


47 C.F.R. § 4.1

Code of Federal Regulations [Currentness](#)

Title 47. Telecommunication

Chapter I. Federal Communications Commission ([Refs & Annos](#))

Subchapter A. General

▣ [Part 4](#). Disruptions to Communications ([Refs & Annos](#))

▣ General

➔ **§ 4.1 Scope, basis and purpose.**

In this part, the Federal Communications Commission is setting forth requirements pertinent to the reporting of disruptions to communications and to the reliability and security of communications infrastructures.

SOURCE: [69 FR 70338](#), Dec. 3, 2004; [69 FR 78338](#), Dec. 30, 2004, unless otherwise noted.

AUTHORITY: [47 U.S.C. 151](#), [154\(i\)](#), [154\(j\)](#), [154\(o\)](#), [218](#), [219](#), [230](#), [256](#), [301](#), [302\(a\)](#), [303\(f\)](#), [303\(g\)](#), [303\(j\)](#), [303\(r\)](#), [403](#), 621(b)(3), and 621(d), unless otherwise noted.

47 C. F. R. § 4.1, 47 CFR § 4.1

Current through June 30, 2006; 71 FR 37805

Copr. © 2006 Thomson/West

END OF DOCUMENT

(C) 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.



47 C.F.R. § 4.2

Code of Federal Regulations [Currentness](#)

Title 47. Telecommunication

Chapter I. Federal Communications Commission ([Refs & Annos](#))

Subchapter A. General

▣ [Part 4](#). Disruptions to Communications ([Refs & Annos](#))

▣ General

➔ **§ 4.2 Availability of reports filed under this part.**

Reports filed under this part will be presumed to be confidential. Public access to reports filed under this part may be sought only pursuant to the procedures set forth in [47 CFR §](#)

[0.461](#). Notice of any requests for inspection of outage reports will be provided pursuant to [47 CFR 0.461\(d\)\(3\)](#).

SOURCE: [69 FR 70338](#), Dec. 3, 2004; [69 FR 78338](#), Dec. 30, 2004, unless otherwise noted.

AUTHORITY: [47 U.S.C. 151](#), [154\(i\)](#), [154\(j\)](#), [154\(o\)](#), [218](#), [219](#), [230](#), [256](#), [301](#), [302\(a\)](#), [303\(f\)](#), [303\(g\)](#), [303\(j\)](#), [303\(r\)](#), [403](#), 621(b)(3), and 621(d), unless otherwise noted.

47 C. F. R. § 4.2, 47 CFR § 4.2

Current through June 30, 2006; 71 FR 37805

Copr. © 2006 Thomson/West
END OF DOCUMENT

(C) 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.



47 C.F.R. § 4.3

Code of Federal Regulations [Currentness](#)

Title 47. Telecommunication

Chapter I. Federal Communications Commission ([Refs & Annos](#))

Subchapter A. General

▣ [Part 4](#). Disruptions to Communications ([Refs & Annos](#))

▣ Reporting Requirements for Disruptions to Communications

➔ **§ 4.3 Communications providers covered by the requirements of this part.**

(a) Cable communications providers are cable service providers that also provide circuit-switched telephony. Also included are affiliated and non-affiliated entities that maintain or provide communications networks or services used by the provider in offering telephony.

(b) Communications provider is an entity that provides for a fee to one or more unaffiliated entities, by radio, wire, cable, satellite, and/or lightguide: two-way voice and/or data communications, paging service, and/or SS7 communications.

(c) IXC or LEC tandem facilities refer to tandem switches (or their equivalents) and interoffice facilities used in the provision of interexchange or local exchange communications.

(d) Satellite communications providers use space stations as a means of providing the public with communications, such as telephony and paging. Also included are affiliated

and non-affiliated entities that maintain or provide communications networks or services used by the provider in offering such communications. "Satellite operators" refer to entities that operate space stations but do not necessarily provide communications services directly to end users.

(e) Signaling System 7 (SS7) is a signaling system used to control telecommunications networks. It is frequently used to "set up," process, control, and terminate circuit-switched telecommunications, including but not limited to domestic and international telephone calls (irrespective of whether the call is wholly or in part wireless, wireline, local, long distance, or is carried over cable or satellite infrastructure), SMS text messaging services, 8XX number type services, local number portability, VoIP signaling gateway services, 555 number type services, and most paging services. For purposes of this rule part, SS7 refers to both the SS7 protocol and the packet networks through which signaling information is transported and switched or routed. It includes future modifications to the existing SS7 architecture that will provide the functional equivalency of the SS7 services and network elements that exist as of August 4, 2004. SS7 communications providers are subject to the provisions of this part 4 regardless of whether or not they provide service directly to end users. Also subject to part 4 of the Commission's rules are affiliated and non-affiliated entities that maintain or provide communications networks or services used by the SS7 provider in offering SS7 communications.

(f) Wireless service providers include Commercial Mobile Radio Service communications providers that use cellular architecture and CMRS paging providers. In particular, they include Cellular Radio Telephone Service (part 22 of the Commission's Rules) providers; Personal Communications Service (PCS) (part 24) providers; those Special Mobile Radio Service (part 90) providers that meet the definition of "covered CMRS" providers pursuant to [§§ 20.18\(a\), 52.21, and 52.31](#) of the Commission's rules, those private paging (part 90) providers that are treated as CMRS providers (see [§ 20.9](#) of this chapter); and narrowband PCS providers (part 24) of this chapter. Also included are affiliated and non-affiliated entities that maintain or provide communications networks or services used by the provider in offering such communications.

(g) Wireline communications providers offer terrestrial communications through direct connectivity, predominantly by wire, coaxial cable, or optical fiber, between the serving central office (as defined in the appendix to part 36 of this chapter) and end user location(s). Also included are affiliated and non-affiliated entities that maintain or provide communications networks or services used by the provider in offering such communications.

(h) Exclusion of equipment manufacturers or vendors. Excluded from the requirements of this part 4 are those equipment manufacturers or vendors that do not maintain or provide communications networks or services used by communications providers in offering communications.

SOURCE: [69 FR 70338](#), Dec. 3, 2004; [69 FR 78338](#), Dec. 30, 2004, unless otherwise noted.

AUTHORITY: [47 U.S.C. 151](#), [154\(i\)](#), [154\(j\)](#), [154\(o\)](#), [218](#), [219](#), [230](#), [256](#), [301](#), [302\(a\)](#), [303\(f\)](#), [303\(g\)](#), [303\(j\)](#), [303\(r\)](#), [403](#), 621(b)(3), and 621(d), unless otherwise noted.

47 C. F. R. § 4.3, 47 CFR § 4.3

Current through June 30, 2006; 71 FR 37805

Copr. © 2006 Thomson/West
END OF DOCUMENT

(C) 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.



47 C.F.R. § 4.5

Code of Federal Regulations [Currentness](#)

Title 47. Telecommunication

Chapter I. Federal Communications Commission ([Refs & Annos](#))

Subchapter A. General

▣ [Part 4](#). Disruptions to Communications ([Refs & Annos](#))

▣ Reporting Requirements for Disruptions to Communications

➔ **§ 4.5 Definitions of outage, special offices and facilities, and 911 special facilities.**

(a) Outage is defined as a significant degradation in the ability of an end user to establish and maintain a channel of communications as a result of failure or degradation in the performance of a communications provider's network.

(b) Special offices and facilities are defined as major military installations, key government facilities, nuclear power plants, and those airports that are listed as current primary (PR), commercial service (CM), and reliever (RL) airports in the FAA's National Plan of Integrated Airports Systems (NPIAS) (as issued at least one calendar year prior to the outage). The member agencies of the National Communications System (NCS) will determine which of their locations are "major military installations" and "key government facilities." 911 special facilities are addressed separately in paragraph (e) of this section.

(c) All outages that potentially affect communications for at least 30 minutes with any airport that qualifies as a "special office and facility" pursuant to the preceding paragraph shall be reported in accordance with the provisions of [§§ 4.11](#) and [4.13](#).

(d) A mission-affecting outage is defined as an outage that is deemed critical to national security/emergency preparedness (NS/EP) operations of the affected facility by the National Communications System member agency operating the affected facility.

(e) An outage that potentially affects a 911 special facility occurs whenever:

(1) There is a loss of communications to PSAP(s) potentially affecting at least 900,000 user-minutes and: The failure is neither at the PSAP(s) nor on the premises of the PSAP(s); no reroute for all end users was available; and the outage lasts 30 minutes or more; or

(2) There is a loss of 911 call processing capabilities in one or more E-911 tandems/selective routers for at least 30 minutes duration; or

(3) One or more end-office or MSC switches or host/remote clusters is isolated from 911 service for at least 30 minutes and potentially affects at least 900,000 user-minutes; or

(4) There is a loss of ANI/ALI (associated name and location information) and/or a failure of location determination equipment, including Phase II equipment, for at least 30 minutes and potentially affecting at least 900,000 user-minutes (provided that the ANI/ALI or location determination equipment was then currently deployed and in use, and the failure is neither at the PSAP(s) or on the premises of the PSAP(s)).

SOURCE: [69 FR 70338](#), Dec. 3, 2004; [69 FR 78338](#), Dec. 30, 2004, unless otherwise noted.

AUTHORITY: [47 U.S.C. 151](#), [154\(i\)](#), [154\(j\)](#), [154\(o\)](#), [218](#), [219](#), [230](#), [256](#), [301](#), [302\(a\)](#), [303\(f\)](#), [303\(g\)](#), [303\(j\)](#), [303\(r\)](#), [403](#), 621(b)(3), and 621(d), unless otherwise noted.

47 C. F. R. § 4.5, 47 CFR § 4.5

Current through June 30, 2006; 71 FR 37805

Copr. © 2006 Thomson/West
END OF DOCUMENT

(C) 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.



47 C.F.R. § 4.7

Code of Federal Regulations [Currentness](#)

Title 47. Telecommunication

Chapter I. Federal Communications Commission ([Refs & Annos](#))

Subchapter A. General

■ [Part 4](#). Disruptions to Communications ([Refs & Annos](#))

■ Reporting Requirements for Disruptions to Communications

➡§ 4.7 Definitions of metrics used to determine the general outage-reporting threshold criteria.

(a) Administrative numbers are defined as the telephone numbers used by communications providers to perform internal administrative or operational functions necessary to maintain reasonable quality of service standards.

(b) Assigned numbers are defined as the telephone numbers working in the Public Switched Telephone Network under an agreement such as a contract or tariff at the request of specific end users or customers for their use. This excludes numbers that are not yet working but have a service order pending.

(c) Assigned telephone number minutes are defined as the mathematical result of multiplying the duration of an outage, expressed in minutes, by the sum of the number of assigned numbers (defined in paragraph (b) of this section) potentially affected by the outage and the number of administrative numbers (defined in paragraph (a) of this section) potentially affected by the outage. "Assigned telephone number minutes" can alternatively be calculated as the mathematical result of multiplying the duration of an outage, expressed in minutes, by the number of working telephone numbers potentially affected by the outage, where working telephone numbers are defined as the telephone numbers, including DID numbers, working immediately prior to the outage.

(d) DS3 minutes are defined as the mathematical result of multiplying the duration of an outage, expressed in minutes, by the number of previously operating DS3 circuits that were affected by the outage.

(e) User minutes are defined as:

(1) Assigned telephone number minutes (as defined in paragraph (c) of this section), for telephony and for those paging networks in which each individual user is assigned a telephone number;

(2) The mathematical result of multiplying the duration of an outage, expressed in minutes, by the number of end users potentially affected by the outage, for all other forms of communications.

(f) Working telephone numbers are defined to be the sum of all telephone numbers that can originate, or terminate telecommunications. This includes, for example, all working telephone numbers on the customer's side of a PBX, or Centrex, or similar arrangement.

SOURCE: [69 FR 70338](#), Dec. 3, 2004; [69 FR 78338](#), Dec. 30, 2004, unless otherwise noted.

AUTHORITY: [47 U.S.C. 151](#), [154\(i\)](#), [154\(j\)](#), [154\(o\)](#), [218](#), [219](#), [230](#), [256](#), [301](#), [302\(a\)](#), [303\(f\)](#), [303\(g\)](#), [303\(j\)](#), [303\(r\)](#), [403](#), 621(b)(3), and 621(d), unless otherwise noted.

47 C. F. R. § 4.7, 47 CFR § 4.7

Current through June 30, 2006; 71 FR 37805

Copr. © 2006 Thomson/West
END OF DOCUMENT

(C) 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.



47 C.F.R. § 4.9

Code of Federal Regulations [Currentness](#)

Title 47. Telecommunication

Chapter I. Federal Communications Commission ([Refs & Annos](#))

Subchapter A. General

▣ [Part 4](#). Disruptions to Communications ([Refs & Annos](#))

▣ Reporting Requirements for Disruptions to Communications

➔ **§ 4.9 Outage reporting requirements--threshold criteria.**

(a) Cable. All cable communications providers shall submit electronically a Notification to the Commission within 120 minutes of discovering that they have experienced on any facilities that they own, operate, lease, or otherwise utilize, an outage of at least 30 minutes duration that:

(1) Potentially affects at least 900,000 user minutes of telephony service;

(2) Affects at least 1,350 DS3 minutes;

(3) Potentially affects any special offices and facilities (in accordance with [paragraphs \(a\) through \(d\) of § 4.5](#)); or

(4) Potentially affects a 911 special facility (as defined in [paragraph \(e\) of § 4.5](#)), in which case they also shall notify, as soon as possible by telephone or other electronic means, any official who has been designated by the management of the affected 911 facility as the provider's contact person for communications outages at that facility, and they shall convey to that person all available information that may be useful to the management of the affected facility in mitigating the effects of the outage on callers to that facility. (DS3 minutes and user minutes are defined in [paragraphs \(d\) and \(e\) of § 4.7](#).) Not later than 72 hours after discovering the outage, the provider shall submit electronically an Initial Communications Outage Report to the Commission. Not later than thirty days after discovering the outage, the provider shall submit electronically a Final Communications Outage Report to the Commission. The Notification and the Initial and Final reports shall comply with all of the requirements of [§ 4.11](#).

(b) IXC or LEC tandem facilities. In the case of IXC or LEC tandem facilities, providers must, if technically possible, use real-time blocked calls to determine whether criteria for reporting an outage have been reached. Providers must report IXC and LEC tandem outages of at least 30 minutes duration in which at least 90,000 calls are blocked or at least 1,350 DS3- minutes are lost. For interoffice facilities which handle traffic in both directions and for which blocked call information is available in one direction only, the total number of blocked calls shall be estimated as twice the number of blocked calls determined for the available direction. Providers may use historic carried call load data for the same day(s) of the week and the same time(s) of day as the outage, and for a time interval not older than 90 days preceding the onset of the outage, to estimate blocked calls whenever it is not possible to obtain real-time blocked call counts. When using historic data, providers must report incidents where at least 30,000 calls would have been carried during a time interval with the same duration of the outage. (DS3 minutes are defined in [paragraph \(d\) of § 4.7.](#)) In situations where, for whatever reason, real-time and historic carried call load data are unavailable to the provider, even after a detailed investigation, the provider must determine the carried call load based on data obtained in the time interval between the onset of the outage and the due date for the final report; this data must cover the same day of the week, the same time of day, and the same duration as the outage. Justification that such data accurately estimates the traffic that would have been carried at the time of the outage had the outage not occurred must be available on request. If carried call load data cannot be obtained through any of the methods described, for whatever reason, then the provider shall report the outage.

(c) Satellite.

(1) All satellite operators shall submit electronically a Notification to the Commission within 120 minutes of discovering that they have experienced on any facilities that they own, operate, lease, or otherwise utilize, of an outage of at least 30 minutes duration that manifests itself as a failure of any of the following key system elements: One or more satellite transponders, satellite beams, inter-satellite links, or entire satellites. In addition, all Mobile-Satellite Service ("MSS") satellite operators shall submit electronically a Notification to the Commission within 120 minutes of discovering that they have experienced on any facilities that they own, operate, lease, or otherwise utilize, of an outage of at least 30 minutes duration that manifests itself as a failure of any gateway earth station, except in the case where other earth stations at the gateway location are used to continue gateway operations within 30 minutes of the onset of the failure.

(2) All satellite communications providers shall submit electronically a Notification to the Commission within 120 minutes of discovering that they have experienced on any facilities that they own, operate, lease, or otherwise utilize, an outage of at least 30 minutes duration that manifests itself as:

(i) A loss of complete accessibility to at least one satellite or transponder;

(ii) A loss of a satellite communications link that potentially affects at least 900,000 user-minutes (as defined in [§ 4.7\(d\)](#)) of either telephony service or paging service;

(iii) Potentially affecting any special offices and facilities (in accordance with [paragraphs \(a\) through \(d\) of § 4.5](#)) other than airports; or

(iv) Potentially affecting a 911 special facility (as defined in (e) of [§ 4.5](#)), in which case they also shall notify, as soon as possible by telephone or other electronic means, any official who has been designated by the management of the affected 911 facility as the provider's contact person for communications outages at that facility, and they shall convey to that person all available information that may be useful to the management of the affected facility in mitigating the effects of the outage on callers to that facility.

(3) Not later than 72 hours after discovering the outage, the operator and/or provider shall submit electronically an Initial Communications Outage Report to the Commission. Not later than thirty days after discovering the outage, the operator and/or provider shall submit electronically a Final Communications Outage Report to the Commission.

(4) The Notification and the Initial and Final reports shall comply with all of the requirements of [§ 4.11](#).

(5) Excluded from these outage-reporting requirements are those satellites, satellite beams, inter-satellite links, MSS gateway earth stations, satellite networks, and transponders that are used exclusively for intra-corporate or intra-organizational private telecommunications networks, for the one-way distribution of video or audio programming, or for other non-covered services (that is, when they are never used to carry common carrier voice or paging communications).

(d) Signaling system 7. Signaling System 7 (SS7) providers shall submit electronically a Notification to the Commission within 120 minutes of discovering that they have experienced on any facilities that they own, operate, lease, or otherwise utilize an outage of at least 30 minutes duration that is manifested as the generation of at least 90,000 blocked calls based on real-time traffic data or at least 30,000 lost calls based on historic carried loads. In cases where a third-party SS7 provider cannot directly estimate the number of blocked calls, the third-party SS7 provider shall use 500,000 real-time lost MTP messages as a surrogate for 90,000 real-time blocked calls, or 167,000 lost MTP messages on a historical basis as a surrogate for 30,000 lost calls based on historic carried loads. Historic carried load data or the number of lost MTP messages on a historical basis shall be for the same day(s) of the week and the same time(s) of day as the outage, and for a time interval not older than 90 days preceding the onset of the outage. In situations where, for whatever reason, real-time and historic data are unavailable to the provider, even after a detailed investigation, the provider must determine the carried load based on data obtained in the time interval between the onset of the outage and the due date for the final report; this data must cover the same day of the week and the same time of day as the outage. If this cannot be done, for whatever reason, the outage must be reported. Justification that such data accurately estimates the traffic that would have been carried at the time of the outage had the outage not occurred must be available on request. Finally, whenever a pair of STPs serving any communications provider becomes isolated from a

pair of interconnected STPs that serve any other communications provider, for at least 30 minutes duration, each of these communications providers shall submit electronically a Notification to the Commission within 120 minutes of discovering such outage. Not later than 72 hours after discovering the outage, the provider(s) shall submit electronically an Initial Communications Outage Report to the Commission. Not later than thirty days after discovering the outage, the provider(s) shall submit electronically a Final Communications Outage Report to the Commission. The Notification and the Initial and Final reports shall comply with all of the requirements of [§ 4.11](#).

(e) Wireless. All wireless service providers shall submit electronically a Notification to the Commission within 120 minutes of discovering that they have experienced on any facilities that they own, operate, lease, or otherwise utilize, an outage of at least 30 minutes duration:

(1) Of a Mobile Switching Center (MSC);

(2) That potentially affects at least 900,000 user minutes of either telephony and associated data (2nd generation or lower) service or paging service;

(3) That affects at least 1,350 DS3 minutes;

(4) That potentially affects any special offices and facilities (in accordance with [paragraphs \(a\) through \(d\) of § 4.5](#)) other than airports through direct service facility agreements; or

(5) That potentially affects a 911 special facility (as defined in (e) of [§ 4.5](#)), in which case they also shall notify, as soon as possible by telephone or other electronic means, any official who has been designated by the management of the affected 911 facility as the provider's contact person for communications outages at that facility, and they shall convey to that person all available information that may be useful to the management of the affected facility in mitigating the effects of the outage on callers to that facility. (DS3 minutes and user minutes are defined in [paragraphs \(d\) and \(e\) of § 4.7](#).) In determining the number of users potentially affected by a failure of a switch, a concentration ratio of 8 shall be applied. For providers of paging service solely, however, the following outage criteria shall apply instead of those in paragraphs (b)(1) through (b)(3) of this section. Notification must be submitted if the failure of a switch for at least 30 minutes duration potentially affects at least 900,000 user-minutes. Not later than 72 hours after discovering the outage, the provider shall submit electronically an Initial Communications Outage Report to the Commission. Not later than thirty days after discovering the outage, the provider shall submit electronically a Final Communications Outage Report to the Commission. The Notification and the Initial and Final reports shall comply with all of the requirements of [§ 4.11](#).

(f) Wireline. All wireline communications providers shall submit electronically a Notification to the Commission within 120 minutes of discovering that they have experienced on any facilities that they own, operate, lease, or otherwise utilize, an outage of at least 30 minutes duration that:

- (1) Potentially affects at least 900,000 user minutes of either telephony or paging;
- (2) Affects at least 1,350 DS3 minutes;
- (3) Potentially affects any special offices and facilities (in accordance with [paragraphs \(a\) through \(d\) of § 4.5](#)); or
- (4) Potentially affects a 911 special facility (as defined in [paragraph \(e\) of § 4.5](#)), in which case they also shall notify, as soon as possible by telephone or other electronic means, any official who has been designated by the management of the affected 911 facility as the provider's contact person for communications outages at that facility, and the provider shall convey to that person all available information that may be useful to the management of the affected facility in mitigating the effects of the outage on efforts to communicate with that facility. (DS3 minutes and user minutes are defined in [paragraphs \(d\) and \(e\) of § 4.7](#).) Not later than 72 hours after discovering the outage, the provider shall submit electronically an Initial Communications Outage Report to the Commission. Not later than thirty days after discovering the outage, the provider shall submit electronically a Final Communications Outage Report to the Commission. The Notification and the Initial and Final reports shall comply with all of the requirements of [§ 4.11](#).

SOURCE: [69 FR 70338](#), Dec. 3, 2004; [69 FR 78338](#), Dec. 30, 2004, unless otherwise noted.

AUTHORITY: [47 U.S.C. 151](#), [154\(i\)](#), [154\(j\)](#), [154\(o\)](#), [218](#), [219](#), [230](#), [256](#), [301](#), [302\(a\)](#), [303\(f\)](#), [303\(g\)](#), [303\(j\)](#), [303\(r\)](#), [403](#), 621(b)(3), and 621(d), unless otherwise noted.

47 C. F. R. § 4.9, 47 CFR § 4.9

Current through June 30, 2006; 71 FR 37805

Copr. © 2006 Thomson/West
END OF DOCUMENT

(C) 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.



47 C.F.R. § 4.11

Code of Federal Regulations [Currentness](#)

Title 47. Telecommunication

Chapter I. Federal Communications Commission ([Refs & Annos](#))

Subchapter A. General

* [Part 4](#). Disruptions to Communications ([Refs & Annos](#))

Reporting Requirements for Disruptions to Communications

§ 4.11 Notification and initial and final communications outage reports that must be filed by communications providers.

Notification and Initial and Final Communications Outage Reports shall be submitted by a person authorized by the communications provider to submit such reports to the Commission. The person submitting the Final report to the Commission shall also be authorized by the provider to legally bind the provider to the truth, completeness, and accuracy of the information contained in the report. Each Final report shall be attested by the person submitting the report that he/she has read the report prior to submitting it and on oath deposes and states that the information contained therein is true, correct, and accurate to the best of his/her knowledge and belief and that the communications provider on oath deposes and states that this information is true, complete, and accurate. The Notification shall provide: the name of the reporting entity; the date and time of onset of the outage; a brief description of the problem; service affects; the geographic area affected by the outage; and a contact name and contact telephone number by which the Commission's technical staff may contact the reporting entity. The Initial and Final Reports shall contain the information required in this part 4. The Initial report shall contain all pertinent information then available on the outage and shall be submitted in good faith. The Final report shall contain all pertinent information on the outage, including any information that was not contained in, or that has changed from that provided in, the Initial report. The Notification and the Initial and Final Communications Outage Reports are to be submitted electronically to the Commission.

"Submitted electronically" refers to submission of the information using Commission-approved Web-based outage report templates. If there are technical impediments to using the Web-based system during the Notification stage, then a written Notification to the Commission by email, FAX, or courier may be used; such Notification shall contain the information required. All hand-delivered Notifications and Initial and Final Communications Outage Reports, shall be addressed to the Federal Communications Commission, The Office of Secretary, Attention: Edmond J. Thomas, Chief, Office of Engineering & Technology, 236 Massachusetts Ave., NE., Suite 110, Washington, DC 20002. Electronic filing shall be effectuated in accordance with procedures that are specified by the Commission by public notice.

SOURCE: [69 FR 70338](#), Dec. 3, 2004; [69 FR 78338](#), Dec. 30, 2004, unless otherwise noted.

AUTHORITY: [47 U.S.C. 151](#), [154\(i\)](#), [154\(j\)](#), [154\(o\)](#), [218](#), [219](#), [230](#), [256](#), [301](#), [302\(a\)](#), [303\(f\)](#), [303\(g\)](#), [303\(j\)](#), [303\(r\)](#), [403](#), 621(b)(3), and 621(d), unless otherwise noted.

47 C. F. R. § 4.11, 47 CFR § 4.11

Current through June 30, 2006; 71 FR 37805

Copr. © 2006 Thomson/West
END OF DOCUMENT

(C) 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.



47 C.F.R. § 4.13

Code of Federal Regulations [Currentness](#)

Title 47. Telecommunication

Chapter I. Federal Communications Commission ([Refs & Annos](#))

Subchapter A. General

▣ [Part 4](#). Disruptions to Communications ([Refs & Annos](#))

▣ Reporting Requirements for Disruptions to Communications

➔ **§ 4.13 Reports by the National Communications System (NCS) and by special offices and facilities, and related responsibilities of communications providers.**

Reports by the National Communications System (NCS) and by special offices and facilities (other than 911 special offices and facilities) of outages potentially affecting them (see [paragraphs \(a\) through \(d\) of § 4.5](#)) shall be made according to the following procedures:

(a) When there is a mission-affecting outage, the affected facility will report the outage to the NCS and call the communications provider in order to determine if the outage is expected to last 30 minutes. If the outage is not expected to, and does not, last 30 minutes, it will not be reported to the Commission. If it is expected to last 30 minutes or does last 30 minutes, the NCS, on the advice of the affected special facility and in the exercise of its judgment, will either:

(1) Forward a report of the outage to the Commission, supplying the information for initial reports affecting special facilities specified in this section of the Commission's Rules;

(2) Forward a report of the outage to the Commission, designating the outage as one affecting "special facilities," but reporting it at a level of detail that precludes identification of the particular facility involved; or

(3) Hold the report at the NCS due to the critical nature of the application.

(b) If there is to be a report to the Commission, an electronic, written, or oral report will be given by the NCS within 120 minutes of an outage to the Commission's Duty Officer, on duty 24 hours a day in the FCC's Communications and Crisis Management Center in Washington, DC. Notification may be served at such other facility designated by the Commission by public notice or (at the time of the emergency) by public announcement only if there is a telephone outage or similar emergency in Washington, DC. If the report

is oral, it is to be followed by an electronic or written report not later than the next business day. Those providers whose service failures are in any way responsible for the outage must consult and cooperate in good faith with NCS upon its request for information.

(c) Additionally, if there is to be a report to the Commission, the communications provider will provide a written report to the NCS, supplying the information for final reports for special facilities required by this section of the Commission's rules. The communications provider's final report to the NCS will be filed within 28 days after the outage, allowing the NCS to then file the report with the Commission within 30 days after the outage. If the outage is reportable as described in paragraph (b) of this section, and the NCS determines that the final report can be presented to the Commission without jeopardizing matters of national security or emergency preparedness, the NCS will forward the report as provided in either paragraphs (a)(1) or (a)(2) of this section to the Commission.

SOURCE: [69 FR 70338](#), Dec. 3, 2004; [69 FR 78338](#), Dec. 30, 2004, unless otherwise noted.

AUTHORITY: [47 U.S.C. 151](#), [154\(i\)](#), [154\(j\)](#), [154\(o\)](#), [218](#), [219](#), [230](#), [256](#), [301](#), [302\(a\)](#), [303\(f\)](#), [303\(g\)](#), [303\(j\)](#), [303\(r\)](#), [403](#), 621(b)(3), and 621(d), unless otherwise noted.

47 C. F. R. § 4.13, 47 CFR § 4.13

Current through June 30, 2006; 71 FR 37805

Copr. © 2006 Thomson/West
END OF DOCUMENT

(C) 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.



47 C.F.R. § 201.0

Code of Federal Regulations [Currentness](#)

Title 47. Telecommunication

▣ [Chapter II](#). Office of Science and Technology Policy and National Security Council

▣ [Part 201](#). Executive Policy ([Refs & Annos](#))

➔ **§ 201.0 Background.**

National policy with respect to the conservation, allocation and use of the Nation's telecommunications resources during crises and emergencies is set forth in [Executive Order 12472](#). The following parts of this chapter address specific responsibilities with respect to management of telecommunications resources and related procedures which

bear upon provision, restoration and continuity of telecommunications services during crises and emergencies. In doing so, the chapter encompasses both national security and emergency preparedness activities, consistent with [Executive Order 12472](#). This concept of national security and emergency preparedness telecommunications services (as defined in [§ 201.2\(g\)](#)) includes crises that do not necessarily entail serious degradation of, or serious threats to, national security. It therefore is a broader concept than the term "national security emergency preparedness activities" in [Executive Order 12656](#), which concerns only national security emergencies, and preparedness activities necessarily related to such emergencies.

SOURCE: [55 FR 51056](#), Dec. 11, 1990, unless otherwise noted.

AUTHORITY: 61 Stat. 496 ([50 U.S.C. 401](#)); 64 Stat. 798 ([50 U.S.C. app. 2061](#)); 64 Stat. 1245 ([50 U.S.C. app. 2251](#)); 90 Stat. 463 ([42 U.S.C. 6611](#)); [E.O. 12046](#), March 27, 1978 ([43 FR 13349](#); 3 CFR, 1978 Comp., p. 158); [E.O. 12472](#), April 3, 1984 ([49 FR 13471](#); 3 CFR, 1984 Comp., p. 193); [E.O. 12656](#), November 18, 1988 ([53 FR 47491](#); 3 CFR, 1988 Comp., p. 585).

47 C. F. R. § 201.0, 47 CFR § 201.0

Current through June 30, 2006; 71 FR 37805

Copr. © 2006 Thomson/West
END OF DOCUMENT

(C) 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.



47 C.F.R. § 201.1

Code of Federal Regulations [Currentness](#)

Title 47. Telecommunication

▣ [Chapter II](#). Office of Science and Technology Policy and National Security Council

▣ [Part 201](#). Executive Policy ([Refs & Annos](#))

➔ **§ 201.1 Authority.**

(a) Authorities and responsibilities related to and bearing upon national security and emergency preparedness telecommunications matters are set forth in:

(1) Section 706 of the Communications Act of 1934 (48 Stat. 1104, [47 U.S.C. 606](#)), as amended.

(2) The National Security Act of 1947, as amended (61 Stat. 496, [50 U.S.C. 402](#)).

(3) The Federal Civil Defense Act of 1950, as amended ([50 U.S.C. app. 2251](#) et seq.).

(4) The Disaster Relief Act of 1974 ([42 U.S.C. 5121](#) et seq.).

(5) The National Science and Technology Policy, Organization, and Priorities Act of 1976 (90 Stat. 463, [42 U.S.C. 6611](#)).

(6) [Executive Order 12046](#), "Relating to the Transfer of Telecommunications Functions," March 27, 1978 ([43 FR 13349](#); 3 CFR, 1978 Comp., p. 158).

(7) [Executive Order 12472](#), "Assignment of National Security and Emergency Preparedness Telecommunications Functions," April 3, 1984 ([49 FR 13471](#); 3 CFR, 1984 Comp., p. 193).

(b) Authorities to be exercised in the execution and performance of emergency functions are subject to the provisions of the National Emergencies Act of 1976 (90 Stat. 1255, [50 U.S.C. 1601](#)).

SOURCE: [55 FR 51056](#), Dec. 11, 1990, unless otherwise noted.

AUTHORITY: 61 Stat. 496 ([50 U.S.C. 401](#)); 64 Stat. 798 ([50 U.S.C. app. 2061](#)); 64 Stat. 1245 ([50 U.S.C. app. 2251](#)); 90 Stat. 463 ([42 U.S.C. 6611](#)); [E.O. 12046](#), March 27, 1978 ([43 FR 13349](#); 3 CFR, 1978 Comp., p. 158); [E.O. 12472](#), April 3, 1984 ([49 FR 13471](#); 3 CFR, 1984 Comp., p. 193); [E.O. 12656](#), November 18, 1988 ([53 FR 47491](#); 3 CFR, 1988 Comp., p. 585).

47 C. F. R. § 201.1, 47 CFR § 201.1

Current through June 30, 2006; 71 FR 37805

Copr. © 2006 Thomson/West

END OF DOCUMENT

(C) 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.



47 C.F.R. § 201.2

Code of Federal Regulations [Currentness](#)

Title 47. Telecommunication

▣ [Chapter II](#). Office of Science and Technology Policy and National Security Council

▣ [Part 201](#). Executive Policy ([Refs & Annos](#))

➡ **§ 201.2 Definitions.**

The following definitions apply herein:

(a) Communications common carrier, specialized carrier, or carrier means any individual, partnership, association, joint stock company, trust, or corporation subject to Federal or State regulation engaged in providing telecommunications facilities or services, for use by the public, for hire.

(b) Government means Federal, State, county, municipal, and other local government authority. Specific qualification will be provided whenever reference to a particular level of government is intended.

(c) Joint Telecommunications Resources Board (JTRB) means that organization established by the Director, Office of Science and Technology Policy, pursuant to [Executive Order 12472](#) to assist the Director, OSTP, in exercising the non-wartime emergency telecommunications functions assigned by [Executive Order 12472](#).

(d) The National Communications System (NCS) means that organization established by [Executive Order 12472](#) consisting of the telecommunications assets of the entities represented on the NCS Committee of Principals and an administrative structure consisting of the Executive Agent, the NCS Committee of Principals and the Manager. The NCS Committee of Principals consists of representatives from those Federal departments, agencies or entities, designated by the President, which lease or own telecommunications facilities or services of significance to national security and emergency preparedness, and, to the extent permitted by law, other Executive entities which bear policy, regulatory or enforcement responsibilities of importance to national security and emergency preparedness telecommunications capabilities. The NCS is a confederative arrangement in which member Federal agencies participate with their owned and leased telecommunications assets to provide necessary communications services for the Federal Government, under all conditions, including nuclear war.

(e) National Coordinating Center (NCC) refers to the joint industry-government telecommunications entity established by the NCS pursuant to [Executive Order 12472](#) to assist in the initiation, coordination, restoration and reconstitution of national security and emergency preparedness telecommunications services or facilities under all conditions of crisis or emergency.

(f) National priorities means those essential actions and activities in which the government and the private sector must become engaged in the interests of national survival and recovery.

(g) National security and emergency preparedness (NS/EP) telecommunications services, or NS/EP services, means those 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 NS/EP posture of the United States.

(h) NS/EP treatment refers to the provisioning of a telecommunications service before others based on the provisioning priority level assigned by the Executive Office of the President.

(i) National Telecommunications Management Structure (NTMS) means a survivable and enduring management structure which will support the exercise of the war power functions of the President under section 706 of the Communications Act of 1934 ([47 U.S.C. 606](#)), as amended.

(j) Private sector means those sectors of non-government entities that are users of telecommunications services.

(k) Telecommunications means any transmission, emission, or reception of signs, signals, writing, images, graphics, and sounds or intelligence of any nature by wire, radio, optical, or other electromagnetic systems.

(l) Telecommunications resources include telecommunications personnel, equipment, material, facilities, systems, and services, public and private, wheresoever located within the jurisdiction of the United States.

(m) Wartime emergency means a crisis or event which permits the exercise of the war power functions of the President under section 706 of the Communications Act of 1934 ([47 U.S.C. 606](#)), as amended.

SOURCE: [55 FR 51056](#), Dec. 11, 1990, unless otherwise noted.

AUTHORITY: 61 Stat. 496 ([50 U.S.C. 401](#)); 64 Stat. 798 ([50 U.S.C. app. 2061](#)); 64 Stat. 1245 ([50 U.S.C. app. 2251](#)); 90 Stat. 463 ([42 U.S.C. 6611](#)); [E.O. 12046](#), March 27, 1978 ([43 FR 13349](#); 3 CFR, 1978 Comp., p. 158); [E.O. 12472](#), April 3, 1984 ([49 FR 13471](#); 3 CFR, 1984 Comp., p. 193); [E.O. 12656](#), November 18, 1988 ([53 FR 47491](#); 3 CFR, 1988 Comp., p. 585).

47 C. F. R. § 201.2, 47 CFR § 201.2

Current through June 30, 2006; 71 FR 37805

Copr. © 2006 Thomson/West
END OF DOCUMENT

(C) 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.



47 C.F.R. § 201.3

Code of Federal Regulations [Currentness](#)

Title 47. Telecommunication

☞ [Chapter II](#). Office of Science and Technology Policy and National Security Council

☞ [Part 201](#). Executive Policy ([Refs & Annos](#))

➔ **§ 201.3 Policy.**

(a) The Federal Government is responsible for resources mobilization, including determination of the need for and the extent of mobilization necessary in all crises and emergencies, wartime and non-wartime.

(b) The President has limited non-wartime NS/EP telecommunications functions, and wartime NS/EP functions under the Communications Act of 1934 (as amended), which have been delegated to Federal agencies under [Executive Order 12472](#). Federal, State, and local governments share the responsibility for conservation of the Nation's telecommunications resources.

(1) The achievement of survival and recovery during a crisis or emergency would establish an unavoidable interdependence between and among Federal, State, and local authorities; therefore, there should be no barriers between Federal and State levels of authorities and between State and local levels of authorities which would impede, obstruct, or otherwise hinder effective conservation and equitable allocation of telecommunications resources and services to the needs of the Nation.

(2) The Federal Government will rely upon State governments and their telecommunications management organizations for management or control of intrastate carrier services and continuity of interconnectivity with interstate carriers to assure that national objectives and priorities are properly served. Applicable regulations of the Federal Communications Commission govern the extent of the allocation of responsibility between Federal and State authorities for the management of NS/EP intrastate carrier services and the interconnectivity of intrastate services for NS/EP telecommunications functions.

(c) A system of telecommunications service priorities will be established which facilitates the provisioning and early restoration of services considered vital to national interests during those events or crises which warrant NS/EP treatment.

(d) The President is authorized during, or in anticipation of, an emergency or major disaster (as defined in the Disaster Relief Act of 1974) to establish temporary telecommunications systems and to make such telecommunications available to State and local government officials and such other persons as deemed appropriate ([42 U.S.C. 5185](#)).

(e) The President also is authorized, during war, when necessary in the interest of national defense and security, to direct or establish priorities for essential

communications with any commercial or governmental carrier and to prevent obstruction of telecommunications. The President may also suspend or amend rules and regulations, close stations and facilities, and authorize U.S. government use and control of telecommunications resources with regard to:

(1) Radio communications (during war, or Presidentially declared threat of war, public peril, disaster or national emergency or a need to preserve the neutrality of the U.S.) and

(2) Wire communications (during war or threat of war).

(f) During an attack on the United States by an aggressor nation, and in an immediate postattack period, all decisions regarding the use of telecommunications resources will be directed to the objective of national survival and recovery. In order to achieve this objective, postattack resources will be assigned to activities concerned with the maintenance and saving of lives, immediate military defense and response, and economic activities essential to continued economic survival and recovery.

(g) The Director of the Office of Science and Technology Policy will serve as the central authority to control, coordinate, and direct the activities of the Nation's telecommunications facilities, systems, and services during periods of wartime emergency as determined under section 706 of the Communications Act of 1934 ([47 U.S.C. 606](#)), as amended.

(h) Telecommunications resources of the Federal Government will be employed, as required, to best serve the continuity of government and national interests.

(i) Federal agencies will, in the development of emergency operational plans, minimize, to the extent feasible, dependence upon telecommunications services for continuity of essential operations.

SOURCE: [55 FR 51056](#), Dec. 11, 1990, unless otherwise noted.

AUTHORITY: 61 Stat. 496 ([50 U.S.C. 401](#)); 64 Stat. 798 ([50 U.S.C. app. 2061](#)); 64 Stat. 1245 ([50 U.S.C. app. 2251](#)); 90 Stat. 463 ([42 U.S.C. 6611](#)); [E.O. 12046](#), March 27, 1978 ([43 FR 13349](#); 3 CFR, 1978 Comp., p. 158); [E.O. 12472](#), April 3, 1984 ([49 FR 13471](#); 3 CFR, 1984 Comp., p. 193); [E.O. 12656](#), November 18, 1988 ([53 FR 47491](#); 3 CFR, 1988 Comp., p. 585).

47 C. F. R. § 201.3, 47 CFR § 201.3

Current through June 30, 2006; 71 FR 37805

Copr. © 2006 Thomson/West
END OF DOCUMENT



47 C.F.R. § 202.0

Code of Federal Regulations [Currentness](#)

Title 47. Telecommunication

▣ [Chapter II](#). Office of Science and Technology Policy and National Security Council

▣ [Part 202](#). National Security and Emergency Preparedness Planning and Execution
([Refs & Annos](#))

➔ **§ 202.0 Objectives.**

(a) During, or in anticipation of, a non-wartime emergency or natural disaster, a telecommunications capacity must exist to provide temporary telecommunications service to State and local government officials and other persons deemed appropriate by the President.

(b) In the event of a general war and attack upon the Nation, a national telecommunications capability must exist that will support telecommunications requirements with respect to national security, survival and recovery. The development of survivable telecommunications to support essential functions (including an emergency broadcasting system), and technical compatibility of signaling methods, transmission modes, switching facilities, and terminal devices to permit exchange of communications over the surviving media of all systems, government or commercial, are crucial elements of such a national capability. In addition, a survivable national telecommunications management structure is necessary to manage initiation, coordination and restoration of telecommunications services. The management structure must include the following:

(1) Legal authority for telecommunications management.

(2) A control mechanism to manage the initiation, coordination and restoration of telecommunications services.

(3) Procedures to ensure timely damage assessment and allocation of residual resources and controlled restoration of services based on national policy/direction.

(4) The capability to execute a telecommunications recovery plan based on national policy/guidance.

(c) Notwithstanding any provision regarding NS/EP Planning and Execution, nothing in this Part shall be deemed to affect the authorities or responsibilities of the Director of the Office of Management and Budget, or any Office or official thereof; or reassign any function assigned any agency under the Federal Property and Administrative Services Act of 1949, as amended, or under any other law, or any function vested by law in the Federal Communications Commission.

SOURCE: [55 FR 51058](#), Dec. 11, 1990, unless otherwise noted.

AUTHORITY: 61 Stat. 496 ([50 U.S.C. 401](#)); 64 Stat. 798 ([50 U.S.C. app. 2061](#)); 64 Stat. 1245 ([50 U.S.C. app. 2251](#)); 90 Stat. 463 ([42 U.S.C. 6611](#)); [E.O. 12046](#), March 27, 1978 ([43 FR 13349](#); 3 CFR, 1978 Comp., p. 158); [E.O. 11021](#), May 7, 1962 ([27 FR 4409](#); 3 CFR, 1959-1963 Comp., p. 600); [E.O. 12472](#), April 3, 1984 ([49 FR 13471](#); 3 CFR, 1984 Comp., p. 193).

47 C. F. R. § 202.0, 47 CFR § 202.0

Current through June 30, 2006; 71 FR 37805

Copr. © 2006 Thomson/West
END OF DOCUMENT

(C) 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.



47 C.F.R. § 202.1

Code of Federal Regulations [Currentness](#)

Title 47. Telecommunication

▣ [Chapter II](#). Office of Science and Technology Policy and National Security Council

▣ [Part 202](#). National Security and Emergency Preparedness Planning and Execution
([Refs & Annos](#))

➔ **§ 202.1 Policies.**

(a) The telecommunications resources of the Nation will be available for government use during crises and emergencies, wartime and non-wartime, and to satisfy the needs of the public welfare and safety.

(b) The National Plan for Telecommunications Support in Non-Wartime Emergencies provides procedures for planning and using National telecommunications assets and resources in support of non-wartime emergencies, including those covered by the Disaster Relief Act of 1974, in Presidentially declared Emergencies and Major Disasters, Extraordinary Situations, and other emergencies.

(c) An NS/EP Telecommunications Service Priority (TSP) System will provide procedures to authorize priority treatment for the provisioning and restoration of NS/EP telecommunications services for wartime and non-wartime emergencies.

(d) In wartime emergencies, facilities management will remain decentralized to the extent feasible to assure continued flexibility of operational response to critical needs, subject to

the management direction and overriding authority of those officials delegated to act for and with the consent of the central point of authority within the Federal Government.

(1) Federally owned, leased, and/or operated telecommunications facilities, systems, and networks will be managed during such an emergency by the agency normally controlling the facility, system, or network except that all operations will be subject to the management direction and authority of the officials delegated overall management responsibility for Federal Government systems.

(2) Facilities other than those of the Federal Government, with the exception of radio stations in the Aviation Services and certain classes of radio stations in the Maritime Services, will be managed by the authorized common carrier or other person owning and operating such facilities subject to Federal Communications Commission (FCC) guidance and direction or in accordance with State or local plans if not subject to FCC jurisdiction.

(3) Radio stations in the Aviation Services and those aboard vessels in the Maritime Service will be subject to the control of the Secretary of Defense during a national emergency.

(e) The Director of the Office of Science and Technology Policy is the single point of authority within the Federal Government for the wartime emergency functions under section 706 of the Communications Act ([47 U.S.C. 606](#)) with respect to the allocation and use of surviving resources in support of national objectives enunciated by the President. Authority may be redelegated as necessary and when it can be exercised within boundaries established by Presidential authority.

(f) Radio frequency utilization during a wartime emergency will be in accordance with authorizations, assignments, and mobilization plans in existence at the onset of the emergency. Subject to the overriding control of the Director, OSTP, under the President's War Emergency Powers, spectrum management regarding the authorization and assignment of radio frequencies will be made by the National Telecommunications and Information Administration (NTIA) for the Federal Government, and the Director, OSTP, through the FCC, for all other entities subject to the Commission's jurisdiction. Radio stations are subject to closure if considered a threat to national security.

(g) Section 706 of the Communications Act of 1934, as amended, confers authority to the President in the matter of suspension of all rules and regulations pertaining to the use and operation of telecommunications facilities, public or private during wartime emergencies.

SOURCE: [55 FR 51058](#), Dec. 11, 1990, unless otherwise noted.

AUTHORITY: 61 Stat. 496 ([50 U.S.C. 401](#)); 64 Stat. 798 ([50 U.S.C. app. 2061](#)); 64 Stat. 1245 ([50 U.S.C. app. 2251](#)); 90 Stat. 463 ([42 U.S.C. 6611](#)); [E.O. 12046](#), March 27, 1978 ([43 FR 13349](#); 3 CFR, 1978 Comp., p. 158); [E.O. 11021](#), May 7, 1962 ([27 FR 4409](#); 3 CFR, 1959-1963 Comp., p. 600); [E.O. 12472](#), April 3, 1984 ([49 FR 13471](#); 3 CFR, 1984 Comp., p. 193).

47 C. F. R. § 202.1, 47 CFR § 202.1

Current through June 30, 2006; 71 FR 37805

Copr. © 2006 Thomson/West
END OF DOCUMENT

(C) 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.



47 C.F.R. § 202.2

Code of Federal Regulations [Currentness](#)

Title 47. Telecommunication

▣ [Chapter II](#). Office of Science and Technology Policy and National Security Council

▣ [Part 202](#). National Security and Emergency Preparedness Planning and Execution
([Refs & Annos](#))

➔ **§ 202.2 Criteria and guidance.**

NS/EP planning in government and industry with respect to effective conservation and use of surviving telecommunications resources in a disaster, emergency or postattack period must provide for orderly and uninhibited restoration of services by the carriers and authoritative control of services allocation which will assure that priority will be afforded the most critical needs of government and the private sector with respect to these objectives.

(a) The preservation of the integrity of characteristics and capabilities of the Nation's telecommunications systems and networks during wartime or non-wartime emergencies is of the utmost importance. This can best be accomplished by centralized policy development, planning, and broad direction. Detailed operations management will remain decentralized in order to retain flexibility in the use of individual systems in responding to the needs of national security, survival and recovery. Each Federal agency responsible for telecommunications systems operations, and the carriers, are responsible for planning with respect to emergency operations. Guidance in this matter has been issued from a number of sources and contained in:

(1) Annex C-XI (Telecommunications), Federal Emergency Plan D (Classified).

(2) National Plan for Telecommunications Support in Non-wartime Emergencies.

(3) The National Communications System Management Plan for Annex C-XI (Telecommunications) Federal Emergency Plan D (Classified).

(b) The continuity of essential communications services will be maintained through the

use of controls and operational procedures to assure that priority is given to vital services. NS/EP telecommunications services entail policies, procedures and responsibilities as described in parts 211 and 213 of this chapter.

(c) The Nation's telecommunications systems facilities are vulnerable to physical and radiological damage. Planning factors with respect to the resumption of services in a disaster or postattack period must consider the probable loss of facilities which formerly provided direct and/or alternate intercity services among surviving population centers. Since surviving areas and population centers would serve as the sources of support to crippled areas of the Nation, the resumption of services between and among surviving metropolitan areas will be a high priority with the carriers.

SOURCE: [55 FR 51058](#), Dec. 11, 1990, unless otherwise noted.

AUTHORITY: 61 Stat. 496 ([50 U.S.C. 401](#)); 64 Stat. 798 ([50 U.S.C. app. 2061](#)); 64 Stat. 1245 ([50 U.S.C. app. 2251](#)); 90 Stat. 463 ([42 U.S.C. 6611](#)); [E.O. 12046](#), March 27, 1978 ([43 FR 13349](#); 3 CFR, 1978 Comp., p. 158); [E.O. 11021](#), May 7, 1962 ([27 FR 4409](#); 3 CFR, 1959-1963 Comp., p. 600); [E.O. 12472](#), April 3, 1984 ([49 FR 13471](#); 3 CFR, 1984 Comp., p. 193).

47 C. F. R. § 202.2, 47 CFR § 202.2

Current through June 30, 2006; 71 FR 37805

Copr. © 2006 Thomson/West
END OF DOCUMENT

(C) 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.



47 C.F.R. § 202.3

Code of Federal Regulations [Currentness](#)

Title 47. Telecommunication

▣ [Chapter II](#). Office of Science and Technology Policy and National Security Council

▣ [Part 202](#). National Security and Emergency Preparedness Planning and Execution
([Refs & Annos](#))

➔ **§ 202.3 Plans preparation and execution.**

Federal authority, substantive provisions, and functional responsibilities of the executive office are summarized in the following:

(a) Wartime Emergency Functions.

(1) The Assistant to the President for National Security Affairs (the National Security Advisor) shall provide general policy direction for the exercise of the war power functions of the President under section 706 of the Communications Act ([47 U.S.C. 606](#)), as amended, should the President issue implementing instructions in accordance with the National Emergencies Act ([50 U.S.C. 1601](#)).

(2) The Director of the Office of Science and Technology Policy shall direct the exercise of the war power functions of the President under section 706(a), (c)-(e) of the Communications Act ([47 U.S.C. 606](#)), as amended, should the President issue implementing instructions in accordance with the National Emergencies Act ([50 U.S.C. 1601](#)).

(b) Non-wartime Emergency Functions.

(1) The National Security Advisor shall:

(i) Advise and assist the President in coordinating the development of policy, plans, programs and standards within the Federal Government for the identification, allocation and use of the Nation's telecommunications resources by the Federal Government, and by State and local governments, private industry and volunteer organizations, upon request, to the extent practicable and otherwise consistent with the law, during those crises or emergencies in which the exercise of the President's war power functions is not required or permitted by law.

(ii) Provide policy oversight and direction of the activities of the NCS.

(2) The Director of the Office of Science and Technology Policy shall:

(i) Provide information, advice, guidance and assistance, as appropriate, to the President and to those Federal departments and agencies with responsibilities for the provision, management or allocation of telecommunications resources during those crises or emergencies in which the exercise of the President's war power functions is not required or permitted by law.

(ii) Establish a Joint Telecommunications Resources Board (JTRB) to assist the Director in providing information, advice, guidance and assistance, as appropriate, to the President and to those Federal Departments and agencies with responsibilities for the provision, management, or allocation of telecommunications resources, during those crises or emergencies in which the exercise of the President's war power functions is not required or permitted by law.

(c) Planning and Oversight Responsibilities.

(1) The National Security Advisor shall advise and assist the President in:

(i) Coordination and development of policy, plans, programs and standards for the mobilization and use of the Nation's commercial, government, and privately owned

telecommunications resources to meet national security and emergency preparedness telecommunications requirements.

(ii) Providing policy oversight and direction of the activities of the NCS; and

(iii) Providing policy oversight and guidance for the execution of the responsibilities assigned to the Federal departments and agencies by [Executive Order 12472](#).

(2) The Director of the Office of Science and Technology Policy (or a designee) shall:

(i) Advise and assist the President in the administration of a system of radio spectrum priorities for those spectrum dependent telecommunications resources of the Federal government which support national security and emergency preparedness telecommunications functions.

(ii) Certify or approve priorities for radio spectrum use by the Federal government, including the resolution of any conflicts in or among priorities under all conditions or crisis or emergency.

(3) The National Security Advisor, the Director of the Office of Science and Technology Policy and the Director of the Office of Management and Budget shall, in consultation with the Executive Agent for the NCS and the NCS Committee of Principals, determine what constitutes national security and emergency preparedness telecommunications requirements.

(4) The Director of the Office of Management and Budget, in consultation with the National Security Advisor and the NCS, will prescribe general guidelines and procedures for reviewing the financing of the NCS within the budgetary process and for preparation of budget estimates by participating agencies.

(d) Performance of essential government and public services during a national emergency, as defined in section 706 of the Communications Act ([47 U.S.C. 606](#)), as amended, will require a means for communications between government and the private sector, communications essential to operations of elements of the national economy, and communications for national defense and civil defense purposes. The needs of the private sector and those of government should be properly coordinated to ensure that responses to each of these communities of interest, government and private sector, are appropriately balanced. For this reason, with regard to wartime emergency functions, the Director, Office of Science and Technology Policy (OSTP), has delegated the responsibility for the private sector to the Chairman, Federal Communications Commission (FCC), and responsibility for the needs of government to the Executive Agent, National Communications System (NCS). A parity of level of authority of these officials is established. They will coordinate and negotiate telecommunications conflicts with respect to the allocation and use of the Nation's telecommunications resources, reporting to the Director on unresolved issues which are within the domain of their respective responsibilities and authorities.

(e) In order to support the NS/EP telecommunications needs of the Federal government, State and local governments, private industry and volunteer organizations, under all circumstances, including those of crisis or emergency, the following functions shall be performed:

(1) The Secretary of Commerce, for all conditions of crisis or emergency, shall:

(i) Develop plans and procedures concerning radio spectrum assignments, priorities and allocations for use by Federal departments, agencies and entities; and

(ii) Develop, maintain and publish policy, plans and procedures for the control and assignment of radio frequencies, including the authority to amend, modify or revoke such assignments, in those parts of the electromagnetic spectrum allocated to the Federal Government.

(2) The Director of the Federal Emergency Management Agency shall:

(i) Plan for and provide, operate and maintain telecommunications services and facilities, as part of its National Emergency Management System, adequate to support its assigned emergency management responsibilities.

(ii) Advise and assist State and local governments and volunteer organizations, upon request and to the extent consistent with law, in developing plans and procedures for identifying and satisfying their NS/EP telecommunications requirements.

(iii) Ensure, to the maximum extent practicable, that national security and emergency preparedness telecommunications planning by State and local governments and volunteer organizations is mutually supportive of and consistent with the planning of the Federal Government.

(iv) Develop, upon request and to the extent consistent with law and in consonance with regulations promulgated by and agreements with the Federal Communications Commission, plans and capabilities for, and provide policy and management oversight of, the Emergency Broadcast System, and advise and assist private radio licensees of the Commission in developing emergency communications plans, procedures and capabilities.

(v) Act as sponsor for State and local governments' requests for telecommunications service priority (TSP) in accordance with the Federal Communications Commission's regulations and with procedures in approved NCS issuances.

(3) The Secretary of State, in accordance with assigned responsibilities within the Diplomatic Telecommunications Service, shall plan for and provide, operate and maintain rapid, reliable and secure telecommunications services to those Federal entities represented at United States diplomatic missions and consular offices overseas. This

responsibility shall include the provision and operation of domestic telecommunications in support of assigned national security and emergency preparedness responsibilities.

(4) The Secretary of Defense shall:

(i) Plan for and provide, operate and maintain telecommunications services and facilities adequate to support the National Command Authorities and to execute responsibilities assigned by [Executive Order 12333](#), December 4, 1981 ([46 FR 59941](#); 3 CFR, 1981 Comp., p. 200).

(ii) Ensure that the Director of the National Security Agency provides the technical support necessary to develop and maintain plans adequate to provide for the security and protection of national security and emergency preparedness telecommunications.

(iii) Provide protection for interstate or foreign communication as directed by the President when the public interest requires under section 706(b) of the Communications Act ([47 U.S.C. 606\(b\)](#)).

(iv) In consultation with the Secretary of Transportation, develop policy, plans and procedures adequate to enable a transfer of control over radio stations in the Aviation Service and aboard vessels in the Maritime Service to the Department of Defense during a national emergency pursuant to [§ 202.1\(b\)\(3\)](#) of these regulations.

(5) The Attorney General shall, as necessary, review for legal sufficiency, including consistency with the antitrust laws, all policies, plans or procedures developed pursuant to these regulations.

(6) The Director, Central Intelligence Agency, shall plan for and provide, operate and maintain telecommunications services adequate to support the Agency's assigned responsibilities, including the dissemination of intelligence within the Federal government.

(7) Except as otherwise assigned pursuant to these regulations, the Administrator of General Services shall ensure that Federally owned or managed domestic communications facilities and services meet the NS/EP requirements of Federal civilian departments, agencies and entities. The Administrator shall perform these responsibilities consistent with policy guidance of the Director of the Office of Management and Budget.

(8) The Secretary of the Interior shall develop and execute emergency plans with respect to the administration of telecommunications activities in the territorial and trusteeship areas under the jurisdiction of the United States and within the responsibility previously assigned to him by appropriate laws and other authority.

(9) The Federal Communications Commission, consistent with its statutory authority, shall:

(i) Review the policies, plans and procedures of all entities licensed or regulated by the Commission that are developed to provide national security and emergency preparedness telecommunications services to ensure that such policies, plans and procedures are consistent with the public interest, convenience and necessity.

(ii) Perform such functions as required by law with respect to all entities licensed or regulated by the Commission, including (but not limited to) the extension, discontinuance or reduction of common carrier facilities or services; the control of common carrier rates, charges, practices and classifications; the construction, authorization, activation, deactivation or closing of radio stations, services and facilities; the assignment of radio frequencies to Commission licensees; the investigation of violations of pertinent law and regulation; and the initiation of appropriate enforcement actions.

(iii) Develop policy, plans and procedures adequate to execute the responsibilities assigned pursuant to these regulations under all conditions of crisis or emergency.

(iv) Consult as appropriate with authorized officials of the NCS to ensure continued coordination of their respective NCS activities.

(10) The National Communications System (comprised of the Executive Agent for the NCS, the NCS Committee of Principals, and the Manager, NCS) shall assist the President, the Director of the Office of Science and Technology Policy, National Security Advisor and the Director of the Office of Management and Budget in the exercise of national security and emergency preparedness telecommunications functions and responsibilities and in the coordination of the planning for and provision of national security and emergency preparedness communications for the Federal government under all circumstances, including crisis or emergency, attack, recovery and reconstitution.

(11) The Executive Agent for the NCS shall:

(i) Ensure that the NCS conducts unified planning and operations, in order to coordinate the development and maintenance of an effective and responsive capability for meeting the domestic and international national security and emergency preparedness needs of the Federal government.

(ii) Ensure that the activities of the NCS are conducted in conjunction with the emergency management activities of the Federal Emergency Management Agency.

(12) The Manager, NCS shall:

(i) Develop for consideration by the NCS Committee of Principals and the Executive Agent:

(A) A recommended evolutionary telecommunications architecture designed to meet current and future Federal government national security and emergency preparedness telecommunications requirements.

(B) Plans and procedures for the management, allocation and use, including the establishment of priorities or preferences, of Federally owned or leased telecommunications assets under all conditions of crisis or emergency.

(C) Plans, procedures and standards for minimizing or removing technical impediments to the interoperability of government-owned and/or commercially provided telecommunications systems.

(D) Test and exercise programs and procedures for the evaluation of the capability of the Nation's telecommunications resources to meet national security and emergency preparedness telecommunications requirements.

(E) Alternative mechanisms for funding, through the budget review process, NS/EP telecommunications initiatives which benefit multiple Federal departments, agencies or entities. Those mechanisms recommended by the NCS Committee of Principals and the Executive Agent shall be submitted to the Executive Office of the President.

(ii) Implement and administer any approved plans or programs as assigned, including any system of priorities and preferences for the provision of telecommunications service, in consultation with the NCS Committee of Principals and the Federal Communications Commission, to the extent practicable or otherwise required by law or regulation.

(iii) Implement, with the assistance of appropriate Federal agencies, a decentralized National Telecommunications Management Structure (NTMS) capable of functioning independently in support of appropriate authority within the terms and guidelines delineated in the White House approved Implementation Concept.

(iv) Conduct technical studies or analyses, and examine research and development programs, for the purpose of identifying, for consideration by the NCS Committee of Principals and the Executive Agent, improved approaches which may assist Federal entities in fulfilling national security and emergency preparedness telecommunications objectives.

(v) Develop an NCS Issuance System of official documents to implement, establish, guide, describe or explain organizational responsibilities, authorities, policies and procedures.

(13) The NCS Committee of Principals shall:

(i) Serve as the forum in which each member of the Committee may review, evaluate and present views, information and recommendations concerning ongoing or prospective national security and emergency preparedness telecommunications programs of the NCS and the entities represented on the Committee.

(ii) Serve as the forum in which each member of the Committee shall report on and explain ongoing or prospective telecommunications plans and programs developed or designed to achieve national security and emergency preparedness telecommunications objectives.

(iii) Provide comments or recommendations, as appropriate, to the National Security Council, the Director of the Office of Science and Technology Policy, the Director of the Office of Management and Budget, the Executive Agent, or the Manager of the NCS, regarding ongoing or prospective activities of the NCS.

(14) All Federal departments and agencies shall:

(i) Prepare policies, plans and procedures concerning telecommunications facilities, services, or equipment under their management or operational control to maximize their capability to respond to the national security and emergency preparedness needs of the Federal Government. Such plans will be prepared, and the operations will be executed, in conjunction with the emergency management activities of the Federal Emergency Management Agency, and in regular consultation with the Executive Agent for the NCS and the NCS Committee of Principals.

(ii) Cooperate with and assist the Executive Agent for the NCS, the NCS Committee of Principals, the Manager of the NCS, and other departments and agencies in the execution of the functions set forth in this regulation, furnishing them such information, support and assistance as may be required.

SOURCE: [55 FR 51058](#), Dec. 11, 1990, unless otherwise noted.

AUTHORITY: 61 Stat. 496 ([50 U.S.C. 401](#)); 64 Stat. 798 ([50 U.S.C. app. 2061](#)); 64 Stat. 1245 ([50 U.S.C. app. 2251](#)); 90 Stat. 463 ([42 U.S.C. 6611](#)); [E.O. 12046](#), March 27, 1978 ([43 FR 13349](#); 3 CFR, 1978 Comp., p. 158); [E.O. 11021](#), May 7, 1962 ([27 FR 4409](#); 3 CFR, 1959-1963 Comp., p. 600); [E.O. 12472](#), April 3, 1984 ([49 FR 13471](#); 3 CFR, 1984 Comp., p. 193).

47 C. F. R. § 202.3, 47 CFR § 202.3

Current through June 30, 2006; 71 FR 37805

Copr. © 2006 Thomson/West
END OF DOCUMENT

(C) 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.



47 C.F.R. § 215.0

Code of Federal Regulations [Currentness](#)

Title 47. Telecommunication

☞ [Chapter II](#). Office of Science and Technology Policy and National Security Council

☞ [Part 215](#). Federal Government Focal Point for Electromagnetic Pulse (Emp)

Information ([Refs & Annos](#))

➡ **§ 215.0 Purpose and authority.**

The purpose of this part is to designate a focal point within the Federal Government for electromagnetic pulse (EMP) information concerning telecommunications. It is issued pursuant to the authority of Reorganization Plan No. 1 of 1977, 42 FR 56101, 91 Stat. 1633, as amended (5 U.S.C. appendix), Executive Order 12472, ([49 FR 13471](#); 3 CFR, 1984 Comp., p. 193), "Assignment of National Security and Emergency Preparedness Telecommunications, April 3, 1984 and Executive Order 12046, [43 FR 13349](#), "Relating to the Transfer of Telecommunications Functions," May 27, 1978, as amended by [Executive Order 12472](#).

SOURCE: [55 FR 51063](#), Dec. 11, 1990, unless otherwise noted.

AUTHORITY: 84 Stat. 2083, and [E.O. 12472](#), April 3, 1984 ([49 FR 13471](#) et seq.).

47 C. F. R. § 215.0, 47 CFR § 215.0

Current through June 30, 2006; 71 FR 37805

Copr. © 2006 Thomson/West

END OF DOCUMENT

(C) 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.



47 C.F.R. § 215.1

Code of Federal Regulations [Currentness](#)

Title 47. Telecommunication

☞ [Chapter II](#). Office of Science and Technology Policy and National Security Council

☞ [Part 215](#). Federal Government Focal Point for Electromagnetic Pulse (Emp)

Information ([Refs & Annos](#))

➡ **§ 215.1 Background.**

(a) The nuclear electromagnetic pulse (EMP) is part of the complex environment produced by nuclear explosions. It consists of transient voltages and currents which can

cause malfunctioning and serious damage to electrical and electronic equipment.

(b) The Defense Nuclear Agency (DNA) is the overall technical coordinator for the Army, Navy, Air Force, and DOE laboratories on matters concerning nuclear weapons, nuclear weapons effects, and nuclear weapons testing. It acts as the focal point between the service laboratories and other agencies. The National Communications System (NCS), with the Defense Communications Agency (DCA), maintains a data base for telecommunications. DCA also provides the primary capability for the NCS to conduct telecommunications survivability studies for civil and military departments and agencies.

(c) In order to disseminate among affected Federal agencies information concerning the telecommunications effects of EMP and available protective measures, and in order to avoid duplication of research efforts, it is desirable to designate a focal point within the Federal Government for telecommunications EMP matters.

SOURCE: [55 FR 51063](#), Dec. 11, 1990, unless otherwise noted.

AUTHORITY: 84 Stat. 2083, and [E.O. 12472](#), April 3, 1984 ([49 FR 13471](#) et seq.).

47 C. F. R. § 215.1, 47 CFR § 215.1

Current through June 30, 2006; 71 FR 37805

Copr. © 2006 Thomson/West
END OF DOCUMENT

(C) 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.



47 C.F.R. § 215.2

Code of Federal Regulations [Currentness](#)

Title 47. Telecommunication

* [Chapter II](#). Office of Science and Technology Policy and National Security Council

* [Part 215](#). Federal Government Focal Point for Electromagnetic Pulse (Emp)

Information ([Refs & Annos](#))

➔ **§ 215.2 Assignment of responsibilities.**

The Executive Agent, NCS, shall be the focal point within the Federal Government for all EMP technical data and studies concerning telecommunications. It shall provide such data and the results of such studies to all appropriate agencies requesting them. It shall coordinate and approve EMP telecommunications tests and studies, and shall keep the National Security Advisor informed regarding such tests and studies being conducted and planned.

SOURCE: [55 FR 51063](#), Dec. 11, 1990, unless otherwise noted.

AUTHORITY: 84 Stat. 2083, and [E.O. 12472](#), April 3, 1984 ([49 FR 13471](#) et seq.).

47 C. F. R. § 215.2, 47 CFR § 215.2

Current through June 30, 2006; 71 FR 37805

Copr. © 2006 Thomson/West
END OF DOCUMENT

(C) 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.



47 U.S.C.A. § 220

United States Code Annotated [Currentness](#)

Title 47. Telegraphs, Telephones, and Radiotelegraphs

Chapter 5. Wire or Radio Communication ([Refs & Annos](#))

▣ [Subchapter II](#). Common Carriers ([Refs & Annos](#))

▣ [Part I](#). Common Carrier Regulation

➔ **§ 220. Accounts, records, and memoranda**

(a) Forms

(1) The Commission may, in its discretion, prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject to this chapter, including the accounts, records, and memoranda of the movement of traffic, as well as of the receipts and expenditures of moneys.

(2) The Commission shall, by rule, prescribe a uniform system of accounts for use by telephone companies. Such uniform system shall require that each common carrier shall maintain a system of accounting methods, procedures, and techniques (including accounts and supporting records and memoranda) which shall ensure a proper allocation of all costs to and among telecommunications services, facilities, and products (and to and among classes of such services, facilities, and products) which are developed, manufactured, or offered by such common carrier.

(b) Depreciation charges

The Commission may prescribe, for such carriers as it determines to be appropriate, the classes of property for which depreciation charges may be properly included under operating expenses, and the percentages of depreciation which shall be charged with respect to each of such classes of property, classifying the carriers as it may deem proper for this purpose. The Commission may, when it deems necessary, modify the classes and percentages so prescribed. Such carriers shall not, after the Commission has prescribed the classes of property for which depreciation charges may be included, charge to operating expenses any depreciation charges on classes of property other than those prescribed by the Commission, or after the Commission has prescribed percentages of depreciation, charge with respect to any class of property a percentage of depreciation other than that prescribed therefor by the Commission. No such carrier shall in any case include in any form under its operating or other expenses any depreciation or other charge or expenditure included elsewhere as a depreciation charge or otherwise under its operating or other expenses.

(c) Access to information; burden of proof; use of independent auditors

The Commission shall at all times have access to and the right of inspection and examination of all accounts, records, and memoranda, including all documents, papers, and correspondence now or hereafter existing, and kept or required to be kept by such carriers, and the provisions of this section respecting the preservation and destruction of books, papers, and documents shall apply thereto. The burden of proof to justify every accounting entry questioned by the Commission shall be on the person making, authorizing, or requiring such entry and the Commission may suspend a charge or credit pending submission of proof by such person. Any provision of law prohibiting the disclosure of the contents of messages or communications shall not be deemed to prohibit the disclosure of any matter in accordance with the provisions of this section. The Commission may obtain the services of any person licensed to provide public accounting services under the law of any State to assist with, or conduct, audits under this section. While so employed or engaged in conducting an audit for the Commission under this section, any such person shall have the powers granted the Commission under this subsection and shall be subject to subsection (f) of this section in the same manner as if that person were an employee of the Commission.

(d) Penalty for failure to comply

In case of failure or refusal on the part of any such carrier to keep such accounts, records, and memoranda on the books and in the manner prescribed by the Commission, or to submit such accounts, records, memoranda, documents, papers, and correspondence as are kept to the inspection of the Commission or any of its authorized agents, such carrier shall forfeit to the United States the sum of \$6,000 for each day of the continuance of each such offense.

(e) False entry; destruction; penalty

Any person who shall willfully make any false entry in the accounts of any book of accounts or in any record or memoranda kept by any such carrier, or who shall willfully destroy, mutilate, alter, or by any other means or device falsify any such account, record, or memoranda, or who shall willfully neglect or fail to make full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of the carrier, shall be deemed guilty of a misdemeanor, and shall be subject, upon conviction, to a fine of not less than \$1,000 nor more than \$5,000 or imprisonment for a term of not less than one year nor more than three years, or both such fine and imprisonment: *Provided*, That the Commission may in its discretion issue orders specifying such operating, accounting, or financial papers, records, books, blanks, or documents which may, after a reasonable time, be destroyed, and prescribing the length of time such books, papers, or documents shall be preserved.

(f) Confidentiality of information

No member, officer, or employee of the Commission shall divulge any fact or information which may come to his knowledge during the course of examination of books or other accounts, as hereinbefore provided, except insofar as he may be directed by the Commission or by a court.

(g) Use of other forms; alterations in prescribed forms

After the Commission has prescribed the forms and manner of keeping of accounts, records, and memoranda to be kept by any person as herein provided, it shall be unlawful for such person to keep any other accounts, records, or memoranda than those so prescribed or such as may be approved by the Commission or to keep the accounts in any other manner than that prescribed or approved by the Commission. Notice of alterations by the Commission in the required manner or form of keeping accounts shall be given to such persons by the Commission at least six months before the same are to take effect.

(h) Exemption; regulation by State commission

The Commission may classify carriers subject to this chapter and prescribe different requirements under this section for different classes of carriers, and may, if it deems such action consistent with the public interest, except the carriers of any particular class or classes in any State from any of the requirements under this section in cases where such carriers are subject to State commission regulation with respect to matters to which this section relates.

(i) Consultation with State commissions

The Commission, before prescribing any requirements as to accounts, records, or memoranda, shall notify each State commission having jurisdiction with respect to any carrier involved, and shall give reasonable opportunity to each such commission to present its views, and shall receive and consider such views and recommendations.

(j) Report to Congress on need for further legislation

The Commission shall investigate and report to Congress as to the need for legislation to define further or harmonize the powers of the Commission and of State commissions with respect to matters to which this section relates.

CREDIT(S)

(June 19, 1934, c. 652, Title II, § 220, 48 Stat. 1078; Dec. 19, 1989, [Pub.L. 101-239, Title III, § 3002\(f\)](#), 103 Stat. 2131; Oct. 25, 1994, [Pub.L. 103-414, Title III, §§ 303\(a\)\(7\), \(8\), 304\(a\)\(5\)](#), 108 Stat. 4294, 4296; Feb. 8, 1996, [Pub.L. 104-104, Title IV, § 403\(d\), \(e\)](#), 110 Stat. 130.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1989 Acts. [House Report No. 101-247](#), [House Conference Report No. 101-386](#), and Statement by President, see 1989 U.S.Code Cong. and Adm.News, p. 1906.

1994 Acts. [House Report No. 103-827](#), see 1994 U.S. Code Cong. and Adm. News, p. 3489.

1996 Acts. [House Report No. 104-204](#) and [House Conference Report No. 104- 458](#), see 1996 U.S. Code Cong. and Adm. News, p. 10.

Amendments

1996 Amendments. Subsec. (b). [Pub.L. 104-104, § 403\(d\)](#), substituted "may prescribe, for such carriers as it determines to be appropriate," for "shall prescribe for such carriers".

Subsec. (c). [Pub.L. 104-104, § 403\(e\)](#), added provisions relating to assistance with audits by persons licensed to provide public accounting services.

1994 Amendments. Subsec. (a)(1). [Pub.L. 103-414, § 303\(a\)\(7\)\(A\)](#), designated existing provisions as par. (1).

Subsec. (a)(2). [Pub.L. 103-414, § 303\(a\)\(7\)\(B\)](#), added par. (2).

Subsec. (b). [Pub.L. 103-414, § 303\(a\)\(8\)](#), substituted "prescribed the classes" for "prescribed the clases".

[Pub.L. 103-414, § 304\(a\)\(5\)](#), struck out ", as soon as practicable," following "The Commission shall".

1989 Amendments. Subsec. (d). [Pub.L. 101-239](#) increased penalty from \$500 to \$6,000 per day of continuance of offense.

CODE OF FEDERAL REGULATIONS

Preservation of records of communications common carriers, see [47 CFR § 42.01](#) et seq.

LIBRARY REFERENCES

American Digest System

[Telecommunications](#) ¶6, 144, 333, 382, 412.

Key Number System Topic No. [372](#).

Corpus Juris Secundum

[CJS Telecommunications § 5](#), Federal Communications Commission in General.

RESEARCH REFERENCES

Forms

[Am. Jur. Pl. & Pr. Forms Telecommunications § 94](#), Complaint in Federal Court -- by Telephone Company -- Against State Public Utilities Commission -- for Injunctive Relief -- to Enforce Federal Communications Commission Preemption Order Relating To...

Treatises and Practice Aids

[Federal Procedure, Lawyers Edition § 72:1040](#), Generally.

NOTES OF DECISIONS

Amortization, depreciation [7](#)

Construction of Commission orders [4](#)

Construction of section [1](#)

Construction of section with other laws [2](#)

Consultation with State commissions [15](#)

Depreciation [6-8](#)
Depreciation - Generally [6](#)
Depreciation - Amortization [7](#)
Depreciation - Original cost [8](#)
Disclosure of information [13](#)
Effect of telephone company determinations [16](#)
Forms [5](#)
Legislative committees' access to information [14](#)
Money orders [10](#)
Original cost, depreciation [8](#)
Pension funds [11](#)
Recovery from ratepayers of litigation costs [9](#)
State regulation or control [3](#)
Telephone plant acquisition adjustment account [12](#)

[1. Construction of section](#)

Provision of § 213(c) of this title authorizing Commission to obtain from telephone carriers at any time information concerning original cost of their properties which may be needed for rate fixing purposes was not restrictive of provision authorizing Commission to prescribe forms of accounts and records to be kept by carriers, but two provisions were capable of complementary treatment. [American Telephone & Telegraph Co. v. U.S., S.D.N.Y.1936, 14 F.Supp. 121](#), affirmed [57 S.Ct. 170, 299 U.S. 232, 81 L.Ed. 142. Telecommunications ¶762; Telecommunications ¶969; Telecommunications ¶941](#)

[2. Construction of section with other laws](#)

Incorporation in this chapter of former provisions of Interstate Commerce Act relative to making of general accounting orders was an indication that Congress approved the administrative interpretation of Interstate Commerce Commission that such orders were not required to be prefaced with report stating conclusions and basic findings. [American Telephone & Telegraph Co. v. U.S., S.D.N.Y.1936, 14 F.Supp. 121](#), affirmed [57 S.Ct. 170, 299 U.S. 232, 81 L.Ed. 142. Statutes ¶223.5\(1\)](#)

[3. State regulation or control](#)

This section which deals specifically with depreciation does not require automatic preemption of all state regulations respecting depreciation, rather, meaning of this provision is not so unambiguous or straightforward as to override command of section 152(b) of this title that provides that nothing in this chapter shall be construed to apply or give Commission jurisdiction over intrastate service. [Louisiana Public Service Com'n v. F.C.C., U.S.1986, 106 S.Ct. 1890, 476 U.S. 355, 90 L.Ed.2d 369. States ¶18.81](#)

A state commission is not deprived of power to fix rates for intrastate telephone service and is not bound by regulations prescribed by the Federal Communications Commission. [In re Northwestern Bell Tel. Co., S.D.1950, 43 N.W.2d 553, 73 S.D. 370](#), certiorari denied [71 S.Ct. 489, 340 U.S. 934, 95 L.Ed. 674. Commerce ¶59](#)

Corporation Commission is not bound by accounting procedure established by Commission on ground that Congress preempted state regulations of deferred income tax account by giving Commission authority to prescribe forms of accounts for companies under its jurisdiction. [Matter of Rates and Charges of Mountain States Tel. & Tel. Co., N.M.1982, 653 P.2d 501, 99 N.M. 1. States ¶18.75](#)

Order of the Commission overruling a prior decision which held that this section did not preempt state commissions from applying different accounting and depreciation procedures for purposes of intrastate rate-making proceedings applies not only to interstate companies but to intrastate telephone companies. [Union Springs Telephone Co., Inc. v. Alabama Public Service Com'n, Ala.1983, 437 So.2d 485. States ¶18.81](#)

4. Construction of Commission orders

Assistant Attorney General's declaration to Supreme Court as to Commission's construction of order relating to uniform system of accounts prescribed by Commission for telephone companies would be accepted as an administrative construction binding on Commission in its future dealings with companies. [American Telephone & Telegraph Co. v. U.S., U.S.N.Y.1936, 57 S.Ct. 170, 299 U.S. 232, 81 L.Ed. 142. Administrative Law And Procedure ¶413; Telecommunications ¶762](#)

5. Forms

Provision in Commission's order prescribing uniform system of accounts for telephone companies, that amounts recorded in telephone plant acquisition adjustment account representing difference between original and present cost of telephone plant should be written off as directed by Commission, did not invalidate order, as against contention that difference between present value and original cost was thereby withdrawn from recognition as legitimate investment, and that ultimate disposition of any item was uncertain until Commission gave particular directions with reference thereto, in view of administrative construction that amounts in such accounts representing investment in assets of continuous value would be retained until such assets ceased to exist or were retired. [American Telephone & Telegraph Co. v. U.S., U.S.N.Y.1936, 57 S.Ct. 170, 299 U.S. 232, 81 L.Ed. 142. Telecommunications ¶762](#)

6. Depreciation--Generally

Federal Communications Commission's conclusions that remaining life depreciation rates, which permit recovery of remaining unrecovered depreciation over actual remaining life of asset, would result in timely recovery of telephone company's deficit and that a more accelerated method of depreciation for the company posed a significant risk of bypass of the local telephone facilities were neither arbitrary or capricious, where conclusion that remaining life rates would result in timely recovery of depreciation deficits due to overestimations of life of assets was reasonable and supported by substantial evidence indicating that bulk of the deficits would be recovered in the first few years after full implementation of remaining life rates, and uneconomic bypass could

be a problem in the near term that could be exacerbated by acceleration in recovery of depreciation deficits beyond that provided by remaining life rates. [Southern Bell Tel. & Tel. Co. v. F.C.C., C.A.D.C.1986, 781 F.2d 209, 251 U.S.App.D.C. 33. Telecommunications ¶945\(2\)](#)

7. ---- Amortization, depreciation

Provision in Commission order prescribing uniform system of accounts for telephone companies, that amortization reserve account should be credit with amounts which Commission should authorize under plan to amortize balance in telephone plant acquisition adjustment account, authorized amortization of amounts in telephone plant acquisition adjustment account which were attributable to depreciable telephone plant. [American Telephone & Telegraph Co. v. U.S., U.S.N.Y.1936, 57 S.Ct. 170, 299 U.S. 232, 81 L.Ed. 142. Telecommunications ¶762](#)

Federal Communications Commission's decision to allow telephone company to amortize its deficits in depreciation of assets made after its determination that another telephone company could not amortize such deficits, but rather was required to depreciate its assets based on their actual remaining life was not so inconsistent as to make that prior decision unreasonable, even though only substantive difference between the two telephone companies was that the company permitted to amortize its deficits had concurrence of the state regulatory body, where FCC chose in the subsequent proceeding to make state regulatory body's support of amortization proposal a necessary, but not sufficient, condition for deviation from the remaining life depreciation method, and telephone company relegated to remaining-life method would have opportunity to seek depreciation rates based on amortization in subsequent year if it could convince the pertinent state commissions to concur. [Southern Bell Tel. & Tel. Co. v. F.C.C., C.A.D.C.1986, 781 F.2d 209, 251 U.S.App.D.C. 33. Telecommunications ¶945\(2\)](#)

8. ---- Original cost, depreciation

Where effect of write-up caused originally by subsidiary telephone company's recording the property purchased from parent company at structural value rather than at parent company's net book cost had never been eradicated, Commission's order requiring subsidiary to make charges to surplus with corresponding credits to other accounts, to conform with Commission's uniform system of accounts based upon "original cost", was not erroneous because portions of property had been retired and written out of plant account at amount at which they were recorded originally and corresponding charges had been made concurrently to depreciation reserve. United States v. New York [Telephone Co., U.S.N.Y.1946, 66 S.Ct. 393, 326 U.S. 638, 90 L.Ed. 371. Telecommunications ¶762](#)

Requirement in Commission order prescribing uniform system of accounts for telephone companies, that companies record estimate of original cost where actual original cost was unknown was not invalid, as against contention that requirement was arbitrary requirement which mutilated telephone companies' accounts and exposed them to hazard of criminal prosecution, since companies could resort to Commission for particular

instructions in exceptional events, and violation of this chapter would have to be knowing and willful to subject companies or their officers to criminal prosecution. [American Telephone & Telegraph Co. v. U.S., U.S.N.Y.1936, 57 S.Ct. 170, 299 U.S. 232, 81 L.Ed. 142. Telecommunications](#) ↩️762

9. Recovery from ratepayers of litigation costs

Federal Communications Commission (FCC) had to justify application of its new accounting rule, giving telephone companies burden of showing that they should recover from ratepayers costs of adverse judgments and expenses in actions involving federal statutes, and had to detail effect of its rules on various incentives facing carriers.

[Mountain States Tel. & Tel. Co. v. F.C.C., C.A.D.C.1991, 939 F.2d 1035, 291 U.S.App.D.C. 207. Telecommunications](#) ↩️756

Federal Communications Commission (FCC) could not treat litigation expenses incurred by telecommunication service companies in lawsuits charging civil antitrust violations as illegitimate expenses absent clear and detailed explanation for its position. [Mountain States Tel. and Tel. Co. v. F.C.C., C.A.D.C.1991, 939 F.2d 1021, 291 U.S.App.D.C. 193, rehearing denied, opinion after remand. Telecommunications](#) ↩️940(1)

10. Money orders

Telegraph company's bookkeeping treatment of money order transactions, which were made under federal and state regulations prescribing uniform systems of accounts, and which required telegraph company to hold money order item open as an account payable for two years, and if no claim was made within that time to credit the item to extraordinary current income credits and treat it as income, although not determinative of the relationship, was consistent with the inference of a debtor-creditor rather than trust relation between sender of money order and telegraph company. [State by Richman v. W. U. Tel. Co., N.J.1954, 110 A.2d 115, 17 N.J. 149. Trusts](#) ↩️1

11. Pension funds

Where telephone company failed to make monthly charges to account of payments by company into pension trust fund for employees at a level accrual rate during period from 1927 to 1937, as authorized by Commission's order, the accrued deficiency for purposes of further charges to the account was required to be treated as though it had been paid into the fund during the period from 1927 to 1937. [New England Tel. & Tel. Co. v. U.S., D.C.Mass.1943, 53 F.Supp. 400. Telecommunications](#) ↩️762

12. Telephone plant acquisition adjustment account

Provision in Commission order prescribing uniform system of accounts for telephone companies, that companies maintain "telephone plant acquisition adjustment account," was not invalid as against contention that there would be difficulty in determining amount to be written out of such account when property recorded therein was withdrawn, in view of provisions in order for clarifying instructions whenever duty was uncertain.

[American Telephone & Telegraph Co. v. U.S., U.S.N.Y.1936, 57 S.Ct. 170, 299 U.S. 232, 81 L.Ed. 142. Telecommunications ↵762](#)

13. Disclosure of information

Communications Act provisions permitting Federal Communications Commission (FCC) to collect confidential accounting information from telecommunications service providers for audit purposes, and prohibiting disclosure of such information except as may be directed by FCC or a court, gave FCC authorization to disclose such information even if it was protected by Trade Secrets Act, as Congress contemplated that FCC would be reviewing such information and alluded to possibility of disclosure. [Qwest Communications Intern. Inc. v. F.C.C., C.A.D.C.2000, 229 F.3d 1172, 343 U.S.App.D.C. 324, 56 U.S.P.Q.2d 1932. Telecommunications ↵751](#)

14. Legislative committees' access to information

Commission's act in taking possession of telegraph companies' offices, and examining thousands of private telegraph messages received and dispatched over period of seven months for purpose of securing to Senate committee knowledge of contents of messages, was unauthorized and constituted trespass which equity court had power to enjoin; but court had no jurisdiction to restrain committee from keeping messages or making use of those in its possession. [Hearst v. Black, App.D.C.1936, 87 F.2d 68, 66 App.D.C. 313. Searches And Seizures ↵85](#)

15. Consultation with State commissions

Federal Communications Commission's reliance on state commission assessments of local competitive conditions and the effect of higher rates in each state is reasonable and consistent with Communications Act requirement that FCC receive and consider views of state commissions before it prescribes depreciation rates [47 U.S.C.A. § 220(i)]. [Southern Bell Tel. & Tel. Co. v. F.C.C., C.A.D.C.1986, 781 F.2d 209, 251 U.S.App.D.C. 33. Telecommunications ↵945\(2\)](#)

16. Effect of telephone company determinations

The determination as to proper accounting classification of monthly charges by telephone company to account of payments made by it into pension trust fund for its employees pursuant to Commission's order would not be conclusive either on the Commission or the company at hearing of a subsequent rate case. [New England Tel. & Tel. Co. v. U.S., D.C.Mass.1943, 53 F.Supp. 400. Administrative Law And Procedure ↵501; Telecommunications ↵762](#)

47 U.S.C.A. § 220, 47 USCA § 220

Current through P.L. 109-239 approved 07-03-06

END OF DOCUMENT

(C) 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.



47 U.S.C.A. § 226

United States Code Annotated [Currentness](#)

Title 47. Telegraphs, Telephones, and Radiotelegraphs

Chapter 5. Wire or Radio Communication ([Refs & Annos](#))

▣ [Subchapter II](#). Common Carriers ([Refs & Annos](#))

▣ [Part I](#). Common Carrier Regulation

➔ **§ 226. Telephone operator services**

(a) Definitions

As used in this section--

- (1) The term "access code" means a sequence of numbers that, when dialed, connect the caller to the provider of operator services associated with that sequence.
- (2) The term "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.
- (3) The term "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.
- (4) The term "consumer" means a person initiating any interstate telephone call using operator services.
- (5) The term "equal access" has the meaning given that term in Appendix B of the Modification of Final Judgment entered August 24, 1982, in *United States v. Western Electric*, Civil Action No. 82-0192 (United States District Court, District of Columbia), as amended by the Court in its orders issued prior to October 17, 1990.
- (6) The term "equal access code" means an access code that allows the public to obtain an equal access connection to the carrier associated with that code.
- (7) The term "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--
 - (A) automatic completion with billing to the telephone from which the call originated; or
 - (B) completion through an access code used by the consumer, with billing to an account previously established with the carrier by the consumer.

(8) The term "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.

(9) The term "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.

(b) Requirements for providers of operator services

(1) In general

Beginning not later than 90 days after October 17, 1990, each provider of operator services shall, at a minimum--

(A) 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;

(B) permit the consumer to terminate the telephone call at no charge before the call is connected;

(C) disclose immediately to the consumer, upon request and at no charge to the consumer--

(i) a quote 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;

(D) 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 subsection (c) of this section and, if applicable, subsection (e)(1) of this section;

(E) withhold payment (on a location-by-location basis) of any compensation, including commissions, to aggregators if such provider reasonably believes that the aggregator (i) is blocking access by means of "950" or "800" numbers to interstate common carriers in violation of subsection (c)(1)(B) of this section or (ii) is blocking access to equal access codes in violation of rules the Commission may prescribe under subsection (e)(1) of this section;

(F) not bill for unanswered telephone calls in areas where equal access is available;

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

(H) 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; and

(I) except as provided in subparagraph (H), not bill for a call that does not reflect the location of the origination of the call.

(2) Additional requirements for first 3 years

In addition to meeting the requirements of paragraph (1), during the 3-year period beginning on the date that is 90 days after October 17, 1990, each presubscribed provider

of operator services shall identify itself audibly and distinctly to the consumer, not only as required in paragraph (1)(A), but also for a second time before connecting the call and before the consumer incurs any charge.

(c) Requirements for aggregators

(1) In general

Each aggregator, beginning not later than 90 days after October 17, 1990, shall--

(A) post on or near the telephone instrument, in plain view of consumers--

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

(ii) 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; and

(iii) the name and address of the enforcement division of the Common Carrier Bureau of the Commission, to which the consumer may direct complaints regarding operator services;

(B) 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; and

(C) 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.

(2) Effect of State law or regulation

The requirements of paragraph (1)(A) 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 (1)(A).

(d) General rulemaking required

(1) Rulemaking proceeding

The Commission shall conduct a rulemaking proceeding pursuant to this subchapter to prescribe regulations to--

(A) protect consumers from unfair and deceptive practices relating to their use of operator services to place interstate telephone calls; and

(B) ensure that consumers have the opportunity to make informed choices in making such calls.

(2) Contents of regulations

The regulations prescribed under this section shall--

(A) contain provisions to implement each of the requirements of this section, other than the requirements established by the rulemaking under subsection (e) of this section on access and compensation; and

(B) contain such other provisions as the Commission determines necessary to carry out this section and the purposes and policies of this section.

(3) Additional requirements to be implemented by regulations

The regulations prescribed under this section shall, at a minimum--

(A) establish minimum standards for providers of operator services and aggregators to use in the routing and handling of emergency telephone calls; and

(B) establish a policy for requiring providers of operator services to make public information about recent changes in operator services and choices available to consumers in that market.

(e) Separate rulemaking on access and compensation

(1) Access

The Commission, [\[FN1\]](#) shall require--

(A) that each aggregator ensure within a reasonable time that each of its telephones presubscribed to a provider of operator services allows the consumer to obtain access to the provider of operator services desired by the consumer through the use of an equal access code; or

(B) that all providers of operator services, within a reasonable time, make available to their customers a "950" or "800" access code number for use in making operator services calls from anywhere in the United States; or

(C) that the requirements described under both subparagraphs (A) and (B) apply.

(2) Compensation

The Commission shall consider the need to prescribe compensation (other than advance payment by consumers) for owners of competitive public pay telephones for calls routed to providers of operator services that are other than the presubscribed provider of operator services for such telephones. Within 9 months after October 17, 1990, the Commission shall reach a final decision on whether to prescribe such compensation.

(f) Technological capability of equipment

Any equipment and software manufactured or imported more than 18 months after October 17, 1990, and installed by any aggregator shall be technologically capable of providing consumers with access to interstate providers of operator services through the use of equal access codes.

(g) Fraud

In any proceeding to carry out the provisions of this section, the Commission shall require such actions or measures as are necessary to ensure that aggregators are not exposed to undue risk of fraud.

(h) Determinations of rate compliance

(1) Filing of informational tariff

(A) In general

Each provider of operator services shall file, within 90 days after October 17, 1990, and shall maintain, update regularly, and keep open for public inspection, an informational tariff specifying rates, terms, and conditions, and including commissions, surcharges, any fees which are collected from consumers, and reasonable estimates of the amount of traffic priced at each rate, with respect to calls for which operator services are provided. Any changes in such rates, terms, or conditions shall be filed no later than the first day on which the changed rates, terms, or conditions are in effect.

(B) Waiver authority

The Commission may, after 4 years following October 17, 1990, waive the requirements of this paragraph only if--

- (i) the findings and conclusions of the Commission in the final report issued under paragraph (3)(B)(iii) state that the regulatory objectives specified in subsection (d)(1)(A) and (B) of this section have been achieved; and
- (ii) the Commission determines that such waiver will not adversely affect the continued achievement of such regulatory objectives.

(2) Review of informational tariffs

If the rates and charges filed by any provider of operator services under paragraph (1) appear upon review by the Commission to be unjust or unreasonable, the Commission may require such provider of operator services to do either or both of the following:

- (A) demonstrate that its rates and charges are just and reasonable, and
- (B) announce that its rates are available on request at the beginning of each call.

(3) Proceeding required

(A) In general

Within 60 days after October 17, 1990, the Commission shall initiate a proceeding to determine whether the regulatory objectives specified in subsection (d)(1)(A) and (B) of this section are being achieved. The proceeding shall--

- (i)** monitor operator service rates;
- (ii)** determine the extent to which offerings made by providers of operator services are improvements, in terms of service quality, price, innovation, and other factors, over those available before the entry of new providers of operator services into the market;
- (iii)** report on (in the aggregate and by individual provider) operator service rates, incidence of service complaints, and service offerings;
- (iv)** consider the effect that commissions and surcharges, billing and validation costs, and other costs of doing business have on the overall rates charged to consumers; and
- (v)** monitor compliance with the provisions of this section, including the periodic placement of telephone calls from aggregator locations.

(B) Reports

- (i)** The Commission shall, during the pendency of such proceeding and not later than 5 months after its commencement, provide the Congress with an interim report on the Commission's activities and progress to date.
- (ii)** Not later than 11 months after the commencement of such proceeding, the Commission shall report to the Congress on its interim findings as a result of the proceeding.
- (iii)** Not later than 23 months after the commencement of such proceeding, the Commission shall submit a final report to the Congress on its findings and conclusions.

(4) Implementing regulations

(A) In general

Unless the Commission makes the determination described in subparagraph (B), the Commission shall, within 180 days after submission of the report required under paragraph (3)(B)(iii), complete a rulemaking proceeding pursuant to this subchapter to establish regulations for implementing the requirements of this subchapter (and paragraphs (1) and (2) of this subsection) that rates and charges for operator services be just and reasonable. Such regulations shall include limitations on the amount of commissions or any other compensation given to aggregators by providers of operator service.

(B) Limitation

The requirement of subparagraph (A) shall not apply if, on the basis of the proceeding under paragraph (3)(A), the Commission makes (and includes in the report required by paragraph (3)(B)(iii)) a factual determination that market forces are securing rates and charges that are just and reasonable, as evidenced by rate levels, costs, complaints, service quality, and other relevant factors.

(i) Statutory construction

Nothing in this section shall be construed to alter the obligations, powers, or duties of common carriers or the Commission under the other sections of this chapter.

CREDIT(S)

(June 19, 1934, c. 652, Title II, § 226, as added Oct. 17, 1990, [Pub.L. 101-435, § 3, 104 Stat. 987](#), and amended Nov. 15, 1990, [Pub.L. 101-555, § 4, 104 Stat. 2760](#); Oct. 27, 1992, [Pub.L. 102-538, Title II, § 207](#), 106 Stat. 3543; Oct. 25, 1994, [Pub.L. 103-414, Title III, §§ 303\(a\)\(10\), 304\(a\)\(8\)](#), 108 Stat. 4294, 4297.)

[\[FN1\]](#) So in original.

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1990 Acts. [Senate Report No. 101-439](#), see 1990 U.S.Code Cong. and Adm.News, p. 1577.

1994 Acts. [House Report No. 103-827](#), see 1994 U.S. Code Cong. and Adm. News, p. 3489.

Codifications. Section 304(a)(8) of [Pub.L. 103-414](#) directed deletion of "within 9 months after October 17, 1990," from subsec. (e), which was executed to par. (1) of subsec. (e). A similar phrase, "Within 9 months after October 17, 1990," appears in par. (2) of subsec. (e), but was not deleted, in compliance with the exact instructions of Congress.

Amendments

1994 Amendments. Subsec. (d)(2). [Pub.L. 103-414, § 303\(a\)\(10\)](#), redesignated former par. (3) as (2), and struck out former par. (2), which set deadlines for initiating the rulemaking proceeding under par. (1) and for prescribing regulations pursuant to such proceeding.

Subsec. (d)(3). [Pub.L. 103-414, § 303\(a\)\(10\)](#), redesignated former par. (4) as (3). Former par. (3) redesignated (2).

Subsec. (d)(4). [Pub.L. 103-414, § 303\(a\)\(10\)](#), redesignated former par. (4) as (3).

Subsec. (e)(1). [Pub.L. 103-414, § 304](#) (a)(8), struck out "within 9 months after October 17, 1990," following "The Commission,". See Codification note set out under this section.

1992 Amendments. Subsec. (d)(4)(A). [Pub.L. 102-538, Title II, § 207](#), directed that the regulations prescribed under this section shall establish minimum standards to use in routing emergency telephone calls, for both operator services and aggregators, rather than only for operator services.

1990 Amendments. Subsec. (b)(1). [Pub.L. 101-555, § 4\(a\)](#), substituted "90" for "30".

Subsec. (b)(1)(H). [Pub.L. 101-555, § 4\(b\)](#), added "and" following "consents to be transferred;"

Subsec. (b)(1)(I). [Pub.L. 101-555, § 4\(b\)](#), substituted "of the call." for "of the call; and".

Subsec. (b)(1)(J). [Pub.L. 101-555, § 4\(b\)](#), struck out former subpar. (J) which related to billing of interexchange telephone call to billing card number issued by another provider of operator services.

Subsec. (b)(2). [Pub.L. 101-555, § 4\(a\)](#), substituted "90" for "30".

Subsec. (c)(1). [Pub.L. 101-555, § 4\(a\)](#), substituted "90" for "30".

Subsec. (h)(1)(A). [Pub.L. 101-555, § 4\(a\)](#), substituted "90" for "30".

Termination of Reporting Requirements

For termination of reporting provisions of [Pub.L. 101-435, § 3](#) pertaining to activities and progress of the Commission on the proceedings required by the Act, effective May 15, 2000, see [Pub.L. 104-66, § 3003](#), as amended, set out as a note under [31 U.S.C.A. § 1113](#), and the 4th item on page 167 of House Document No. 103-7.

Congressional Statement of Findings

[Section 2 of Pub.L. 101-435](#) provided that:

"The Congress finds that--

"**(1)** the divestiture of AT & T and decisions allowing open entry for competitors in the telephone marketplace produced a variety of new services and many new providers of existing telephone services;

"**(2)** the growth of competition in the telecommunications market makes it essential to ensure that safeguards are in place to assure fairness for consumers and service providers alike;

"**(3)** a variety of providers of operator services now compete to win contracts to provide operator services to hotels, hospitals, airports, and other aggregators of telephone business from consumers;

"(4) the mere existence of a variety of service providers in the operator services marketplace is significant in making that market competitive only when consumers are able to make informed choices from among those service providers;

"(5) however, often consumers have no choices in selecting a provider of operator services, and often attempts by consumers to reach their preferred long distance carrier by using a telephone billing card, credit card, or prearranged access code number are blocked;

"(6) a number of State regulatory authorities have taken action to protect consumers using intrastate operator services;

"(7) from January 1988 through February 1990, the Federal Communications Commission received over 4,000 complaints from consumers about operator services;

"(8) those consumers have complained that they are denied access to the interexchange carrier of their choice, that they are deceived about the identity of the company providing operator services for their calls and the rates being charged, that they lack information on what they can do to complain about unfair treatment by an operator service provider, and that they are, accordingly, being deprived of the free choice essential to the operation of a competitive market;

"(9) the Commission has testified that its actions have been insufficient to correct the problems in the operator services industry to date; and

"(10) a combination of industry self-regulation and government regulation is required to ensure that competitive operator services are provided in a fair and reasonable manner."

LIBRARY REFERENCES

American Digest System

[Telecommunications](#) ¶266, 267, 306, 323.
Key Number System Topic No. [372](#).

NOTES OF DECISIONS

Construction [1](#)
Pay telephone owners' compensation [2](#)

[1](#). Construction

In construing Telephone Operator Consumer Services Improvement Act (TOCSIA) provision, directing Federal Communications Commission (FCC) to consider need to prescribe compensation for pay telephone owners for calls "routed to" providers of operator services other than presubscribed provider of operator services for such telephones, Court of Appeals had to read provision in context of statute as a whole. [Florida Public Telecommunications Ass'n, Inc. v. F.C.C., C.A.D.C.1995, 54 F.3d 857, 312 U.S.App.D.C. 24. Telecommunications](#) ¶890

[2](#). Pay telephone owners' compensation

Telephone Operator Consumer Services Improvement Act (TOCSIA) provision, directing

Federal Communications Commission (FCC) to consider need to prescribe compensation for pay telephone owners for calls "routed to" providers of operator services other than presubscribed provider of operator services for such telephones, gave Commission authority to prescribe compensation for pay telephone owners for subscriber-800 calls as well as for access-code calls. [Florida Public Telecommunications Ass'n, Inc. v. F.C.C., C.A.D.C.1995, 54 F.3d 857, 312 U.S.App.D.C. 24. Telecommunications ¶890](#)

47 U.S.C.A. § 226, 47 USCA § 226

Current through P.L. 109-239 approved 07-03-06

Copr. © 2006 Thomson/West. No. Claim to Orig. U.S. Govt. Works

END OF DOCUMENT

(C) 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.



47 U.S.C.A. § 276

United States Code Annotated [Currentness](#)

Title 47. Telegraphs, Telephones, and Radiotelegraphs

Chapter 5. Wire or Radio Communication ([Refs & Annos](#))

▣ [Subchapter II. Common Carriers \(Refs & Annos\)](#)

▣ [Part III. Special Provisions Concerning Bell Operating Companies](#)

➔ **§ 276. Provision of payphone service**

(a) Nondiscrimination safeguards

After the effective date of the rules prescribed pursuant to subsection (b) of this section, any Bell operating company that provides payphone service--

(1) shall not subsidize its payphone service directly or indirectly from its telephone exchange service operations or its exchange access operations; and

(2) shall not prefer or discriminate in favor of its payphone service.

(b) Regulations

(1) Contents of regulations

In order to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public, within 9 months after February 8, 1996, the Commission shall take all actions necessary (including any reconsideration) to prescribe regulations that--

(A) establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone, except that emergency calls and telecommunications relay service calls for hearing disabled individuals shall not be subject to such compensation;

(B) discontinue the intrastate and interstate carrier access charge payphone service elements and payments in effect on February 8, 1996, and all intrastate and interstate payphone subsidies from basic exchange and exchange access revenues, in favor of a compensation plan as specified in subparagraph (A);

(C) prescribe a set of nonstructural safeguards for Bell operating company payphone service to implement the provisions of paragraphs (1) and (2) of subsection (a) of this section, which safeguards shall, at a minimum, include the nonstructural safeguards equal to those adopted in the Computer Inquiry-III (CC Docket No. 90-623) proceeding;

(D) provide for Bell operating company payphone service providers to have the same right that independent payphone providers have 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 calls from their payphones, unless the Commission determines in the rulemaking pursuant to this section that it is not in the public interest; and

(E) provide for all payphone service providers to 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 intraLATA calls from their payphones.

(2) Public interest telephones

In the rulemaking conducted pursuant to paragraph (1), the Commission shall determine whether public interest payphones, which are provided in the interest of public health, safety, and welfare, in locations where there would otherwise not be a payphone, should be maintained, and if so, ensure that such public interest payphones are supported fairly and equitably.

(3) Existing contracts

Nothing in this section shall affect any existing contracts between location providers and payphone service providers or interLATA or intraLATA carriers that are in force and effect as of February 8, 1996.

(c) State preemption

To the extent that any State requirements are inconsistent with the Commission's regulations, the Commission's regulations on such matters shall preempt such State requirements.

(d) "Payphone service" defined

As used in this section, the term "payphone service" means the provision of public or semi-public pay telephones, the provision of inmate telephone service in correctional institutions, and any ancillary services.

CREDIT(S)

(June 19, 1934, c. 652, Title II, § 276, as added Feb. 8, 1996, [Pub.L. 104- 104, Title I, § 151\(a\)](#), 110 Stat. 106.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1996 Acts. [House Report No. 104-204](#) and [House Conference Report No. 104- 458](#), see 1996 U.S. Code Cong. and Adm. News, p. 10.

LIBRARY REFERENCES

American Digest System

[Telecommunications](#) ¶276, 323.
Key Number System Topic No. [372](#).

RESEARCH REFERENCES

Encyclopedias

[Am. Jur. 2d Telecommunications § 27](#), Special Provisions Concerning Bell Operating Companies.

NOTES OF DECISIONS

Carrier pays scheme, compensation [5](#)
Compensation [4-6](#)
Compensation - Generally [4](#)
Compensation - Carrier pays scheme [5](#)
Compensation - Market based plan [6](#)
Deregulation [1](#)
Discrimination [3](#)
Judicial Review [8](#)
Market based plan, compensation [6](#)
Preemption [2](#)
Private right of action [9](#)
Subsidies [7](#)

1. Deregulation

Decision of Federal Communications Commission (FCC) to deregulate local coin rates for payphones was not arbitrary and capricious for failing to address possibility of "locational monopolies" held by certain payphone service providers (PSPs), since FCC did not ignore possibility of problematic monopolies, but, rather, concluded that FCC would deal with them if and when specific PSPs were shown to have substantial market power. [Illinois Public Telecommunications Ass'n v. F.C.C., C.A.D.C.1997, 117 F.3d 555, 326 U.S.App.D.C. 1](#), decision clarified on rehearing [123 F.3d 693, 326 U.S.App.D.C. 315](#), certiorari denied [118 S.Ct. 1361, 523 U.S. 1046, 140 L.Ed.2d 511](#), decided after remand [1997 WL 868694](#), corrected [1997 WL 622294](#), stay denied [1997 WL 751204](#), stay denied [1997 WL 775453](#), review granted in part, cause remanded [143 F.3d 606, 330 U.S.App.D.C. 92](#), on remand [1998 WL 323742](#), decided after remand [1999 WL 49817](#), corrected 1999 WL 713706, review denied [215 F.3d 51, 342 U.S.App.D.C. 51](#), on remand [2002 WL 122604](#), on remand [2002 WL 31374875](#). [Telecommunications](#) ↩️951

2. Preemption

Federal Communications Commission (FCC) could mandate that Bell operating companies (BOCs) price intrastate service lines provided to competing payphone service providers (PSPs) at forward-looking, cost-based rates; Telecommunications Act's requirement that FCC issue regulations implementing goal of promoting competition in payphone service industry unambiguously authorized agency to regulate BOCs' intrastate payphone line rates, preempting states' general statutory power to regulate intrastate charges and services. [New England Public Communications Council, Inc. v. F.C.C., C.A.D.C.2003, 334 F.3d 69, 357 U.S.App.D.C. 231](#), rehearing and rehearing en banc denied, certiorari denied [124 S.Ct. 2065, 541 U.S. 1009, 158 L.Ed.2d 618](#). [Telecommunications](#) ↩️894

Telecommunications Act provision requiring Federal Communications Commission (FCC) to establish regulations ensuring that payphone operators be "fairly compensated" authorized FCC to set local coin rates for payphones and thereby preempt states' power to regulate such rates. [Illinois Public Telecommunications Ass'n v. F.C.C., C.A.D.C.1997, 117 F.3d 555, 326 U.S.App.D.C. 1](#), decision clarified on rehearing [123 F.3d 693, 326 U.S.App.D.C. 315](#), certiorari denied [118 S.Ct. 1361, 523 U.S. 1046, 140 L.Ed.2d 511](#), decided after remand [1997 WL 868694](#), corrected [1997 WL 622294](#), stay denied [1997 WL 751204](#), stay denied [1997 WL 775453](#), review granted in part, cause remanded [143 F.3d 606, 330 U.S.App.D.C. 92](#), on remand [1998 WL 323742](#), decided after remand [1999 WL 49817](#), corrected 1999 WL 713706, review denied [215 F.3d 51, 342 U.S.App.D.C. 51](#), on remand [2002 WL 122604](#), on remand [2002 WL 31374875](#). [States](#) ↩️18.81; [Telecommunications](#) ↩️754

Although Telecommunications Act provision requiring that payphone service providers (PSPs) be "fairly compensated" by interexchange carriers (IXCs) for dial-around calls provided private cause of action, Act did not completely preempt state laws providing means to collect dial-around compensation, so as to render federal court with federal

question jurisdiction over PSP's removed quantum meruit actions against IXC; Act only displaced state laws that were inconsistent with it, and contained savings clause stating that remedies in Act were in addition to those existing at common law or by statute.

[Precision Pay Phones v. Qwest Communications Corp., N.D.Cal.2002, 210 F.Supp.2d 1106. Removal Of Cases](#) [↩](#)25(1); [States](#) [↩](#)18.81; [Telecommunications](#) [↩](#)734

3. Discrimination

Federal Communications Commission (FCC) lacked authority to require non-Bell operating company (non-BOC) local exchange carriers (LECs) to price intrastate service lines provided to competing payphone service providers (PSPs) at forward-looking, cost-based rates; Telecommunications Act's requirement that FCC issue regulations implementing goal of promoting competition in payphone service industry expressly applied only to BOCs. [New England Public Communications Council, Inc. v. F.C.C., C.A.D.C.2003, 334 F.3d 69, 357 U.S.App.D.C. 231](#), rehearing and rehearing en banc denied, certiorari denied [124 S.Ct. 2065, 541 U.S. 1009, 158 L.Ed.2d 618](#). [Telecommunications](#) [↩](#)894

Telecommunications Act section providing that particular telecommunications operating companies that provided payphone service were not to prefer or discriminate in favor of its own payphone service did not require Federal Communications Commission (FCC) to prohibit all discrimination by such companies; thus, FCC could proscribe discrimination only in provision of basic services. [Illinois Public Telecommunications Ass'n v. F.C.C., C.A.D.C.1997, 117 F.3d 555, 326 U.S.App.D.C. 1](#), decision clarified on rehearing [123 F.3d 693, 326 U.S.App.D.C. 315](#), certiorari denied [118 S.Ct. 1361, 523 U.S. 1046, 140 L.Ed.2d 511](#), decided after remand [1997 WL 868694](#), corrected [1997 WL 622294](#), stay denied [1997 WL 751204](#), stay denied [1997 WL 775453](#), review granted in part, cause remanded [143 F.3d 606, 330 U.S.App.D.C. 92](#), on remand [1998 WL 323742](#), decided after remand [1999 WL 49817](#), corrected 1999 WL 713706, review denied [215 F.3d 51, 342 U.S.App.D.C. 51](#), on remand [2002 WL 122604](#), on remand [2002 WL 31374875](#). [Telecommunications](#) [↩](#)890

4. Compensation--Generally

Telecommunications Act section providing that Federal Communications Commission (FCC) "within 9 months after February 8, 1996, shall take all actions necessary (including any reconsideration) to prescribe regulations to ensure that all payphone service providers are fairly compensated" did not remove FCC's discretion to deny reconsideration of petition challenging compensation rates for payphone service providers, even if FCC believed that granting such petition was necessary to ensuring fair payphone compensation. [AT&T Corp. v. F.C.C., C.A.D.C.2004, 363 F.3d 504, 361 U.S.App.D.C. 68](#). [Telecommunications](#) [↩](#)890

Federal Communications Commission's (FCC's) exclusion, from independent payphone service providers' (PSPs') per-call compensation for "dial around" coinless calls, of amount for bad debt associated with collection of coinless call fees from interexchange carriers (IXC) was prudent and reasonable, where FCC decided that, on balance, data

relating to bad debt was not reliable enough to warrant any educated guess as to future bad debt percentages, since it could not determine what percentage of uncollected compensation resulted from PSP billing errors as opposed to IXCs' refusal to pay.

[American Public Communications Council v. F.C.C., C.A.D.C.2000, 215 F.3d 51, 342 U.S.App.D.C. 51. Telecommunications ↵890](#)

Decision of Federal Communications Commission (FCC) that compensation rate to be paid to payphone service providers (PSPs) by interexchange carriers (IXCs) for toll-free and access code calls should be equal to deregulated local coin rate for payphones was arbitrary and capricious, even if rate was merely default rate which could be renegotiated by IXCs, because FCC's rationale for decision, that costs of such calls were similar, was contrary to evidence and FCC failed to acknowledge contrary data. [Illinois Public Telecommunications Ass'n v. F.C.C., C.A.D.C.1997, 117 F.3d 555, 326 U.S.App.D.C. 1, decision clarified on rehearing 123 F.3d 693, 326 U.S.App.D.C. 315, certiorari denied 118 S.Ct. 1361, 523 U.S. 1046, 140 L.Ed.2d 511, decided after remand 1997 WL 868694, corrected 1997 WL 622294, stay denied 1997 WL 751204, stay denied 1997 WL 775453, review granted in part, cause remanded 143 F.3d 606, 330 U.S.App.D.C. 92, on remand 1998 WL 323742, decided after remand 1999 WL 49817, corrected 1999 WL 713706, review denied 215 F.3d 51, 342 U.S.App.D.C. 51, on remand 2002 WL 122604, on remand 2002 WL 31374875. Telecommunications ↵866](#)

Federal Communications Commission (FCC) did not act arbitrarily and capriciously by requiring interexchange carriers (IXCs) to "track" payphone calls as part of regulatory scheme promulgated under Telecommunications Act, which required FCC to establish regulations ensuring that payphone operators be "fairly compensated," since IXCs had ability to track calls. [Illinois Public Telecommunications Ass'n v. F.C.C., C.A.D.C.1997, 117 F.3d 555, 326 U.S.App.D.C. 1, decision clarified on rehearing 123 F.3d 693, 326 U.S.App.D.C. 315, certiorari denied 118 S.Ct. 1361, 523 U.S. 1046, 140 L.Ed.2d 511, decided after remand 1997 WL 868694, corrected 1997 WL 622294, stay denied 1997 WL 751204, stay denied 1997 WL 775453, review granted in part, cause remanded 143 F.3d 606, 330 U.S.App.D.C. 92, on remand 1998 WL 323742, decided after remand 1999 WL 49817, corrected 1999 WL 713706, review denied 215 F.3d 51, 342 U.S.App.D.C. 51, on remand 2002 WL 122604, on remand 2002 WL 31374875. Telecommunications ↵890](#)

Interim plan established by Federal Communications Commission (FCC) for compensation rate to be paid to payphone service providers (PSPs) by interexchange carriers (IXCs) for toll-free and access code calls, which was based on deregulated local coin rate for payphones, was arbitrary and capricious because there was no basis for linking compensation rate to local coin rate and plan required payments from only large IXCs for first year of plan. [Illinois Public Telecommunications Ass'n v. F.C.C., C.A.D.C.1997, 117 F.3d 555, 326 U.S.App.D.C. 1, decision clarified on rehearing 123 F.3d 693, 326 U.S.App.D.C. 315, certiorari denied 118 S.Ct. 1361, 523 U.S. 1046, 140 L.Ed.2d 511, decided after remand 1997 WL 868694, corrected 1997 WL 622294, stay denied 1997 WL 751204, stay denied 1997 WL 775453, review granted in part, cause remanded 143 F.3d 606, 330 U.S.App.D.C. 92, on remand 1998 WL 323742, decided](#)

after remand [1999 WL 49817](#), corrected 1999 WL 713706, review denied [215 F.3d 51](#), [342 U.S.App.D.C. 51](#), on remand [2002 WL 122604](#), on remand [2002 WL 31374875](#).
[Telecommunications](#) ↩890

Communications Act provision, directing Federal Communications Commission (FCC) to prescribe regulations that established a per call compensation plan to ensure that all payphone service providers were fairly compensated for each and every call, conferred a private right of action on payphone service providers to enforce their rights under the FCC regulation establishing per call compensation plan specifying precise level of compensation; the statute was not merely a directive to the FCC, it conferred upon payphone service providers a right to be fairly compensated, and the regulation, in turn, simply provided the details necessary to implement the statutory right. [APCC Services, Inc. v. Cable & Wireless, Inc., D.D.C.2003, 281 F.Supp.2d 52](#), motion to certify appeal granted [297 F.Supp.2d 101](#), motion to certify appeal granted [297 F.Supp.2d 90](#), reversed [418 F.3d 1238, 368 U.S.App.D.C. 79](#), rehearing denied, petition for certiorari filed [2005 WL 3438135](#). [Action](#) ↩3

Statute which commands the Federal Communications Commission (FCC) to prescribe regulations to establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed call using their payphones does not provide a private right of action for violations of the FCC regulations it orders. [Phonetel Technologies, Inc. v. Network Enhanced Telecom, E.D.Tex.2002, 197 F.Supp.2d 720](#). [Telecommunications](#) ↩916(1)

Telecommunications Act's grant of authority to Federal Communications Commission (FCC) to regulate payphone compensation plans did not create federal question permitting removal of suit by families of inmates against state alleging that state had entered into agreements for inmate phone service which charged recipients of inmates' collect calls uncompetitive rates and resulted in kickbacks in violation of state constitution and state law; Act created no private cause of action, state court would not have to interpret core terms of Act to decide whether families' claims could succeed, and FCC left it to parties to contracts for payphone services to determine rates of compensation. [Fair v. Sprint Payphone Services, Inc., D.S.C.2001, 148 F.Supp.2d 622](#).
[Removal Of Cases](#) ↩19(5)

5. ---- Carrier pays scheme, compensation

Establishment of "carrier pays" compensation scheme for toll-free telephone calls made from payphones was not arbitrary and capricious, as scheme would not preclude competitive market pricing, and scheme was based on balancing of competing concerns of administrative efficiency and consumer convenience, as well as Federal Communications Commission's valid judgment that carriers were primary economic beneficiaries of such calls. [Illinois Public Telecommunications Ass'n v. F.C.C., C.A.D.C.1997, 117 F.3d 555, 326 U.S.App.D.C. 1](#), decision clarified on rehearing [123 F.3d 693, 326 U.S.App.D.C. 315](#), certiorari denied [118 S.Ct. 1361, 523 U.S. 1046, 140 L.Ed.2d 511](#), decided after remand [1997 WL 868694](#), corrected [1997 WL 622294](#), stay denied [1997 WL 751204](#), stay denied [1997 WL 775453](#), review granted in part, cause

remanded [143 F.3d 606, 330 U.S.App.D.C. 92](#), on remand [1998 WL 323742](#), decided after remand [1999 WL 49817](#), corrected 1999 WL 713706, review denied [215 F.3d 51, 342 U.S.App.D.C. 51](#), on remand [2002 WL 122604](#), on remand [2002 WL 31374875](#). [Telecommunications](#) ↩️890

Interlocutory review of district court's holding that Telecommunications Act provided private right of action was warranted in suit by payphone service providers (PSP) against interexchange carrier (IXC) seeking payment of dial-around compensation for certain long distance telephone calls originating from payphones; issue was dispositive and would be effectively unreviewable on appeal from final judgment, there was substantial difference of opinion on issue, and resolution of issue would conserve judicial resources and spare parties from possibly needless expense if ruling was reversed, would be dispositive of several cases before court, and would provide persuasive authority for courts in other jurisdictions, as well as for Federal Communications Commission (FCC). [APCC Services, Inc. v. AT & T Corp., D.D.C.2003, 297 F.Supp.2d 101](#). [Federal Courts](#) ↩️576.1

6. ---- Market based plan, compensation

Federal Communications Commission (FCC) could rely upon market forces to determine local coin rates for payphones, pursuant to Telecommunications Act provision requiring FCC to establish regulations ensuring that payphone operators be "fairly compensated," without making statutory findings on whether "forbearance" from regulating such rates was appropriate; FCC did not forebear from applying any regulation but merely established compensation plan in accordance with Act which was market-based. [Illinois Public Telecommunications Ass'n v. F.C.C., C.A.D.C.1997, 117 F.3d 555, 326 U.S.App.D.C. 1](#), decision clarified on rehearing [123 F.3d 693, 326 U.S.App.D.C. 315](#), certiorari denied [118 S.Ct. 1361, 523 U.S. 1046, 140 L.Ed.2d 511](#), decided after remand [1997 WL 868694](#), corrected [1997 WL 622294](#), stay denied [1997 WL 751204](#), stay denied [1997 WL 775453](#), review granted in part, cause remanded [143 F.3d 606, 330 U.S.App.D.C. 92](#), on remand [1998 WL 323742](#), decided after remand [1999 WL 49817](#), corrected 1999 WL 713706, review denied [215 F.3d 51, 342 U.S.App.D.C. 51](#), on remand [2002 WL 122604](#), on remand [2002 WL 31374875](#). [Telecommunications](#) ↩️951

7. Subsidies

Federal Communications Commission's (FCC) adoption of certification scheme to effect Telecommunications Act mandate to discontinue intrastate and interstate payphone subsidies in favor of compensation plan, as opposed to requiring proof by local exchange carrier/payphone service provider (LEC PSP) of removal of subsidies as condition of entitlement to compensation, was reasonable under Act and thus entitled to deference; FCC employed same scheme for broad range of other statutory functions, and any false certification by a LEC PSP could be redressed by interexchange carrier's (IXC) separate complaint under Act and would expose LEC PSP to penalties as well as damages. [Global Crossing Telecommunications, Inc. v. F.C.C., C.A.D.C.2001, 259 F.3d 740, 347 U.S.App.D.C. 271](#). [Telecommunications](#) ↩️890

Section of Telecommunications Act requiring that payphone subsidies be discontinued did not require that certain operating companies' payphone assets be transferred to its unregulated books, but required only that payphone assets not transferred to separate affiliate be accounted for under nonstructural safeguards designed to effectively protect against cross-subsidization. [Illinois Public Telecommunications Ass'n v. F.C.C., C.A.D.C.1997, 117 F.3d 555, 326 U.S.App.D.C. 1](#), decision clarified on rehearing [123 F.3d 693, 326 U.S.App.D.C. 315](#), certiorari denied [118 S.Ct. 1361, 523 U.S. 1046, 140 L.Ed.2d 511](#), decided after remand [1997 WL 868694](#), corrected [1997 WL 622294](#), stay denied [1997 WL 751204](#), stay denied [1997 WL 775453](#), review granted in part, cause remanded [143 F.3d 606, 330 U.S.App.D.C. 92](#), on remand [1998 WL 323742](#), decided after remand [1999 WL 49817](#), corrected 1999 WL 713706, review denied [215 F.3d 51, 342 U.S.App.D.C. 51](#), on remand [2002 WL 122604](#), on remand [2002 WL 31374875](#). [Telecommunications](#) ↩951

[8. Judicial Review](#)

Data from regional Bell operating companies (RBOCs) suggesting that calls per payphone had been declining over time was not new evidence warranting judicial review of Federal Communications Commission's (FCC's) denial of long-distance carrier's petition for reconsideration of rule governing compensation of payphone service providers, as data did not relate to events occurring after FCC order at issue or facts unknown to carrier that could not have been known by it, and carrier had notice that such data would have been relevant to rulemaking that was subject of reconsideration request. [AT&T Corp. v. F.C.C., C.A.D.C.2004, 363 F.3d 504, 361 U.S.App.D.C. 68](#). [Telecommunications](#) ↩904

[9. Private right of action](#)

Statute requiring Federal Communications Commission (FCC) to prescribe regulations establishing per-call compensation plan to ensure that payphone service providers (PSPs) were fairly compensated for all completed intrastate and interstate calls using their payphones, which was addressed to FCC only, and not to rights of PSPs or obligations of PSPs' interexchange carriers (IXCs), did not regulate IXCs or obligate them to pay dial-around compensation to PSPs, and thus did not create private right of action allowing PSP or its assignee to sue to recover dial-around compensation from IXC. [APCC Services, Inc. v. Sprint Communications Co., C.A.D.C.2005, 418 F.3d 1238, 368 U.S.App.D.C. 79](#). [Telecommunications](#) ↩890

47 U.S.C.A. § 276, 47 USCA § 276

Current through P.L. 109-239 approved 07-03-06

Copr. © 2006 Thomson/West. No. Claim to Orig. U.S. Govt. Works

END OF DOCUMENT

(C) 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

