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will be presumed to be sufficient evidence of a violation.

[78 FR 40609, July 5, 2013]

§ 64.634 Procedures where the Fund has not yet reimbursed the provider.

(a) This section shall only apply after an iTRS user or iTRS provider has complained to or notified the Commission that an allegedly unauthorized change, as defined by § 64.601(a) of this part, has occurred, and the TRS Fund (Fund), as defined in § 64.604(c)(5)(iii) of this part, has not reimbursed the allegedly unauthorized default provider for service attributable to the iTRS user after the allegedly unauthorized change occurred.

(b) An allegedly unauthorized provider shall identify to the Fund administrator all minutes submitted by the allegedly unauthorized provider to the Fund for reimbursement that are attributable to the iTRS user after the allegedly unauthorized change of default provider, as defined by § 64.601(a) of this part, is alleged to have occurred.

(c) If the Commission determines that an unauthorized change, as defined by § 64.601(a) of this part, has occurred, the Commission shall direct the Fund administrator to not reimburse for any minutes attributable to the iTRS user after the unauthorized change occurred, and neither the authorized nor the unauthorized default provider may seek reimbursement from the fund for those charges. The remedies provided in this section are in addition to any other remedies available by law.

(d) If the Commission determines that the default provider change was authorized, the default provider may seek reimbursement from the Fund for minutes of service provided to the iTRS user.

[78 FR 40609, July 5, 2013]

§ 64.635 Procedures where the Fund has already reimbursed the provider.

(a) The procedures in this section shall only apply after an iTRS user or iTRS provider has complained to or notified the Commission that an unauthorized change, as defined by

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§ 64.601(a) of this part, has occurred, and the Fund has reimbursed the allegedly unauthorized default provider for minutes of service provided to the iTRS user.

(b) If the Commission determines that an unauthorized change, as defined by § 64.601(a) of this part, has occurred, it shall direct the unauthorized default provider to remit to the Fund an amount equal to 100% of all payments the unauthorized default provider received from the Fund for minutes attributable to the iTRS user after the unauthorized change occurred. The remedies provided in this section are in addition to any other remedies available by law.

[78 FR 40609, July 5, 2013]

§ 64.636 Prohibition of default provider freezes.

(a) A default provider freeze prevents a change in an iTRS user's default provider selection unless the iTRS user gives the provider from whom the freeze was requested his or her express consent.

(b) Default provider freezes shall be prohibited.

[78 FR 40609, July 5, 2013]

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

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

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

(b) Bell Operating Companies common carriers subject, in whole or in

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

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

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

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

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

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

(5) All transactions between the separate corporation and the carrier or its affiliates which involve the transfer,

either direct or by accounting or other record entries, of money, personnel, resources, other assets or anything of value, shall be reduced to writing. A copy of any contract, agreement, or other arrangement entered into between such entities shall be filed with the Commission within 30 days after the contract, agreement, or other arrangement is made. This provision shall not apply to any transaction governed by the provision of an effective state or federal tariff.

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

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

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

(3) [Reserved]

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

(e) Except as otherwise ordered by the Commission, the carrier provision of customer premises equipment used

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

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

§ 64.703 Consumer information.

(a) Each provider of operator services shall:

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

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

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

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

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

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

(4) Disclose, audibly and distinctly to the consumer, at no charge and before connecting any interstate non-access code operator service call, how to obtain the total cost of the call, including any aggregator surcharge, or the maximum possible total cost of the call, including any aggregator surcharge, before providing further oral advice to the consumer on how to proceed to make the call. The oral disclosure required in this subsection shall instruct consumers that they may obtain applicable rate and surcharge quotations either, at the option of the provider of operator services, by dialing no more than two digits or by remaining on the line. The phrase “total cost of the call” as used in this paragraph means both the variable (duration-based) charges for the call and the total per-call charges, exclusive of taxes, that the carrier, or its billing agent, may collect from the consumer for the call. It does not include addi-

tional charges that may be assessed and collected without the involvement of the carrier, such as a hotel surcharge billed by a hotel. Such charges are addressed in paragraph (b) of this section.

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

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

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

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

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

(c) *Updating of postings.* The posting required by this section shall be updated as soon as practicable following any change of the carrier presubscribed to provide interstate service at an aggregator location, but no later than 30 days following such change. This requirement may be satisfied by applying to a payphone a temporary sticker displaying the required posting information, provided that any such temporary sticker shall be replaced with permanent signage during the next regularly scheduled maintenance visit.