

United States Code Annotated [Currentness](#)

Title 47. Telegraphs, Telephones, and Radiotelegraphs

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

▣ [Subchapter I](#). General Provisions ([Refs & Annos](#))

➔ **§ 153. Definitions**

For the purposes of this chapter, unless the context otherwise requires--

(1) Affiliate

The term "affiliate" means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term "own" means to own an equity interest (or the equivalent thereof) of more than 10 percent.

(2) Amateur station

The term "amateur station" means a radio station operated by a duly authorized person interested in radio technique solely with a personal aim and without pecuniary interest.

(3) AT&T Consent Decree

The term "AT&T Consent Decree" means the order entered August 24, 1982, in the antitrust action styled United States v. Western Electric, Civil Action No. 82- 0192, in the United States District Court for the District of Columbia, and includes any judgment or order with respect to such action entered on or after August 24, 1982.

(4) Bell operating company

The term "Bell operating company"--

**(A)** means any of the following companies: Bell Telephone Company of Nevada, Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan Bell Telephone Company, New England Telephone and Telegraph Company, New Jersey Bell Telephone Company, New York Telephone Company, US West Communications Company, South Central Bell Telephone Company, Southern Bell Telephone and Telegraph Company, Southwestern Bell Telephone Company, The Bell Telephone Company of Pennsylvania, The Chesapeake and Potomac Telephone Company, The Chesapeake and Potomac Telephone Company of Maryland, The Chesapeake and Potomac Telephone Company of Virginia, The Chesapeake and Potomac Telephone Company of West Virginia, The Diamond State Telephone Company, The Ohio Bell Telephone Company, The Pacific Telephone and Telegraph Company, or Wisconsin Telephone Company; and

**(B)** includes any successor or assign of any such company that provides wireline telephone exchange service; but  
**(C)** does not include an affiliate of any such company, other than an affiliate described in subparagraph (A) or (B).

(5) Broadcast station

The term "broadcast station", "broadcasting station", or "radio broadcast station" means a radio station equipped to engage in broadcasting as herein defined.

(6) Broadcasting

The term "broadcasting" means the dissemination of radio communications intended to be received by the public, directly or by the intermediary of relay stations.

(7) Cable service

The term "cable service" has the meaning given such term in [section 522](#) of this title.

(8) Cable system

The term "cable system" has the meaning given such term in [section 522](#) of this title.

(9) Chain broadcasting

The term "chain broadcasting" means simultaneous broadcasting of an identical program by two or more connected stations.

(10) Common carrier

The term "common carrier" or "carrier" means any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or interstate or foreign radio transmission of energy, except where reference is made to common carriers not subject to this chapter; but a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier.

(11) Connecting carrier

The term "connecting carrier" means a carrier described in [clauses \(2\), \(3\), or \(4\) of section 152\(b\)](#) of this title.

(12) Construction permit

The term "construction permit" or "permit for construction" means that instrument of authorization required by this chapter or the rules and regulations of the Commission made pursuant to this chapter for the construction of a station, or the installation of

apparatus, for the transmission of energy, or communications, or signals by radio, by whatever name the instrument may be designated by the Commission.

(13) Corporation

The term "corporation" includes any corporation, joint-stock company, or association.

(14) Customer premises equipment

The term "customer premises equipment" means equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications.

(15) Dialing parity

The term "dialing parity" means that a person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer's designation from among 2 or more telecommunications services providers (including such local exchange carrier).

(16) Exchange access

The term "exchange access" means the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services.

(17) Foreign communication

The term "foreign communication" or "foreign transmission" means communication or transmission from or to any place in the United States to or from a foreign country, or between a station in the United States and a mobile station located outside the United States.

(18) Great Lakes Agreement

The term "Great Lakes Agreement" means the Agreement for the Promotion of Safety on the Great Lakes by Means of Radio in force and the regulations referred to therein.

(19) Harbor

The term "harbor" or "port" means any place to which ships may resort for shelter or to load or unload passengers or goods, or to obtain fuel, water, or supplies. This term shall apply to such places whether proclaimed public or not and whether natural or artificial.

(20) Information service

The term "information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

(21) InterLATA service

The term "interLATA service" means telecommunications between a point located in a local access and transport area and a point located outside such area.

(22) Interstate communication

The term "interstate communication" or "interstate transmission" means communication or transmission (A) from any State, Territory, or possession of the United States (other than the Canal Zone), or the District of Columbia, to any other State, Territory, or possession of the United States (other than the Canal Zone), or the District of Columbia, (B) from or to the United States to or from the Canal Zone, insofar as such communication or transmission takes place within the United States, or (C) between points within the United States but through a foreign country; but shall not, with respect to the provisions of subchapter II of this chapter (other than [section 223](#) of this title), include wire or radio communication between points in the same State, Territory, or possession of the United States, or the District of Columbia, through any place outside thereof, if such communication is regulated by a State commission.

(23) Land station

The term "land station" means a station, other than a mobile station, used for radio communication with mobile stations.

(24) Licensee

The term "licensee" means the holder of a radio station license granted or continued in force under authority of this chapter.

(25) Local access and transport area

The term "local access and transport area" or "LATA" means a contiguous geographic area--

**(A)** established before February 8, 1996, by a Bell operating company such that no exchange area includes points within more than 1 metropolitan statistical area, consolidated metropolitan statistical area, or State, except as expressly permitted under the AT&T Consent Decree; or

**(B)** established or modified by a Bell operating company after February 8, 1996, and approved by the Commission.

(26) Local exchange carrier

The term "local exchange carrier" means any person that is engaged in the provision of telephone exchange service or exchange access. Such term does not include a person insofar as such person is engaged in the provision of a commercial mobile service under [section 332\(c\)](#) of this title, except to the extent that the Commission finds that such service should be included in the definition of such term.

(27) Mobile service

The term "mobile service" means a radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes (A) both one-way and two-way radio communication services, (B) a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation, and (C) any service for which a license is required in a personal communications service established pursuant to the proceeding entitled "Amendment to the Commission's Rules to Establish New Personal Communications Services" (GEN Docket No. 90-314; ET Docket No. 92-100), or any successor proceeding.

(28) Mobile station

The term "mobile station" means a radio-communication station capable of being moved and which ordinarily does move.

(29) Network element

The term "network element" means a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.

(30) Number portability

The term "number portability" means the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.

(31) Operator

**(A)** The term "operator" on a ship of the United States means, for the purpose of parts II and III of subchapter III of this chapter, a person holding a radio operator's license of the proper class as prescribed and issued by the Commission.

**(B)** "Operator" on a foreign ship means, for the purpose of part II of subchapter III of this chapter, a person holding a certificate as such of the proper class complying with the provisions of the radio regulations annexed to the International Telecommunication Convention in force, or complying with an agreement or treaty between the United States and the country in which the ship is registered.

#### (32) Person

The term "person" includes an individual, partnership, association, joint-stock company, trust, or corporation.

#### (33) Radio communication

The term "radio communication" or "communication by radio" means the transmission by radio of writing, signs, signals, pictures, and sounds of all kinds, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.

#### (34) Radio officer

**(A)** The term "radio officer" on a ship of the United States means, for the purpose of part II of subchapter III of this chapter, a person holding at least a first or second class radiotelegraph operator's license as prescribed and issued by the Commission. When such person is employed to operate a radiotelegraph station aboard a ship of the United States, he is also required to be licensed as a "radio officer" in accordance with chapter 71 of Title 46.

**(B)** "Radio officer" on a foreign ship means, for the purpose of part II of subchapter III of this chapter, a person holding at least a first or second class radiotelegraph operator's certificate complying with the provisions of the radio regulations annexed to the International Telecommunication Convention in force.

#### (35) Radio station

The term "radio station" or "station" means a station equipped to engage in radio communication or radio transmission of energy.

#### (36) Radiotelegraph auto alarm

The term "radiotelegraph auto alarm" on a ship of the United States subject to the provisions of part II of subchapter III of this chapter means an automatic alarm receiving apparatus which responds to the radiotelegraph alarm signal and has been approved by the Commission. "Radiotelegraph auto alarm" on a foreign ship means an automatic alarm receiving apparatus which responds to the radiotelegraph alarm signal and has been

approved by the government of the country in which the ship is registered: *Provided*, That the United States and the country in which the ship is registered are parties to the same treaty, convention, or agreement prescribing the requirements for such apparatus. Nothing in this chapter or in any other provision of law shall be construed to require the recognition of a radiotelegraph auto alarm as complying with part II of subchapter III of this chapter, on a foreign ship subject to part II of subchapter III of this chapter, where the country in which the ship is registered and the United States are not parties to the same treaty, convention, or agreement prescribing the requirements for such apparatus.

(37) Rural telephone company

The term "rural telephone company" means a local exchange carrier operating entity to the extent that such entity--

**(A)** provides common carrier service to any local exchange carrier study area that does not include either--

**(i)** any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or

**(ii)** any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;

**(B)** provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

**(C)** provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

**(D)** has less than 15 percent of its access lines in communities of more than 50,000 on February 8, 1996.

(38) Safety convention

The term "safety convention" means the International Convention for the Safety of Life at Sea in force and the regulations referred to therein.

(39) Ship

**(A)** The term "ship" or "vessel" includes every description of watercraft or other artificial contrivance, except aircraft, used or capable of being used as a means of transportation on water, whether or not it is actually afloat.

**(B)** A ship shall be considered a passenger ship if it carries or is licensed or certificated to carry more than twelve passengers.

**(C)** A cargo ship means any ship not a passenger ship.

**(D)** A passenger is any person carried on board a ship or vessel except (1) the officers and crew actually employed to man and operate the ship, (2) persons employed to carry on the business of the ship, and (3) persons on board a ship when they are carried, either because of the obligation laid upon the master to carry shipwrecked, distressed, or other persons in like or similar situations or by reason of any circumstance over which neither the master, the owner, nor the charterer (if any) has control.

**(E)** "Nuclear ship" means a ship provided with a nuclear powerplant.

(40) State

The term "State" includes the District of Columbia and the Territories and possessions.

(41) State commission

The term "State commission" means the commission, board, or official (by whatever name designated) which under the laws of any State has regulatory jurisdiction with respect to intrastate operations of carriers.

(42) Station license

The term "station license", "radio station license", or "license" means that instrument of authorization required by this chapter or the rules and regulations of the Commission made pursuant to this chapter, for the use or operation of apparatus for transmission of energy, or communications, or signals by radio, by whatever name the instrument may be designated by the Commission.

(43) Telecommunications

The term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

(44) Telecommunications carrier

The term "telecommunications carrier" means any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in [section 226](#) of this title). A telecommunications carrier shall be treated as a common carrier under this chapter only to the extent that it is engaged in providing telecommunications services, except that the Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage.

(45) Telecommunications equipment

The term "telecommunications equipment" means equipment, other than customer premises equipment, used by a carrier to provide telecommunications services, and includes software integral to such equipment (including upgrades).

(46) Telecommunications service

The term "telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.



(47) Telephone exchange service

The term "telephone exchange service" means (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.

(48) Telephone toll service

The term "telephone toll service" means telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service.

(49) Television service.

**(A) Analog television service.**

The term "analog television service" means television service provided pursuant to the transmission standards prescribed by the Commission in section 73.682(a) of its regulations ([47 C.F.R. 73.682\(a\)](#)).

**(B) Digital television service.**

The term "digital television service" means television service provided pursuant to the transmission standards prescribed by the Commission in [section 73.682\(d\)](#) of its regulations ([47 C.F.R. 73.682\(d\)](#)).

(50) Transmission of energy by radio

The term "transmission of energy by radio" or "radio transmission of energy" includes both such transmission and all instrumentalities, facilities, and services incidental to such transmission.

(51) United States

The term "United States" means the several States and Territories, the District of Columbia, and the possessions of the United States, but does not include the Canal Zone.

(52) Wire communication

The term "wire communication" or "communication by wire" means the transmission of writing, signs, signals, pictures, and sounds of all kinds by aid of wire, cable, or other like

connection between the points of origin and reception of such transmission, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.

## CREDIT(S)

(June 19, 1934, c. 652, Title I, § 3, 48 Stat. 1065; May 20, 1937, c. 229, § 2, 50 Stat. 189; 1946 Proc. No. 2695, eff. July 4, 1946, [11 F.R. 7517, 60 Stat. 1352](#); July 16, 1952, c. 879, § 2, 66 Stat. 711; Apr. 27, 1954, c. 175, §§ 2, 3, 68 Stat. 64; Aug. 13, 1954, c. 729, § 3, 68 Stat. 707; Aug. 13, 1954, c. 735, § 1, 68 Stat. 729; Aug. 6, 1956, c. 973, § 3, 70 Stat. 1049; Aug. 13, 1965, Pub.L. 89-121, § 1, 79 Stat. 511; May 3, 1968, Pub.L. 90-299, § 2, 82 Stat. 112; Sept. 13, 1982, [Pub.L. 97-259, Title I, § 120\(b\)](#), 96 Stat. 1097; Aug. 10, 1993, [Pub.L. 103-66, Title VI, § 6002\(b\)\(2\)\(B\)\(ii\)](#), 107 Stat. 396; Feb. 8, 1996, [Pub.L. 104-104, § 3\(a\), \(c\)](#), 110 Stat. 58, 61; Aug. 5, 1997, [Pub.L. 105-33, Title III, § 3001\(b\)](#), 111 Stat. 258.)

## HISTORICAL AND STATUTORY NOTES

### Revision Notes and Legislative Reports

1952 Acts. House Report No. 1750, see 1952 U.S. Code Cong. and Adm. News, p. 2234.

1954 Acts. Senate Report No. 1090, see 1954 U.S. Code Cong. and Adm. News, p. 2133.

House Report No. 2285, see 1954 U.S. Code Cong. and Adm. News, p. 3018.

House Report No. 2284, see 1954 U.S. Code Cong. and Adm. News, p. 3041.

1956 Acts. Senate Report No. 2792, see 1956 U.S. Code Cong. and Adm. News, p. 4385.

1965 Acts. Senate Report No. 526, see 1965 U.S. Code Cong. and Adm. News, p. 2720.

1968 Acts. House Report No. 1109, see 1968 U.S. Code Cong. and Adm. News, p. 1915.

1982 Acts. [Senate Report Nos. 97-191, 97-404](#), and [House Conference Report No. 97-765](#), see 1982 U.S. Code Cong. and Adm. News, p. 2237.

1993 Acts. [House Report No. 103-111](#) and [House Conference Report No. 103-213](#), see 1993 U.S. Code Cong. and Adm. News, p. 378.

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.

1997 Acts. [House Report No. 105-149](#), [House Conference Report No. 105-217](#), and Statement by President, see 1997 U.S. Code Cong. and Adm. News, p. 176.

## References in Text

This chapter, referred to in text, was in the original "this Act", meaning Act June 19, 1934, c. 652, 48 Stat. 1064, as amended, known as the Communications Act of 1934, which is classified principally to this chapter. For complete classification of this Act to the Code, see section 609 of this title and Tables.

For definition of Canal Zone, referred to in pars. (22) and (51), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

Part II of subchapter III of this chapter, referred to in pars. (31), (34), and (36), is classified to section 351 et seq. of this title. Part III of subchapter III of this chapter, referred to in par. (31), is classified to section 381 et seq. of this title.

## Codifications

References to Philippine Islands in pars. (22) and (50) of this section were omitted on authority of 1946 Proc. No. 2695, issued pursuant to section 1394 of Title 22, Foreign Relations and Intercourse, which proclamation recognized the independence of the Philippine Islands as of July 4, 1946. 1946 Proc. No. 2695 is set out as a note under section 1394 of Title 22.

In par. (34)(A), "chapter 71 of Title 46" was substituted for "the Act of May 12, 1948 (46 U.S.C. 229a-h)" on authority of [Pub.L. 98-89, § 2\(b\)](#), Aug. 26, 1983, 97 Stat. 598, section 1 of which enacted Title 46, Shipping.

## Amendments

1997 Amendments. [Pub.L. 105-33, § 3001\(b\)](#), redesignated former pars. (49) to (51) as pars. (50) to (52), and inserted par. (49), "Television Service".

1996 Amendments. [Pub.L. 104-104, § 3\(a\), \(c\)](#), amended section generally. Prior to amendment, section read as follows: "For the purposes of this chapter, unless the context otherwise requires--

**"(a)** 'Wire communication' or 'communication by wire' means the transmission of writing, signs, signals, pictures, and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.

**"(b)** 'Radio communication' or 'communication by radio' means the transmission by radio of writing, signs, signals, pictures, and sounds of all kinds, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.

"(c) 'Licensee' means the holder of a radio station license granted or continued in force under authority of this chapter.

"(d) 'Transmission of energy by radio' or 'radio transmission of energy' includes both such transmission and all instrumentalities, facilities, and services incidental to such transmission.

"(e) 'Interstate communication' or 'interstate transmission' means communication or transmission (1) from any State, Territory, or possession of the United States (other than the Canal Zone), or the District of Columbia, to any other State, Territory, or possession of the United States (other than the Canal Zone), or the District of Columbia, (2) from or to the United States to or from the Canal Zone, insofar as such communication or transmission takes place within the United States, or (3) between points within the United States but through a foreign country; but shall not, with respect to the provisions of subchapter II of this chapter (other than section 223 of this title), include wire or radio communication between points in the same State, Territory, or possession of the United States, or the District of Columbia, through any place outside thereof, if such communication is regulated by a State commission.

"(f) 'Foreign communication' or 'foreign transmission' means communication or transmission from or to any place in the United States to or from a foreign country, or between a station in the United States and a mobile station located outside the United States.

"(g) 'United States' means the several States and Territories, the District of Columbia, and the possessions of the United States, but does not include the Canal Zone.

"(h) 'Common carrier' or 'carrier' means any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or in interstate or foreign radio transmission of energy, except where reference is made to common carriers not subject to this chapter; but a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier.

"(i) 'Person' includes an individual, partnership, association, joint-stock company, trust, or corporation.

"(j) 'Corporation' includes any corporation, joint-stock company, or association.

"(k) 'Radio station' or 'station' means a station equipped to engage in radio communication or radio transmission of energy.

"(l) 'Mobile station' means a radio-communication station capable of being moved and which ordinarily does move.

"(m) 'Land station' means a station, other than a mobile station, used for radio communication with mobile stations.

**"(n)** 'Mobile service' means a radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes (1) both one-way and two-way radio communication services, (2) a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation, and (3) any service for which a license is required in a personal communications service established pursuant to the proceeding entitled 'Amendment to the Commission's Rules to Establish New Personal Communications Services' (GEN Docket No. 90-314; ET Docket No. 92-100), or any successor proceeding.

**"(o)** 'Broadcasting' means the dissemination of radio communications intended to be received by the public, directly or by the intermediary of relay stations.

**"(p)** 'Chain broadcasting' means simultaneous broadcasting of an identical program by two or more connected stations.

**"(q)** 'Amateur station' means a radio station operated by a duly authorized person interested in radio technique solely with a personal aim and without pecuniary interest.

**"(r)** 'Telephone exchange service' means service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge.

**"(s)** 'Telephone toll service' means telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service.

**"(t)** 'State commission' means the commission, board, or official (by whatever name designated) which under the laws of any State has regulatory jurisdiction with respect to intrastate operations of carriers.

**"(u)** 'Connecting carrier' means a carrier described in clauses (2), (3), or (4) of section 152(b) of this title.

**"(v)** 'State' includes the District of Columbia and the Territories and possessions.

**"(w)(1)** 'Ship' or 'vessel' includes every description of watercraft or other artificial contrivance, except aircraft, used or capable of being used as a means of transportation on water, whether or not it is actually afloat.

**"(2)** A ship shall be considered a passenger ship if it carries or is licensed or certificated to carry more than twelve passengers.

"(3) A cargo ship means any ship not a passenger ship.

"(4) A passenger is any person carried on board a ship or vessel except (1) the officers and crew actually employed to man and operate the ship, (2) persons employed to carry on the business of the ship, and (3) persons on board a ship when they are carried, either because of the obligation laid upon the master to carry shipwrecked, distressed, or other persons in like or similar situations or by reason of any circumstance over which neither the master, the owner, nor the charterer (if any) has control.

"(5) 'Nuclear ship' means a ship provided with a nuclear powerplant.

"(x) 'Radiotelegraph auto alarm' on a ship of the United States subject to the provisions of part II of subchapter III of this chapter means an automatic alarm receiving apparatus which responds to the radiotelegraph alarm signal and has been approved by the Commission. 'Radiotelegraph auto alarm' on a foreign ship means an automatic alarm receiving apparatus which responds to the radiotelegraph alarm signal and has been approved by the government of the country in which the ship is registered: *Provided*, That the United States and the country in which the ship is registered are parties to the same treaty, convention, or agreement prescribing the requirements for such apparatus. Nothing in this chapter or in any other provision of law shall be construed to require the recognition of a radiotelegraph auto alarm as complying with part II of subchapter III of this chapter, on a foreign ship subject to part II of subchapter III of this chapter, where the country in which the ship is registered and the United States are not parties to the same treaty, convention, or agreement prescribing the requirements for such apparatus.

"(y)(1) 'Operator' on a ship of the United States means, for the purpose of parts II and III of subchapter III of this chapter, a person holding a radio operator's license of the proper class as prescribed and issued by the Commission.

"(2) 'Operator' on a foreign ship means, for the purpose of part II of subchapter III of this chapter, a person holding a certificate as such of the proper class complying with the provisions of the radio regulations annexed to the International Telecommunication Convention in force, or complying with an agreement or treaty between the United States and the country in which the ship is registered.

"(z)(1) 'Radio officer' on a ship of the United States means, for the purpose of part II of subchapter III of this chapter, a person holding at least a first or second class radiotelegraph operator's license as prescribed and issued by the Commission. When such person is employed to operate a radiotelegraph station aboard a ship of the United States, he is also required to be licensed as a 'radio officer' in accordance with chapter 71 of Title 46.

"(2) 'Radio officer' on a foreign ship means, for the purpose of part II of subchapter III of this chapter, a person holding at least a first or second class radiotelegraph operator's certificate complying with the provisions of the radio regulations annexed to the

International Telecommunication Convention in force.

"**(aa)** 'Harbor' or 'port' means any place to which ships may resort for shelter or to load or unload passengers or goods, or to obtain fuel, water, or supplies. This term shall apply to such places whether proclaimed public or not and whether natural or artificial.

"**(bb)** 'Safety convention' means the International Convention for the Safety of Life at Sea in force and the regulations referred to therein.

"**(cc)** 'Station license', 'radio station license', or 'license' means that instrument of authorization required by this chapter or the rules and regulations of the Commission made pursuant to this chapter, for the use or operation of apparatus for transmission of energy, or communications, or signals by radio, by whatever name the instrument may be designated by the Commission.

"**(dd)** 'Broadcast station', 'broadcasting station', or 'radio broadcast station' means a radio station equipped to engage in broadcasting as herein defined.

"**(ee)** 'Construction permit' or 'permit for construction' means that instrument of authorization required by this chapter or the rules and regulations of the Commission made pursuant to this chapter for the construction of a station, or the installation of apparatus, for the transmission of energy, or communications, or signals by radio, by whatever name the instrument may be designated by the Commission.

"**(ff)** 'Great Lakes Agreement' means the Agreement for the Promotion of Safety on the Great Lakes by Means of Radio in force and the regulations referred to therein.

"**(gg)** Repealed. [Pub.L. 103-66, Title VI, § 6002\(b\)\(2\)\(B\)\(ii\)\(II\)](#), Aug. 10, 1993, 107 Stat. 396"

1993 Amendments. Subsec. (n). [Pub.L. 103-66, § 6002\(b\)\(2\)\(B\)\(ii\)\(I\)](#), designated portion of existing text as par. (1) and added pars. (2) and (3).

Subsec. (gg). [Pub.L. 103-66, § 6002\(b\)\(2\)\(B\)\(ii\)\(II\)](#), struck out subsec. (gg), which defined "private land mobile service".

1982 Amendments. Subsec. (n). [Pub.L. 97-259, § 120\(b\)\(2\)](#), added "or receivers" following "between mobile stations", and added provision that "mobile service" includes both one-way and two-way radio communication services.

Subsec. (gg). [Pub.L. 97-259, § 120\(b\)\(1\)](#), added subsec. (gg).

1968 Amendments. Subsec. (e). Pub.L. 90-299 inserted "(other than section 223 of this title)" following "subchapter II of this chapter".

1965 Amendments. Subsec. (w). Pub.L. 89-121, § 1(1), added par. (5).

Subsec. (x). Pub.L. 89-121, § 1(2), among other changes, substituted "radiotelegraph auto alarm" for "auto-alarm" wherever appearing, "receiving apparatus which responds to the radiotelegraph alarm signal" for "receiver" in two instances, and "country in which the ship is registered" for "country to which the ship belongs" and for "country of origin."

Subsec. (y). Pub.L. 89-121, § 1(3), struck out "qualified operator" from pars. (1) and (2), and substituted "country in which the ship is registered" for "country to which the ship belongs."

Subsec. (z). Pub.L. 89-121, § 1(4)(D), (E), added subsec. (z) and redesignated former subsec. (z) as (aa).

Subsec. (aa). Pub.L. 89-121, § 1(4)(A), (D), redesignated former subsec. (z) as (aa) and former subsec. (aa) as (bb).

Subsecs. (bb) to (dd). Pub.L. 89-121, § 1(4)(A), redesignated former subsecs. (aa) to (cc) as (bb) to (dd) and former subsec. (dd) as (ee).

Subsec. (ee). Pub.L. 89-121, § 1(4)(A), (B), redesignated former subsec. (dd) as (ee), and repealed former subsec. (ee) which defined "existing installation."

Subsec. (ff). Pub.L. 89-121, § 1(4)(B), (C), redesignated former subsec. (gg) as (ff) and repealed former subsec. (ff) which defined "new installation".

Subsec. (gg). Pub.L. 89-121, § 1(4)(C), redesignated former subsec. (gg) as (ff).

1956 Amendments. Subsec. (y)(2). Act Aug. 6, 1956, substituted "parts II and III of subchapter III of this chapter" for "part II of subchapter III of this chapter".

1954 Amendments. Subsec. (e). Act Apr. 27, 1954, § 2, obviated any possible construction that the Commission was empowered to assert common-carrier jurisdiction over point-to-point communication by radio between two points within a single State when the only possible claim that such an operation constituted an interstate communication rested on the fact that the signal might traverse the territory of another State.

Subsec. (u). Act Apr. 27, 1954, § 3, inserted reference to clauses (3) and (4) of section 152(b) of this title.

Subsecs. (ee), (ff). Act Aug. 13, 1954, c. 729 added subsecs. (ee) and (ff).

Subsec. (gg), "Great Lakes Agreement". Act Aug. 13, 1954, c. 735, added another subsec. (ee) which for purposes of codification was designated subsec. (gg).

1952 Amendments. Subsecs. (bb) to (dd). Act July 16, 1952 added subsecs. (bb) to (dd).



1937 Amendments. Subsecs. (w) to (aa). Act May 20, 1937 added subsecs. (w) to (aa).

#### Effective and Applicability Provisions

1956 Acts. Amendment by Act Aug. 6, 1956 effective Mar. 1, 1957, see section 4 of Act Aug. 6, 1956, set out as an Effective Date note under section 381 of this title.

1954 Acts. Amendment by Act Aug. 13, 1954, c. 735, effective Nov. 13, 1954, see section 6 of Act Aug. 13, 1954, set out as an Effective Date note under section 507 of this title.

1952 Acts. Section 19 of Act July 16, 1952, provided that:

"This Act [enacting section 1343 of Title 18, Crimes and Criminal Procedure, amending this section and sections 154, 155, 307 to 312, 315, 316, 319, 402, 405, 409, and 410 of this title, and enacting provisions set out as notes under this section and section 609 of this title] shall take effect on the date of its enactment [July 16, 1952], but--

"(1) Insofar as the amendments made by this Act to the Communications Act of 1934 [this chapter] provide for procedural changes, requirements imposed by such changes shall not be mandatory as to any agency proceeding (as defined in the Administrative Procedure Act) [see sections 551 et seq. and 701 et seq. of Title 5, Government Organization and Employees] with respect to which hearings have been commenced prior to the date of enactment of this Act [July 16, 1952].

"(2) The amendments made by this Act to section 402 of the Communications Act of 1934 [section 402 of this title] (relating to judicial review of orders and decisions of the Commission) shall not apply with respect to any action or appeal which is pending before any court on the date of enactment of this Act [July 16, 1952]."

#### Common Terminology

Section 3(b) of Pub.L. 104-104 provided that: "Except as otherwise provided in this Act [Telecommunications Act of 1996, [Pub.L. 104-104](#), Feb. 8, 1996, 110 Stat. 56, see Short Title of 1996 Amendments note set out under section 609 of this title], the terms used in this Act have the meanings provided in section 3 of the Communications Act of 1934 (47 U.S.C. 153), as amended by this section [this section]."

Section 3001(a) of [Pub.L. 105-33](#) provided that: "Except as otherwise provided in this title [amending sections 153, [303](#), [309](#), [923](#), [924](#), and [925](#) of this title, enacting section 337 of this title, and enacting provisions set out as notes under [sections 254](#), [309](#) and [925](#) of this title and under this section], the terms used in this title have the meanings provided in section 3 of the Communications Act of 1934 (47 U.S.C. 153), as amended by this section [this section]."

#### Great Lakes Agreement

The Great Lakes Agreement, referred to in this section, relates to the bilateral Agreement for the Promotion of Safety on the Great Lakes by Means of Radio, signed at Ottawa, Canada, Feb. 21, 1952; entered into force Nov. 13, 1954, [3 UST 4926](#). A subsequent agreement for Promotion of Safety on the Great Lakes by Means of Radio, 1973, was signed at Ottawa, Canada, Feb. 26, 1973, and entered into force May 16, 1975, [25 UST 935](#).

#### Safety Convention

The United States was a party to the International Convention for the Safety of Life at Sea, signed at London May 31, 1929, entered into force as to the United States, Nov. 7, 1936, 50 Stat. 1121, 1306. For subsequent International Conventions for the Safety of Life at Sea to which the United States has been a party, see section 1602 of Title 33, Navigation and Navigable Waters, and notes thereunder.

#### CROSS REFERENCES

Charges or services, see [47 USCA § 202](#).

"Communication common carrier" to have same meaning given "common carrier" by subsec. (h) of this section, see [18 USCA § 2510](#).

Contest for purposes of provisions relating to prohibited practices in contests of knowledge, skill, or chance, see [47 USCA § 509](#).

Corporation deemed common carrier as defined in subsec. (h) of this section, see [47 USCA § 741](#).

Employee as used in provisions relating to franks and passes, see [47 USCA § 210](#).

Line, see [47 USCA § 214](#).

Listening or viewing public for purposes of provisions relating to prohibited practices in contests of knowledge, skill, or chance, see [47 USCA § 509](#).

Overcharges as used in limitations of action provisions, see [47 USCA § 415](#).

Rural telephone service defined not to mean radio broadcasting services or facilities within meaning of subsec. (o) of this section, see [7 USCA § 924](#).

"Securities information processor" not to include common carrier as defined in subsec. (h) of this section, subject to jurisdiction of Federal Communications Commission or a State commission as defined in subsec. (t) of this section, see [15 USCA § 78c](#).

Service or other valuable consideration as used in provisions relating to disclosure of payments to individuals connected with broadcasts, see [47 USCA § 508](#).

"State" to have meaning given in subsec. (v) of this section, see [47 USCA §§ 541, 556, 557](#).

#### CODE OF FEDERAL REGULATIONS

Amateur radio services, see [47 CFR § 97.1](#) et seq.

Aviation services, see [47 CFR § 87.1](#) et seq.

Cable television relay services, see [47 CFR § 78.1](#) et seq.

Cable television services, see [47 CFR § 76.1](#) et seq.

Commission organization, see [47 CFR § 0.1](#) et seq.

Extension of lines and discontinuance of services by carriers, see [47 CFR § 63.01](#) et seq.  
Miscellaneous rules relating to common carriers, see [47 CFR § 64.1](#) et seq.  
Radio broadcast services, see [47 CFR § 73.1](#) et seq.

#### LAW REVIEW COMMENTARIES

Cable modem service and the First Amendment: adventures in a "doctrinal wasteland".

[Cybersex and community standards. 75 B.U.L.Rev. 865 \(1995\).](#)

[FCC authority to regulate the Internet: Creating it and limiting it. James B. Speta, 35 Loy. U. Chi. L.J. 15 \(2003\).](#)

On the sixtieth anniversary of the Communications Act of 1934. Joel Rosenbloom, 47 Fed.Comm.L.J. 365 (1994).

[Self-regulation in American television in areas aside from program content. Les Brown, 13 Cardozo Arts & Ent.L.J. 705 \(1995\).](#)

#### LIBRARY REFERENCES

Corpus Juris Secundum

[CJS Telecommunications § 6](#), Matters Subject to Regulation.

[CJS Telecommunications § 7](#), Who Are Common Carriers.

[CJS Telecommunications § 17](#), Regulation in General.

[CJS Telecommunications § 147](#), In General.

[CJS Telecommunications § 149](#), Chain Broadcasting; Networks.

[CJS Telecommunications § 175](#), In General.

[CJS Telecommunications § 219](#), Mobile Communications.

#### RESEARCH REFERENCES

Encyclopedias

[Am. Jur. 2d Monopolies, Restraints of Trade, etc. § 261](#), Carriers' Interlocking Directorates.

[Am. Jur. 2d New Topic Serv., ADA: Analysis & Implic. § 822](#), Services Common Carriers Must Provide.

[Am. Jur. 2d NTS, Computers and the Internet § 1](#), Generally; Access to Government Information Online; Government Websites.

[Am. Jur. 2d Telecommunications § 4](#), As Common Carriers.

[Am. Jur. 2d Telecommunications § 12](#), Generally.

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

[Am. Jur. 2d Telecommunications § 129](#), Definitions.

#### Forms

[Federal Procedural Forms § 62:341](#), Petition -- for Suspension of Tariff on Ground of Interference With Business of Competitor -- Prohibited Attachment of Competitor's Equipment [[47 U.S.C.A. § 204\(A\)](#); [47 C.F.R. § 1.773\(a\)](#)].

[Federal Procedural Forms § 62:349](#), Answer -- to Formal Complaint Against Carrier [[47 U.S.C.A. § 208](#); [47 C.F.R. § 1.724](#)].

[Federal Procedural Forms § 62:391](#), Complaint -- for Injunction and Damages for Unauthorized Use of Radio Broadcast -- by Radio Licensee [[28 U.S.C.A. § 1337](#); [47 U.S.C.A. § 605](#); [Fed R Civ P Rules 8\(A\), 65](#)].

[Nichols Cyclopedia of Legal Forms Annotated § 7:3804](#), Research Checklist.

[1A West's Federal Forms § 323](#), Application for Stay-Federal Court Civil Case.

[Am. Jur. Pl. & Pr. Forms Telecommunications § 68](#), Complaint in Federal Court -- by Radio Licensee -- for Injunction and Damages -- Unauthorized Use of Broadcast.

[Am. Jur. Pl. & Pr. Forms Telecommunications § 84](#), Answer -- to Complaint Against Carrier.

#### Treatises and Practice Aids

[Callmann on Unfair Compet., TMs, & Monopolies § 4:13](#), Exemptions from the Antitrust Laws -- Radio and Television.

[Federal Procedure, Lawyers Edition § 72:273](#), Common Carriers Defined.

[Federal Procedure, Lawyers Edition § 72:274](#), FCC Jurisdiction Over Common Carriers.

#### NOTES OF DECISIONS

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#### [1. Amateur station](#)

Federal recognition that amateur radio plays an important societal function is insufficient to preempt local zoning regulations concerning height of radio antennas in residential areas. [Guschke v. City of Oklahoma City, C.A.10 \(Okla.\) 1985, 763 F.2d 379. Zoning And Planning ↵14](#)

#### [2. Broadcasting](#)

FCC decision, that subscription television and direct broadcast satellite services were not "broadcasting services" subject to the Communications Act, was neither arbitrary nor capricious; transmission and receipt techniques involved indicated that such transmissions were intended to be received only by subscribers, and not by general public. [National Ass'n For Better Broadcasting v. F.C.C., C.A.D.C.1988, 849 F.2d 665, 270 U.S.App.D.C. 334. Telecommunications ↵1234; Telecommunications ↵1275; Telecommunications ↵1276](#)

Federal Communications Commission failed to give adequate reasons either for classifying commercial nonsubscription use of excess instructional television fixed services capacity as nonbroadcasting or for deferring examination of the issue; it was not responsibility of viewers to complain of station's failure to comply with broadcast regulations, but the FCC's to regulate broadcast services and to decide how those services should be classified. [Telecommunications Research and Action Center v. F.C.C., C.A.D.C.1988, 836 F.2d 1349, 267 U.S.App.D.C. 1. Telecommunications ↵1132](#)

Activity that would provide nongeneral interest, point-to-point service, where format is of interest to only narrow class of subscribers and does not implicate broadcasting

objectives of this chapter need not be regulated as broadcasting. [National Ass'n of Broadcasters v. F.C.C., C.A.D.C.1984, 740 F.2d 1190, 239 U.S.App.D.C. 87. Telecommunications](#) ↩️1148

Where FM radio station broadcasting music simultaneously furnished the same music, with deletion of all advertising matter, to subscribers typified by restaurants, schools, stores, etc., furnishing of music to subscribers could not form basis for Commission determination that station's activities were not broadcasting in nature, which determination formed basis of Commission's rules restricting operation of subscription music service, and fact of program specializing and/or control was not necessarily determinative of requisite intent and therefore dispositive of broadcasting status as Commission had assumed. [Functional Music, Inc. v. F.C.C., C.A.D.C.1958, 274 F.2d 543, 107 U.S.App.D.C. 34, certiorari denied 80 S.Ct. 50, 361 U.S. 813, 4 L.Ed.2d 60. Telecommunications](#) ↩️1154

Subscription television transmission constituted broadcasting but were not for use of general public within [section 605](#) of this title exempting broadcast transmitted for use of general public. [U. S. v. Westbrook, E.D.Mich.1980, 502 F.Supp. 588. Telecommunications](#) ↩️1304

FM multiplex radio transmissions of background music to subscribers do not constitute "broadcasting" as that term is defined in this section, and they are protected by this chapter and unauthorized reception and use of such transmissions by one other than authorized subscriber violates this chapter. [KMLA Broadcasting Corp. v. Twentieth Century Cigarette Vendors Corp., C.D.Cal.1967, 264 F.Supp. 35. Telecommunications](#) ↩️1438

Sales and use tax "broadcasting" exemption applied only to television broadcasting equipment and accessories thereto used directly in act of disseminating signal into the air, not to equipment and accessories used to create material which might be disseminated. [WTAR Radio-TV Corp. v. Com., Va.1977, 234 S.E.2d 245, 217 Va. 877. Taxation](#) ↩️3656

### [3. Common carriers--Generally](#)

Cable broadband internet service was not a "cable service" but instead was part "telecommunications service" and part "information service" within meaning of Telecommunications Act. [Brand X Internet Services v. F.C.C., C.A.9 2003, 345 F.3d 1120, rehearing and suggestion for rehearing en banc denied, certiorari granted 125 S.Ct. 654, 2004 WL 2070879, certiorari granted 125 S.Ct. 655, 2004 WL 2153536, certiorari denied 125 S.Ct. 664, 2004 WL 2245551. Telecommunications](#) ↩️455(1)

Mere fact that local exchange carriers were common carriers with respect to some forms of telecommunication, such as offering local telephone service, did not relieve Federal Communications Commission (FCC) of supporting its conclusion that local exchange carriers provided "dark fiber" service on common carrier basis when they entered into

individually tailored service contracts to provide fiber optic lines without necessary electronic equipment to power the fiber. [Southwestern Bell Telephone Co. v. F.C.C., C.A.D.C.1994, 19 F.3d 1475, 305 U.S.App.D.C. 272. Telecommunications ↵898](#)

Primary sine qua non of common carrier status is a quasi-public character, which arises out of the undertaking to carry for all people indifferently; particular services offered need not be practically available to the entire public and specialized carrier whose service is of possible use to only a fraction of the population may nonetheless be a common carrier if he holds himself out to serve indifferently all potential users; it is not essential that there be a statutory or other legal commandment to serve indiscriminately, rather it is the practice of such indifferent service that confers "common carrier" status. [National Ass'n of Regulatory Utility Com'rs v. F. C. C., C.A.D.C.1976, 533 F.2d 601, 174 U.S.App.D.C. 374. Carriers ↵4](#)

For purposes of Federal Communications Commission's (FCC) statutory authority over carriers, term "carrier" includes both long-distance telephone companies and telephone local exchange carrier (LEC) monopolies. [Total Telecommunications Services, Inc. v. American Tel. and Tel. Co., D.D.C.1996, 919 F.Supp. 472, affirmed 99 F.3d 448, 321 U.S.App.D.C. 309. Telecommunications ↵753](#)

Telephone local exchange carriers' (LEC) alleged practice of providing kickbacks to customers of portion of revenue carriers earned from long-distance telephone companies for terminating access service did not deprive carriers of their common carrier status so as to preclude carriers from charging long-distance telephone company for local access services according to carriers' tariffs; carriers were "common carriers" based on facts admitted by company that carriers were local telephone companies providing originating and terminating access services for interexchange calls, that company used such services, and that carriers billed company for access services. [Frontier Communications of Mt. Pulaski, Inc. v. AT & T Corp., C.D.Ill.1997, 957 F.Supp. 170. Telecommunications ↵863](#)

#### 4. ---- Broadcasters, common carriers

Subsec. (h) of this section directing Commission not to treat persons engaged in broadcasting as common carriers was intended to preclude Commission discretion to compel broadcasters to act as common carriers, even with respect to a portion of their total services. [F. C. C. v. Midwest Video Corp., U.S.1979, 99 S.Ct. 1435, 440 U.S. 689, 59 L.Ed.2d 692. Telecommunications ↵1084](#)

Radio broadcasters and television broadcasters are not included in definition of common carriers in this section, as are telephone and telegraph companies, and thus the extensive controls, including rate regulation, of §§ 201 to 222 of this title do not apply to radio broadcasters and television broadcasters. [U. S. v. Radio Corp. of America, U.S.Pa.1959, 79 S.Ct. 457, 358 U.S. 334, 3 L.Ed.2d 354. Telecommunications ↵1084](#)

The chapter recognizes that radio broadcasters are not "common carriers" and that the field of broadcasting is one of free competition. [F.C.C. v. Sanders Bros. Radio Station, U.S. Dist. Col. 1940, 60 S.Ct. 693, 309 U.S. 470, 309 U.S. 642, 84 L.Ed. 869, 84 L.Ed. 1037. Carriers ↵4; Telecommunications ↵1084](#)

"Common carriers" referred to in Title of ADA that amends Communications Act of 1934 to require closed captioning in certain types of television announcements does not include television broadcasters. [Stoutenborough v. National Football League, Inc., C.A.6 \(Ohio\) 1995, 59 F.3d 580, certiorari denied 116 S.Ct. 674, 516 U.S. 1028, 133 L.Ed.2d 523. Civil Rights ↵1021](#)

A radio broadcasting station was not a common carrier within § 1(1) of Title 49. [Sorensen v. Wood, Neb. 1932, 243 N.W. 82, 123 Neb. 348, appeal dismissed 54 S.Ct. 209, 290 U.S. 599, 78 L.Ed. 527.](#)

#### 5. ---- Cable television, common carriers

Federal Communications Commission's (FCC) ruling that cable companies providing broadband Internet access did not provide "telecommunications service" as Communications Act defined that term, and thus were exempt from mandatory common-carrier regulation under Title II, was permissible construction of Act under *Chevron*; term "offer" as used in definition of telecommunications service, was ambiguous, and FCC's construction was reasonable policy choice. [National Cable & Telecommunications Ass'n v. Brand X Internet Services, 2005, 125 S.Ct. 2688, 162 L.Ed.2d 820. Telecommunications ↵1324](#)

Commission rules requiring certain cable television systems to develop, at a minimum, 20-channel capacity by 1986, to make available certain channels for access by third parties, and to furnish equipment and facilities for access purposes were not reasonably ancillary to effective performance of Commission's various responsibilities for regulation of television broadcasting and were not within Commission's statutory authority under this chapter as Commission could not regulate cable systems as common carriers. [F. C. C. v. Midwest Video Corp., U.S. 1979, 99 S.Ct. 1435, 440 U.S. 689, 59 L.Ed.2d 692. Telecommunications ↵1230](#)

#### 6. ---- Miscellaneous common carriers

Federal Communications Commission's (FCC) ruling that cable companies providing broadband Internet access did not provide "telecommunications service" as Communications Act defined that term, and thus were exempt from mandatory common-carrier regulation under Title II, was not inconsistent with its prior ruling requiring providers of Digital Subscriber Line (DSL) service to make telephone lines used to transmit DSL service available to competing Internet service providers (ISP) on nondiscriminatory, common-carrier terms, and therefore, ruling was not arbitrary and capricious change from agency practice under Administrative Procedure Act (APA); FCC provided reasoned explanation for different treatment, that changed market conditions



warranted different treatment of facilities-based cable companies providing Internet access. [National Cable & Telecommunications Ass'n v. Brand X Internet Services, 2005, 125 S.Ct. 2688, 162 L.Ed.2d 820.](#)

Interactive computer services provider was not common carrier, and thus did not violate Communications Act when it allegedly made unreasonable charges, classifications, or regulations, unreasonably prejudiced some subscribers by favoring others, and failed to protect subscriber privacy. [Howard v. America Online Inc., C.A.9 \(Cal.\) 2000, 208 F.3d 741,](#) certiorari denied [121 S.Ct. 77, 531 U.S. 828, 148 L.Ed.2d 40.](#) [Telecommunications](#) ↩️1340

In concluding that submarine cable operator which did not sell its capacity directly to the public was not a common carrier and granting its application for cable landing rights as non-common carrier, Federal Communications Commission (FCC) reasonably interpreted ambiguous new terms in Telecommunications Act, "telecommunications carrier" providing "telecommunications service," to mean "essentially" the same thing as "common carrier." [Virgin Islands Telephone Corp. v. F.C.C., C.A.D.C.1999, 198 F.3d 921, 339 U.S.App.D.C. 174.](#) [Telecommunications](#) ↩️1209

Partnership which obtained Multichannel Multipoint Distribution Service (MMDS) license was not a "common carrier," where partnership never provided communications services, never held itself out as able to provide service to the public as a common carrier, and was under no regulatory compulsion to provide common carrier service, and partnership thus did not violate Communications Act, or engage in impermissible discrimination, by refusing request for common carrier service. [Eagleview Technologies, Inc. v. MDS Associates, C.A.11 \(Fla.\) 1999, 190 F.3d 1195.](#) [Telecommunications](#) ↩️1084

Sharing of private line services as a nonprofit arrangement is not common carriage and thus is not subject to regulation under this chapter. [American Tel. & Tel. Co. v. F. C. C., C.A.2 1978, 572 F.2d 17,](#) certiorari denied [99 S.Ct. 213, 439 U.S. 875, 58 L.Ed.2d 190.](#) [Telecommunications](#) ↩️1401

Internet service provider was information services provider, not "common carrier," and thus was not subject to anti-discrimination provisions of Federal Communications Act. [America Online, Inc. v. GreatDeals.Net, E.D.Va.1999, 49 F.Supp.2d 851.](#) [Telecommunications](#) ↩️1318

International telecommunications company that provided voice, data, and video transmission services, as a carrier of telephone messages on its telecommunications network, was "common carrier" within meaning of Communications Act. [Sprint Corp. v. Evans, M.D.Ala.1994, 846 F.Supp. 1497.](#) [Telecommunications](#) ↩️736

Association of local exchange carriers formed to file industry-wide access charge tariffs on behalf of its membership with the Federal Communications Commission (FCC) was

not a "common carrier" within meaning of Communications Act, precluding district court from exercising subject matter jurisdiction in interexchange carrier's action challenging tariff. [Allnet Communications Services, Inc. v. National Exchange Carrier Ass'n, Inc., D.D.C.1990, 741 F.Supp. 983](#), affirmed [965 F.2d 1118, 296 U.S.App.D.C. 156](#). [Telecommunications](#) ↩️901(1)

Company which was engaged in business of radio telephone communications between the United States and foreign countries was a "common carrier" of interstate or foreign communications by wire or radio within meaning of definition of a "common carrier" in this section. [Curran v. MacKay Radio & Telephone Co, S.D.N.Y.1954, 123 F.Supp. 83](#). [Telecommunications](#) ↩️1034

An interstate railway company doing a telegraph business came clearly within the purview of chapter 1 of Title 49. [La Cost v. Chicago, R.I. & P. Ry. Co., Ark.1918, 203 S.W. 586, 134 Ark. 92](#).

## 7. Foreign communication

Proposed system for bouncing communications between Pasadena and space craft through Goldstone facility, in California, with voice communication between Goldstone and Pasadena merely as adjuncts to transmission of signals between Pasadena and space craft, was "foreign communication" or "foreign transmission", within FCC jurisdiction. [California Interstate Tel. Co. v. F. C. C., C.A.D.C.1964, 328 F.2d 556, 117 U.S.App.D.C. 255](#). [Telecommunications](#) ↩️1400

## 8. Information service

*AT & T v. City of Portland's* construction of Telecommunications Act classifying Internet service provided by cable companies exclusively as an interstate "information service" remained binding precedent within the circuit, even in light of Federal Communications Commission's (FCC) contrary interpretation of the statute; *Portland* court was not presented with a case involving potential deference to an administrative agency's statutory construction pursuant to the *Chevron* doctrine. [Brand X Internet Services v. F.C.C., C.A.9 2003, 345 F.3d 1120](#), rehearing and suggestion for rehearing en banc denied, certiorari granted [125 S.Ct. 654, 2004 WL 2070879](#), certiorari granted [125 S.Ct. 655, 2004 WL 2153536](#), certiorari denied [125 S.Ct. 664, 2004 WL 2245551](#). [Courts](#) ↩️90(2)

Service utilizing Voice over Internet Protocol (VoIP), which allowed those with access to high-speed Internet connection to make and receive computer-to-computer and computer-to-phone voice calls, was "information service" rather than telecommunications service under Telecommunications Act, precluding state utility regulatory commission from subjecting marketer of VoIP service to state laws regulating telephone companies; marketer, which was not an internet service provider (ISP) and never provided phone-to-phone IP telephony, was user rather than provider of telecommunications services. [Vonage Holdings Corp. v. Minnesota Public Utilities Com'n, D.Minn.2003, 290 F.Supp.2d 993](#). [States](#) ↩️18.81; [Telecommunications](#) ↩️1323

Voice mail was "information service," which local exchange carrier providing telephone services was not required to make available to competitor at wholesale rates, under Telecommunications Act, rather than being "telecommunications service" required to be provided. [MCI Telecommunications Corp. v. Sprint-Florida Inc., N.D.Fla.2001, 139 F.Supp.2d 1342. Telecommunications ↩860](#)

## 9. Interstate communication

Community antenna television systems are engaged in "interstate communication," under this chapter, even where the intercepted signals emanate from television stations located within the same state in which the community antenna systems operate. [U. S. v. Southwestern Cable Co., U.S.Cal.1968, 88 S.Ct. 1994, 392 U.S. 157, 20 L.Ed.2d 1001. Telecommunications ↩1234](#)

When toll-free calls originated in one state, but were completed in other states, calls involved "interstate communications" within meaning of Communications Act. [Sprint Corp. v. Evans, M.D.Ala.1994, 846 F.Supp. 1497. Telecommunications ↩754](#)

## 10. Interstate transmission

It was arbitrary and capricious for state public service commission to rule that calls originating in state and terminating in another state in another local access and transport area that used local numbers corresponding with long distance call destinations (interstate interLATA FX traffic) involving competing local exchange carrier (CLEC) were subject to reciprocal compensation pursuant to CLEC's interconnection agreement with incumbent local exchange carrier (ILEC) without addressing ILEC's contention that parties' amendment specifically excluded interLATA FX traffic from local compensation, and thus matter would remanded to commission for further proceedings. [Southern New England Telephone Co. v. Connecticut, Dept. of Public Utility Co., D.Conn.2003, 285 F.Supp.2d 252. Telecommunications ↩864\(1\); Telecommunications ↩911](#)

With regard to interstate transmission of telegrams, tariff provisions limiting liability are binding on all parties and have the force of law irrespective of their knowledge or notice thereof and irrespective of whether message is filed on a regular blank, on a blank piece of paper, over the telephone, or in some manner, but intrastate transmissions are governed by state laws and regulations if such transmissions are governed by a state regulatory commission. [Robert Gibb & Sons, Inc. v. Western Union Tel. Co., D.C.N.D.1977, 428 F.Supp. 140. Commerce ↩59](#)

## 11. Mobile station

Where signals transmitted by unlicensed operators of unlicensed mobile radio station mounted on an automobile in Ohio were heard on a coast guard vessel cruising outside the breakwater at Cleveland on Lake Erie there was a violation of § 301 of this title

prohibiting operation of any apparatus for transmission of energy or communications or signals by radio upon another "mobile station" within jurisdiction of United States except in accordance with § 301 of this title and a license granted thereunder. [U.S. v. Betteridge, N.D.Ohio 1942, 43 F.Supp. 53. Telecommunications ¶1169](#)

## [12. Network element](#)

Federal Communications Commission's (FCC) application of "network element" definition of Telecommunications Act of 1996, to include operator services and directory assistance, operational support systems (OSS), and vertical switching functions as "network elements" under unbundling rule setting forth minimum number of network elements that incumbent telephone local exchange carriers (LEC) must make available to requesting carriers, was eminently reasonable, given breadth of definition. [AT & T Corp. v. Iowa Utilities Bd., U.S.1999, 119 S.Ct. 721, 525 U.S. 366, 142 L.Ed.2d 835](#), opinion after remand [1999 WL 156020](#), on remand [219 F.3d 744. Telecommunications ¶860](#)

### [12A. Number portability](#)

Under primary jurisdiction doctrine, Federal Communications Commission (FCC) was proper body to determine meaning of term "location," in Telecommunications Act provision requiring number portability only "at the same location," for purpose of request of bankruptcy debtor, a network operator that furnished local access numbers to Internet service providers (ISPs), that competitive local exchange carrier (CLEC) with which debtor had existing contracts be required to port such local numbers to other CLECs from which operator wished to acquire services. [In re StarNet, Inc., C.A.7 \(Ill.\) 2004, 355 F.3d 634](#), rehearing and rehearing en banc denied. [Telecommunications ¶753; Telecommunications ¶901\(2\)](#)

## [13. Radio communication](#)

Federal Communications Commission (FCC) acted in excess of its statutory authority in promulgating regulations regarding broadcast flag technology to prevent unauthorized copying and redistribution of digital media, since FCC's authority encompassed regulation of apparatus that could receive television broadcast content only while those apparatus were engaged in process of receiving television broadcast but only effect of flag was to limit capacity of receiver apparatus to redistribute broadcast content after broadcast transmission was complete. [American Library Ass'n. v. F.C.C., C.A.D.C.2005, 406 F.3d 689, 74 U.S.P.Q.2d 1545. Telecommunications ¶1105](#)

Cable television programming transmitted over cable network is not "radio communication" as defined in Communications Act and, thus, its unlawful interception must be prosecuted under statutory provision governing unauthorized reception of cable service, and not provision prohibiting facilitation of unauthorized interception of radio communications. [U.S. v. Norris, C.A.7 \(Ind.\) 1996, 88 F.3d 462. Telecommunications ¶1256; Telecommunications ¶1438](#)

Direct broadcast satellite service, at least when directed at individual homes, is "radio communication" intended to be received by general public under this chapter, despite fact that it can be received only by those with appropriate reception equipment. [National Ass'n of Broadcasters v. F.C.C., C.A.D.C.1984, 740 F.2d 1190, 239 U.S.App.D.C. 87. Telecommunications](#) ↩️1275

Subsec. (b) of this section defining radio communication includes television as one form of radio transmission and this chapter applies to every phase of television and regulatory scheme set out herein is exclusive of state actions. [Allen B. Dumont Laboratories v. Carroll, C.A.3 \(Pa.\) 1950, 184 F.2d 153, certiorari denied 71 S.Ct. 490, 340 U.S. 929, 95 L.Ed. 670. Telecommunications](#) ↩️1076; [Commerce](#) ↩️59

This section which is entitled "definition" and provides that "radio communication" or "communication by radio" means transmission by radio of writing, signs, signals, pictures, and sounds of all kinds, including all instrumentalities, facilities, apparatus, and services incidental to such transmission, includes "television". [Standard Radio & Television Co. v. Chronicle Pub. Co., Cal.App. 1 Dist.1960, 6 Cal.Rptr. 246, 182 Cal.App.2d 293. Telecommunications](#) ↩️1078

#### 14. Ship or vessel

Where signals transmitted by unlicensed operators of unlicensed mobile radio station in Ohio were heard on a coast guard vessel cruising outside the breakwater at Cleveland on Lake Erie there was an unlicensed transmission of energy or communications or signals by radio from a place in a state to a "vessel" contrary to § 301 of this title. [U.S. v. Betteridge, N.D.Ohio 1942, 43 F.Supp. 53. Telecommunications](#) ↩️1169

#### 15. Telephone exchange service

"Telephone exchange service" means service within a discrete local exchange system. [North Carolina Utilities Commission v. F.C.C., C.A.4 1977, 552 F.2d 1036, certiorari denied 98 S.Ct. 222, 434 U.S. 874, 54 L.Ed.2d 154, certiorari denied 98 S.Ct. 223, 434 U.S. 874, 54 L.Ed.2d 154. Telecommunications](#) ↩️855

Community antenna television channel distribution service does not contemplate furnishing subscribers with "intercommunicating service" of the type usually identified with a telephone exchange. [General Tel. Co. of Cal. v. F. C. C., C.A.D.C.1969, 413 F.2d 390, 134 U.S.App.D.C. 116, certiorari denied 90 S.Ct. 173, 396 U.S. 888, 24 L.Ed.2d 163, certiorari denied 90 S.Ct. 178, 396 U.S. 888, 24 L.Ed.2d 163. Telecommunications](#) ↩️1200

The telephone services rendered for guests by hotel maintaining private branch exchange do not constitute "telephone exchange service" within this section, and therefore such services are not exempt from jurisdiction of Commission. [U S v. American Tel & Tel Co, S.D.N.Y.1944, 57 F.Supp. 451, affirmed 65 S.Ct. 1401, 325 U.S. 837, 89 L.Ed. 1964. Internal Revenue](#) ↩️3131

This section defining telephone exchange service as service within a connected system of telephone exchanges within the same exchange area furnishing subscribers intercommunicating service of the character ordinarily furnished by a single exchange and which is covered by the exchange service charge means that which is covered by exchange service charge according to the charges, classifications, practices, services, facilities or regulations of the exchange, since the word "charge" does not invariably signify the singular. [Southwestern Bell Tel. Co. v. U.S., W.D.Mo.1942, 45 F.Supp. 403. Telecommunications ¶947](#)

Term "telephone exchange service," as used in this chapter relating to Federal Communications Commission's jurisdiction, was a statutory term of art meaning service within a discrete local exchange system and did not encompass mobile radio telephone exchange services. [ATS Mobile Telephone, Inc. v. General Communications Co., Inc., Neb.1979, 282 N.W.2d 16, 204 Neb. 141. Telecommunications ¶1040](#)

"Extended area telephone service" is toll free service between two or more exchanges which is furnished to subscribers for exchange service charge; it is exchange service and not toll service. [Northwestern Bell Telephone Co. v. Consolidated Telephone Co. of Dunning, Neb.1966, 142 N.W.2d 324, 180 Neb. 268. Telecommunications ¶853](#)

Order in which Federal Communications Commission (FCC) declined to reconsider portion of its prior order indicating that paging was not "telephone exchange service" under Telecommunications Act did not inflict injury upon paging services provider, which therefore lacked standing to challenge order. [AirTouch Paging v. F.C.C., C.A.2 2000, 234 F.3d 815. Telecommunications ¶1055](#)

## 16. Telephone toll service

Under this section defining telephone toll service, a "toll service" is not only between different exchange areas, but it is a service for which there is made a separate charge not included in contract with subscribers for exchange service. [Southwestern Bell Tel. Co. v. U.S., W.D.Mo.1942, 45 F.Supp. 403. Telecommunications ¶949](#)

As defined by this chapter, "toll service" is not only a service between different exchange areas but is a service for which is made a separate charge not included in the contract with subscribers for exchange service. [Ohmes v. General Tel. Co. of Southwest, Tex.Civ.App.-Amarillo 1964, 384 S.W.2d 796, error refused. Telecommunications ¶949](#)

## 17. Wire communication

Words spoken in a room in the presence of another into a telephone receiver do not constitute a "communication" by wire within this chapter. [Goldman v. U.S., U.S.N.Y.1942, 62 S.Ct. 993, 316 U.S. 129, 86 L.Ed. 1322. Telecommunications ¶1437](#)

Exertion by Commission of ancillary jurisdiction over carrier-provided customer premises equipment to remove customer premises equipment charges from their tariffs

was not an unjustifiable invasion of authority to regulate intrastate communication services reserved to states by this chapter, because only way to give consumers an unfettered choice of customer premises equipment was to require that charges for customer premises equipment be completely separate from transmission rates on both federal and state levels. [Computer and Communications Industry Ass'n v. F.C.C., C.A.D.C.1982, 693 F.2d 198, 224 U.S.App.D.C. 83](#), certiorari denied [103 S.Ct. 2109, 461 U.S. 938, 77 L.Ed.2d 313. Telecommunications](#) ↩624

Commission has authority to regulate a form of wire communication, such as that employed by a community antenna television system, which enlarges the signal range of licensee's stations to the potential detriment of entire regulatory scheme. [Buckeye Cablevision, Inc. v. F. C. C., C.A.D.C.1967, 387 F.2d 220, 128 U.S.App.D.C. 262. Telecommunications](#) ↩1234

The "wire communication" within this chapter, subject to regulation by the Commission, does not end at a private branch exchange maintained by hotel, but extends to service rendered from the exchange to guest rooms or hotel facilities. [U S v. American Tel & Tel Co, S.D.N.Y.1944, 57 F.Supp. 451](#), affirmed [65 S.Ct. 1401, 325 U.S. 837, 89 L.Ed. 1964. Internal Revenue](#) ↩3131

## 18. Tariffs

For purposes of Federal Communications Commission (FCC) regulation of long-distance telephone companies, "tariffs" are public documents setting forth terms and conditions of common carrier's services and rates. [AT & T Corp. v. Community Health Group, S.D.Cal.1995, 931 F.Supp. 719. Telecommunications](#) ↩950

## 19. Telecommunications carriers

Court of Appeals' prior judicial construction of Communications Act did not trump Federal Communications Commission's (FCC) interpretation of definition of "telecommunications service," which was otherwise entitled to *Chevron* deference, since prior decision did not hold that Act unambiguously required court's construction. [National Cable & Telecommunications Ass'n v. Brand X Internet Services, 2005, 125 S.Ct. 2688, 162 L.Ed.2d 820. Statutes](#) ↩219(6.1)

Information providers (IP) that operated pay-per-call information and entertainment services were not "telecommunications carriers," and thus did not have standing under Telecommunications Act to challenge propriety of New York Public Service Commission (PSC) order authorizing telephone company to discontinue its billing and collection services in connection with such calls. [Chladek v. Verizon N.Y. Inc., C.A.2 \(N.Y.\) 2004, 96 Fed.Appx. 19, 2004 WL 816376](#), Unreported. [Telecommunications](#) ↩906

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 47 U.S.C.A. § 271

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

➔ **§ 271. Bell operating company entry into interLATA services**

(a) General limitation

Neither a Bell operating company, nor any affiliate of a Bell operating company, may provide interLATA services except as provided in this section.

(b) InterLATA services to which this section applies

(1) In-region services

A Bell operating company, or any affiliate of that Bell operating company, may provide interLATA services originating in any of its in-region States (as defined in subsection (i) of this section) if the Commission approves the application of such company for such State under subsection (d)(3) of this section.

(2) Out-of-region services

A Bell operating company, or any affiliate of that Bell operating company, may provide interLATA services originating outside its in-region States after February 8, 1996, subject to subsection (j) of this section.

(3) Incidental interLATA services

A Bell operating company, or any affiliate of a Bell operating company, may provide incidental interLATA services (as defined in subsection (g) of this section) originating in any State after February 8, 1996.



#### (4) Termination

Nothing in this section prohibits a Bell operating company or any of its affiliates from providing termination for interLATA services, subject to subsection (j) of this section.

#### (c) Requirements for providing certain in-region interLATA services

##### (1) Agreement or statement

A Bell operating company meets the requirements of this paragraph if it meets the requirements of subparagraph (A) or subparagraph (B) of this paragraph for each State for which the authorization is sought.

##### (A) Presence of a facilities-based competitor

A Bell operating company meets the requirements of this subparagraph if it has entered into one or more binding agreements that have been approved under [section 252](#) of this title specifying the terms and conditions under which the Bell operating company is providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service (as defined in [section 153\(47\)\(A\)](#) of this title, but excluding exchange access) to residential and business subscribers. For the purpose of this subparagraph, such telephone exchange service may be offered by such competing providers either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities in combination with the resale of the telecommunications services of another carrier. For the purpose of this subparagraph, services provided pursuant to subpart K of part 22 of the Commission's regulations ([47 C.F.R. 22.901](#) et seq.) shall not be considered to be telephone exchange services.

##### (B) Failure to request access

A Bell operating company meets the requirements of this subparagraph if, after 10 months after February 8, 1996, no such provider has requested the access and interconnection described in subparagraph (A) before the date which is 3 months before the date the company makes its application under subsection (d)(1) of this section, and a statement of the terms and conditions that the company generally offers to provide such access and interconnection has been approved or permitted to take effect by the State commission under [section 252\(f\)](#) of this title. For purposes of this subparagraph, a Bell operating company shall be considered not to have received any request for access and interconnection if the State commission of such State certifies that the only provider or providers making such a request have (i) failed to negotiate in good faith as required by [section 252](#) of this title, or (ii) violated the terms of an agreement approved under [section 252](#) of this title by the provider's failure to comply, within a reasonable period of time, with the implementation schedule contained in such agreement.

## (2) Specific interconnection requirements

### (A) Agreement required

A Bell operating company meets the requirements of this paragraph if, within the State for which the authorization is sought--

- (i)(I)** such company is providing access and interconnection pursuant to one or more agreements described in paragraph (1)(A), or
- (II)** such company is generally offering access and interconnection pursuant to a statement described in paragraph (1)(B), and
- (ii)** such access and interconnection meets the requirements of subparagraph (B) of this paragraph.

### (B) Competitive checklist

Access or interconnection provided or generally offered by a Bell operating company to other telecommunications carriers meets the requirements of this subparagraph if such access and interconnection includes each of the following:

- (i)** Interconnection in accordance with the requirements of [sections 251\(c\)\(2\)](#) and [252\(d\)\(1\)](#) of this title.
- (ii)** Nondiscriminatory access to network elements in accordance with the requirements of [sections 251\(c\)\(3\)](#) and [252\(d\)\(1\)](#) of this title.
- (iii)** Nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the Bell operating company at just and reasonable rates in accordance with the requirements of [section 224](#) of this title.
- (iv)** Local loop transmission from the central office to the customer's premises, unbundled from local switching or other services.
- (v)** Local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services.
- (vi)** Local switching unbundled from transport, local loop transmission, or other services.
- (vii)** Nondiscriminatory access to--
  - (I)** 911 and E911 services;
  - (II)** directory assistance services to allow the other carrier's customers to obtain telephone numbers; and
  - (III)** operator call completion services.
- (viii)** White pages directory listings for customers of the other carrier's telephone exchange service.
- (ix)** Until the date by which telecommunications numbering administration guidelines, plan, or rules are established, nondiscriminatory access to telephone numbers for assignment to the other carrier's telephone exchange service customers. After that date, compliance with such guidelines, plan, or rules.
- (x)** Nondiscriminatory access to databases and associated signaling necessary for call routing and completion.
- (xi)** Until the date by which the Commission issues regulations pursuant to [section 251](#) of this title to require number portability, interim telecommunications number portability through remote call forwarding, direct inward dialing trunks, or other comparable

arrangements, with as little impairment of functioning, quality, reliability, and convenience as possible. After that date, full compliance with such regulations.

**(xii)** Nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of [section 251\(b\)\(3\)](#) of this title.

**(xiii)** Reciprocal compensation arrangements in accordance with the requirements of [section 252\(d\)\(2\)](#) of this title.

**(xiv)** Telecommunications services are available for resale in accordance with the requirements of [sections 251\(c\)\(4\)](#) and [252\(d\)\(3\)](#) of this title.

(d) Administrative provisions

(1) Application to Commission

On and after February 8, 1996, a Bell operating company or its affiliate may apply to the Commission for authorization to provide interLATA services originating in any in-region State. The application shall identify each State for which the authorization is sought.

(2) Consultation

(A) Consultation with the Attorney General

The Commission shall notify the Attorney General promptly of any application under paragraph (1). Before making any determination under this subsection, the Commission shall consult with the Attorney General, and if the Attorney General submits any comments in writing, such comments shall be included in the record of the Commission's decision. In consulting with and submitting comments to the Commission under this paragraph, the Attorney General shall provide to the Commission an evaluation of the application using any standard the Attorney General considers appropriate. The Commission shall give substantial weight to the Attorney General's evaluation, but such evaluation shall not have any preclusive effect on any Commission decision under paragraph (3).

(B) Consultation with State commissions

Before making any determination under this subsection, the Commission shall consult with the State commission of any State that is the subject of the application in order to verify the compliance of the Bell operating company with the requirements of subsection (c) of this section.

(3) Determination

Not later than 90 days after receiving an application under paragraph (1), the Commission shall issue a written determination approving or denying the authorization requested in

the application for each State. The Commission shall not approve the authorization requested in an application submitted under paragraph (1) unless it finds that--

- (A)** the petitioning Bell operating company has met the requirements of subsection (c)(1) of this section and--
  - (i)** with respect to access and interconnection provided pursuant to subsection (c)(1)(A) of this section, has fully implemented the competitive checklist in subsection (c)(2)(B) of this section; or
  - (ii)** with respect to access and interconnection generally offered pursuant to a statement under subsection (c)(1)(B) of this section, such statement offers all of the items included in the competitive checklist in subsection (c)(2)(B) of this section;
- (B)** the requested authorization will be carried out in accordance with the requirements of [section 272](#) of this title; and
- (C)** the requested authorization is consistent with the public interest, convenience, and necessity.

The Commission shall state the basis for its approval or denial of the application.

#### (4) Limitation on Commission

The Commission may not, by rule or otherwise, limit or extend the terms used in the competitive checklist set forth in subsection (c)(2)(B) of this section.

#### (5) Publication

Not later than 10 days after issuing a determination under paragraph (3), the Commission shall publish in the Federal Register a brief description of the determination.

#### (6) Enforcement of conditions

##### (A) Commission authority

If at any time after the approval of an application under paragraph (3), the Commission determines that a Bell operating company has ceased to meet any of the conditions required for such approval, the Commission may, after notice and opportunity for a hearing--

- (i)** issue an order to such company to correct the deficiency;
- (ii)** impose a penalty on such company pursuant to subchapter V of this chapter; or
- (iii)** suspend or revoke such approval.

##### (B) Receipt and review of complaints

The Commission shall establish procedures for the review of complaints concerning failures by Bell operating companies to meet conditions required for approval under paragraph (3). Unless the parties otherwise agree, the Commission shall act on such complaint within 90 days.

(e) Limitations

(1) Joint marketing of local and long distance services

Until a Bell operating company is authorized pursuant to subsection (d) of this section to provide interLATA services in an in-region State, or until 36 months have passed since February 8, 1996, whichever is earlier, a telecommunications carrier that serves greater than 5 percent of the Nation's presubscribed access lines may not jointly market in such State telephone exchange service obtained from such company pursuant to [section 251\(c\)\(4\)](#) of this title with interLATA services offered by that telecommunications carrier.

(2) IntraLATA toll dialing parity

(A) Provision required

A Bell operating company granted authority to provide interLATA services under subsection (d) of this section shall provide intraLATA toll dialing parity throughout that State coincident with its exercise of that authority.

(B) Limitation

Except for single-LATA States and States that have issued an order by December 19, 1995, requiring a Bell operating company to implement intraLATA toll dialing parity, a State may not require a Bell operating company to implement intraLATA toll dialing parity in that State before a Bell operating company has been granted authority under this section to provide interLATA services originating in that State or before 3 years after February 8, 1996, whichever is earlier. Nothing in this subparagraph precludes a State from issuing an order requiring intraLATA toll dialing parity in that State prior to either such date so long as such order does not take effect until after the earlier of either such dates.

(f) Exception for previously authorized activities

Neither subsection (a) of this section nor [section 273](#) of this title shall prohibit a Bell operating company or affiliate from engaging, at any time after February 8, 1996, in any activity to the extent authorized by, and subject to the terms and conditions contained in, an order entered by the United States District Court for the District of Columbia pursuant to [section VII](#) or [VIII\(C\)](#) of the AT&T Consent Decree if such order was entered on or before February 8, 1996, to the extent such order is not reversed or vacated on appeal. Nothing in this subsection shall be construed to limit, or to impose terms or conditions on, an activity in which a Bell operating company is otherwise authorized to engage under any other provision of this section.

(g) "Incidental interLATA services" defined

For purposes of this section, the term "incidental interLATA services" means the interLATA provision by a Bell operating company or its affiliate--

- (1)(A)** of audio programming, video programming, or other programming services to subscribers to such services of such company or affiliate;
- (B)** of the capability for interaction by such subscribers to select or respond to such audio programming, video programming, or other programming services;
- (C)** to distributors of audio programming or video programming that such company or affiliate owns or controls, or is licensed by the copyright owner of such programming (or by an assignee of such owner) to distribute; or
- (D)** of alarm monitoring services;
- (2)** of two-way interactive video services or Internet services over dedicated facilities to or for elementary and secondary schools as defined in [section 254\(h\)\(5\)](#) of this title;
- (3)** of commercial mobile services in accordance with [section 332\(c\)](#) of this title and with the regulations prescribed by the Commission pursuant to paragraph (8) of such section;
- (4)** of a service that permits a customer that is located in one LATA to retrieve stored information from, or file information for storage in, information storage facilities of such company that are located in another LATA;
- (5)** of signaling information used in connection with the provision of telephone exchange services or exchange access by a local exchange carrier; or
- (6)** of network control signaling information to, and receipt of such signaling information from, common carriers offering interLATA services at any location within the area in which such Bell operating company provides telephone exchange services or exchange access.

(h) Limitations

The provisions of subsection (g) of this section are intended to be narrowly construed. The interLATA services provided under subparagraph (A), (B), or (C) of subsection (g) (1) of this section are limited to those interLATA transmissions incidental to the provision by a Bell operating company or its affiliate of video, audio, and other programming services that the company or its affiliate is engaged in providing to the public. The Commission shall ensure that the provision of services authorized under subsection (g) of this section by a Bell operating company or its affiliate will not adversely affect telephone exchange service ratepayers or competition in any telecommunications market.

(i) Additional definitions

As used in this section--

(1) In-region State

The term "in-region State" means a State in which a Bell operating company or any of its affiliates was authorized to provide wireline telephone exchange service pursuant to the reorganization plan approved under the AT&T Consent Decree, as in effect on the day before February 8, 1996.

(2) Audio programming services

The term "audio programming services" means programming provided by, or generally considered to be comparable to programming provided by, a radio broadcast station.

(3) Video programming services; other programming services

The terms "video programming service" and "other programming services" have the same meanings as such terms have under [section 522](#) of this title.

(j) Certain service applications treated as in-region service applications

For purposes of this section, a Bell operating company application to provide 800 service, private line service, or their equivalents that--

- (1) terminate in an in-region State of that Bell operating company, and
- (2) allow the called party to determine the interLATA carrier,

shall be considered an in-region service subject to the requirements of subsection (b)(1) of this section.

CREDIT(S)

(June 19, 1934, c. 652, Title II, § 271, as added Feb. 8, 1996, [Pub.L. 104- 104, Title I, § 151\(a\)](#), 110 Stat. 86.)

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.

References in Text

Section 254(h)(5) of this title, referred to in subsec. (g)(2), was redesignated [47 U.S.C.A. § 254\(h\)\(7\)](#) by [Pub. L. 106-554, § 1\(a\)\(4\)](#) [Div. B, Title XVII, § 1721(a)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A-343.

LAW REVIEW COMMENTARIES

[FCC authority to regulate the Internet: Creating it and limiting it. James B. Speta, 35 Loy. U. Chi. L.J. 15 \(2003\).](#)

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[Federal Procedure, Lawyers Edition § 72:334](#), Form and Contents of Formal Complaint.

[Federal Procedure, Lawyers Edition § 72:341](#), Answer.

[Federal Procedure, Lawyers Edition § 72:358](#), Preconference Meeting.

[Federal Procedure, Lawyers Edition § 72:936](#), Generally.

## NOTES OF DECISIONS

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## 1. Constitutionality

Provision of Telecommunications Act which prevented Bell operating companies (BOCs) from immediately providing in-region long distance telephone service, absent satisfaction of certain statutory criteria, did not amount to unlawful bill of attainder, although Act applied to BOCs with specificity, since Act did not inflict punishment on BOCs. [BellSouth Corp. v. F.C.C., C.A.D.C.1998, 162 F.3d 678, 333 U.S.App.D.C. 253. Constitutional Law](#) ↩82.5; [Telecommunications](#) ↩730

Provisions of Telecommunications Act of 1996 restricting entry of Bell operating companies (BOC), which were certain formerly-affiliated telephone local exchange carriers (LEC), into long-distance telephone market, prohibiting electronic publishing by BOCs through use of basic telephone service, requiring BOC affiliates for particular lines of business, and restricting manufacturing activities and provision of alarm monitoring services constituted "punishment" and, thus, provisions constituted unconstitutional "bill of attainder"; provisions punished BOCs financially, provisions took from BOCs rights they previously enjoyed, provisions served as punishment for BOCs' presumed anticompetitive conduct, and prior allegedly anticompetitive conduct of BOCs' former corporate parent formed basis of provisions. [SBC Communications, Inc. v. F.C.C., N.D.Tex.1997, 981 F.Supp. 996, stay granted 1998 WL 119707, reversed 154 F.3d 226, certiorari denied 119 S.Ct. 889, 525 U.S. 1113, 142 L.Ed.2d 788. Constitutional Law](#) ↩82.5; [Telecommunications](#) ↩730

## 2. Purpose

Purpose of Federal Telecommunications Act was to replace telecommunications monopolies and regulation with competitive markets. [Bell Atlantic-New Jersey, Inc. v. Tate, D.N.J.1997, 962 F.Supp. 608. Monopolies](#) ↩10

Breaux-Leahy Amendment to Federal Telecommunications Act, permitting states that had ordered regional bell operating companies (RBOC) to offer intra-local access transport area (intraLATA) toll service presubscription by certain date to proceed to effectuate that requirement after that date, was sponsored as means to reduce preemptive effect of earlier versions of the legislation. [Bell Atlantic-New Jersey, Inc. v. Tate, D.N.J.1997, 962 F.Supp. 608. Telecommunications](#) ↩734; [States](#) ↩18.81

## 3. Competing provider

Federal Communications Commission (FCC) reasonably determined that telephone network element unbundling obligations faced by Bell operating companies (BOCs) who wished to enter long distance service market were independent of and not controlled by unbundling obligations such companies faced in order to avoid impairment of competition by competitive local exchange carriers (CLECs). [U.S. Telecom Ass'n v. F.C.C., C.A.D.C.2004, 359 F.3d 554, 360 U.S.App.D.C. 202, certiorari denied 125 S.Ct. 313, 2004 WL 2069543, certiorari denied 125 S.Ct. 316, 2004 WL 2071195, certiorari denied 125 S.Ct. 345, 160 L.Ed.2d 223, 2004 WL 2152860. Telecommunications](#) ↩860

Federal Communications Commission (FCC) reasonably interpreted phrase "competing provider," as used in statute setting requirements for approval of Bell operating company's (BOC) application to provide long-distance services in its in-region state, to require that provider must offer actual commercial alternative to BOC. [SBC Communications Inc. v. F.C.C., C.A.D.C.1998, 138 F.3d 410, 329 U.S.App.D.C. 133. Telecommunications](#) ↩️782

#### 4. State requirements

By issuing order requiring presubscription for intra-local access transport area (intraLATA) toll service by competitive carriers but not yet adopting final rules to implement that requirement, New Jersey Board of Public Utilities (BPU) met requirements of grandfather clause to Federal Telecommunications Act, which clause permitted state that had, by grandfather date, ordered regional Bell operating company (RBOC) to offer presubscription to proceed to effectuate that requirement after that date using its own timeframe; actual implementation of program was not required under clause, Board order established both policy and requirement, and order made clear that presubscription should be implemented as quickly as possible, to be completed within a year of effective date of proposed rules. [Bell Atlantic-New Jersey, Inc. v. Tate, D.N.J.1997, 962 F.Supp. 608. Monopolies](#) ↩️10

#### 5. State policy

In determining whether an incumbent local exchange carrier's (ILEC's) rates for unbundled network elements (UNEs) comply with the "TELRIC" (total-element long run incremental cost) standard for granting authority to the ILEC to offer long-distance service, it is reasonable for the Federal Communications Commission (FCC) to rely on the states' periodic rate revision process as a means of correcting flaws in adopted rates, and Court of Appeals will not upset that balance ad hoc by requiring refunds, or requiring the FCC to do so, unless they are clearly necessary to render the rates TELRIC-compliant. [WorldCom, Inc. v. F.C.C., C.A.D.C.2002, 308 F.3d 1, 353 U.S.App.D.C. 325, on remand 2004 WL 324231. Telecommunications](#) ↩️860; [Telecommunications](#) ↩️866

Federal Communications Commission (FCC), in determining whether state utility commission-approved recurring-charge rates for Bell operating company's (BOC) lease of unbundled network elements (UNEs) to competitive local exchange carrier (CLEC) were TELRIC (total long-run incremental cost) compliant, could rely in part on comparison with rates in state neighboring BOC's region, with suitable adjustments. [Sprint Communications Co. L.P. v. F.C.C., C.A.D.C.2001, 274 F.3d 549, 348 U.S.App.D.C. 266. Telecommunications](#) ↩️866

For purposes of determining whether state established binding policy of presubscription for intra-local access transport area (intraLATA) toll service provided by competitive carriers for purposes of Federal Telecommunications Act grandfather clause permitting state that had, by grandfather date, ordered regional Bell operating company (RBOC) to

offer presubscription to proceed to effectuate that requirement after that date using its own timeframe, "policy" may be "requirement" and vice versa; crucial examination is whether policy is merely precatory or is binding. [Bell Atlantic-New Jersey, Inc. v. Tate, D.N.J.1997, 962 F.Supp. 608. Monopolies ↩10](#)

## 6. Amendment to application

Federal Communications Commission (FCC), in deciding "nondiscriminatory access" component of Bell operating company's (BOC) June 21 application to add long-distance service, did not act arbitrarily or capriciously by considering August 17 submission by BOC; later submission was within exception to FCC's "complete when filed" rule since it addressed commenters' challenges to BOC's wholesale billing performance for May and June, and FCC could reasonably choose not to segregate evidence from June and August submissions into two categories, usable for prima facie case vs. usable for rebuttal only. [Z-Tel Communications, Inc. v. F.C.C., C.A.D.C.2003, 333 F.3d 262, 357 U.S.App.D.C. 141. Telecommunications ↩863](#)

## 7. Billing metrics

Federal Communications Commission (FCC), in deciding "nondiscriminatory access" component of Bell operating company's (BOC) application to add long-distance service, did not act arbitrarily or capriciously by giving no weight to BOC's recalculated billing metrics submitted after application, which allegedly showed that BOC made many more errors in billing competitive local exchange carriers (CLECs) than its own customers; metrics after recalculation retained structural problem that parties agreed was significant, i.e. unpredictable lag between any error and its reflection in metrics. [Z-Tel Communications, Inc. v. F.C.C., C.A.D.C.2003, 333 F.3d 262, 357 U.S.App.D.C. 141. Telecommunications ↩863](#)

## 8. Consultation with Attorney General

Federal Communications Commission (FCC), in deciding Bell operating company's (BOC) application to add long-distance service, did not violate Telecommunications Act's "consultation with Attorney General" provision by considering additional evidence concerning problem with BOC's wholesale billing system after Attorney General had mentioned problem in his evaluation; Attorney General's report expressly anticipated additional evidence, and Act intended such reports to be advisory, not controlling. [Z-Tel Communications, Inc. v. F.C.C., C.A.D.C.2003, 333 F.3d 262, 357 U.S.App.D.C. 141. Telecommunications ↩870](#)

## 9. Substantial evidence

Substantial evidence supported Federal Communications Commission's (FCC) determination the Bell operating company's (BOC) wholesale billing comported with Telecommunications Act's "nondiscriminatory access" requirement, as required for approval of BOC's application to add long-distance service; data from five-month period

before application showed decrease from 27% to 2% in dollar value of all disputes submitted by competitive local exchange carriers (CLECs), error rates for "historic problem areas" declined to "relatively nominal" level, and third-party studies indicated wholesale data were readable and auditable. [Z-Tel Communications, Inc. v. F.C.C., C.A.D.C.2003, 333 F.3d 262, 357 U.S.App.D.C. 141. Telecommunications ¶863](#)

47 U.S.C.A. § 271, 47 USCA § 271

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