



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 36, 42, 54, 63, and 64

[WC Docket No. 15-33; FCC 17-112]

Modernizing Common Carrier Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) adopted a Report and Order that eliminates certain rules from which the Commission has granted unconditional forbearance for all carriers, and eliminates references to telegraph service from certain sections of the Commission's rules. The Report and Order updates our rules to remove outmoded regulations from the Code of Federal Regulations (CFR) that no longer reflect current requirements or technology. In so doing, we further our goals of reducing regulatory burdens, eliminating unnecessary rule provisions, and making the agency as efficient and effective as possible.

DATES: Effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Wireline Competition Bureau, Competition Policy Division, Alex Johns, at (202) 418-1167, alexis.johns@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (R&O) in WC Docket No. 15-33, adopted September 5, 2017 and released September 8, 2017. The full text of this document is available for public inspection during regular business hours in the FCC Reference Information Center,

Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. It is available on the Commission's Web site at

http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0908/FCC-17-112A1.pdf.

I. INTRODUCTION

1. In the R&O, we update our rules to remove outmoded regulations from the Code of Federal Regulations (CFR) that no longer reflect current requirements or technology. Specifically, we eliminate certain rules from which the Commission has granted unconditional forbearance for all carriers, and we eliminate references to telegraph service from certain sections of the Commission's rules. In so doing, we further our goals of reducing regulatory burdens, eliminating unnecessary rule provisions, and making the agency as efficient and effective as possible.

2. The R&O acts on a Notice of Proposed Rulemaking (NPRM) which sought comment on the modifications we adopt here. The NPRM followed (1) two orders adopted in 2013 that, in response to a petition filed by USTelecom, granted forbearance from 126 legacy wireline regulations; and (2) the Process Reform Report, a Commission staff report that recommended eliminating or streamlining rules that are no longer necessary due to marketplace or technology changes. No comments were filed in response to the NPRM.

II. DISCUSSION

A. Deleting Rules from Which the Commission Granted Forbearance in the 2013 USTelecom Forbearance Orders

3. In many instances in the 2013 USTelecom Forbearance Orders, the

Commission granted unconditional forbearance from a requirement, but did not alter the text of the codified rule or remove the rule from the CFR. Thus, the rules appear in the CFR even though the Commission has stated that it will forbear from applying such rules. Absent additional research, a carrier or consumer might mistakenly believe the regulations are still in effect. Therefore, deleting the rules identified below, for which the Commission has granted unconditional forbearance, clarifies carriers' regulatory obligations and ensures that the CFR accurately reflects the Commission's actions with respect to those rules.

4. Specifically, we delete the following CFR provisions from which the Commission has forborne: (1) sections 42.4, 42.5, and 42.7, which required carriers to preserve certain records; (2) section 64.1, which governed traffic damage claims for carriers engaged in radio-telegraph, wire-telegraph, or ocean-cable service; (3) section 64.301, which required carriers to provide communications services to foreign governments for international communications; (4) section 64.501, which governed telephone companies' obligations when recording telephone conversations; (5) section 64.804(c)-(g), which governed a carrier's recordkeeping and other obligations when it extended unsecured credit for communications services to candidates for federal office; and (6) section 64.5001(a)-(c)(2), and (c)(4), which imposed certain reporting and certification requirements on prepaid calling card providers.

B. Other Rules and Requirements Related to Telegraph Service

5. In light of the evolution of technology over many decades away from the use of telegraphs, we find that the references to telegraph service in the rules discussed below are unnecessary and should be deleted. We also grant forbearance from the

application of all exit regulation pursuant to section 214(a) of the Communications Act, as amended (the Act), to telegraph service.

6. Section 36.126 of the Separations Rules. Jurisdictional separations is the process by which incumbent local exchange carriers (LECs) apportion regulated costs between intrastate and interstate jurisdictions. As part of this process, section 36.126 identifies equipment that is considered “Circuit equipment—Category 4.” Section 36.126 lists examples of such equipment, including “telegraph system terminals,” “telegraph repeaters,” certain equipment used for “telegraph . . . testing,” and “telegraph carrier terminals.” To the extent that this equipment is still used, it remains subject to section 36.126, but we delete these terms from the examples provided throughout section 36.126 and we delete the reference to “telegraph grade private line services” in section 36.126(e)(3)(iii) to modernize our rules to better reflect today’s marketplace.

7. Section 54.706(a)(13) of the Universal Service Rules. Section 54.706(a) requires providers of interstate telecommunications services to contribute to the universal service fund, and subparagraph (a)(13) lists “telegraph” as an illustrative example of interstate telecommunications. No entities filing FCC Form 499-A in the past five years indicated that they provide telegraph service, and we are not aware of any interstate telegraph service providers today. Nor did any entities file comments or objections in response to this proposal in the NPRM. As discussed in the NPRM, telegraph service remains theoretically subject to universal service contributions, but it no longer warrants inclusion in the list of examples in section 54.706(a). We therefore, as proposed, delete the term “telegraph” in section 54.706(a) to update the rule to better reflect today’s marketplace.

8. Section 214(a) Discontinuance Requirement and Part 63 Discontinuance, Reduction, Outage and Impairment Rules. Under section 214(a) of the Act, common carriers must obtain Commission approval before they discontinue, reduce, or impair service to a community or part of a community. To the extent that any carriers still provide telegraph service or may do so in the future, we conclude that it is not necessary to subject them to a requirement to obtain Commission approval before discontinuing, reducing, or impairing such service. We thus grant such providers forbearance from the application of this statutory requirement to telegraph service. We also grant forbearance from the application of the Commission’s implementing rules under Part 63 to telegraph service, and we delete the references to “telegraph” from those rules.

9. Under section 10 of the Act, 47 U.S.C. 160(a), the Commission is required to forbear from any statutory provision or regulation if it determines that:

(1) enforcement of the regulation is not necessary to ensure that the telecommunications carrier’s charges, practices, classifications, or regulations are just, reasonable, and not unjustly or unreasonably discriminatory; (2) enforcement of the regulation is not necessary to protect consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest. In the NPRM, we stated our intent to exempt telegraph service from all exit approval requirements by exercising our forbearance authority. No commenters opposed our doing so. In light of market forces and technological advances, we conclude that forbearance from the application of the section 214(a) discontinuance requirement and the Commission’s implementing rules to telegraph service is warranted under the section 10 criteria. Telegraph service is obsolete, and we find that no purpose is served by requiring any remaining (or future)

providers of telegraph service to file discontinuance applications with the Commission. Nor is the public interest served by maintaining outdated and unnecessary requirements in our rules or by expending future agency resources on the processing of any such applications. To the extent that common-carrier telegraph service will ever be offered in the future, allowing unregulated discontinuance would promote competitive market conditions. Accordingly, we forbear from the application of section 214 exit regulation to telegraph service. Having thus forbore, we also take the opportunity to delete references to telegraph service from our discontinuance rules.

III. PROCEDURAL MATTERS

10. Paperwork Reduction Act. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

11. Final Regulatory Flexibility Certification. The Regulatory Flexibility Act of 1980, as amended (RFA), 5 U.S.C. 601–612, requires that an initial regulatory flexibility analysis be prepared for notice and comment rulemaking proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” See 5 U.S.C. 605(b). The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” See 5 U.S.C. 601(6). In addition, the term “small business” has the same meaning as the term

“small business concern” under the Small Business Act. See 5 U.S.C. 601(3). A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). See 15 U.S.C. 632.

12. This R&O eliminates certain rules from which the Commission granted unconditional forbearance for all carriers three years ago, and also eliminates references to telegraph service from certain sections of the Commission’s rules. As noted in this Report and Order, in the 2013 USTelecom Forbearance Orders, the Commission granted unconditional forbearance from certain requirements, but did not alter the text of the codified rule or remove the rule from the CFR. Thus, the rules appear in the CFR even though the Commission has stated that it will forbear from applying such rules. In addition, a number of wireline rule provisions continue to reference telegraph service, which appears to have a limited role, at best, in the marketplace.

13. The Commission is committed to removing unnecessary requirements to reflect new technologies and changing market conditions. Deleting these rules and references clarifies carriers’ (including small entities’) regulatory obligations and ensures that the CFR accurately reflects the Commission’s intended approach to those rules. Therefore, we certify that the requirements of this Report and Order will not have a significant economic impact on a substantial number of small entities.

14. Congressional Review Act. The Commission will send a copy of this R&O, including a copy of the Final Regulatory Flexibility Certification, in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A). In addition, the R&O and this final certification

will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the Federal Register, see 5 U.S.C. 605(b).

IV. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED, pursuant to sections 10, 201, 214, 218-221, 254, 403, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. 160, 201, 214, 218-221, 254, 403, 410, and section 401 of the Federal Election Campaign Act of 1971, as amended, 52 U.S.C. 30141, that this Report and Order IS ADOPTED.

16. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

17. IT IS FURTHER ORDERED that this Report and Order SHALL BE EFFECTIVE 30 days after publication of the text or a summary thereof in the Federal Register.

18. IT IS FURTHER ORDERED that the Commission's rules ARE HEREBY AMENDED, effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

19. IT IS FURTHER ORDERED that, should no petitions for reconsideration or petitions for judicial review be timely filed, WC Docket No. 15-33 shall be TERMINATED and its docket closed.

List of Subjects in 47 CFR Parts 36, 42, 54, 63 and 64

Communications common carriers, Radio, Reporting and recordkeeping requirements, Telecommunications, Telegraph, and Telephone.

FEDERAL COMMUNICATIONS COMMISSION

Katura Jackson,
Federal Register Liaison Officer.
Office of the Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 36, 42, 54, 63, and 64 as follows:

PART 36 — JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES

1. The authority citation for part 36 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i) and (j), 205, 221(c), 254, 303(r), 403, 410, and 1302 unless otherwise noted.

2. Section 36.126 is amended by revising paragraphs (a)(1) and (2), (a)(8), the first and second sentence of paragraph (b)(4), and paragraphs (d)(1), (e)(1) and (e)(3)(iii) to read as follows:

§ 36.126 Circuit equipment – Category 4.

(a) * * *

(1) Carrier telephone system terminals.

(2) Telephone repeaters, termination sets, impedance compensators, pulse link repeaters, echo suppressors and other intermediate transmission amplification and balancing equipment except that included in switchboards.

* * * * *

(8) Testboards, test desks, repair desks and patch bays, including those provided for test and control, and for transmission testing.

(b) * * *

(4) In addition, for the purpose of identifying and separating property associated with special services, circuit equipment included in Categories 4.12 (other than wideband equipment) 4.13 and 4.23 is identified as either basic circuit equipment, i.e., equipment that performs functions necessary to provide and operate channels suitable for voice transmission (telephone grade channels), or special circuit equipment, i.e., equipment that is peculiar to special service circuits. Carrier telephone terminals and carrier telephone repeaters are examples of basic circuit equipment in general use, while audio program transmission amplifiers, bridges, monitoring devices and volume indicators are examples of special circuit equipment in general use. * * *

* * * * *

(d) * * *

(1) Interexchange Circuit Equipment Furnished to Another Company for Interstate Use – Category 4.21 – This category comprises that circuit equipment provided for the use of another company as an integral part of its interexchange circuit facilities used wholly for interstate services. This category includes such circuit equipment as telephone carrier terminals and microwave systems used wholly for interstate services. The total cost of the circuit equipment in this category for the study area is assigned to the interstate operation.

* * * * *

(e) * * *

(1) Interexchange Circuit Equipment Furnished to Another Company for Interstate Use Category – 4.21 – This category comprises that circuit equipment provided for the use of another company as an integral part of its interexchange circuit facilities used wholly for

interstate services. This category includes such circuit equipment as telephone carrier terminals and microwave systems used wholly for interstate services. The total cost of the circuit equipment in this category for the study area is assigned to the interstate operation.

* * * * *

(3) * * *

(iii) The cost of special circuit equipment is segregated among private line services based on an analysis of the use of the equipment and in accordance with § 36.126(b)(4). The special circuit equipment cost assigned to private line services is directly assigned to the appropriate operations.

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PART 42 — PRESERVATION OF RECORDS OF COMMUNICATION

COMMON CARRIERS

3. The authority citation for part 42 continues to read as follows:

Authority: Sec. 4(i), 48 Stat. 1066, as amended, 47 U.S.C. 154(i). Interprets or applies secs. 219 and 220, 48 Stat. 1077-78, 47 U.S.C. 219, 220.

§ 42.4 [Removed]

4. Remove § 42.4.

§ 42.5 [Removed]

5. Remove § 42.5.

§ 42.7 [Removed]

6. Remove § 42.7.

PART 54 — UNIVERSAL SERVICE

7. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

§ 54.706 [Amended]

8. Section 54.706 is amended by removing and reserving paragraph (a)(13).

PART 63 — EXTENSION OF LINES, NEW LINES, AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

9. The authority citation for part 63 continues to read as follows:

Authority: Sections 1, 4(i), 4(j), 10, 11, 201-205, 214, 218, 403 and 651 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 160, 201-205, 214, 218, 403, and 571, unless otherwise noted.

10. Section 63.60 is amended by revising paragraph (c) to read as follows:

§ 63.60 Definitions.

* * * * *

(c) *Emergency discontinuance, reduction, or impairment of service* means any discontinuance, reduction, or impairment of the service of a carrier occasioned by conditions beyond the control of such carrier where the original service is not restored or comparable service is not established within a reasonable time. For the purpose of this part, a reasonable time shall be deemed to be a period not in excess of the following: 10 days in the case of public coast stations; and 60 days in all other cases.

* * * * *

11. Section 63.61 is amended by revising the introductory text to read as follows:

§ 63.61 Applicability.

Any carrier subject to the provisions of section 214 of the Communications Act of 1934, as amended, proposing to discontinue, reduce or impair interstate or foreign telephone service to a community, or a part of a community, shall request authority therefor by formal application or informal request as specified in the pertinent sections of this part:

* * * * *

12. Section 63.62 is amended by revising the section heading to read as follows:

§ 63.62 Type of discontinuance, reduction, or impairment of telephone service requiring formal application.

* * * * *

§ 63.65 [Amended]

13. Section 63.65 is amended by removing and reserving paragraph (a)(4).

14. Section 63.500 is amended by revising paragraph (g) to read as follows:

§ 63.500 Contents of applications to dismantle or remove a trunk line.

* * * * *

(g) Name of any other carrier or carriers providing telephone service to the community;

* * * * *

15. Section 63.501 is amended by revising paragraph (g) to read as follows:

§ 63.501 Contents of applications to sever physical connection or to terminate or suspend interchange of traffic with another carrier.

* * * * *

(g) Name of any other carrier or carriers providing telephone service to the community;

* * * * *

16. Section 63.504 is amended by revising paragraph (k) to read as follows:

§ 63.504 Contents of applications to close a public toll station where no other such toll station of the applicant in the community will continue service and where telephone toll service is not otherwise available to the public through a telephone exchange connected with the toll lines of a carrier.

* * * * *

(k) Description of the service involved, including a statement of the number of toll telephone messages sent-paid and received-collect, and the revenues from such traffic, in connection with the service proposed to be discontinued for each of the past 6 months; and, if the volume of such traffic handled in the area has decreased during recent years, the reasons therefor.

* * * * *

PART 64 — MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

17. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 254(k), 403(b)(2)(B), (c), Pub. L. 104-104, 110 Stat. 56.

Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 227, 228, 254(k), 276, 616, 620, and the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, unless otherwise noted.

Subpart A — [Removed and Reserved]

18. Remove and reserve subpart A, consisting of § 64.1.

Subpart C — [Removed and Reserved]

19. Remove and reserve subpart C, consisting of § 64.301.

Subpart E — [Removed and Reserved]

20. Remove and reserve subpart E, consisting of § 64.501.

§ 64.804 [Amended]

20. Section 64.804 is amended by removing paragraphs (c) through (g).

21. Section 64.5001 is revised to read as follows:

§ 64.5001 Reporting and certification requirements.

On a quarterly basis, every prepaid calling card provider must submit to the Commission a certification with respect to the prior quarter, signed by an officer of the company under penalty of perjury, stating that it is making the required Universal Service Fund contribution. This provision shall not apply to any prepaid calling card provider that has timely filed required annual and quarterly Telecommunications Reporting Worksheets, FCC Forms 499-A and 499-Q, during the preceding two-year period.

[FR Doc. 2017-22770 Filed: 10/19/2017 8:45 am; Publication Date: 10/20/2017]