S. personnel or property.

(e) Response to an enemy or terrorist action, civil disturbance, natural disaster, or any other unpredictable occurrence that has damaged facilities whose uninterrupted operation is critical to NSEP or the management of other ongoing crises.

(f) Certification by the head or director of a Federal agency, commander of a unified/specified command, chief of a military service, or commander of a major military command, that the telecommunications service is so critical to protection of life and property or to NSEP that it must be provided immediately.

(g) A request from an official authorized pursuant to the Foreign Intelligence Surveillance Act (50 U.S.C. 1801 *et seq.* and 18 U.S.C. 2511, 2518, 2519).

(2) Priority Level Assignment.

(a) Services qualifying under the Emergency NSEP category are assigned priority level “E” for provisioning.

(b) After 30 days, assignments of provisioning priority level “E” for Emergency NSEP services are automatically revoked unless extended for another 30-day period. A notice of any such revocation will be sent to service vendors.

(c) For restoration, Emergency NSEP services may be assigned priority levels under the provisions applicable to Essential NSEP services (see section 12(c)). Emergency NSEP services not otherwise qualifying for restoration priority level assignment as Essential NSEP may be assigned a restoration priority level “5” for a 30-day period. Such 30-day restoration priority level assignments will be revoked automatically unless extended for

another 30-day period. A notice of any such revocation will be sent to service vendors.

c. *Essential NSEP.* Telecommunication services in the Essential NSEP category are those required to be provisioned by due dates specified by service users, or restored promptly, normally without regard to associated overtime or expediting costs. They may be assigned priority level of "1," "2," "3," "4," or "5" for both provisioning and restoration, depending upon the nature and urgency of the supported function, the impact of lack of service or of service interruption upon the supported function, and, for priority access to public switched services, the user's level of responsibility. Priority level assignments will be valid for no more than three years unless revalidated. To be categorized as Essential NSEP, a telecommunication service must qualify under one of the four following subcategories: National Security Leadership; National Security Posture and U.S. Population Attack Warning; Public Health, Safety and Maintenance of Law and Order; or Public Welfare and Maintenance of National Economic Posture. (NOTE Under emergency circumstances, Essential NSEP telecommunication services may be recategorized as Emergency NSEP and assigned a priority level "E" for provisioning.)

(1) *National security leadership.* This subcategory will be strictly limited to only those telecommunication services essential to national survival if nuclear attack threatens or occurs, and critical orderwire and control services necessary to ensure the rapid and efficient provisioning or restoration of other NSEP telecommunication services. Services in this subcategory are those for which a service interruption of even a few minutes would have serious adverse impact upon the supported NSEP function.

(a) *Criteria.* To qualify under this subcategory, a service must be at least one of the following:

(i) Critical orderwire, or control service, supporting other NSEP functions.

(ii) Presidential communications service critical to continuity of government and national leadership during crisis situations.

(iii) National Command Authority communications service for military command and control critical to national survival.

(iv) Intelligence communications service critical to warning of potentially catastrophic attack.

(v) Communications service supporting the conduct of diplomatic negotiations critical to arresting or limiting hostilities.

(b) *Priority level assignment.* Services under this subcategory will normally be assigned priority level "1" for provisioning and restoration during the Peace/Crisis/Mobilization time period.

(2) *National security posture and U.S. population attack warning.* This subcategory cov-

ers those minimum additional telecommunication services essential to maintaining an optimum defense, diplomatic, or continuity-of-government postures before, during, and after crises situations. Such situations are those ranging from national emergencies to international crises, including nuclear attack. Services in this subcategory are those for which a service interruption ranging from a few minutes to one day would have serious adverse impact upon the supported NSEP function.

(a) *Criteria.* To qualify under this subcategory, a service must support at least one of the following NSEP functions:

(i) Threat assessment and attack warning.

(ii) Conduct of diplomacy.

(iii) Collection, processing, and dissemination of intelligence.

(iv) Command and control of military forces.

(v) Military mobilization.

(vi) Continuity of Federal government before, during, and after crises situations.

(vii) Continuity of state and local government functions supporting the Federal government during and after national emergencies.

(viii) Recovery of critical national functions after crises situations.

(ix) National space operations.

(b) *Priority level assignment.* Services under this subcategory will normally be assigned priority level "2," "3," "4," or "5" for provisioning and restoration during Peacetime/Crisis/Mobilization.

(3) *Public health, safety, and maintenance of law and order.* This subcategory covers the minimum number of telecommunication services necessary for giving civil alert to the U.S. population and maintaining law and order and the health and safety of the U.S. population in times of any national, regional, or serious local emergency. These services are those for which a service interruption ranging from a few minutes to one day would have serious adverse impact upon the supported NSEP functions.

(a) *Criteria.* To qualify under this subcategory, a service must support at least one of the following NSEP functions:

(i) Population warning (other than attack warning).

(ii) Law enforcement.

(iii) Continuity of critical state and local government functions (other than support of the Federal government during and after national emergencies).

(vi) Hospitals and distributions of medical supplies.

(v) Critical logistic functions and public utility services.

(vi) Civil air traffic control.

(vii) Military assistance to civil authorities.

(viii) Defense and protection of critical industrial facilities.

(ix) Critical weather services.
 (x) Transportation to accomplish the foregoing NSEP functions.

(b) *Priority level assignment.* Service under this subcategory will normally be assigned priority levels “3,” “4,” or “5” for provisioning and restoration during Peacetime/Crisis/Mobilization.

(4) *Public welfare and maintenance of national economic posture.* This subcategory covers the minimum number of telecommunications services necessary for maintaining the public welfare and national economic posture during any national or regional emergency. These services are those for which a service interruption ranging from a few minutes to one day would have serious adverse impact upon the supported NSEP function.

(a) *Criteria.* To qualify under this subcategory, a service must support at least one of the following NSEP functions:

(i) Distribution of food and other essential supplies.

(ii) Maintenance of national monetary, credit, and financial systems.

(iii) Maintenance of price, wage, rent, and salary stabilization, and consumer rationing programs.

(iv) Control of production and distribution of strategic materials and energy supplies.

(v) Prevention and control of environmental hazards or damage.

(vi) Transportation to accomplish the foregoing NSEP functions.

(b) *Priority level assignment.* Services under this subcategory will normally be assigned priority levels “4” or “5” for provisioning and restoration during Peacetime/Crisis/Mobilization.

d. *Limitations.* Priority levels will be assigned only to the minimum number of telecommunication services required to support an NSEP function. Priority levels will not normally be assigned to backup services on a continuing basis, absent additional justification, e.g., a service user specifies a requirement for physically diverse routing or contracts for additional continuity-of-service features. The Executive Office of the President may also establish limitations upon the relative numbers of services which may be assigned any restoration priority level. These limitations will not take precedence over laws or executive orders. Such limitations shall not be exceeded absent waiver by the Executive Office of the President.

e. *Non-NSEP services.* Telecommunication services in the non-NSEP category will be those which do not meet the criteria for either Emergency NSEP or Essential NSEP.

[53 FR 47536, Nov. 23, 1988; 54 FR 152, Jan. 4, 1989; 54 FR 1471, Jan. 13, 1989, as amended at 67 FR 13229, Mar. 21, 2002; 71 FR 69038, Nov. 29, 2006]

APPENDIX B TO PART 64—PRIORITY ACCESS SERVICE (PAS) FOR NATIONAL SECURITY AND EMERGENCY PREPAREDNESS (NSEP)

1. AUTHORITY

This appendix is issued pursuant to sections 1, 4(i), 201 through 205 and 303(r) of the Communications Act of 1934, as amended. Under these sections, the Federal Communications Commission (FCC) may permit the assignment and approval of priorities for access to commercial mobile radio service (CMRS) networks. Under section 706 of the Communications Act, this authority may be superseded by the war emergency powers of the President of the United States. This appendix provides the Commission’s Order to CMRS providers and users to comply with policies and procedures establishing the Priority Access Service (PAS). This appendix is intended to be read in conjunction with regulations and procedures that the Executive Office of the President issues:

(1) To implement responsibilities assigned in section 3 of this appendix, or

(2) For use in the event this appendix is superseded by the President’s emergency war powers. Together, this appendix and the regulations and procedures issued by the Executive Office of the President establish one uniform system of priority access service both before and after invocation of the President’s emergency war powers.

2. BACKGROUND

a. *Purpose.* This appendix establishes regulatory authorization for PAS to support the needs of NSEP CMRS users.

b. *Applicability.* This appendix applies to the provision of PAS by CMRS licensees to users who qualify under the provisions of section 5 of this appendix.

c. *Description.* PAS provides the means for NSEP telecommunications users to obtain priority access to available radio channels when necessary to initiate emergency calls. It does not preempt calls in progress and is to be used during situations when CMRS network congestion is blocking NSEP call attempts. PAS is to be available to authorized NSEP users at all times in equipped CMRS markets where the service provider has voluntarily decided to provide such service. Authorized users would activate the feature on a per call basis by dialing a feature code such as *XX. PAS priorities 1 through 5 are reserved for qualified and authorized NSEP users, and those users are provided access to CMRS channels before any other CMRS callers.

d. *Definitions.* As used in this appendix:

1. *Authorizing agent* refers to a Federal or State entity that authenticates, evaluates

and makes recommendations to the Executive Office of the President regarding the assignment of priority access service levels.

2. *Service provider* means an FCC-licensed CMRS provider. The term does not include agents of the licensed CMRS provider or resellers of CMRS service.

3. *Service user* means an individual or organization (including a service provider) to whom or which a priority access assignment has been made.

4. The following terms have the same meaning as in Appendix A to Part 64:

- (a) Assignment;
- (b) Government;
- (c) National Communications System;
- (d) National Coordinating Center;
- (e) National Security Emergency Preparedness (NSEP) Telecommunications Services (excluding the last sentence);
- (f) Reconciliation;
- (g) Revalidation;
- (h) Revision;
- (i) Revocation.

e. Administration. The Executive Office of the President will administer PAS.

3. RESPONSIBILITIES

a. The *Federal Communications Commission* will provide regulatory oversight of the implementation of PAS, enforce PAS rules and regulations, and act as final authority for approval, revision, or disapproval of priority assignments by the Executive Office of the President by adjudicating disputes regarding either priority assignments or the denial thereof by the Executive Office of the President until superseded by the President's war emergency powers under Section 706 of the Communications Act.

b. The *Executive Office of the President (EOP)* will administer the PAS system. It will:

1. Act as the final approval or denial authority for the assignment of priorities and the adjudicator of disputes during the exercise of the President's war emergency powers under section 706 of the Communications Act.

2. Receive, process, and evaluate requests for priority actions from authorizing agents on behalf of service users or directly from service users. Assign priorities or deny requests for priority using the priorities and criteria specified in section 5 of this appendix. Actions on such requests should be completed within 30 days of receipt.

3. Convey priority assignments to the service provider and the authorizing agent.

4. Revise, revalidate, reconcile, and revoke priority level assignments with service users and service providers as necessary to maintain the viability of the PAS system.

5. Maintain a database for PAS related information.

6. Issue new or revised regulations, procedures, and instructional material supple-

mental to and consistent with this appendix regarding the operation, administration, and use of PAS.

7. Provide training on PAS to affected entities and individuals.

8. Enlarge the role of the Telecommunications Service Priority System Oversight Committee to include oversight of the PAS system.

9. Report periodically to the FCC on the status of PAS.

10. Disclose content of the NSEP PAS database only as may be required by law.

c. An *Authorizing agent* shall:

1. Identify itself as an authorizing agent and its community of interest (State, Federal Agency) to the EOP. State Authorizing Agents will provide a central point of contact to receive priority requests from users within their state. Federal Authorizing Agents will provide a central point of contact to receive priority requests from federal users or federally sponsored entities.

2. Authenticate, evaluate, and make recommendations to the EOP to approve priority level assignment requests using the priorities and criteria specified in section 5 of this appendix. As a guide, PAS authorizing agents should request the lowest priority level that is applicable and the minimum number of CMRS services required to support an NSEP function. When appropriate, the authorizing agent will recommend approval or deny requests for PAS.

3. Ensure that documentation is complete and accurate before forwarding it to the EOP.

4. Serve as a conduit for forwarding PAS information from the EOP to the service user and vice versa. Information will include PAS requests and assignments, reconciliation and revalidation notifications, and other information.

5. Participate in reconciliation and revalidation of PAS information at the request of the EOP.

6. Comply with any regulations and procedures supplemental to and consistent with this appendix that are issued by the EOP.

7. Disclose content of the NSEP PAS database only to those having a need-to-know.

d. *Service users* will:

1. Determine the need for and request PAS assignments in a planned process, not waiting until an emergency has occurred.

2. Request PAS assignments for the lowest applicable priority level and minimum number of CMRS services necessary to provide NSEP telecommunications management and response functions during emergency/disaster situations.

3. Initiate PAS requests through the appropriate authorizing agent. The EOP will make final approval or denial of PAS requests and may direct service providers to remove PAS if appropriate. (Note: State and local government or private users will apply for PAS

through their designated State government authorizing agent. Federal users will apply for PAS through their employing agency. State and local users in states where there has been no designation will be sponsored by the Federal agency concerned with the emergency function as set forth in Executive Order 12656. If no authorizing agent is determined using these criteria, the EOP will serve as the authorizing agent.)

4. Submit all correspondence regarding PAS to the authorizing agent.

5. Invoke PAS only when CMRS congestion blocks network access and the user must establish communications to fulfill an NSEP mission. Calls should be as brief as possible so as to afford CMRS service to other NSEP users.

6. Participate in reconciliation and revalidation of PAS information at the request of the authorizing agent or the EOP.

7. Request discontinuance of PAS when the NSEP qualifying criteria used to obtain PAS is no longer applicable.

8. Pay service providers as billed for PAS.

9. Comply with regulations and procedures that are issued by the EOP which are supplemental to and consistent with this appendix.

e. *Service providers* who offer any form of priority access service for NSEP purposes shall provide that service in accordance with this appendix. As currently described in the Priority Access and Channel Assignment Standard (IS-53-A), service providers will:

1. Provide PAS levels 1, 2, 3, 4, or 5 only upon receipt of an authorization from the EOP and remove PAS for specific users at the direction of the EOP.

2. Ensure that PAS system priorities supersede any other NSEP priority which may be provided.

3. Designate a point of contact to coordinate with the EOP regarding PAS.

4. Participate in reconciliation and revalidation of PAS information at the request of the EOP.

5. As technically and economically feasible, provide roaming service users the same grade of PAS provided to local service users.

6. Disclose content of the NSEP PAS database only to those having a need-to-know or who will not use the information for economic advantage.

7. Comply with regulations and procedures supplemental to and consistent with this appendix that are issued by the EOP.

8. Insure that at all times a reasonable amount of CMRS spectrum is made available for public use.

9. Notify the EOP and the service user if PAS is to be discontinued as a service.

f. *The Telecommunications Service Priority Oversight Committee* will identify and review any systemic problems associated with the PAS system and recommend actions to correct them or prevent their recurrence.

4. APPEAL

Service users and authorizing agents may appeal any priority level assignment, denial, revision or revocation to the EOP within 30 days of notification to the service user. The EOP will act on the appeal within 90 days of receipt. If a dispute still exists, an appeal may then be made to the FCC within 30 days of notification of the EOP's decision. The party filing the appeal must include factual details supporting its claim and must provide a copy of the appeal to the EOP and any other party directly involved. Involved parties may file a response to the appeal made to the FCC within 20 days, and the initial filing party may file a reply within 10 days thereafter. The FCC will provide notice of its decision to the parties of record. Until a decision is made, the service will remain status quo.

5. PAS PRIORITY LEVELS AND QUALIFYING CRITERIA

The following PAS priority levels and qualifying criteria apply equally to all users and will be used as a basis for all PAS assignments. There are five levels of NSEP priorities, priority one being the highest. The five priority levels are:

1. Executive Leadership and Policy Makers
2. Disaster Response/Military Command and Control
3. Public Health, Safety and Law Enforcement Command
4. Public Services/Utilities and Public Welfare
5. Disaster Recovery

These priority levels were selected to meet the needs of the emergency response community and provide priority access for the command and control functions critical to management of and response to national security and emergency situations, particularly during the first 24 to 72 hours following an event. Priority assignments should only be requested for key personnel and those individuals in national security and emergency response leadership positions. PAS is not intended for use by all emergency service personnel.

A. Priority 1: Executive Leadership and Policy Makers.

Users who qualify for the Executive Leadership and Policy Makers priority will be assigned priority one. A limited number of CMRS technicians who are essential to restoring the CMRS networks shall also receive this highest priority treatment. Examples of those eligible include:

- (i) The President of the United States, the Secretary of Defense, selected military leaders, and the minimum number of senior staff necessary to support these officials;
- (ii) State governors, lieutenant governors, cabinet-level officials responsible for public

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safety and health, and the minimum number of senior staff necessary to support these officials; and

(iii) Mayors, county commissioners, and the minimum number of senior staff to support these officials.

B. Priority 2: Disaster Response/Military Command and Control

Users who qualify for the Disaster Response/Military Command and Control priority will be assigned priority two. Individuals eligible for this priority include personnel key to managing the initial response to an emergency at the local, state, regional and federal levels. Personnel selected for this priority should be responsible for ensuring the viability or reconstruction of the basic infrastructure in an emergency area. In addition, personnel essential to continuity of government and national security functions (such as the conduct of international affairs and intelligence activities) are also included in this priority. Examples of those eligible include:

- (i) Federal emergency operations center coordinators, e.g., Manager, National Coordinating Center for Telecommunications, National Interagency Fire Center, Federal Coordinating Officer, Federal Emergency Communications Coordinator, Director of Military Support;
- (ii) State emergency Services director, National Guard Leadership, State and Federal Damage Assessment Team Leaders;
- (iii) Federal, state and local personnel with continuity of government responsibilities;
- (iv) Incident Command Center Managers, local emergency managers, other state and local elected public safety officials; and
- (v) Federal personnel with intelligence and diplomatic responsibilities.

C. Priority 3: Public Health, Safety, and Law Enforcement Command

Users who qualify for the Public Health, Safety, and Law Enforcement Command priority will be assigned priority three. Eligible for this priority are individuals who direct operations critical to life, property, and maintenance of law and order immediately following an event. Examples of those eligible include:

- (i) Federal law enforcement command;
- (ii) State police leadership;
- (iii) Local fire and law enforcement command;
- (iv) Emergency medical service leaders;
- (v) Search and rescue team leaders; and
- (vi) Emergency communications coordinators.

D. Priority 4: Public Services/Utilities and Public Welfare

Users who qualify for the Public Services/Utilities and Public Welfare priority will be

assigned priority four. Eligible for this priority are those users whose responsibilities include managing public works and utility infrastructure damage assessment and restoration efforts and transportation to accomplish emergency response activities. Examples of those eligible include:

- (i) Army Corps of Engineers leadership;
- (ii) Power, water and sewage and telecommunications utilities; and
- (iii) Transportation leadership.

E. Priority 5: Disaster Recovery

Users who qualify for the Disaster Recovery priority will be assigned priority five. Eligible for this priority are those individuals responsible for managing a variety of recovery operations after the initial response has been accomplished. These functions may include managing medical resources such as supplies, personnel, or patients in medical facilities. Other activities such as coordination to establish and stock shelters, to obtain detailed damage assessments, or to support key disaster field office personnel may be included. Examples of those eligible include:

- (i) Medical recovery operations leadership;
- (ii) Detailed damage assessment leadership;
- (iii) Disaster shelter coordination and management; and
- (iv) Critical Disaster Field Office support personnel.

6. LIMITATIONS

PAS will be assigned only to the minimum number of CMRS services required to support an NSEP function. The Executive Office of the President may also establish limitations upon the relative numbers of services that may be assigned PAS or the total number of PAS users in a serving area. These limitations will not take precedence over laws or executive orders. Limitations established shall not be exceeded.

[65 FR 48396, Aug. 8, 2000]

PART 65—INTERSTATE RATE OF RETURN PRESCRIPTION PROCEDURES AND METHODOLOGIES

Subpart A—General

Sec.

65.1 Application of part 65.

Subpart B—Procedures

65.100 Participation and acceptance of service designation.

65.101 Initiation of unitary rate of return prescription proceedings.

65.102 Petitions for exclusion from unitary treatment and for individual treatment