[10] DEMS User Stations antennas in this band must meet performance Standard B and have a minimum antenna gain of 34 dBI. The maximum beamwidth requirement does not apply to DEMS User Stations. DEMS Nodal Stations need not comply with these standards.

* * * * *

11. In § 101.141, the introductory text of paragraph (a) is revised to read as follows:

§ 101.141 Microwave modulation.

(a) Microwave transmitters employing digital modulation techniques and operating below 19.7 GHz and in the 24.25–25.25 GHz band must, with appropriate multiplex equipment, comply with the following additional requirements:

* * * * *

12. In § 101.147, paragraph (a) is amended by adding an entry to the listing; revising paragraph (r) heading, paragraph (r)(9) introductory text, and the first two sentences of paragraph (r)(10); and adding new entries to the table in paragraph (r)(9), to read as follows:

§ 101.147 Frequency assignments.

(a) * * *

* * * * *

24,250–25,250 MHz

* * * * *

(r) *17,700 to 19,700 and 24,250 to 25,250 MHz.* * * *

* * * * *

(9) The following frequencies are available for point-to-multipoint DEMS Systems, except that channels 35–39 are available only to existing 18 GHz DEMS licensees as of March 14, 1997. Systems operating on Channels 25–34 must cease operations as of January 1, 2001, except that those stations on these channels within 150 km of the coordinates 38°48′ N/76°52′ W (Washington, D.C., area) and 39°43′ N/104°46′ W (Denver, Colorado, area) must cease operations as of June 5, 1997:

Channel No.	Nodal station frequency band (MHz) limits	User station frequency band (MHz) limits
* *	*	* *
35	24,250–24,290	25,050–25,090
36	24,290–24,330	25,090–25,130
37	24,330–24,370	25,130–25,170
38	24,370–24,410	25,170–25,210
39	24,410–24,450	25,210–25,250

* * * * *

(10) Special provision for low power systems in the 17,700–19,700 MHz band: Notwithstanding other provisions in this rule part and except for specified areas around Washington, D.C., and Denver, Colorado, licensees of point-to-multipoint channel pairs 25–29 identified in paragraph (r)(9) of this section may operate multiple low power transmitting devices within a defined service area. New operations are prohibited within 55 km when used outdoor and within 20 km when used indoor of the coordinates 38°48′ N/76°52′ W and 39°43′ N/104°46′ W. * * *

* * * * *

13. Section 101.501 is revised to read as follows:

§ 101.501 Eligibility.

In that DEMS operations will be transitioned to the 24 GHz band, applications for new facilities using the 18 GHz channels identified in § 101.147(r)(9) are not acceptable for filing as of June 5, 1997.

14. Section 101.505 is revised to read as follows:

§ 101.505 Frequencies.

Frequencies, and the conditions on which they are available, for DEMS operations are contained in this subpart as well as in § 101.147(r)(9) of subpart C of this part.

15. Section 101.507 is revised to read as follows:

§ 101.507 Frequency stability.

The frequency stability in the 17,700–19,700 and 24,250–25,250 MHz bands must be ± 0.001% for each DEMS Nodal Station transmitter and ± 0.003% for each DEMS User Station transmitter.

16. In § 101.509, the introductory text of paragraph (c) is revised to read as follows:

§ 101.509 Interference protection criteria.

* * * * *

(c) The following interference studies, as appropriate, must be included in DEMS Nodal Station applications to the extent they are provided for in this subpart:

* * * * *

[FR Doc. 97–11768 Filed 5–5–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 96–128; DA 97–805]

Pay Telephone Reclassification and Compensation

AGENCY: Federal Communications Commission.

ACTION: Final rule; waiver.

SUMMARY: On April 15, 1997, the Common Carrier Bureau (''Bureau'') granted a limited waiver of the Commission's requirement that effective intrastate tariffs for payphone services be in compliance with federal guidelines, specifically that the tariffs comply with the ''new services'' test, as set forth in the *Payphone Reclassification Proceeding,* CC Docket No. 96–128 [''*Payphone Order*'' 61 FR 52307 (October 7, 1997); ''*Order on Reconsideration*'' 61 FR 65341 (December 12, 1996)]. Local exchange carriers (''LECs'') must comply with this requirement, among others, before they are eligible to receive the compensation from interexchange carriers (''IXCs'') that is mandated in that proceeding. Because some LEC intrastate tariffs for payphone services are not in full compliance with the Commission's guidelines, the Bureau granted all LECs a limited waiver until May 19, 1997 to file intrastate tariffs for payphone services consistent with the ''new services'' test, pursuant to the federal guidelines established in the *Order on Reconsideration,* subject to the terms discussed therein.

DATES *Effective:* April 15, 1997.

FOR FURTHER INFORMATION CONTACT: Michael Carowitz, 202–418–0960, Enforcement Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION:

Synopsis of Order

1. Upon reviewing the contentions of the Regional Bell Operating Company (''RBOC'') Coalition and the language it cites from the two orders in the *Payphone Reclassification Proceeding,* the Bureau concluded that while the individual BOCs may not be in full compliance with the intrastate tariffing requirements of the *Payphone Reclassification Proceeding,* they have made a good faith effort to comply with the requirements. The RBOC Coalition concedes that the Commission's payphone orders, as clarified by the *Bureau Waiver Order,* mandate that the payphone services a LEC tariffs at the state level are subject to the new services test and that the requisite cost-support data must be submitted to the individual states. In addition, the RBOC Coalition states that it will take whatever action is necessary to comply with the Commission's orders in order to be eligible to receive payphone compensation at the earliest possible date. Therefore, the Bureau adopted an

order, which contains a limited waiver of the federal guidelines for intrastate tariffs, specifically the requirement that LECs have filed intrastate payphone service tariffs as required by the *Order on Reconsideration* and the *Bureau Waiver Order* that satisfy the new services test, and that effective intrastate payphone service tariffs comply with the ''new services'' test of the federal guidelines for the purpose of allowing a LEC to be eligible to receive payphone compensation. The existing intrastate tariffs for payphone services will continue in effect until the intrastate tariffs filed pursuant to the *Order on Reconsideration*, the *Bureau Waiver Order* and the instant order become effective. Because other LECs may also have failed to file the intrastate tariffs for payphone services that comply with the ''new services'' test of the federal guidelines, the Bureau applied this limited waiver to all LECs, with the limitations set forth therein.

2. Consistent with its conclusions above and in the interests of bringing LECs into compliance with the requirements of the *Payphone Reclassification Proceeding,* the Bureau waived for 45 days from the April 4, 1997 release date of the *Bureau Waiver Order* the requirement that LEC intrastate tariffs for payphone services comply with the ''new services'' test of the federal guidelines, as set forth in paragraph 163 of the Order on *Reconsideration* and clarified in the *Bureau Waiver Order.* LECs must file intrastate tariffs for payphone services, as required by the *Payphone Reclassification Proceeding* consistent with all the requirements set forth in the *Order on Reconsideration,* within 45 days of the April 4, 1997 release date of the *Bureau Waiver Order.* Any LEC that files these intrastate tariffs for payphone services within 45 days of the release date of the *Bureau Waiver Order* will be eligible to receive the payphone compensation provided by the Payphone *Reclassification Proceeding* as of April 15, 1997, as long as that LEC has complied with all of the other requirements set forth in paragraph 131 (and paragraph 132 for the Bell Operating Companies) of the *Order on Reconsideration,* subject to the clarifications and limited waiver in the *Bureau Waiver Order.* Under the terms of this limited waiver, a LEC must have in place intrastate tariffs for payphone services that are effective by April 15, 1997. The waiver permits the LEC to file intrastate tariffs that are consistent with the ''new services'' test of the federal guidelines set forth in the *Order on Reconsideration,* as clarified by the *Bureau Waiver Order.* The existing intrastate payphone service tariffs will continue in effect until the intrastate tariffs filed pursuant to the Bureau's order become effective.

3. The RBOC Coalition and Ameritech have committed, once the new intrastate tariffs are effective, to reimburse or provide credit to its customers for these payphone services from April 15, 1997, if newly tariffed rates, when effective, are lower than the existing rates. This action will help to mitigate any delay in having in effect intrastate tariffs that comply with the guidelines required by the *Order on Reconsideration,* including the concern raised by MCI that the subsidies from payphone services will not have been removed before the LECs receive payphone compensation. A LEC who seeks to rely on the waiver granted in the instant Order must also reimburse their customers or provide credit, from April 15, 1997, in situations where the newly tariffed rates are lower than the existing tariffed rates. The Bureau noted, in response to the arguments raised by the IXCs, that its order did not waive the requirement that subsidies be removed from local exchange service and exchange access services, the ''harm'' to the IXCs resulting from the delayed removal of subsidies from some intrastate payphone service tariffs will be limited.

4. The Bureau concluded that the waiver it granted, which is for a limited duration to address a specific compliance issue, is consistent with, and does not undermine, the rules adopted by the Commission in the *Payphone Reclassification Proceeding.* Therefore, it rejected the various alternatives to granting a waiver that were suggested by the American Public Communications Council (''APCC'') and the IXCs. More specifically, it concluded that APCC's proposal to require the refiling of all intrastate payphone service tariffs would unduly delay, and possibly undermine, the Commission's efforts to implement Section 276 and the congressional goals of ''promot[ing] competition among payphone service providers and promot[ing] the widespread deployment of payphone services to the benefit of the general public. * * *''. In response to Sprint's proposal that we delay the effective date of the LECs' interstate carrier common line reductions, the Bureau concluded that the better approach would be to evaluate requests for such treatment by individual LECs on a case-by-case basis. In addition, the Bureau declined to treat the request of the RBOC Coalition as an untimely petition for reconsideration of the Commission's rules, because the RBOC Coalition did not seek reconsideration of the rules adopted in the *Payphone Reclassification Proceeding,* but instead sought additional time, in a specific, limited circumstance, to comply with those rules.

5. In response to AT&T's arguments that a LEC must show proof that its intrastate tariffs have removed payphone subsidies consistent with Section 276, the Bureau noted the Commission concluded that ''[t]o receive compensation a LEC *must be able to certify*'' that it has satisfied each of the individual prerequisites to receiving the compensation mandated by the *Payphone Reclassification Proceeding.* The Commission did not require that the LECs file such a certification with it. Nothing in the Commission's orders, however, prohibits the IXCs obligated to pay compensation from requiring that their LEC payees provide such a certification for each prerequisite. Such an approach is consistent with the Commission's statement that ''we leave the details associated with the administration of this compensation mechanism to the parties to determine for themselves through mutual agreement.''

6. Waiver of Commission rules is appropriate only if special circumstances warrant a deviation from the general rule and such deviation serves the public interest. Because the LECs are required to file, and the states are required to review, intrastate tariffs for payphone services consistent with federal guidelines, which, in some cases, may not have been previously filed in this manner at the intrastate level, the Bureau found that special circumstances exist in this case to grant a limited waiver of brief duration to address this responsibility. In addition, it found that its grant of a waiver in this limited circumstance, does not undermine, and is consistent with, the Commission's overall policies in CC Docket No. 96–128 to reclassify LEC payphone assets and ensure fair PSP compensation for all calls originated by payphones. Moreover, the states' review of the intrastate tariffs that are the subject of this limited waiver will enable them to determine whether these tariffs have been filed in accordance with the Commission's rules, including the ''new services'' test. Accordingly, the Bureau granted a limited waiver for 45 days from the April 4, 1997 release date of the *Bureau Waiver Order* the requirement that LEC intrastate tariffs for payphone services comply with the ''new services'' test of the federal guidelines, as set forth in paragraph 163 of the *Order on Reconsideration*. The

order did not waive any of the other requirements set forth in paragraphs 131–132 of the *Order on Reconsideration*.

Ordering Clauses

7. Accordingly, it is ordered, pursuant to Sections 4(i,), 5(c), 201–205, 276 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 155(c), 201–205, 276, and Sections 0.91 and 0.291 of the Commission's rules, 47 CFR 0.91 and 0.291, that limited waiver of the Commission's requirements to be eligible to receive the compensation provided by the *Payphone Reclassification Proceeding*, CC Docket No. 96–128, is granted to the extent stated herein.

8. It is further ordered that this Order shall be effective upon release.

List of Subjects in 47 CFR Part 64

Communications common carriers, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–11683 Filed 5–5–97; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 96–128; DA 97–678]

Pay Telephone Reclassification and Compensation

AGENCY: Federal Communications Commission.

ACTION: Final rule; waiver.

SUMMARY: On April 4, 1997, the Common Carrier Bureau (''Bureau'') clarified and granted a limited waiver of the Commission's interstate tariffing requirements for unbundled features and functions, as set forth in the *Payphone Reclassification Proceeding*, CC Docket No. 96–128 [''*Payphone Order*'' 61 FR 52307 (October 7, 1997); ''*Order on Reconsideration*'' 61 FR 65341 (December 12, 1996)]. Local exchange carriers (''LECs'') must comply with these requirements, among others, before they are eligible to receive the compensation from interexchange carriers (''IXCs'') that is mandated in that proceeding. Because some LECs are not in full compliance with the Commission's federal tariffing requirements for unbundled features and functions under the *Payphone Order* and *Order on Reconsideration*, the Bureau granted all LECs a limited waiver of the deadline for filing the federal tariffs for unbundled features and functions, to the extent necessary, to enable LECs to file the required federal tariffs within 45 days after the release of the Bureau's order, with a scheduled effective date no later than 15 days after the date of filing.

DATES: Effective: April 4, 1997.

FOR FURTHER INFORMATION CONTACT: Michael Carowitz, 202–418–0960, Enforcement Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION:

Synopsis of Order

1. The Bureau clarified here that the unbundled features and functions addressed in the *Payphone Reclassification Proceeding* are network services similar to basic service elements (''BSEs'') under the Open Network Architecture (''ONA'') regulatory framework. BSEs are defined as optional unbundled features that an enhanced services provider may require or find useful in configuring its enhanced service. In this case, the unbundled features are payphone-specific, network-based features and functions used in configuring unregulated payphone operations provided by payphone service providers (''PSPs'') or LECs. Some of the LECs use terms such as tariffed ''options'' and ''elective features'' for network services that other LECs call features and functions. Options and elective features must be federally tariffed in the same circumstances as features and functions must be federally tariffed, depending on whether they are provided on a bundled basis with the basic network payphone line (state tariff), or separately on an unbundled basis (federal and state tariffs).

2. The Bureau also clarified that the requirement to file federal tariffs applies only to payphone-specific, network-based, unbundled features and functions provided to others or taken by a LEC's operations, such as answer supervision and call screening, with the following qualifications discussed below. It agreed with the Regional Bell Operating Company (''RBOC'') Coalition that the federal tariffing requirement does not apply to non-network services, such as inside wire services. Moreover, as suggested by the RBOC Coalition, the Bureau did not include in this federal tariffing requirement features and functions that are generally available to all local exchange customers and are only incidental to payphone service, such as touchtone services and various custom calling features. In addition, the Bureau clarified that payphone-specific, network-based features and functions must be federally tariffed now only if the LEC provides them separately and on an unbundled basis from the basic payphone line, either to its payphone operations or to others, because the payphone orders did not require additional unbundling of features and functions by April 15 beyond those that the LEC chooses to provide. As required by the *Payphone Reclassification Proceeding*, however, a state may require further unbundling, and PSPs may request additional unbundled features and functions from BOCs through the ONA 120-day service request process.

3. The Bureau concluded that the *Payphone Reclassification Proceeding* does not prohibit the mixing and matching of payphone services between federal and state tariffs by LEC and independent payphone operations. This conclusion applies only to payphone services and does not affect *Computer III* requirements. In *Computer III*, the Commission did not allow such mixing and matching because: (1) Mixing and matching could result in mismatch of basic service arrangements (''BSA'') and BSEs costs and revenues; (2) it could undermine state policies; (3) states may impose terms and conditions on BSAs/BSEs that differ from those of the FCC; and (4) other jurisdictional problems. Unlike *Computer III*, however, Section 276 provides the Commission with jurisdiction over all tariffing of payphone services. The Commission has delegated to each state the review, pursuant to federal guidelines, of payphone tariffs filed in the state. Given that the federal guidelines for tariffing discussed above are the same in the state and federal jurisdictions, there is no undermining of state policies or the creation of jurisdictional conflicts. Moreover, in this case, mixing and matching provides a safeguard to ensure that unbundled features are available at rates that comply with the guidelines established in the *Payphone Reclassification Proceeding*. The Bureau concluded that the separations issues, if any, raised by allowing mixing and matching are outweighed, in this case, by the importance of this safeguard to ensure that unbundled features and functions are available at rates that comply with the guidelines established in the *Payphone Reclassification Proceeding*.

4. Upon reviewing the contentions of the RBOC Coalition and the language it cites from the two orders in the *Payphone Reclassification Proceeding*, the Bureau concluded that while the individual BOCs are not in full compliance with the requirements of the *Payphone Reclassification Proceeding*,