§ 63.702
leased from another entity, or other ar-

rangement and a description of the ar-

rangement.

[51 FR 18448, May 20, 1986]

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

[51 FR 18448, May 20, 1986]
Federal Communications Commission

§ 64.1 Traffic damage claims.

(a) Each carrier engaged in furnishing radio-telegraph, wire-telegraph, or ocean-cable service shall maintain separate files for each damage claim of a traffic nature filed with the carrier, showing the name, address, and nature of business of the claimant, the basis for the claim, disposition made, and all correspondence, reports, and records pertaining thereto. Such files shall be preserved in accordance with existing rules of the Commission (part 42 of this chapter) and at points (one or more) to be specifically designated by each carrier.

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

Subpart B—Restrictions on Indecent Telephone Message Services

§ 64.201 Restrictions on indecent telephone message services.

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

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

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

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

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

(ii) Established a procedure to cancel immediately the code of any person upon written, telephonic or other notice to the defendant’s business office that such code has been lost, stolen, or used by a person or persons under the age of eighteen, or that such code is no longer desired; or

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

(5) Where the defendant is a message sponsor subscriber to mass announce-
§ 64.401 Policies and procedures for provisioning and restoring certain telecommunications services in emergencies.

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

[53 FR 47536, Nov. 23, 1988]

§ 64.501 Recording of telephone conversations with telephone companies.

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

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

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

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

Provided That:

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

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


§ 64.601 Definitions.

As used in this subpart, the following definitions apply:

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

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

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

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

5. Communications assistant (CA). A person who translates conversation
§ 64.602 from text to voice and from voice to text between two end users of TRS. CA supersedes the term “TDD operator.”

(6) Hearing carry over (HCO). A reduced form of TRS where the person with the speech disability is able to listen to the other end user and, in reply, the CA speaks the text as typed by the person with the speech disability. The CA does not type any conversation.

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

(8) Text telephone (TT). A machine that employs graphic communication in the transmission of coded signals through a wire or radio communication system. TT supersedes the term “TDD” or “telecommunications device for the deaf.”

(9) Voice carry over (VCO). A reduced form of TRS where the person with the hearing disability is able to speak directly to the other end user. The CA types the response back to the person with the hearing disability. The CA does not voice the conversation.

§ 64.603 Provision of services.

Each common carrier providing telephone voice transmission services shall provide, not later than July 26, 1993, in compliance with the regulations prescribed herein, throughout the area in which it offers services, telecommunications relay services, individually, through designees, through a competitively selected vendor, or in concert with other carriers. A common carrier shall be considered to be in compliance with these regulations:

(a) With respect to intrastate telecommunications relay services in any state that does not have a certified program under § 64.605 and with respect to interstate telecommunications relay services, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with § 64.604; or

(b) With respect to intrastate telecommunications relay services in any state that has a certified program under § 64.605 for such state, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with the program certified under § 64.605 for such state.

§ 64.604 Mandatory minimum standards.

(a) Operational standards—(1) Communications assistant (CA). TRS providers are responsible for requiring that CAs be sufficiently trained to effectively meet the specialized communications needs of individuals with hearing and speech disabilities, and that CAs have competent skills in typing, grammar, spelling, interpretation of typewritten ASL, and familiarity with hearing and speech disability cultures, languages and etiquette.

(2) Confidentiality and conversation content. Except as authorized by section 705 of the Communications Act, 47 U.S.C. 605, CAs are prohibited from disclosing the content of any relayed conversation regardless of content and from keeping records of the content of any conversation beyond the duration of a call, even if to do so would be inconsistent with state or local law. CAs are prohibited from intentionally altering a relayed conversation and, to the extent that it is not inconsistent with federal, state or local law regarding use of telephone company facilities for illegal purposes, must relay all conversation verbatim unless the relay
(3) Types of calls. Consistent with the obligations of common carrier operators, CAs are prohibited from refusing single or sequential calls or limiting the length of calls utilizing relay services. TRS shall be capable of handling any type of call normally provided by common carriers and the burden of proving the infeasibility of handling any type of call will be placed on the carriers. Providers of TRS are permitted to decline to complete a call because credit authorization is denied. CAs shall handle emergency calls in the same manner as they handle any other TRS calls.

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

(2) Speed of answer. TRS shall include adequate staffing to provide callers with efficient access under projected calling volumes, so that the probability of a busy response due to CA unavailability shall be functionally equivalent to what a voice caller would experience in attempting to reach a party through the voice telephone network. TRS shall, except during network failure, answer 85% of all calls within 10 seconds and no more than 30 seconds shall elapse between receipt of dialing information and the dialing of the requested number.

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

(4) TRS facilities. TRS shall operate every day, 24 hours a day. TRS shall have redundancy features functionally equivalent to the equipment in normal central offices, including uninterruptible power for emergency use. TRS shall transmit conversations between TT and voice callers in real time. Adequate network facilities shall be used in conjunction with TRS so that under projected calling volume the probability of a busy response due to loop trunk congestion shall be functionally equivalent to what a voice caller would experience in attempting to reach a party through the voice telephone network.

(5) Technology. No regulation set forth in this subpart is intended to discourage or impair the development of improved technology that fosters the availability of telecommunications to persons with disabilities. VCO and HCO technology are required to be standard features of TRS.

(c) Functional standards—(1) Enforcement. Subject to §64.603, the Commission shall resolve any complaint alleging a violation of this section within 180 days after the complaint is filed.

(2) Public access to information. Carriers, through publication in their directories, periodic billing inserts, placement of TRS instructions in telephone directories, through directory assistance services, and incorporation of TT numbers in telephone directories, shall assure that callers in their service areas are aware of the availability and use of TRS.

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

(4) Jurisdictional separation of costs—(i) General. Where appropriate, costs of providing TRS shall be separated in accordance with the jurisdictional separation procedures and standards set forth in the Commission's regulations adopted pursuant to section 410 of the Communications Act of 1934, as amended.

(ii) Cost recovery. Costs caused by interstate TRS shall be recovered from all subscribers for every interstate service, utilizing a shared-funding cost recovery mechanism. Costs caused by intrastate TRS shall be recovered from the intrastate jurisdiction. In a state that has a certified program under §64.605, the state agency providing TRS shall, through the state's regulatory agency, permit a common carrier to recover costs incurred in providing TRS by a method consistent with the requirements of this section.

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

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

(B) Contribution computations. Contributors' contribution to the TRS fund shall be the product of their subject revenues for the prior calendar year and a contribution factor determined annually by the Commission. The contribution factor shall be based on the ratio between expected TRS Fund expenses to total interstate revenues. In the event that contributions exceed TRS payments and administrative costs, the contribution factor for the following year will be adjusted by an appropriate amount, taking into consideration projected cost and usage changes. In the event that contributions are inadequate, the fund administrator may bill contributors a separate assessment for reasonable administrative expenses and interest resulting from improper filing or overdue contributions.

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

(D) The TRS Fund will be subject to a yearly audit performed by an independent certified accounting firm or the Commission, or both.

(E) Payments to TRS Providers. TRS Fund payments shall be distributed to TRS providers based on formulas approved or modified by the Commission. The administrator shall file schedules of payment formulas with the Commission. Such formulas shall be designed to compensate TRS providers for reasonable costs of providing interstate TRS, and shall be subject to Commission approval. Such formulas shall be based on total monthly interstate TRS minutes of use. TRS minutes of use for purposes of interstate cost recovery under the TRS Fund are defined as the minutes of use for completed interstate
TRS calls placed through the TRS center beginning after call set-up and concluding after the last message call unit. In addition to the data required under paragraph (c)(4)(iii)(C) of this section, all TRS providers, including providers who are not interexchange carriers, local exchange carriers, or certified state relay providers, must submit reports of interstate TRS minutes of use to the administrator in order to receive payments. The administrator shall establish procedures to verify payment claims, and may suspend or delay payments to a TRS provider if the TRS provider fails to provide adequate verification of payment upon reasonable request, or if directed by the Commission to do so. TRS Fund administrator shall make payments only to eligible TRS providers operating pursuant to the mandatory minimum standards as required in §64.604, and after disbursements to the administrator for reasonable expenses incurred by it in connection with TRS Fund administration. TRS providers receiving payments shall file a form prescribed by the administrator. The administrator shall fashion a form that is consistent with Parts 32 and 36 procedures reasonably tailored to meet the needs of TRS providers. The Commission shall have authority to audit providers and have access to all data, including carrier specific data, collected by the fund administrator. The fund administrator shall have authority to audit TRS providers reporting data to the administrator.

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

(1) TRS facilities operated under contract with and/or by certified state TRS programs pursuant to §64.602; or

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

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

(G) Any eligible TRS provider as defined in paragraph (c)(4)(iii)(F) of this section shall notify the administrator of its intent to participate in the TRS Fund thirty (30) days prior to submitting reports of TRS interstate minutes of use in order to receive payment settlements for interstate TRS, and failure to file may exclude the TRS provider from eligibility for the year.

(H) Administrator reporting, monitoring, and filing requirements. The administrator shall perform all filing and reporting functions required under paragraphs (c)(4)(iii)(A) through (J), of this section. Beginning in 1994, TRS payment formulas and revenue requirements shall be filed with the Commission on October 1 of each year, to be effective for a one-year period beginning the following January 1. The administrator shall report annually to the Commission an itemization of monthly administrative costs which shall consist of all expenses, receipts, and payments associated with the administration of TRS Fund. The administrator is required to keep the TRS Fund separate from all other funds administered by the administrator, shall file a cost allocation manual (CAM), and shall provide the Commission full access to all data collected pursuant to the administration of the TRS Fund. The administrator shall establish a non-paid, voluntary advisory committee of persons from the hearing and speech disability community, TRS users (voice and text telephone), interstate service providers, state representatives, and TRS providers, which will meet at reasonable intervals (at least semi-annually) in order to monitor TRS cost recovery matters. Each group shall select its own representative to the committee. The administrator's annual report shall include a discussion of advisory committee deliberations.

(I) Information filed with the administrator. The administrator shall keep all data obtained from contributors and TRS providers confidential and shall not disclose such data in company-specific form unless directed to do so by the Commission. The administrator shall not use such data except for purposes of administering the TRS Fund, calculating the regulatory fees of interstate common carriers, and aggregating such fee payments for submission to the Commission. The Commission shall have access to all data reported to the administrator, and authority to audit TRS providers.

(J) The administrator’s performance and this plan shall be reviewed by the Commission after two years.
(K) All parties providing services or contributions or receiving payments under this section are subject to the enforcement provisions specified in the Communications Act, the Americans with Disabilities Act, and the Commission's rules.

(5) Complaints—(i) Referral of complaint. If a complaint to the Commission alleges a violation of this subpart with respect to intrastate TRS within a state and certification of the program of such state under §64.605 is in effect, the Commission shall refer such complaint to such state expeditiously.

(ii) Jurisdiction of Commission. After referring a complaint to a state under paragraph (c)(5)(i) of this section, or if a complaint is filed directly with a state, the Commission shall exercise jurisdiction over such complaint only if:

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

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

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

(B) The Commission determines that such state program is no longer qualified for certification under §64.605.

(iii) Complaint procedures—(A) Content. A complaint shall be in writing, addressed to the Federal Communications Commission, Common Carrier Bureau, TRS Complaints, Washington, DC 20554, or addressed to the appropriate state office, and shall contain:

(1) The name and address of the complainant,

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

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

(4) The relief sought.

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

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

(D) Service—(1) Except where a complaint is referred to a state pursuant to §64.604(c)(5)(i), or where a complaint is filed directly with a state, the Commission will serve on the named party a copy of any complaint or amended complaint filed with it, together with a notice of the filing of the complaint. Such notice shall call upon the defendant to satisfy or answer the complaint in writing within the time specified in said notice of complaint.

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

(E) Answers to complaints and amended complaints. Any party upon whom a copy of a complaint or amended complaint is served under this subpart shall serve an answer within the time specified by the Commission in its notice of complaint. The answer shall advise the parties and the Commission fully and completely of the nature of the defense and shall respond specifically to all material allegations of the complaint. In cases involving allegations of harm, the answer shall indicate what action has been taken or is proposed to be taken to stop the occurrence of such harm. Collateral or immaterial issues shall be avoided in answers and every effort should be made to narrow the issues. Matters alleged as affirmative defenses shall be separately stated and numbered. Any defendant failing to file and serve an answer within the time and in the manner prescribed may be deemed in default.

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

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


§ 64.605 State certification.

(a) State documentation. Any state, through its office of the governor or other designated executive office empowered to provide TRS, desiring to establish a state program under this section shall submit, not later than October 1, 1992, documentation to the Commission addressed to the Federal Communications Commission, Chief, Common Carrier Bureau, TRS Certification Program, Washington, DC 20554, and captioned “TRS State Certification Application.” All documentation shall be submitted in narrative form, shall clearly describe the state program for implementing intrastate TRS, and the procedures and remedies for enforcing any requirements imposed by the state program. The Commission shall give public notice of states filing for certification including notification in the Federal Register.

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

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

(2) Establishes that the state program makes available adequate procedures and remedies for enforcing the requirements of the state program; and

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

(c) Certification period. State certification shall remain in effect for five years. One year prior to expiration of certification, a state may apply for renewal of its certification by filing documentation as prescribed by paragraphs (a) and (b) of this section.

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

(e) Suspension or revocation of certification. The Commission may suspend or revoke such certification if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted. In a state whose program has been suspended or revoked, the Commission shall take such steps as may be necessary, consistent with this subpart, to ensure continuity of TRS.

§ 64.606 Furnishing related customer premises equipment.

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

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

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

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

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

In the absence of alternative suppliers in an exchange area, an exchange carrier must provide a hearing aid compatible telephone, as defined in §68.316 of this chapter, and provide related installation and maintenance services for such telephones on a
§ 64.608 Enforcement of related customer premises equipment rules.

Enforcement of §§ 64.606 and 64.607 is delegated to those state public utility or public service commissions which adopt those sections and provide for their enforcement. Subpart G—Furnishing of Enhanced Services and Customer-Premises Equipment by Communications Common Carriers

Subpart G—Furnishing of Enhanced Services and Customer-Premises Equipment by Communications Common Carriers; Telephone Operator Services

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

(a) For the purpose of this subpart, the term enhanced service shall refer to services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information. Enhanced services are not regulated under title II of the Act.

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

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

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

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

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

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

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

(d) A carrier subject to the proscription set forth in paragraph (c) of this section:
§ 64.703 Consumer information.

(a) Each provider of operator services shall:

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

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

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

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

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

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

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

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

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

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

(4) The name and address of the Enforcement Division of the Common Carrier Bureau of the Commission (FCC, Enforcement Division, CCB, Mail Stop 1600A2, Washington, DC 20554), to which the consumer may direct complaints regarding operator services.

(c) Additional requirements for first 3 years. In addition to meeting the requirements of paragraph (a) of this section, each presubscribed provider of operator services shall, until January 15, 1994, identify itself audibly and distinctly to the consumer, not only as required in paragraph (a)(1) of this section, but also for a second time before connecting the call and before the consumer incurs any charge.

(d) Effect of state law or regulation. The requirements of paragraph (b) of

**§ 64.703** Consumer information.

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

(2) Shall disclose to the public all information relating to network design and technical standards and information affecting changes to the telecommunications network which would affect either intercarrier interconnection or the manner in which customer-premises equipment is attached to the interstate network prior to implementation and with reasonable advance notification. When such information is disclosed to the separate corporation it shall be disclosed and be available to any member of the public on the same terms and conditions;

(3) May not provide to any such separate corporation any customer proprietary information unless such information is available to any member of the public on the same terms and conditions; and

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

(e) Except as otherwise ordered by the Commission, after March 1, 1982, the carrier provision of customer-premises equipment used in conjunction with the interstate telecommunications network shall be separate and distinct from provision of common carrier communications services and not offered on a tariffed basis.

**§ 64.703** Consumer information.

(a) Each provider of operator services shall:

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

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

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

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

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

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

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

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

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

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

(4) The name and address of the Enforcement Division of the Common Carrier Bureau of the Commission (FCC, Enforcement Division, CCB, Mail Stop 1600A2, Washington, DC 20554), to which the consumer may direct complaints regarding operator services.

(c) Additional requirements for first 3 years. In addition to meeting the requirements of paragraph (a) of this section, each presubscribed provider of operator services shall, until January 15, 1994, identify itself audibly and distinctly to the consumer, not only as required in paragraph (a)(1) of this section, but also for a second time before connecting the call and before the consumer incurs any charge.

(d) Effect of state law or regulation. The requirements of paragraph (b) of
§ 64.704 Call blocking prohibited.

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

(b) Each provider of operator services shall:

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

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

(c) Each aggregator shall, by the earliest applicable date set forth in this paragraph, ensure that any of its equipment presubscribed to a provider of operator services allows the consumer to use equal access codes to obtain access to the consumer’s desired provider of operator services.

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

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

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

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

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

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

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

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

(a) A provider of operator services shall:

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

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

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

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

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

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

[56 FR 18523, Apr. 23, 1991]

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

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

[61 FR 14961, Apr. 4, 1996]

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

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

[56 FR 18524, Apr. 23, 1991]

§ 64.708 Definitions.

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

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

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

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

(d) Consumer means a person initiating any interstate telephone call using operator services. In collect calling arrangements handled by a provider of operator services, both the party on the originating end of the call and the party on the terminating end of the call are consumers under this definition.

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

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

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

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

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

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

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


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


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

§ 64.801 Purpose.

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

§ 64.802 Applicability.

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

§ 64.803 Definitions.

For the purposes of this subpart:

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

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

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

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

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

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

(a) There is no obligation upon a carrier to extend unsecured credit for interstate and foreign communication services to a candidate or person on behalf of such candidate for Federal office. However, if the carrier chooses to extend such unsecured credit, it shall comply with the requirements set forth in paragraphs (b) through (g) of this section.
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(b) If a carrier decides to extend unsecured credit to any candidate for Federal office or any person on behalf of such candidate, then unsecured credit shall be extended on substantially equal terms and conditions to all candidates and all persons on behalf of all candidates for the same office, with due regard for differences in the estimated quantity of service to be furnished each such candidate or person.

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

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

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

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

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

(f) The records of each account, involving the extension by a carrier of unsecured credit to a candidate or person on behalf of such candidate for common carrier communications services shall be maintained by the carrier so as to show separately, for interstate and foreign communication services all charges, credits, adjustments, and security, if any, and balance receivable.

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

(1) Name of candidate.

(2) Name and address of person or persons applying for service.

(3) Balance due carrier.

(4) Reason for nonpayment.

(5) Payment arrangements, if any.

(6) Date service discontinued.

(7) Date, nature and status of any action taken at law in compliance with paragraph (e) of this section.


Subpart I—Allocation of Costs

§ 64.901 Allocation of costs.

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

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

(1) Tariffed services provided to a nonregulated activity will be charged to the nonregulated activity at the tariffed rates and credited to the regulated revenue account for that service.

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

(3) Costs which cannot be directly assigned to either regulated or nonregulated activities will be described as common costs. Common costs shall be
§ 64.902 Transactions with affiliates.

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

§ 64.903 Cost allocation manuals.

(a) Each local exchange carrier with annual operating revenues that equal or exceed the indexed revenue threshold, as defined in §32.900 of this chapter, shall file with the Commission within 90 days after publication of that threshold in the FEDERAL REGISTER, a manual containing the following information regarding its allocation of costs between regulated and unregulated activities:
   (1) A description of each of the carrier’s unregulated activities;
   (2) A list of all the activities to which the carrier now accords incidental accounting treatment and the justification therefor;
   (3) A chart showing all of the carrier’s corporate affiliates;
   (4) A statement identifying each affiliate that engages in or will engage in transactions with the carrier and describing the nature, terms, and frequency of each transaction;
   (5) A cost apportionment table showing, for each account containing costs incurred in providing regulated services, the cost pools with that account, the procedures used to allocate costs into each cost pool, and the method used to apportion the costs within each cost pool between regulated and unregulated activities; and
   (6) A description of the time reporting procedures that the carrier uses, including the methods or studies designed to measure and allocate non-productive time.

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

§ 64.1001 International settlements policy and modification requests.

(a) The procedures set forth in this rule are subject to Commission policies on international operating agreements in CC Dkt. No. 90-337.

(b) If the accounting rate referred to in §43.51(d)(1) of this chapter is lower than the accounting rate in effect in the operating agreement of another carrier providing service to or from the same foreign point, and there is no modification in the other terms and conditions referred to in §43.51(d)(1) of this chapter, the carrier must file a notification letter under paragraph (e) of this section.

(c) If the amendment referred to in §43.51(d)(2) of this chapter is a simple reduction in the accounting rate, and there is no modification in the other terms and conditions referred to in §43.51(d)(2) of this chapter, the carrier must file a notification letter under paragraph (e) of this section.

(d) If the operating agreement or amendment referred to in §§43.51(d)(1) and (d)(2) of this chapter is not subject to notification under paragraphs (b) and (c) of this section, the carrier must file a modification request under paragraph (f) of this section.

(e) A notification letter must contain the following information:

1. The applicable international service;
2. The name of the foreign telecommunications administration;
3. The present accounting rate (including any surcharges);
4. The new accounting rate (including any surcharges);
5. The effective date (see paragraph (h) of this section);
6. A statement that the accounting rate will be divided 50-50; and
7. A statement that there has been no other modification in the operating agreement with the foreign correspondent regarding the exchange of services.

interchange or routing of traffic and matters concerning rates, accounting rates, division of tolls, allocation of return traffic, or the basis of settlement of traffic balances.

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

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

(h) The operating agreement or amendment subject to a notification letter is effective on the date the carrier files the notification letter; provided that the notification letter specifies an effective date for the modification that is later than the filing date; provided further that, if the purpose of the amendment is to match an accounting rate reduction specified in a notification letter previously filed by another carrier for the same point, the filing carrier may specify in the amendment and notification letter a retroactive effective date identical to that on which the previously-filed reduction became effective.

(i) If a carrier files a notification letter for an operating agreement or amendment that should have been filed as a modification request, the Bureau will notify the carrier that, before it can implement the proposed modification, it must file a modification request under paragraph (f) of this section.

(j) An operating agreement or amendment filed under a modification request cannot become effective until the modification request has been granted under paragraph (l) of this section.

(k) On the same day the notification letter or modification request is filed, carriers must serve a copy of the notification letter or modification request on all carriers providing the same or similar service to the foreign administration identified in the filing.

(l) All modification requests will be subject to a twenty-one (21) day pleading period for objections or comments, commencing the date after the request is filed. If the modification request is not complete when filed, the carrier will be notified that additional information is to be submitted, and a new 21 day pleading period will begin when the additional information is filed. The modification request will be deemed granted as of the twenty-second (22nd) day without any formal staff action being taken; provided
(1) No objections have been filed, and
(2) The International Bureau has not notified the carrier that grant of the modification request may not serve the public interest and that implementation of the proposed modification must await formal staff action on the modification request. If objections or comments are filed, the carrier requesting the modification request may file a response pursuant to §1.45 of this chapter. Modification requests that are formally opposed must await formal action by the International Bureau before the proposed modification can be implemented.

§ 64.1002 Alternative settlement arrangements.

(a) A communications common carrier engaged in providing switched voice, telex, telegraph, or packet switched service between the United States and a foreign point may seek approval to enter into an operating
agreement with a foreign telecommunications administration containing an alternative settlement arrangement that does not comply with the requirements of §43.51(e)(1) and §63.14 of this chapter and §64.1001 by filing a petition for declaratory ruling in compliance with the requirements of this section.

(b) A petition for declaratory ruling must contain the following:
(1) Information to demonstrate that either:
   (i) The Commission has made a previous determination that the effective competitive opportunities test in §63.18(h)(6)(i) of this chapter has been satisfied on the route covered by the alternative settlement arrangement; or
   (ii) The effective competitive opportunities test in §63.18(h)(6)(i) of this chapter is satisfied on the route covered by the alternative settlement arrangement; or
   (iii) The alternative settlement arrangement is otherwise in the public interest.
(2) A certification as to whether the alternative settlement arrangement affects more than 25 percent of the outbound traffic or 25 percent of the inbound traffic on the route to which the alternative settlement arrangement applies.
(3) A certification as to whether the parties to the alternative settlement arrangement are affiliated, as defined in §63.18(h)(1)(i) of this chapter, or involved in a non-equity joint venture affecting the provision of basic services on the route to which the alternative settlement arrangement applies.
(4) A copy of the alternative settlement arrangement if it affects more than 25 percent of the outbound traffic or 25 percent of the inbound traffic on the route to which the alternative settlement arrangement applies, or if it is between parties that are affiliated, as defined in §63.18(h)(1)(i) of this chapter, or that are involved in a non-equity joint venture affecting the provision of basic services on the route to which the alternative settlement arrangement applies.
(5) A summary of the terms and conditions of the alternative settlement arrangement if it does not come within the scope of paragraph (b)(4) of this section. However, upon request by the International Bureau, a full copy of such alternative settlement arrangement must be forwarded promptly to the International Bureau.

(c) An alternative settlement arrangement filed for approval under this section cannot become effective until the petition for declaratory ruling required by paragraph (a) of this section has been granted under paragraph (e) of this section.

(d) On the same day the petition for declaratory ruling has been filed, the filing carrier must serve a copy of the petition on all carriers providing the same or similar service with the foreign administration identified in the petition.

(e) All petitions for declaratory ruling shall be subject to a 21 day pleading period for objections or comments, commencing the day after the date of public notice listing the petition as accepted for filing. The petition will be deemed granted as of the 28th day without any formal staff action being taken: provided
   (1) The petition is not formally opposed within the meaning of §1.1202(e) of this chapter; and
   (2) The International Bureau has not notified the filing carrier that grant of the petition may not serve the public interest and that implementation of the proposed alternative settlement arrangement must await formal staff action on the petition. If objections or comments are filed, the petitioning carrier may file a response pursuant to §1.45 of this chapter. Petitions that are formally opposed must await formal action by the International Bureau before the proposed alternative settlement arrangement may be implemented.

§ 64.1100 Verification of orders for long distance service generated by telemarketing.

No IXC shall submit to a LEC a primary interexchange carrier (PIC) change order generated by telemarketing unless and until the order has first
§ 64.1150

been confirmed in accordance with the following procedures:

(a) The IXC has obtained the customer's written authorization in a form that meets the requirements of § 64.1150; or

(b) The IXC has obtained the customer's electronic authorization, placed from the telephone number(s) on which the PIC is to be changed, to submit the order that confirms the information described in paragraph (a) of this section to confirm the authorization. IXCs electing to confirm sales electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a customer to a voice response unit, or similar mechanism, that records the required information regarding the PIC change, including automatically recording the originating ANI; or

(c) An appropriately qualified and independent third party operating in a location physically separate from the telemarketing representative has obtained the customer's oral authorization to submit the PIC change order that confirms and includes appropriate verification data (e.g., the customer's date of birth or social security number); or

(d) Within three business days of the customer's request for a PIC change, the IXC must send each new customer an information package by first class mail containing at least the following information concerning the requested change:

(1) The information is being sent to confirm a telemarketing order placed by the customer within the previous week;

(2) The name of the customer's current IXC;

(3) The name of the newly requested IXC;

(4) A description of any terms, conditions, or charges that will be incurred;

(5) The name of the person ordering the change;

(6) The name, address, and telephone number of both the customer and the soliciting IXC;

(7) A postpaid postcard which the customer can use to deny, cancel or confirm a service order;

(8) A clear statement that if the customer does not return the postcard the customer's long distance service will be switched within 14 days after the date the information package was mailed to [name of soliciting carrier];

(9) The name, address, and telephone number of a contact point at the Commission for consumer complaints; and

(10) IXCs must wait 14 days after the form is mailed to customers before submitting their PIC change orders to LECs. If customers have cancelled their orders during the waiting period, IXCs, of course, cannot submit the customer's orders to LECs.


EFFECTIVE DATE NOTES: 1. At 62 FR 43481, Aug. 14, 1997, § 64.1100 was amended by revising paragraph (a), effective Jan. 12, 1998. For the convenience of the user, the superseded text is set forth as follows:

§ 64.1100 Verification of orders for long distance service generated by telemarketing.

(a) The IXC has obtained the customer's written authorization in a form that meets the requirements of § 64.1150.

§ 64.1150 Letter of agency form and content.

(a) An interchange carrier shall obtain any necessary written authorization from a subscriber for a primary interexchange carrier change by using a letter of agency as specified in this section. Any letter of agency that does not conform with this section is invalid.

(b) The letter of agency shall be a separate document (an easily separable document containing only the authorizing language described in paragraph (e) of this section) whose sole purpose is to authorize an interexchange carrier to initiate a primary interexchange carrier change. The letter of agency must be signed and dated by the subscriber to the telephone line(s) requesting the primary interexchange carrier change.
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(c) The letter of agency shall not be combined with inducements of any kind on the same document.

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

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

1. The subscriber’s billing name and address and each telephone number to be covered by the primary interexchange carrier change order;
2. The decision to change the primary interexchange carrier from the current interexchange carrier to the prospective interexchange carrier;
3. That the subscriber designates the interexchange carrier to act as the subscriber’s agent for the primary interexchange carrier change;
4. That the subscriber understands that only one interexchange carrier may be designated as the subscriber’s interstate or interLATA primary interexchange carrier for any one telephone number. To the extent that a jurisdiction allows the selection of additional primary interexchange carriers (e.g., for intrastate, intraLATA or international calling), the letter of agency must contain separate statements regarding those choices. Any carrier designated as a primary interexchange carrier must be the carrier directly setting the rates for the subscriber. One interexchange carrier can be both a subscriber’s interstate or interLATA primary interexchange carrier and a subscriber’s intrastate or intraLATA primary interexchange carrier; and
5. That the subscriber understands that any primary interexchange carrier selection the subscriber chooses may involve a charge to the subscriber for changing the subscriber’s primary interexchange carrier.

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

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


EFFECTIVE DATE NOTE: At 62 FR 43481, Aug. 14, 1997, § 64.1150 was amended by revising paragraphs (e)(4) and (g). These amendments contain information collection requirements and will not become effective until approval has been given by the Office of Management and Budget.

Subpart L—Restrictions on Telephone Solicitation § 64.1200 Delivery restrictions.

(a) No person may:

1. Initiate any telephone call (other than a call made for emergency purposes or made with the prior express consent of the called party) using an automatic telephone dialing system or an artificial or prerecorded voice, (i) To any emergency telephone line, including any 911 line and any emergency line of a hospital, medical physician or service office, health care facility, poison control center, or fire protection or law enforcement agency;
(ii) To any emergency telephone line, including any 911 line and any emergency line of a hospital, medical physician or service office, health care facility, poison control center, or fire protection or law enforcement agency;
(iii) To the telephone line of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment; or
(ii) To any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call;
(2) Initiate any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call is initiated for emergency purposes or is exempted by §64.1200(c) of this section.

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

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

(b) For the purpose of §64.1200(a) of this section, the term emergency purposes means calls made necessary in any situation affecting the health and safety of consumers.

(c) The term telephone call in §64.1200(a)(2) of this section shall not include a call or message by, or on behalf of, a caller:

(1) That is not made for a commercial purpose,

(2) That is made for a commercial purpose but does not include the transmission of any unsolicited advertisement,

(3) To any person with whom the caller has an established business relationship at the time the call is made, or

(4) Which is a tax-exempt nonprofit organization.

(d) All artificial or prerecorded telephone messages delivered by an automatic telephone dialing system shall:

(1) At the beginning of the message, state clearly the identity of the business, individual, or other entity initiating the call, and

(2) During or after the message, state clearly the telephone number (other than that of the autodialer or prerecorded message player which placed the call) or address of such business, other entity, or individual.

(e) No person or entity shall initiate any telephone solicitation to a residential telephone subscriber:

(1) Before the hour of 8 a.m. or after 9 p.m. (local time at the called party’s location), and

(2) Unless such person or entity has instituted procedures for maintaining a list of persons who do not wish to receive telephone solicitations made by or on behalf of that person or entity. The procedures instituted must meet the following minimum standards:

(i) Written policy. Persons or entities making telephone solicitations must have a written policy, available upon demand, for maintaining a do-not-call list.

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

(iii) Recording, disclosure of do-not-call requests. If a person or entity making a telephone solicitation (or on whose behalf a solicitation is made) receives a request from a residential telephone subscriber not to receive calls from that person or entity, the person or entity must record the request and place the subscriber’s name and telephone number on the do-not-call list at the time the request is made. If such requests are recorded or maintained by a party other than the person or entity on whose behalf the solicitation is made, the person or entity on whose behalf the solicitation is made will be liable for any failures to honor the do-not-call request. In order to protect the consumer’s privacy, persons or entities must obtain a consumer’s prior express consent to share or forward the consumer’s request not to be called to a party other than the person or entity on whose behalf a solicitation is made or an affiliated entity.

(iv) Identification of telephone solicitor. A person or entity making a telephone solicitation must provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted. If a person or entity makes a solicitation using an artificial or prerecorded voice message transmitted by an autodialer, the person or entity must provide a telephone number other than that of the autodialer or prerecorded message player which placed the call. The telephone number provided may not be a 900 number or any other number for which charges
exceed local or long distance transmission charges.

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

(vi) Maintenance of do-not-call lists. A person or entity making telephone solicitations must maintain a record of a caller's request not to receive future telephone solicitations. A do not call request must be honored for 10 years from the time the request is made.

(f) As used in this section:

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

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

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

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

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

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

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

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

§ 64.1201 Restrictions on billing name and address disclosure.

(a) As used in this section:

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

(2) The term "telecommunications service provider" means interexchange carriers, operator service providers, enhanced service providers, and any other provider of interstate telecommunications services.

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

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

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

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

[57 FR 48335, Oct. 23, 1992; 57 FR 53293, Nov. 9, 1992, as amended at 60 FR 42069, Aug. 15, 1995]
§ 64.1300  Payphone compensation obligation.

(a) Except as provided herein, every carrier to whom a completed call from a payphone is routed shall compensate the payphone service provider for the call at a rate agreed upon by the parties by contract.

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

(c) In the absence of an agreement as required by paragraph (a) of this section, the carrier obligated to compensate the payphone service provider shall do so at a per-call rate equal to its local coin rate at the payphone in question.

(d) For the initial one-year period during which carriers are required to pay per-call compensation, in the absence of an agreement as required by
paragraph (a) of this section, the carrier is obligated to compensate the payphone service provider at a per-call rate of $.35 per call. After this initial one-year period of per-call compensation, paragraph (c) of this section will apply.

[61 FR 52324, Oct. 7, 1996]

Effect Date Note: At 61 FR 52324, Oct. 7, 1996, § 64.1300 was added, effective Oct. 7, 1997.

§ 64.1301 Payphone compensation.

(a) Each payphone service provider eligible to receive compensation shall be paid $45.85 per payphone per month for originating access code and toll-free calls.

(b) This compensation shall be paid by interexchange carriers (IXCs) that earn annual toll revenues in excess of $100 million, as reported in the FCC staff report entitled "Long Distance Market Shares." Each individual IXC’s compensation obligation shall be set in accordance with its relative share of toll revenues among IXCs required to pay compensation. For example, if total toll revenues of IXCs required to pay compensation is $50 billion, and one of these IXCs had $5 billion of total toll revenues, the IXC must pay $4.585 per payphone per month.

(c) Initial compensation obligations are set forth in Appendix B of the Commission’s Second Report and Order in CC Docket No. 91–35, released May 8, 1992. Compensation obligations shall be adjusted periodically if the operational status of any eligible IXC changes or in accordance with revised toll revenue data. In either such event, the Common Carrier Bureau shall issue a public notice showing the revised compensation obligations. These revised obligations shall become effective on the date specified in the public notice.

(d) IXCs obligated to pay compensation and payphone service providers are responsible for establishing their own billing or payment arrangements.

(e) LECs shall provide IXCs paying compensation under paragraphs (b) and (c) of this section with a list each quarter of all telephone lines receiving customer-owned coin-operated telephone (COCOT) service in the LEC’s region as of the date the list was generated.

(f) A competitive payphone owner (PPO) that seeks compensation for competitive payphones that are not included on a LEC COCOT list satisfies its obligation to provide alternative reasonable verification to an IXC if it provides to that IXC:

1. A notarized affidavit, signed by the president of the company, attesting that each of the payphones for which the PPO seeks compensation is a competitive payphone that was in working order as of the last day of the compensation period; and

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


Effect Date Note: At 61 FR 52324, Oct. 7, 1996, § 64.1301 was removed, effective Oct. 7, 1997.

§ 64.1310 Payphone compensation payment procedures.

(a) It is the responsibility of each carrier to whom a compensable call from a payphone is routed to track, or arrange for the tracking of, each such call so that it may accurately compute the compensation required by Section 64.1300(a).

(b) Carriers and payphone service providers shall establish arrangements for the billing and collection of compensation for calls subject to Section 64.1300(a).

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

(d) Local Exchange Carriers must respond to all carrier requests for
§ 64.1320 Payphone number verification in connection with the compensation requirements herein, even if such verification is a negative response.

(e) A payphone service provider that seeks compensation for payphones that are not included on the Local Exchange Carrier’s list satisfies its obligation to provide alternative reasonable verification to a payor carrier if it provides to that carrier:

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

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

[61 FR 52324, Oct. 7, 1996]


§ 64.1320 Payphone compensation verification and reports.

(a) Carriers subject to payment of compensation pursuant to Section 64.1300(a) shall conduct an annual verification of calls routed to them that are subject to such compensation and file a report with the Chief, Common Carrier Bureau within 90 days of the end of the calendar year, provided, however, that such verification and report shall not be required for calls received after December 31, 1996.

(b) The annual verification required in this section shall list the total amount of compensation paid to payphone service providers for interstate and international calls, the number of compensable calls received by the carrier and the number of payees.

[61 FR 52324, Oct. 7, 1996]


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

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

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

(c) Each state must review its rules and policies to determine whether it has provided for public interest payphones consistent with applicable Commission guidelines, evaluate whether it needs to take measures to ensure that such payphones will continue to exist in light of the Commission’s implementation of Section 276 of the Communications Act, and administer and fund such programs so that such payphones are supported fairly and equitably. This review must be completed by September 20, 1998.

[61 FR 52323, Oct. 7, 1996]

§ 64.1340 Right to negotiate.

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

[61 FR 52323, Oct. 7, 1996]
wire centers, and at other rating points used for interstate special access.

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

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

(2) Upon bona fide request, in tandem offices housed in buildings not containing such carriers' end offices or serving wire centers, or in buildings containing the carriers' end offices or serving wire centers for which interstate switched transport expanded interconnection has not been tariffed and

(3) Upon bona fide request, at remote nodes/switches that serve as rating points for interstate switched transport and that are capable of routing outgoing interexchange access traffic to interconnectors and in which interconnectors can route terminating traffic to such carriers. No such carrier is required to enhance remote nodes/switches or to build additional space to accommodate interstate switched transport expanded interconnection at these locations.

(c) The local exchange carriers specified in paragraph (a) of this section shall offer expanded interconnection for interstate special access and switched transport services through virtual collocation, except that they may offer physical collocation, instead of virtual collocation, in specific central offices, as a service subject to non-streamlined communications common carrier regulation under Title II of the Communications Act (47 U.S.C. 201-228).

(d) For the purposes of this subpart, physical collocation means an offering that enables interconnectors:

(1) To place their own equipment needed to terminate basic transmission facilities, including optical terminating equipment and multiplexers, within or upon the local exchange carrier's central office buildings;

(2) To use such equipment to connect interconnectors' fiber optic systems or microwave radio transmission facilities (where reasonably feasible) with the local exchange carrier's equipment and facilities used to provide interstate special access services;

(3) To enter the local exchange carrier's central office buildings, subject to reasonable terms and conditions, to install, maintain, and repair the equipment described in paragraph (d)(1) of this section; and

(4) To obtain reasonable amounts of space in central offices for the equipment described in paragraph (d)(1) of this section, allocated on a first-come, first-served basis.

(e) For purposes of this subpart, virtual collocation means an offering that enables interconnectors:

(1) To designate or specify equipment needed to terminate basic transmission facilities, including optical terminating equipment and multiplexers, to be located within or upon the local exchange carrier's buildings, and dedicated to such interconnectors' use;

(2) To use such equipment to connect interconnectors' fiber optic systems or microwave radio transmission facilities (where reasonably feasible) with the local exchange carrier's equipment and facilities used to provide interstate special and switched access services, and

(3) To monitor and control their communications channels terminating in such equipment.

(f) Under both physical collocation offering and virtual collocation offerings for expanded interconnection of fiber optic facilities, local exchange carriers shall provide:

(1) An interconnection point or points at which the fiber optic cable carrying an interconnectors' circuits can enter each local exchange carrier location, provided that the local exchange carrier shall designate interconnection points as close as reasonably possible to each location; and

(2) At least two such interconnection points at any local exchange carrier location at which there are at least two entry points for the local exchange carrier's cable facilities, and space is available for new facilities in at least two of those entry points.
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(g) The local exchange carriers specified in paragraph (a) of this section shall offer signalling for tandem switching, as defined in §69.2(vv) of this chapter, at central offices that are classified as equal access end offices or serving wire centers, or at signal transfer points if such information is offered via common channel signalling.


§ 64.1402 Rights and responsibilities of interconnectors.

(a) For the purposes of this subpart, an interconnector means a party taking expanded interconnection offerings. Any party shall be eligible to be an interconnector.

(b) Interconnectors shall have the right, under expanded interconnection, to interconnect their fiber optic systems and, where reasonably feasible, their microwave transmission facilities.

(c) Interconnectors shall not be allowed to use interstate special access expanded interconnection offerings to connect their transmission facilities with the local exchange carrier's interstate switched services until that local exchange carrier's tariffs implementing expanded interconnection for switched transport have become effective.

[57 FR 54331, Nov. 18, 1992, as amended at 61 FR 43160, Aug. 21, 1996]

Subpart O—Interstate Pay-Per-Call and Other Information Services

SOURCE: 58 FR 44773, Aug. 25, 1993, unless otherwise noted.

§ 64.1501 Definitions.

For purposes of this subpart, the following definitions shall apply:

(a) Pay-per-call service means any service:

(1) In which any person provides or purports to provide:

(i) Audio information or audio entertainment produced or packaged by such person;

(ii) Access to simultaneous voice conversation services; or

(iii) Any service, including the provision of a product, the charges for which are assessed on the basis of the completion of the call;

(2) For which the caller pays a per-call or per-time-interval charge that is greater than, or in addition to, the charge for transmission of the call; and

(3) Which is accessed through use of a 900 number;

(4) Provided, however, such term does not include directory services provided by a common carrier or its affiliate or by a local exchange carrier or its affiliate, or any service for which users are assessed charges only after entering into a presubscription or comparable arrangement with the provider of such service.

(b) Presubscription or comparable arrangement means a contractual agreement in which:

(1) The service provider clearly and conspicuously discloses to the consumer all material terms and conditions associated with the use of the service, including the service provider's name and address, a business telephone number which the consumer may use to obtain additional information or to register a complaint, and the rates for the service;

(2) The service provider agrees to notify the consumer of any future rate changes;

(3) The consumer agrees to use the service on the terms and conditions disclosed by the service provider; and

(4) The service provider requires the use of an identification number or other means to prevent unauthorized access to the service by nonsubscribers;

(5) Provided, however, that disclosure of a credit, prepaid account, debit, charge, or calling card number, along with authorization to bill that number, made during the course of a call to an information service shall constitute a presubscription or comparable arrangement if an introductory message containing the information specified in §64.1504(c)(2) is provided prior to, and independent of, assessment of any charges. No other action taken by a consumer during the course of a call to an information service, for which charges are assessed, can create a presubscription or comparable arrangement.
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(6) Provided, that a presubscription arrangement to obtain information services provided by means of a toll-free number shall conform to the requirements of § 64.1504(c).

(c) Calling card means an identifying number or code unique to the individual, that is issued to the individual by a common carrier and enables the individual to be charged by means of a phone bill for charges incurred independent of where the call originates.

[61 FR 39087, July 26, 1996]

§ 64.1502 Limitations on the provision of pay-per-call services.

Any common carrier assigning a telephone number to a provider of interstate pay-per-call service shall require, by contract or tariff, that such provider comply with the provisions of this subpart and of titles II and III of the Telephone Disclosure and Dispute Resolution Act (Pub. L. No. 102-556) (TDDRA) and the regulations prescribed by the Federal Trade Commission pursuant to those titles.

[61 FR 39087, July 26, 1996]

§ 64.1503 Termination of pay-per-call and other information programs.

(a) Any common carrier assigning a telephone number to a provider of interstate pay-per-call service shall specify by contract or tariff that pay-per-call programs not in compliance with § 64.1502 shall be terminated following written notice to the information provider. The information provider shall be afforded a period of no less than seven and no more than 14 days during which a program may be brought into compliance. Programs not in compliance at the expiration of such period shall be terminated immediately.

(b) Any common carrier providing transmission or billing and collection services to a provider of interstate information service through any 800 telephone number, or other telephone number advertised or widely understood to be toll-free, shall terminate the provision of service to an information provider unless the provider supplies evidence of a written agreement that meets the requirements of this § 64.1504(c)(1).

[61 FR 39087, July 26, 1996]

§ 64.1504 Restrictions on the use of toll-free numbers.

A common carrier shall prohibit by tariff or contract the use of any 800 telephone number, or other telephone number advertised or widely understood to be toll-free, in a manner that would result in:

(a) The calling party or the subscriber to the originating line being assessed, by virtue of completing the call, a charge for a call;

(b) The calling party being connected to a pay-per-call service;

(c) The calling party being charged for information conveyed during the call unless:

(1) The calling party has a written agreement (including an agreement transmitted through electronic medium) that specifies the material terms and conditions under which the information is offered and includes:

(i) The rate at which charges are assessed for the information;

(ii) The information provider's name;

(iii) The information provider's business address;

(iv) The information provider's regular business telephone number;

(v) The information provider's agreement to notify the subscriber at least one billing cycle in advance of all future changes in the rates charged for the information;

(vi) The subscriber's choice of payment method, which may be by direct remit, debit, prepaid account, phone bill, or credit or calling card and, if a subscriber elects to pay by means of phone bill, a clear explanation that the subscriber will be assessed for calls made to the information service from the subscriber's phone line;

(vii) A unique personal identification number or other subscriber-specific identifier that must be used to obtain access to the information service and instructions on its use, and, in addition, assures that any charges for services accessed by use of the subscriber's personal identification number or subscriber-specific identifier be assessed to subscriber's source of payment elected.
§ 64.1505 Restrictions on collect telephone calls.

(a) No common carrier shall provide interstate transmission or billing and collection services to an entity offering any service within the scope of §64.1501(a)(1) that is billed to a subscriber on a collect basis at a per-call or per-time-interval charge that is greater than, or in addition to, the charge for transmission of the call.

(b) No common carrier shall provide interstate transmission services for any collect information services billed to a subscriber at a tariffed rate unless the called party has taken affirmative action clearly indicating that it accepts the charges for the collect service.

(d) The calling party being called back collect for the provision of audio or data information services, simultaneous voice conversation services, or products; and

(e) The calling party being assessed by virtue of the caller being asked to connect or otherwise transfer to a pay-per-call service, a charge for the call.

(f) Provided, however, that:

(1) Notwithstanding paragraph (c)(1) of this section, a written agreement that meets the requirements of that paragraph is not required for:

(a) Calls utilizing telecommunications devices for the deaf;

(b) Directory services provided by a common carrier or its affiliate or by a local exchange carrier or its affiliate; or

(c) Any purchase of goods or of services that are not information services.

(2) The requirements of paragraph (c)(2) of this section shall not apply to calls from repeat callers using a bypass mechanism to avoid listening to the introductory message: Provided, That information providers shall disable such a bypass mechanism after the institution of any price increase for a period of time determined to be sufficient by the Federal Trade Commission to give callers adequate and sufficient notice of a price increase.

[61 FR 39087, July 26, 1996]

§ 64.1506 Number designation.

Any interstate service described in §64.1501(a)(1)-(2), and not subject to the exclusions contained in §64.1501(a)(4), shall be offered only through telephone numbers beginning with a 900 service access code.

[59 FR 46770, Sept. 12, 1994]

§ 64.1507 Prohibition on disconnection or interruption of service for failure to remit pay-per-call and similar service charges.

No common carrier shall disconnect or interrupt in any manner, or order the disconnection or interruption of, a telephone subscriber’s local exchange or long distance telephone service as a result of that subscriber’s failure to pay:

(a) Charges for interstate pay-per-call service;

(b) Charges for interstate information services provided pursuant to a presubscription or comparable arrangement; or

(c) Charges for interstate information services provided on a collect basis which have been disputed by the subscriber.

§ 64.1508 Blocking access to 900 service.

(a) Local exchange carriers must offer to their subscribers, where technically feasible, an option to block access to services offered on the 900 service access code. Blocking is to be offered at no charge, on a one-time basis, to:

(1) All telephone subscribers during the period from November 1, 1993 through December 31, 1993; and

(2) Any subscriber who subscribes to a new telephone number for a period of 60 days after the new number is effective.

(b) For blocking requests not within the one-time option or outside the time frames specified in paragraph (a) of this section, and for unblocking requests, local exchange carriers may charge a reasonable one-time fee. Requests by subscribers to remove 900 services blocking must be in writing.

(c) The terms and conditions under which subscribers may obtain 900 services blocking are to be included in tariffs filed with this Commission.

§ 64.1509 Disclosure and dissemination of pay-per-call information.

(a) Any common carrier assigning a telephone number to a provider of interstate pay-per-call services shall make readily available, at no charge, to Federal and State agencies and all other interested persons:

(1) A list of the telephone numbers for each of the pay-per-call services it carries;

(2) A short description of each such service;

(3) A statement of the total cost or the cost per minute and any other fees for each such service; and

(4) A statement of the pay-per-call service provider’s name, business address, and business telephone number.

(b) Any common carrier assigning a telephone number to a provider of interstate pay-per-call services and offering billing and collection services to such provider shall:

(1) Establish a local or toll-free telephone number to answer questions and provide information on subscribers’ rights and obligations with regard to their use of pay-per-call services and to provide to callers the name and mailing address of any provider of pay-per-call services offered by that carrier; and

(2) Provide to all its telephone subscribers, either directly or through contract with any local exchange carrier providing billing and collection services to that carrier, a disclosure statement setting forth all rights and obligations of the subscriber and the carrier with respect to the use and payment of pay-per-call services. Such statement must include the prohibition against disconnection of basic communications services for failure to pay pay-per-call charges established by §64.1507, the right of a subscriber to obtain blocking in accordance with §64.1508, the right of a subscriber not to be billed for pay-per-call services not offered in compliance with federal laws and regulations established by §64.1510(a)(1), and the possibility that a subscriber’s access to 900 services may be involuntarily blocked pursuant to §64.1512 for failure to pay legitimate pay-per-call charges. Disclosure statements must be forwarded to:

(i) All telephone subscribers no later than 60 days after these regulations take effect;

(ii) All new telephone subscribers no later than 60 days after service is established;

(iii) All telephone subscribers requesting service at a new location no later than 60 days after service is established; and

(iv) Thereafter, to all subscribers at least once per calendar year, at intervals of not less than 6 months nor more than 18 months.

§ 64.1510 Billing and collection of pay-per-call and similar service charges.

(a) Any common carrier assigning a telephone number to a provider of interstate pay-per-call services and offering billing and collection services to such provider shall:

(1) Ensure that a subscriber is not billed for interstate pay-per-call services that such carrier knows or reasonably should know were provided in violation of the regulations set forth in
§ 64.1511 Forgiveness of charges and refunds.

(a) Any carrier assigning a telephone number to a provider of interstate pay-per-call services or providing transmission for interstate information services provided pursuant to a presubscription or comparable arrangement or on a collect basis, and providing billing and collection for such services, shall establish procedures for the handling of subscriber complaints regarding charges for those services. A billing carrier is afforded discretion to set standards for determining when a subscriber's complaint warrants forgiveness, refund or credit of interstate pay-per-call or information services charges provided that such charges must be forgiven, refunded, or credited when a subscriber has complained about such charges and either this Commission, the Federal Trade Commission, or a court of competent jurisdiction has found or the carrier has determined, upon investigation, that the service has been offered in violation of federal law or the regulations that are either set forth in this subpart or prescribed by the Federal Trade Commission pursuant to titles II or III of the TDDRA. Carriers shall observe the record retention requirements set forth in §42.6 of this chapter except that relevant records shall be retained by carriers beyond the requirements of part 42 of this chapter when a complaint is pending at the time the specified retention period expires.

(b) Any carrier assigning a telephone number to a provider of interstate pay-per-call services but not providing billing and collection services for such services, shall, by tariff or contract, require that the provider and/or its billing and collection agents have in place procedures whereby, upon complaint, pay-per-call charges may be forgiven, refunded, or credited, provided that such charges must be forgiven, refunded, or credited when a subscriber has complained about such charges and either this Commission, the Federal
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Trade Commission, or a court of competent jurisdiction has found or the carrier has determined, upon investigation, that the service has been offered in violation of federal law or the regulations that are either set forth in this subpart or prescribed by the Federal Trade Commission pursuant to titles II or III of the TDDRA.


§ 64.1512 Involuntary blocking of pay-per-call services.

Nothing in this subpart shall preclude a common carrier or information provider from blocking or ordering the blocking of its interstate pay-per-call programs from numbers assigned to subscribers who have incurred, but not paid, legitimate pay-per-call charges, except that a subscriber who has filed a complaint regarding a particular pay-per-call program pursuant to procedures established by the Federal Trade Commission under title III of the TDDRA shall not be involuntarily blocked from access to that program while such a complaint is pending. This restriction is not intended to preclude involuntary blocking when a carrier or IP has decided in one instance to sustain charges against a subscriber but that subscriber files additional separate complaints.

§ 64.1513 Verification of charitable status.

Any common carrier assigning a telephone number to a provider of interstate pay-per-call services that the carrier knows or reasonably should know is engaged in soliciting charitable contributions shall obtain verification that the entity or individual for whom contributions are solicited has been granted tax exempt status by the Internal Revenue Service.

§ 64.1514 Generation of signalling tones.

No common carrier shall assign a telephone number for any pay-per-call service that employs broadcast advertising which generates the audible tones necessary to complete a call to a pay-per-call service.

§ 64.1515 Recovery of costs.

No common carrier shall recover its cost of complying with the provisions of this subpart from local or long distance ratepayers.

Subpart P—Calling Party Telephone Number, Privacy

Source: 59 FR 18319, Apr. 18, 1994, unless otherwise noted.

§ 64.1600 Definitions.

(a) Aggregate information. The term "aggregate information" means collective data that relate to a group or category of services or customers, from which individual customer identities or characteristics have been removed.

(b) ANI. The term "ANI" (automatic number identification) refers to the delivery of the calling party's billing number by a local exchange carrier to any interconnecting carrier for billing or routing purposes, and to the subsequent delivery of such number to end users.

(c) Calling party number. The term Calling Party Number refers to the subscriber line number or the directory number contained in the calling party number parameter of the call set-up message associated with an interstate call on a Signaling System 7 network.

(d) Charge number. The term "charge number" refers to the delivery of the calling party's billing number in a Signaling System 7 environment by a local exchange carrier to any interconnecting carrier for billing or routing purposes, and to the subsequent delivery of such number to end users.

(e) Privacy indicator. The term Privacy Indicator refers to information, contained in the calling party number parameter of the call set-up message associated with an interstate call on an Signaling System 7 network, that indicates whether the calling party authorizes presentation of the calling party number to the called party.

(f) Signaling System 7. The term Signaling System 7 (SS7) refers to a carrier to carrier out-of-band signaling network used for call routing, billing and management.

[60 FR 29670, June 5, 1995]
§ 64.1601 Delivery requirements and privacy restrictions.

(a) Delivery. Except as provided in paragraph (d) of this section, common carriers using Signaling System 7 and offering or subscribing to any service based on Signaling System 7 functionality are required to transmit the calling party number (CPN) associated with an interstate call to interconnecting carriers.

(b) Privacy. Except as provided in paragraph (d) of this section, originating carriers using Signaling System 7 and offering or subscribing to any service based on Signaling System 7 functionality will recognize *67 dialed as the first three digits of a call (or 1167 for rotary or pulse dialing phones) as a caller's request that the CPN not be passed on an interstate call. Such carriers providing line blocking services will recognize *82 as a caller's request that the CPN be passed on an interstate call. No common carrier subscribing to or offering any service that delivers CPN may override the privacy indicator associated with an interstate call. Carriers must arrange their CPN-based services, and billing practices, in such a manner that when a caller requests that the CPN not be passed, a carrier may not reveal that caller's number or name, nor may the carrier use the number or name to allow the called party to contact the calling party. The terminating carrier must act in accordance with the privacy indicator unless the call is made to a called party that subscribes to an ANI or charge number based service and the call is paid for by the called party.

(c) Charges. No common carrier subscribing to or offering any service that delivers calling party number may

(1) Impose on the calling party charges associated with per call blocking of the calling party's telephone number, or

(2) Impose charges upon connecting carriers for the delivery of the calling party number parameter or its associated privacy indicator.

(d) Exemptions. Section 64.1601(a) and (b) shall not apply when:

(1) A call originates from a payphone.

(2) A local exchange carrier with Signaling System 7 capability does not have the software to provide *67 or *82 functionalities. Such carriers are prohibited from passing CPN.

(3) A Private Branch Exchange or Centrex system does not pass end user CPN. Centrex systems that rely on *6 or *8 for a function other than CPN blocking or unblocking, respectively, are also exempt if they employ alternative means of blocking or unblocking.

(4) CPN delivery—

(i) Is used solely in connection with calls within the same limited system, including (but not limited to) a Centrex system, virtual private network, or Private Branch Exchange;

(ii) Is used on a public agency's emergency telephone line or in conjunction with 911 emergency services, or on any entity's emergency assistance poison control telephone line; or

(iii) Is provided in connection with legally authorized call tracing or trapping procedures specifically requested by a law enforcement agency.

(a) (1) and (2) of this section, any inform-
mation derived from the automatic
number identification or charge num-
ber service for any purpose other than
(i) Performing the services or trans-
actions that are the subject of the orig-
nating telephone subscriber’s call,
(ii) Ensuring network performance
security, and the effectiveness of call
delivery,
(iii) Compiling, using, and disclosing
aggregate information, and
(iv) Complying with applicable law or
legal process.
(b) The requirements imposed under
paragraph (a) of the section shall not
prevent a person to whom automatic
number identification or charge num-
ber services are provided from using
(1) The telephone number and billing
information provided pursuant to such
service, and
(2) Any information derived from the
automatic number identification or
charge number service, or from the
analysis of the characteristics of a
telecommunications transmission, to
offer a product or service that is di-
rectly related to the products or serv-
ices previously acquired by that cus-
tomer from such person. Use of such in-
formation is subject to the require-
ments of 47 CFR 64.1200 and 64.1504(c).
[60 FR 29490, June 5, 1995]
§ 64.1603 Customer notification.
Any common carrier participating in
the offering of services providing call-
ing party number, ANI, or charge num-
ber on interstate calls must notify its
subscribers, individually or in conjunc-
tion with other carriers, that their
telephone numbers may be identified
to a called party. Such notification
must be made not later than December
1, 1995, and at such times thereafter as
to ensure notice to subscribers. The no-
tification must be effective in inform-
ing subscribers how to maintain pri-
vacy by dialing *67 (or 1167 for rotary
or pulse-dialing phones) on interstate
calls. The notice shall inform subscrib-
ers whether dialing *82 (or 1182 for ro-
tary or pulse-dialing phones) on inter-
state calls is necessary to present call-
ing party number to called parties. For
ANI or charge number services for
which such privacy is not provided, the
notification shall inform subscribers of
the restrictions on the reuse or sale of
subscriber information.
[60 FR 29490, June 5, 1995; 60 FR 54449, Oct. 24,
1995]
§ 64.1604 Effective date.
The provisions of §§ 64.1600 and 64.1602
are effective April 12, 1995. The provi-
sions of §§ 64.1601 and 64.1603 are effec-
tive December 1, 1995, except §§ 64.1601
and 64.1603 do not apply to public
payphones and partylines until Janu-
ary 1, 1997.
[60 FR 29490, June 5, 1995; 60 FR 54449, Oct. 24,
1995]
Subpart Q—Implementation of
Section 273(d)(5) of the
Communications Act Dispute
Resolution Regarding Equipment
Standards
SOURCE: 61 FR 24903, May 17, 1996, unless
otherwise noted.
§ 64.1700 Purpose and scope.
The purpose of this subpart is to im-
plement the Telecommunications Act
of 1996 which amended the Communi-
cations Act by creating section 273(d)(5),
47 U.S.C. 273(d)(5). Section 273(d) sets
forth procedures to be followed by non-
accredited standards development or-
ganizations when these organizations
set industry-wide standards and ge-
eric requirements for telecommuni-
cations equipment or customer prem-
ises equipment. The statutory proce-
dures allow outside parties to fund and
participate in setting the organiza-
tion’s standards and require the orga-
nization and the parties to develop a
process for resolving any technical dis-
putes. In cases where all parties cannot
agree to a mutually satisfactory dis-
pute resolution process, section
273(d)(5) requires the Commission to
prescribe a dispute resolution process.
§ 64.1701 Definitions.
For purposes of this subpart, the
terms accredited standards development
organization, funding party, generic re-
quirement, and industry-wide have the
same meaning as found in 47 U.S.C. 273.
§ 64.1702 Procedures.

If a non-accredited standards development organization (NASDO) and the funding parties are unable to agree unanimously on a dispute resolution process prior to publishing a text for comment pursuant to 47 U.S.C. 273(d)(4)(A)(v), a funding party may use the default dispute resolution process set forth in section 64.1703.

§ 64.1703 Dispute resolution default process.

(a) Tri-Partite Panel. Technical disputes governed by this section shall be resolved in accordance with the recommendation of a three-person panel, subject to a vote of the funding parties in accordance with paragraph (b) of this section. Persons who participated in the generic requirements or standards development process are eligible to serve on the panel. The panel shall be selected and operate as follows:

(1) Within two (2) days of the filing of a dispute with the NASDO invoking the dispute resolution default process, both the funding party seeking dispute resolution and the NASDO shall select a representative to sit on the panel;

(2) Within four (4) days of their selection, the two panelists shall select a neutral third panel member to create a tri-partite panel;

(3) The tri-partite panel shall, at a minimum, review the proposed text of the NASDO and any explanatory material provided to the funding parties by the NASDO, the comments and any alternative text provided by the funding party seeking dispute resolution, any relevant standards which have been established or which are under development by an accredited-standards development organization, and any comments submitted by other funding parties;

(4) Any party in interest submitting information to the panel for consideration (including the NASDO, the party seeking dispute resolution and the other funding parties) shall be asked by the panel whether there is knowledge of patents, the use of which may be essential to the standard or generic requirement being considered. The fact that the question was asked along with any affirmative responses shall be recorded, and considered, in the panel's recommendation; and

(5) The tri-partite panel shall, within fifteen (15) days after being established, decide by a majority vote, the issue or issues raised by the party seeking dispute resolution and produce a report of their decision to the funding parties. The tri-partite panel must adopt one of the five options listed below:

(i) The NASDO's proposal on the issue under consideration;

(ii) The position of the party seeking dispute resolution on the issue under consideration;

(iii) A standard developed by an accredited standards development organization that addresses the issue under consideration;

(iv) A finding that the issue is not ripe for decision due to insufficient technical evidence to support the soundness of any one proposal over any other proposal; or

(v) Any other resolution that is consistent with the standard described in section 64.1703(a)(6).

(6) The tri-partite panel must choose, from the five options outlined above, the option that they believe provides the most technically sound solution and base its recommendation upon the substantive evidence presented to the panel. The panel is not precluded from taking into account complexity of implementation and other practical considerations in deciding which option is most technically sound. Neither of the disputants (i.e., the NASDO and the funding party which invokes the dispute resolution process) will be permitted to participate in any decision to reject the mediation panel's recommendation.

(b) The tri-partite panel's recommendation(s) must be included in the final industry-wide standard or industry-wide generic requirement, unless three-fourths of the funding parties who vote decide within thirty (30) days of the filing of the dispute to reject the recommendation and accept one of the options specified in paragraphs (a)(5) (i) through (v) of this section. Each funding party shall have one vote.

(c) All costs sustained by the tri-partite panel will be incorporated into
the cost of producing the industry-wide standard or industry-wide generic requirement.

§ 64.1704 Frivolous disputes/penalties.

(a) No person shall willfully refer a dispute to the dispute resolution process under this subpart unless to the best of his knowledge, information and belief there is good ground to support the dispute and the dispute is not interposed for delay.

(b) Any person who fails to comply with the requirements in paragraph (a) of this section, may be subject to forfeiture pursuant to section 503(b) of the Communications Act, 47 U.S.C. 503(b).

Subpart R—Geographic Rate Averaging and Rate Integration

AUTHORITY: 47 U.S.C. §§ 151, 154(i), 201-205, 214(e), 215 and 254(g).

§ 64.1801 Geographic rate averaging and rate integration.

(a) The rates charged by providers of interexchange telecommunications services to subscribers in rural and high-cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas.

(b) A provider of interstate interexchange telecommunications services shall provide such services to its subscribers in each U.S. state at rates no higher than the rates charged to its subscribers in any other state.

[61 FR 42564, Aug. 16, 1996]

Subpart S—Nondominant Interexchange Carrier Certifications Regarding Geographic Rate Averaging and Rate Integration Requirements

§ 64.1900 Nondominant interexchange carrier certifications regarding geographic rate averaging and rate integration requirements.

(a) A nondominant provider of interexchange telecommunications services, which provides detariffed interstate, domestic, interexchange services, shall file with the Commission, on an annual basis, a certification that it is providing such services in compliance with its geographic rate averaging and rate integration obligations pursuant to section 254(g) of the Communications Act of 1934, as amended.

(b) The certification filed pursuant to paragraph (a) of this section shall be signed by an officer of the company under oath.

[61 FR 59366, Nov. 22, 1996]

Subpart T—Separate Affiliate Requirements for Incumbent Independent Local Exchange Carriers That Provide In-Region, Interstate Domestic Interexchange Services or In-Region International Interexchange Services

SOURCE: 62 FR 36017, July 3, 1997, unless otherwise noted.

§ 64.1901 Basis and purpose.

(a) Basis. These rules are issued pursuant to the Communications Act of 1934, as amended.

(b) Purpose. The purpose of these rules is to regulate the provision of in-region, interstate, domestic, interexchange services and in-region international interexchange services by incumbent independent local exchange carriers.

§ 64.1902 Terms and definitions.

Terms used in this part have the following meanings:

Books of Account. Books of account refer to the financial accounting system a company uses to record, in monetary terms the basic transactions of a company. These books of account reflect the company's assets, liabilities, and equity, and the revenues and expenses from operations. Each company has its own separate books of account.

Incumbent Independent Local Exchange Carrier (Incumbent Independent LEC). The term incumbent independent local exchange carrier means, with respect to an area, the independent local exchange carrier that:

(1) On February 8, 1996, provided telephone exchange service in such area; and
§ 64.1903 Obligations of all incumbent independent local exchange carriers.

(a) Except as provided in paragraph (c) of this section, an incumbent independent LEC providing in-region, interstate, interexchange services or in-region international interexchange services shall provide such services through an affiliate that satisfies the following requirements:

1. The affiliate shall maintain separate books of account from its affiliated exchange companies. Nothing in this section requires the affiliate to maintain separate books of account that comply with Part 32 of this title;

2. The affiliate shall not jointly own transmission or switching facilities with its affiliated exchange companies. Nothing in this section prohibits the affiliate from sharing personnel or other resources or assets with an affiliated exchange company;

3. The affiliate shall acquire any services from its affiliated exchange companies for which the affiliated exchange companies are required to file a tariff at tariffed rates, terms, and conditions. Nothing in this section shall prohibit the affiliate from acquiring any unbundled network elements or exchange services for the provision of a telecommunications service from its affiliated exchange companies, subject to the same terms and conditions as provided in an agreement approved under section 252 of the Communications Act of 1934, as amended.

(b) The affiliate required in paragraph (a) of this section shall be a separate legal entity from its affiliated exchange companies. The affiliate may be staffed by personnel of its affiliated exchange companies, housed in existing offices of its affiliated exchange companies, and use its affiliated exchange companies' marketing and other services, subject to paragraph (a)(3) of this section.

(c) An incumbent independent LEC that is providing in-region, interstate, domestic interexchange services or in-region international interexchange services prior to April 18, 1997, but is not providing such services through an affiliate that satisfies paragraph (a) of this section as of April 18, 1997, shall comply with the requirements of this section no later than April 18, 1998.

§ 64.1903 Obligations of all incumbent independent local exchange carriers.

(2) (i) On February 8, 1996, was deemed to be a member of the exchange carrier association pursuant to § 69.601(b) of this title; or

(ii) is a person or entity that, on or after February 8, 1996, became a successor or assign of a member described in paragraph (2) (i) of this definition. The Commission may also, by rule, treat an independent local exchange carrier as an incumbent independent local exchange carrier pursuant to section 251(h)(2) of the Communications Act of 1934, as amended.

Independent Local Exchange Carrier (Independent LEC). Independent local exchange carriers are local exchange carriers, including GTE, other than the BOCs.

Independent Local Exchange Carrier Affiliate (Independent LEC Affiliate). An independent local exchange carrier affiliate is a carrier that is owned (in whole or in part) or controlled by, or under common ownership (in whole or in part) or control with, an independent local exchange carrier.

In-Region Service. In-region service means telecommunications service originating in an independent local exchange carrier's local service areas or 800 service, private line service, or their equivalents that:

1. Terminate in the independent LEC's local exchange areas; and

2. Allow the called party to determine the interexchange carrier, even if the service originates outside the independent LEC's local exchange areas.

Local Exchange Carrier. The term local exchange carrier means any person that is engaged in the provision of telephone exchange service or exchange access. Such term does not include a person insofar as such person is engaged in the provision of a commercial mobile service under section 332(c), except to the extent that the Commission finds that such service should be included in the definition of that term.
APPENDIX A TO PART 64—TELECOMMUNICATIONS SERVICE PRIORITY (TSP) SYSTEM FOR NATIONAL SECURITY EMERGENCY PREPAREDNESS (NSEP)

1. Purpose and Authority
   a. This appendix establishes policies and procedures and assigns responsibilities for the National Security Emergency Preparedness (NSEP) Telecommunications Service Priority (TSP) System. The NSEP TSP System authorizes priority treatment to certain domestic telecommunications services (including portions of U.S. international telecommunications services provided by U.S. service vendors) for which provisioning or restoration priority (RP) levels are requested, assigned, and approved in accordance with this appendix.

   b. This appendix is issued pursuant to sections 1, 4(l), 201 through 205 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201 through 205 and 303(r). These sections grant to the Federal Communications Commission (FCC) the authority over the assignment and approval of priorities for provisioning and restoration of common carrier-provided telecommunications services. Under section 706 of the Communications Act, this authority may be superseded, and expanded to include non-common carrier telecommunication services, by the war emergency powers of the President of the United States. This appendix provides the Commission’s Order to telecommunication service vendors and users to comply with policies and procedures establishing the NSEP TSP System, until such policies and procedures are superseded by the President’s war emergency powers. This appendix is intended to be read in conjunction with regulations and procedures that the Executive Office of the President issues (1) to implement responsibilities assigned in section 6(b) of this appendix, or (2) for use in the event this appendix is superseded by the President’s war emergency powers.

   c. Together, this appendix and the regulations and procedures issued by the Executive Office of the President establish one uniform system of priorities for provisioning and restoration of NSEP telecommunication services both before and after invocation of the President’s war emergency powers. In order that government and industry resources may be used effectively under all conditions, a single set of rules, regulations, and procedures is necessary, and they must be applied on a day-to-day basis to all NSEP services so that the priorities they establish can be implemented at once when the need arises.

   a. In sections 2(a)(2) and 2(b)(2) of Executive Order No. 12472, “Assignment of National Security and Emergency Preparedness Telecommunications Functions” April 3, 1984 (49 FR 13471 (1984)), the President assigned to the Director, Office of Science and Technology Policy, certain NSEP telecommunication resource management responsibilities. The term “Executive Office of the President” as used in this appendix refers to the official or organization designated by the President to act on his behalf.

2. Applicability and Revocation
   a. This appendix applies to NSEP telecommunications services:

      (1) For which initial or revised priority level assignments are requested pursuant to section 8 of this appendix.

      (2) Which were assigned restoration priorities under the provision of FCC Order 80-581;

      (3) For which initial or revised priority level assignments pursuant to section 10 of this appendix. (Such services will retain assigned restoration priorities until a resubmission for a TSP assignment is completed or until the existing RP rules are terminated.)

   b. FCC Order 80-581 will continue to apply to all other intercity, private line circuits assigned restoration priorities thereunder until the fully operating capability date of this appendix, 30 months after the initial operating capability date referred to in subsection d of this section.

   c. In addition, FCC Order, “Precedence System for Public Correspondence Services Provided by the Communications Common Carriers” (34 FR 17292 (1969); 47 CFR part 64, appendix B), is revoked as of the effective date of this appendix.

   d. The initial operating capability (IOC) date for NSEP TSP will be nine months after release in the Federal Register of the FCC’s order following review of procedures submitted by the Executive Office of the President. On this IOC date requests for priority assignments generally will be accepted only by the Executive Office of the President.

3. Definitions
   a. Assignment means the designation of priority level(s) for a defined NSEP telecommunications service for a specified time period.

   b. Audit means a quality assurance review in response to identified problems.

   c. Government refers to the Federal government or any foreign, state, county, municipal or other local government agency or organization. Specific qualifications will be supplied whenever reference to a particular level of government is intended (e.g., “Federal government”, “state government”). “Foreign government” means any sovereign

emergency Preparedness Telecommunications

President in Executive Order No. 12472, ``As-

cmunity, including foreign diplo-

mation or associations of governments (e.g., North Atlantic Treaty Organization (NATO), Southeast Asian Treaty Organization (SEATO), Organization of American States (OAS), and government agencies or organiza-

tional and International

North Atlantic Treaty Organization (NATO), Organization of American States (OAS), and government agencies or organiza-

tion (e.g., Pan American Union, Inter-

National Postal Union, and International

Monetary Fund)).

d. National Communications System (NCS) re-

fers to that organization established by the

President in Executive Order No. 12472, “As-

ignment of National Security and Emer-

gency Preparedness Telecommunications


e. National Coordinating Center (NCC) refers
to the joint telecommunications industry-

Feder

ever a telecommunication service before others

isnt in the initiation, coordination, restora-

ation, and reconstitution of NSEP tele-

communication services or facilities.


(NSEP) telecommunications services, or

“NSEP services,” means telecommunication

services which are used to maintain a state

of readiness or to respond to and manage any

event or crisis (local, national, or inter-

tional), which causes or could cause injury

or harm to the population, damage to or loss

of property, or degrades or threatens the

NSEP posture of the United States. These

services fall into two specific categories, Em-

ergency NSEP and Essential NSEP, and are

assigned priority level(s) pursuant to section

9 of this appendix.

g. NSEP treatment refers to the provisioning

of a telecommunication service before others

based on the priority level assignment to an

NSEP service. This includes any extension

of an existing priority level assignment to an

expanded NSEP service.

h. Priority action means assignment, revi-

sion, revocation, or revalidation by the Exec-

utive Office of the President of the priority

level associated with an NSEP telecommu-

nications service.

i. Provisioning means the act of supplying

telecommunications service to a user, in-

cluding all associated transmission, wiring

and equipment. As used herein, “provision-

ing” and “initiation” are synonymous and

include altering the state of an existing pri-

ority service or capability.

j. Private NSEP telecommunications services

include non-common carrier telecommunications services including private line, vir-

tual private line, and private switched net-

work services.

k. Restoration means the repair or returning

to service of one or more telecommunica-

tion services that have experienced a serv-

ice outage or are unusable for any reason, in-

cluding a damaged or impaired telecommu-

nications facility. Such repair or returning to

service may be done by patching, rerouting,

substitution of component parts or pathways,

and other means, as determined neces-

sary by a service vendor.

l. Revalidation means the rejustification by

a service user of a priority level assignment.

This may result in extension by the Execu-

tive Office of the President of the expiration

date associated with the priority level as-

signment.

m. Revision means the change of priority

level assignment for an NSEP telecommuni-

cations service. This includes any extension

of an existing priority level assignment to an

expanded NSEP service.

n. Service identification refers to the infor-

mation uniquely identifying an NSEP tele-

communications service to the service ven-

dor and/or service user.

o. Service vendor refers to any person, asso-

ciation, partnership, corporation, organiza-

tion, or other entity (including common car-

riers and government organizations) that of-

fers to supply any telecommunications equip-

ment, facilities, or services (including cus-

tomer premises equipment and wiring) or

combination thereof. The term includes re-

sale carriers, prime contractors, subcontrac-

tors, and interconnecting carriers.

<table>
<thead>
<tr>
<th>Priority action</th>
<th>Reference</th>
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<tbody>
<tr>
<td>Assignment</td>
<td>p. 105</td>
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<td>Revision</td>
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<tr>
<td>Revalidation</td>
<td>p. 105</td>
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<tr>
<td>Restoration</td>
<td>p. 105</td>
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</table>
v. Spare circuits or services refers to those not being used or contracted for by any customer.

w. Telecommunication services means the transmission, emission, or reception of signals, signs, writing, images, sounds, or intelligence of any nature, by wire, cable, satellite, fiber optics, laser, radio, visual or other electronic, electric, electromagnetic, or acoustically coupled means, or any combination thereof. The term can include necessary telecommunication facilities.

x. Telecommunications Service Priority (TSP) system user refers to any individual, organization, or activity that interacts with the NSEP TSP System.

4. Scope

a. Domestic NSEP services. The NSEP TSP System and procedures established by this appendix authorize priority treatment to the following domestic telecommunication services (including portions of U.S. international telecommunication services provided by U.S. vendors) for which provisioning or restoration priority levels are requested, assigned, and approved in accordance with this appendix:

(1) Common carrier services which are:
   (a) Interstate or foreign telecommunication services,
   (b) Intrastate telecommunication services inseparable from interstate or foreign telecommunication services, and intrastate telecommunication services to which priority levels are assigned pursuant to section 9 of this appendix.

NOTE: Initially, the NSEP TSP System’s applicability to public switched services is limited to (a) provisioning of such services (e.g., business, centrex, cellular, foreign exchange, Wide Area Telephone Service (WATS) and other services that the selected vendor is able to provision) and (b) restoration of services that the selected vendor is able to restore.

(2) Services which are provided by government and/or non-common carriers and are interconnected to common carrier services assigned a priority level pursuant to section 9 of this appendix.

b. Control services and orderwires. The NSEP TSP System and procedures established by this appendix are not applicable to authorize priority treatment to control services or orderwires owned by a service vendor and needed for provisioning, restoration, or maintenance of other services owned by that service vendor. Such control services and orderwires shall have priority provisioning and restoration over all other telecommunication services (including NSEP services) and shall be exempt from preemption. However, the NSEP TSP System and procedures established by this appendix are applicable to control services or orderwires leased by a service vendor.

c. Other services. The NSEP TSP System may apply, at the discretion of and upon special arrangements by the NSEP TSP System users involved, to authorize priority treatment to the following telecommunication services:

(1) Government or non-common carrier services which are not connected to common carrier provided services assigned a priority level pursuant to section 9 of this appendix.

(2) Portions of U.S. international services which are provided by foreign correspondents. (U.S. telecommunication service vendors are encouraged to ensure that relevant operating arrangements are consistent to the maximum extent practicable with the NSEP TSP System. If such arrangements do not exist, U.S. telecommunication service vendors should handle service provisioning and/or restoration in accordance with any system acceptable to their foreign correspondents which comes closest to meeting the procedures established in this appendix.)

5. Policy

The NSEP TSP System is the regulatory, administrative, and operational system authorizing and providing for priority treatment, i.e., provisioning and restoration, of NSEP telecommunication services. As such, it establishes the framework for telecommunication service vendors to provision, restore, or otherwise act on a priority basis to ensure effective NSEP telecommunication services. The NSEP TSP System allows the assignment of priority levels to any NSEP service across three time periods, or stress conditions: Peacetime/Crisis/Mobilizations, Attack/War, and Post-Attack/Recovery. Although priority levels normally will be assigned by the Executive Office of the President and retained by service vendors only for the current time period, they may be reassigned for the other two time periods at the request of service users who are able to identify and justify in advance, their wartime or post-attack NSEP telecommunication requirements. Absent such preassigned priority levels for the Attack/War and Post-Attack/Recovery periods, priority level assignments for the Peacetime/Crisis/Mobilization period will remain in effect. At all times, priority level assignments will be subject to revision by the FCC or (on an interim basis) the Executive Office of the President, based upon changing NSEP needs. No other system of telecommunication service priorities which conflicts with the NSEP TSP System is authorized.

6. Responsibilities

a. The FCC will:

(1) Provide regulatory oversight of implementation of the NSEP TSP System.
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(2) Enforce NSEP TSP System rules and regulations, which are contained in this appendix.

(3) Act as final authority for approval, revision, and disapproval of priority actions by the Executive Office of the President and adjudicate disputes regarding either priority actions or denials of requests for priority actions. The Executive Office of the President, until superseded by the President’s war emergency powers under section 706 of the Communications Act.

(4) Function (on a discretionary basis) as a sponsoring Federal organization. (See section 6(c) below.)

b. The Executive Office of the President will:

(1) During exercise of the President’s war emergency powers under section 706 of the Communications Act, act as the final approval authority for priority actions or denials of requests for priority actions, adjudicating any disputes.

(2) Until the exercise of the President’s war emergency powers, administer the NSEP TSP System which includes:

(a) Receiving, processing, and evaluating requests for priority actions from service users, or sponsoring Federal government organizations on behalf of service users (e.g., Department of State or Defense on behalf of foreign governments, Federal Emergency Management Agency on behalf of state and local governments, and any Federal organization on behalf of private industry entities). Action on such requests will be completed within 30 days of receipt.

(b) Assigning, revising, revalidating, or revoking priority levels as necessary or upon request of service users concerned, and denying requests for priority actions, adjudicating any disputes. Action on such requests will be completed within 30 days of receipt.

(c) Maintaining data on priority level assignments.

(d) Periodically forwarding to the FCC lists of priority actions by the Executive Office of the President for review and approval.

(e) Periodically initiating reconciliation.

(f) Testing and evaluating the NSEP TSP System for effectiveness.

(g) Conducting audits as necessary. Any Telecommunications Service Priority (TSP) System user may request the Executive Office of the President to conduct an audit.

(h) Issuing, subject to review by the FCC, regulations and procedures supplemental to and consistent with this appendix regarding operation and use of the NSEP TSP System.

(i) Serving as a centralized point-of-contact for collecting and disseminating to all interested parties (consistent with requirements for treatment of classified and proprietary material) information concerning use and abuse of the NSEP TSP System.

(j) Establishing and assisting a TSP System Oversight Committee to identify and review any problems developing in the system and recommend actions to correct them or prevent recurrence. In addition to representatives of the Executive Office of the President, representatives from private industry (including telecommunication service vendors), state and local governments, the FCC, and other organizations may be appointed to that Committee.

(k) Reporting at least quarterly to the FCC and TSP System Oversight Committee, together with any recommendations for action, the operational status of and trends in the NSEP TSP System, including:

(i) Numbers of requests processed for the various priority actions, and the priority levels assigned.

(ii) Relative percentages of services assigned to each priority level under each NSEP category and subcategory.

(iii) Any apparent serious misassignment or abuse of priority level assignments.

(iv) Any existing or developing problem.

(l) Submitting semi-annually to the FCC and TSP System Oversight Committee a summary report identifying the time and event associated with each invocation of NSEP treatment under section 9(c) of this appendix, whether the NSEP service requirement was adequately handled, and whether any additional charges were incurred. These reports will be due by April 30th for the preceding July through December and by October 31 for the preceding January through June time periods.

(m) All reports submitted to the FCC should be directed to Chief, Domestic Services Branch, Common Carrier Bureau, Washington, DC 20554.

(3) Function (on a discretionary basis) as a sponsoring Federal organization. (See section 6(c) below.)

c. Sponsoring Federal organizations will:

(1) Review and decide whether to sponsor foreign, state, and local government and private industry (including telecommunication service vendors) requests for priority actions. Federal organizations will forward sponsored requests with recommendations for disposition to the Executive Office of the President. Recommendations will be based on the categories and criteria in section 12 of this appendix.

(2) Forward notification of priority actions or denials of requests for priority actions from the Executive Office of the President to the requesting foreign, state, and local government and private industry entities.

(3) Cooperate with the Executive Office of the President during reconciliation, revalidation, and audits.

(4) Comply with any regulations and procedures supplemental to and consistent with this appendix which are issued by the Executive Office of the President.
d. Service users will:
(1) Identify services requiring priority level assignments and request and justify priority level assignments in accordance with this appendix and any supplemental regulations and procedures issued by the Executive Office of the President that are consistent with this appendix.
(2) Request and justify revalidation of all priority level assignments at least every three years.
(3) For services assigned priority levels, ensure (through contractual means or otherwise) availability of customer premises equipment and wiring necessary for end-to-end operation by the service due date, and continued operation; and, for such services in the Emergency NSEP category, by the time that vendors are prepared to provide the services. Additionally, designate the organization responsible for the service on an end-to-end basis.
(4) Be prepared to accept services assigned priority levels by the service due dates or, for services in the Emergency NSEP category, when they are available.
(5) Pay vendors any authorized costs associated with services that are assigned priority levels.
(6) Report to vendors any failed or unusable services that are assigned priority levels.
(7) Designate a 24-hour point-of-contact for matters concerning each request for priority action and apprise the Executive Office of the President thereof.
(8) Upon termination of services that are assigned priority levels, or circumstances warranting revisions in priority level assignment (e.g., expansion of service), request and justify revocation or revision.
(9) When NSEP treatment is invoked under section 9(c) of this appendix, within 50 days following provisioning of the service involved, forward to the National Coordinating Center (see section 3(e) of this appendix) complete information identifying the time and event associated with the invocation and regarding whether the NSEP service requirement was adequately handled and whether any additional charges were incurred.
(10) Cooperate with the Executive Office of the President during reconciliation, revalidation, and audits.
(11) Comply with any regulations and procedures supplemental to and consistent with this appendix that are issued by the Executive Office of the President.

e. Non-federal service users, in addition to responsibilities prescribed above in section 6(d), will obtain a sponsoring Federal organization for all requests for priority actions. If unable to find a sponsoring Federal organization, a non-federal service user may submit its request, which must include documentation of attempts made to obtain a sponsor and reasons given by the sponsor for its refusal, directly to the Executive Office of the President.

f. Service vendors will:
(1) When NSEP treatment is invoked by service users, provision NSEP telecommunications services before non-NSEP services, based on priority level assignments made by the Executive Office of the President. Provisioning will require service vendors to:
   (a) Allocate resources to ensure best efforts to provide NSEP services by the time required. When limited resources constrain response capability, vendors will address conflicts for resources by:
      (i) Providing NSEP services in order of provisioning priority level assignment (i.e., "E", "1", "2", "3", "4", or "5") that have the same provisioning priority level in order of service due dates; and
      (ii) Providing Emergency NSEP services (i.e., those assigned provisioning priority level "E") in order of receipt of the service requests;
   (iii) Providing Essential NSEP services (i.e., those assigned priority levels "1", "2", "3", "4", or "5") by:
      (i) Providing NSEP services in order of provisioning priority level assignment (i.e., "E", "1", "2", "3", "4", or "5") that have the same provisioning priority level in order of service due dates; and
      (ii) Referring any conflicts which cannot be resolved (to the mutual satisfaction of service vendors and users) to the Executive Office of the President for resolution.
   (b) Comply with NSEP service requests by:
      (i) Allocating resources necessary to provide Emergency NSEP services as soon as possible, dispatching outside normal business hours when necessary;
      (ii) Ensuring best efforts to meet requested service dates for Essential NSEP services, negotiating a mutually (customer and vendor) acceptable service due date when the requested service due date cannot be met; and
      (iii) Seeking National Coordinating Center (NCC) assistance as authorized under the NCC Charter (see section 1.3, NCC Charter, dated October 9, 1985).
(2) Restore NSEP telecommunications services which suffer outage, or are reported as unusable or otherwise in need of restoration, before non-NSEP services, based on restoration priority level assignments. (Note: For broadband or multiple service facilities, restoration is permitted even though it might result in restoration of services assigned no or lower priority levels along with, or sometimes ahead of, some higher priority level services.) Restoration will require service vendors to restore NSEP services in order of restoration priority level assignment (i.e., "1", "2", "3", "4", or "5") by:
   (a) Allocating available resources to restore NSEP services as quickly as practicable, dispatching outside normal business hours to restore services assigned priority levels "1", "2", and "3" when necessary, and services assigned priority level "4" and "5" when the next business day is more than 24 hours away;
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(b) Restoring NSEP services assigned the same restoration priority level based upon which can be first restored. (However, restoration actions in progress should not normally be interrupted to restore another NSEP service assigned the same restoration priority level);  
(c) Patching and/or rerouting NSEP services assigned restoration priority levels from "1" through "5," when use of patching and/or rerouting will hasten restoration;  
(d) Seeking National Coordinating Center (NCC) assistance authorized under the NCC Charter; and  
(e) Referring any conflicts which cannot be resolved (to the mutual satisfaction of service vendors and users) to the Executive Office of the President for resolution.  
(3) Respond to provisioning requests of customers and/other service vendors, and to restoration priority level assignments when an NSEP service suffers an outage or is reported as unusable, by:  
(a) Ensuring that vendor personnel understand their responsibilities to handle NSEP provisioning requests and to restore NSEP service; and  
(b) Providing a 24-hour point-of-contact for receiving provisioning requests for Emergency NSEP services and reports of NSEP service outages or unusability.  
(c) Seek verification from an authorized entity if legitimacy of a priority level assignment or provisioning request for an NSEP service is in doubt. However, processing of Emergency NSEP service requests will not be delayed for verification purposes.  
(d) Cooperate with other service vendors involved in provisioning or restoring a portion of an NSEP service by honoring provisioning or restoration priority level assignments, or requests for assistance to provision or restore NSEP services, as detailed in sections 6(f)(1), (2), and (3) above.  
(e) Keep verification from an authorized entity if legitimacy of a priority level assignment or provisioning request for an NSEP service is in doubt. However, processing of Emergency NSEP service requests will not be delayed for verification purposes.  
(f) Cooperate with other service vendors involved in provisioning or restoring a portion of an NSEP service by honoring provisioning or restoration priority level assignments, or requests for assistance to provision or restore NSEP services, as detailed in sections 6(f)(1), (2), and (3) above.  
(4) Provide a 24-hour point-of-contact for receiving provisioning requests for Emergency NSEP services and reports of NSEP service outages or unusability.  
(5) All service vendors, including resale carriers, are required to ensure that service vendors supplying underlying facilities are provided information necessary to implement priority treatment of facilities that support NSEP services.  
(6) Prempt, when necessary, existing services to provide an NSEP service as authorized in section 7 of this appendix.  
(7) Assist in ensuring that priority level assignments of NSEP services are accurately identified "end-to-end" by:  
(a) Seeking verification from an authorized Federal government entity if the legitimacy of the restoration priority level assignment is in doubt;  
(b) Providing to subcontractors and/or interconnecting carriers the restoration priority level assigned to a service;  
(c) Supplying, to the Executive Office of the President, when acting as a prime contractor to a service user, confirmation information regarding NSEP service completion for that portion of the service they have contracted to supply;  
(d) Supplying, to the Executive Office of the President, NSEP service information for the purpose of reconciliation.  
(e) Cooperating with the Executive Office of the President during reconciliation.  
(7) Periodically initiating reconciliation with their subcontractors and arranging for subsequent subcontractors to cooperate in the reconciliation process.  
(8) Receive compensation for costs authorized through tariffs or contracts by:  
(a) Provisions contained in properly filed state or Federal tariffs; or  
(b) Provisions of properly negotiated contracts where the carrier is not required to file tariffs.  
(9) Provision or restore only the portions of services for which they have agreed to be responsible (i.e., have contracted to supply), unless the President's war emergency powers under section 706 of the Communications Act are in effect.  
(10) Cooperate with the Executive Office of the President during audits.  
(11) Comply with any regulations or procedures supplemental to and consistent with this appendix that are issued by the Executive Office of the President and reviewed by the FCC.  
(12) Insure that at all times a reasonable number of public switched network services are made available for public use.  
(13) Not disclose information concerning NSEP services they provide to those not having a need-to-know or might use the information for competitive advantage.  

7. Preemption of Existing Services

When necessary to provision or restore NSEP services, service vendors may preempt existing services they provide as specified below. "User" as used in this Section means any user of a telecommunications service, including both NSEP and non-NSEP services. Prior consent by a preempted user is not required.  
(a) The sequence in which existing services may be preempted to provision NSEP services assigned a provisioning priority level "E" or restore NSEP services assigned a restoration priority level from "1" through "5":  
(1) Non-NSEP services: If suitable spare services are not available, then, based on the considerations in this appendix and the service vendor's best judgment, non-NSEP services will be preempted. After ensuring a sufficient number of public switched services are available for public use, based on the service vendor's best judgment, such services may be used to satisfy a requirement for provisioning or restoring NSEP services.  
(2) NSEP services: If no suitable spare or non-NSEP services are available, then existing NSEP services may be preempted to provision or restore NSEP services with higher
priority level assignments. When this is necessary, NSEP services will be selected for preemption in the inverse order of priority level assignment.

(3) Service vendors who are preempting services will ensure their best effort to notify the service user of the preempted service and state the reason for and estimated duration of the preemption.

b. Service vendors may, based on their best judgment, determine the sequence in which existing services may be preempted to provision NSEP services assigned a provisioning priority of "1" through "5". Preemption is not subject to the consent of the user whose service will be preempted.

8. Requests for Priority Assignments.

All service users are required to submit requests for priority actions through the Executive Office of the President in the format and following the procedures prescribed by that Office.

a. Assignment and approval of priority levels.

Priority level assignments will be based upon the categories and criteria specified in section 12 of this appendix. A priority level assignment made by the Executive Office of the President will serve as that Office's recommendation to the FCC. Until the President's war emergency powers are invoked, priority level assignments must be approved by the FCC. However, service vendors are ordered to implement any priority level assignments that are pending FCC approval.

After invocation of the President's war emergency powers, these requirements may be superseded by other procedures issued by the Executive Office of the President.

b. Use of Priority Level Assignments.

(1) All provisioning and restoration priority level assignments for services in the Emergency NSEP category will be included in initial service orders to vendors. Provisioning priority level assignments for Essential NSEP services, however, will not usually be included in initial service orders to vendors. NSEP treatment for Essential NSEP services will be invoked and provisioning priority level assignments will be conveyed to service vendors only if the vendors cannot meet needed service dates through the normal provisioning process.

(2) Any revision or revocation of either provisioning or restoration priority level assignments will also be transmitted to vendors.

(3) Service vendors shall accept priority levels and/or revisions only after assignment by the Executive Office of the President.

NOTE: Service vendors acting as prime contractors will accept assigned NSEP priority levels only when they are accompanied by the Executive Office of the President designated service identification, i.e., TSP Authorization Code. However, service vendors are authorized to accept priority levels and/or revisions from users and contracting activities before assignment by the Executive Office of the President when service vendor, user, and contracting activities are unable to communicate with either the Executive Office of the President or the FCC. Processing of Emergency NSEP service requests will not be delayed for verification purposes.

c. Invocation of NSEP treatment.

To invoke NSEP treatment for the priority provisioning of an NSEP telecommunications service, an authorized Federal official either within, or acting on behalf of, the service user's organization must make a written or oral declaration to concerned service vendor(s) and the Executive Office of the President that NSEP treatment is being invoked. Authorized Federal officials include the head or director of a Federal agency, commander of a unified/specified military command, chief of a military service, or commander of a major military command; the delegates of any of the foregoing; or any other officials as specified in supplemental regulations or procedures issued by the Executive Office of the President. The authority to invoke NSEP treatment may be delegated only to a general or flag officer of a military service, civilian employee of equivalent grade (e.g., Senior Executive Service member), Federal Coordinating Officer or Federal Emergency Communications Coordinator/Manager, or any other such officials specified in supplemental regulations or procedures issued by the Executive Office of the President. Delegates must be designated as such in writing, and written or oral invocations must be accomplished, in accordance with supplemental regulations or procedures issued by the Executive Office of the President.


All circuits assigned restoration priorities must be reviewed for eligibility for initial restoration priority level assignment under the provisions of this appendix. Circuits currently assigned restoration priorities, and for which restoration priority level assignments are requested under section 8 of this appendix, will be resubmitted to the Executive Office of the President. To resubmit such circuits, service users will comply with applicable provisions of section 6(d) of this appendix.

11. Appeal.

Service users or sponsoring Federal organizations may appeal any priority level assignment, denial, revision, revocation, approval, or disapproval to the Executive Office of the President within 30 days of notification to the service user. The appellant must use the
form or format required by the Executive Office of the President and must serve the FCC with a copy of its appeal. The Executive Office of the President will act on the appeal within 90 days of receipt. Service users and sponsoring Federal organizations may only then appeal directly to the FCC. Such FCC appeal must be filed within 30 days of notification of the Executive Office of the President's decision on appeal. Additionally, the Executive Office of the President may appeal any FCC revisions, approvals, or disapprovals to the FCC. All appeals to the FCC must be submitted using the form or format required. The party filing its appeal with the FCC must include factual details supporting its claim and must serve a copy on the Executive Office of the President and any other party directly involved. Such party may file a response within 20 days, and replies may be filed within 10 days thereafter. The Commission will not issue public notices of such submissions. The Commission will provide notice of its decision to the parties of record. Any appeals to the Executive Office of the President that include a claim of new information that has not been presented before for consideration may be submitted at any time.

12. NSEP TSP System Categories, Criteria, and Priority Levels

a. General. NSEP TSP System categories and criteria, and permissible priority level assignments, are defined and explained below.

(1) The Essential NSEP category has four subcategories: National Security Leadership; National Security Posture and U.S. Population Attack Warning; Public Health, Safety, and Maintenance of Law and Order; and Public Welfare and Maintenance of National Economic Posture. Each subcategory has its own criteria. Criteria are also shown for the Emergency NSEP category, which has no sub-categories.

(2) Priority levels of "1," "2," "3," "4," and "5" may be assigned for provisioning and/or restoration of Essential NSEP telecommunications services. However, for Emergency NSEP telecommunications services, a priority level "E" is assigned for provisioning. A restoration priority level from "1" through "5" may be assigned if an Emergency NSEP service also qualifies for such a restoration priority level under the Essential NSEP category.

(3) The NSEP TSP System allows the assignment of priority levels to any NSEP telecommunications service across three time periods, or stress conditions: Peace-time/Crisis/Mobilization, Attack/War, and Post-Attack/Recovery. Priority levels will normally be assigned only for the first time period. These assigned priority levels will apply through the onset of any attack, but it is expected that they would later be revised by surviving authorized telecommunication resource managers within the Executive Office of the President based upon specific facts and circumstances arising during the Attack/War and Post-Attack/Recovery time periods.

(4) Service users may, for their own internal use, assign subpriorities to their services assigned priority levels. Receipt of and response to any such subpriorities is optional for service vendors.

(5) The following paragraphs provide a detailed explanation of the categories, subcategories, criteria, and priority level assignments, beginning with the Emergency NSEP category.

b. Emergency NSEP. Telecommunications services in the Emergency NSEP category are those new services so critical as to be required to be provisioned at the earliest possible time, without regard to the costs of obtaining them.

(1) Criteria. To qualify under the Emergency NSEP category, the service must meet criteria directly supporting or resulting from at least one of the following NSEP functions:

(a) Federal government activity responding to a Presidentially declared disaster or emergency as defined in the Disaster Relief Act (42 U.S.C. 5122).

(b) State or local government activity responding to a Presidentially declared disaster or emergency.

(c) Response to a state of crisis declared by the National Command Authorities (e.g., exercise of Presidential war emergency powers under section 706 of the Communications Act.)

(d) Efforts to protect endangered U.S. personnel or property.

(e) Response to an enemy or terrorist action, civil disturbance, natural disaster, or any other unpredictable occurrence that has damaged facilities whose uninterrupted operation is critical to NSEP or the management of other ongoing crises.

(f) Certification by the head or director of a Federal agency, commander of a unified/specified command, chief of a military service, or commander of a major military command, that the telecommunications service is so critical to protection of life and property or to NSEP that it must be provided immediately.

(g) A request from an official authorized pursuant to the Foreign Intelligence Surveillance Act (50 U.S.C. 1801 et seq. and 18 U.S.C. 2511, 2518, 2519).

(2) Priority Level Assignment.

(a) Services qualifying under the Emergency NSEP category are assigned priority level "E" for provisioning.

(b) After 30 days, assignments of provisioning priority level "E" for Emergency NSEP services are automatically revoked unless extended for another 30-day period. A notice
of any such revocation will be sent to service vendors.

c. Essential NSEP. Telecommunication services in the Essential NSEP category are those required to be provisioned by due dates specified by service users, or restored promptly, normally without regard to associated overtime or expediting costs. They may be assigned priority level of "1," "2," "3," "4," or "5" for both provisioning and restoration, depending upon the nature and urgency of the supported function, the impact of lack of service or of service interruption upon the supported function, and, for priority access to public switched services, the user’s level of responsibility. Priority level assignments will be valid for no more than three years unless revalidated. To be categorized as Essential NSEP, a telecommunication service must qualify under one of the following NSEP categories: National Security Leadership; National Security Posture and U.S. Population Attack Warning; Public Health, Safety, and Maintenance of Law and Order; or Public Welfare and Maintenance of National Economic Posture. (NOTE.—Under emergency circumstances, Essential NSEP telecommunication services may be recategorized as Emergency NSEP and assigned a priority level "E" for provisioning.)

(i) National security leadership. This subcategory will be strictly limited to only those telecommunication services essential to national survival if nuclear attack threatens or occurs, and critical orderwire and control services necessary to ensure the rapid and efficient provisioning or restoration of other NSEP telecommunication services. Services in this subcategory are those for which a service interruption of even a few minutes would have serious adverse impact upon the supported NSEP function.

(a) Criteria. To qualify under this subcategory, a service must be at least one of the following:

(i) Critical orderwire, or control service, supporting other NSEP functions.

(ii) Presidential communications service critical to continuity of government and national leadership during crisis situations.

(iii) National Command Authority communications service for military command and control critical to national survival.

(iv) Intelligence communications service critical to warning of potentially catastrophic attack.

(v) Communications service supporting the conduct of diplomatic negotiations critical to arresting or limiting hostilities.

(b) Priority level assignment. Services under this subcategory will normally be assigned priority level "1" for provisioning and restoration during the Peace/Crisis/Mobilization time period.

(ii) Law enforcement.

(ii) Law enforcement.
(iii) Continuity of critical state and local government functions (other than support of the Federal government during and after national emergencies).

(v) Hospitals and distributions of medical supplies.

(vi) Critical logistic functions and public utility services.

(vi) Civil air traffic control.

(vii) Military assistance to civil authorities.

(xii) Defense and protection of critical industrial facilities.

(ix) Critical weather services.

(x) Transportation to accomplish the foregoing NSEP functions.

(b) Priority level assignment. Service under this subcategory will normally be assigned priority levels "3," "4," or "5" for providing and restoration during Peacetime/Crisis/Mobilization.

(d) Public welfare and maintenance of national economic posture. This subcategory covers the minimum number of telecommunication services necessary for maintaining the public welfare and national economic posture during any national or regional emergency. These services are those for which a service interruption ranging from a few minutes to one day would have serious adverse impact upon the supported NSEP function.

(a) Criteria. To qualify under this subcategory, a service must support at least one of the following NSEP functions:

(i) Distribution of food and other essential supplies.

(ii) Maintenance of national monetary, credit, and financial systems.

(iii) Maintenance of price, wage, rent, and salary stabilization, and consumer rationing programs.

(iv) Control of production and distribution of strategic materials and energy supplies.

(v) Prevention and control of environmental hazards or damage.

(vi) Transportation to accomplish the foregoing NSEP functions.

(b) Priority level assignment. Services under this subcategory will normally be assigned priority levels "3," "4," or "5" for providing and restoration during Peacetime/Crisis/Mobilization.

d. Limitations. Priority levels will be assigned only to the minimum number of telecommunication services required to support an NSEP function. Priority levels will not normally be assigned to backup services on a continuing basis, absent additional justification, e.g., a service user specifies a requirement for physically diverse routing or contracts for additional continuity-of-service features. The Executive Office of the President may also establish limitations upon the relative numbers of services which may be assigned any restoration priority level. These limitations will not take precedence over laws or executive orders. Such limitations shall not be exceeded absent waiver by the Executive Office of the President.

e. Non-NSEP services. Telecommunication services in the non-NSEP category will be those which do not meet the criteria for either Emergency NSEP or Essential NSEP.


PART 65—INTERSTATE RATE OF RETURN PRESCRIPTION PROCEDURES AND METHODOLOGIES

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