

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.*

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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*,

they have made a good faith effort to comply with the requirements. The RBOC Coalition conceded that the Commission's payphone orders mandate the federal tariffing of some payphone services, namely those that the LEC provides to its own payphone operations. In addition, the RBOC Coalition stated 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, because the RBOC Coalition has indicated its intent to comply with the Commission's requirements, as established by the *Payphone Reclassification Proceeding*, and because the Coalition's narrower reading of what payphone services need to be federally tariffed is based on its good faith efforts to comply with the Commission's rules, the Bureau adopted an order, which contained a limited waiver of the federal tariffing requirements for unbundled features and functions a LEC must meet before it is eligible to receive payphone compensation. Because other LECs may also have failed to file all the federal tariffs for unbundled features and functions required by the *Payphone Order* and the *Order on Reconsideration*, the Bureau applied the limited waiver to all LECs, with the limitations set forth below.

5. In the *Payphone Order* and *Order on Reconsideration*, the Commission required that LECs file federal tariffs by January 15, 1997 with a 90-day review period for unbundled features and functions. Consistent with its conclusions outlined above and in the interests of bringing LECs into compliance with the requirements of the *Payphone Reclassification Proceeding*, the Bureau waived for 60 days the requirement that LECs have "in effect \* \* \* interstate tariffs for unbundled functionalities associated with [payphone] lines" by April 15, 1997. The Bureau also waived both the January 15th filing deadline and the 90-day review period for interstate tariffs. LECs must file interstate tariffs for unbundled features and functions, as required by the *Payphone Reclassification Proceeding*, as clarified herein, within 45 days after the release date of this order under the streamlined tariff review process. These tariffs will be effective no later than 15 days after filing, unless suspended or rejected. Any LEC that files federal tariffs for unbundled functionalities, as clarified herein, within 45 days of the release date of the instant Order will be eligible to collect the payphone compensation

provided by the *Payphone Reclassification Proceeding* on 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 BOCs) of the *Order on Reconsideration*. If a LEC fails to file all of the requisite federal tariffs within 45 days, or if the federal tariffs for a particular LEC are not in effect after 60 days from the date of release of this Order, the LEC will not be eligible to receive the payphone compensation provided by the *Payphone Reclassification Proceeding*.

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 Commission is required to review incoming tariffs for the unbundled features and functions associated with payphone service, which have not been previously filed at the interstate level, the Bureau found that special circumstances existed to grant a limited waiver of brief duration to address this responsibility. In addition, for the reasons stated above, the Bureau's grant of a waiver in a limited circumstance, would 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 Bureau's review of the interstate tariffs that are the subject of this limited waiver will enable it to determine whether these tariffs have been filed in accordance with its rules. Accordingly, the Bureau granted a limited waiver subject to the filing of federal tariffs for unbundled features and functions within 45 days of the release date of the Bureau's order. The Bureau's order does not waive any of the other requirements set forth in paragraphs 131-132 of the *Order on Reconsideration*, including the requirement that a LEC have "in effect intrastate \* \* \* tariffs for unbundled functionalities." \* \* \*

7. The Bureau denied the Motion by the American Public Communications Council ("APCC") that requested that the Commission conclude that the BOCs are disqualified from receiving interim compensation pursuant to the *Payphone Reclassification Proceeding*. APCC argues that the BOCs have failed both to retariff their basic payphone services at cost-based rates, and to tariff separately from basic payphone lines coin service features and other unbundled features and functions. The Bureau clarified that the *Payphone Reclassification Proceeding* did not require, by April 15, 1997, the level of unbundling sought by

APCC. LECs, including the BOCs, must comply with the state tariffing requirements of the *Payphone Reclassification Proceeding*. In response to APCC's contentions, the Bureau concluded that it did not have a record to determine whether the BOCs have complied with the state tariffing requirement for cost-based rates. As required by the *Order on Reconsideration*, however, LECs, including the BOCs, must be prepared to certify that they have complied with all the requirements of the *Payphone Reclassification Proceeding*, including those involving intrastate tariffs, subject to the limited waiver provided herein.

8. The Bureau emphasized that LECs must comply with all of the enumerated requirements established in the *Payphone Reclassification Proceeding*, except as waived, before the LECs' payphone operations are eligible to receive the payphone compensation provided by that proceeding. Both independent PSPs and IXC claim that some LECs have not filed state tariffs that comply with the requirements set forth in the *Order on Reconsideration*. These requirements are: (1) That payphone service intrastate tariffs be cost-based, consistent with Section 276, and nondiscriminatory; and (2) that the states ensure that payphone costs for unregulated equipment and subsidies be removed from the intrastate local exchange service and exchange access service rates. LEC intrastate tariffs must comply with these requirements by April 15, 1997 in order for the payphone operations of the LECs to be eligible to receive payphone compensation. LECs that have not complied with these requirements will not be entitled to receive compensation.

9. The Bureau disagreed with the RBOC Coalition regarding the applicability of the federal guidelines for state tariffing of payphone services. The Commission concluded in the *Order on Reconsideration* that it had jurisdiction over the tariffing of payphone services in order to implement Section 276. The plain language of the *Order on Reconsideration* provides that state tariffs for payphone services must be cost based, consistent with the requirements of Section 276, nondiscriminatory, and consistent with *Computer III* guidelines. The footnote referred to by the RBOC Coalition provides references to Commission orders describing the applicable *Computer III* guidelines.

10. The guidelines for state review of intrastate tariffs are essentially the same as those included in the *Payphone Order* for federal tariffs. On

reconsideration, the Commission stated that although it had the authority under Section 276 to require federal tariffs for payphone services, it delegated some of the tariffing requirements to the state jurisdiction. The *Order on Reconsideration* required that state tariffs for payphone services meet the requirements outlined above. The *Order on Reconsideration* provides that states that are unable to review these tariffs may require the LECs to file the tariffs with the Commission.

11. The Bureau clarified that, for purposes of meeting all of the requirements necessary to receive payphone compensation, the question of whether a LEC has effective intrastate tariffs is to be considered on a state-by-state basis. Under this approach, assuming the LEC has complied with all of the other compliance list requirements, if a LEC has effective intrastate tariffs in State X and has filed tariffs in State Y that are not yet in effect, then the LEC PSP will be able to receive payphone compensation for its payphones in State X but not in State Y. The intrastate tariffs for payphone services, including unbundled features, and the state tariffs removing payphone equipment costs and subsidies must be in effect for a LEC to receive compensation in a particular state.

#### Ordering Clauses

12. 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.

13. It is further ordered that each individual BOC must file an *ex parte* document with the Secretary, by April 10, 1997, advising on the status of intrastate tariffs for the unbundled features and functions that it has not yet federally tariffed, and stating that it commits to filing federal tariffs for such unbundled features and functions within 45 days of the release date of this Order.

14. It is further ordered that this limited waiver shall be effective upon release.

15. It is further ordered that the Motion of APCC requesting that the Commission conclude that the BOCs are disqualified from receiving interim compensation under the *Payphone Reclassification Proceeding* is denied.

#### List of Subjects in 47 CFR Part 64

Communications common carriers, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

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#### FEDERAL COMMUNICATIONS COMMISSION

##### 47 CFR Part 68

[CC Docket No. 93-268; FCC 97-126]

#### Inclusion of Terminal Equipment Connected to Basic Rate Access Service Provided via Integrated Services Digital Network Access Technology and Terminal Equipment Connected to Public Switched Digital Service

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

**SUMMARY:** This document contains corrections to the final rules which were published in the **Federal Register** August 15, 1996. (61 FR 42386). The rules related to the effective dates after which new or modified equipment connected to the Integrated Services Digital Network (ISDN) or to the Public Switched Digital Service (PSDS) must comply with the rules released in a Report and Order on March 7, 1996. (FCC 96-1).

**DATES:** Effective on June 5, 1997.

**FOR FURTHER INFORMATION CONTACT:** Bill von Alven, Senior Engineer, Network Services Division, Common Carrier Bureau, (202) 418-2342.

#### SUPPLEMENTARY INFORMATION:

##### Background

On April 10, 1997, the Commission released an Order on Reconsideration (FCC 97-126) to change the dates defining grandfathered equipment and thereby provide Part 68 applicants 18 months to comply with the new registration requirements. To retain the 18-month period necessary for an orderly transition of equipment to the new requirements, the Commission amends its rules to extend the time frame for equipment governed by the rules. The dates January 1, 1996 and July 1, 1997, are thus changed to November 13, 1996 and May 13, 1998, respectively. Consequently, equipment connected by November 13, 1996 will be considered grandfathered and not subject to our registration rules under Part 68.

#### Need for Correction

As published, the final rules need to be clarified to allow part 68 applicants the customary 18 months to comply with new registration requirements.

#### List of Subjects in 47 CFR Part 68

Federal Communications Commission, Registered terminal equipment, Telephone.

Accordingly, 47 CFR part 68 is corrected by making the following correcting amendments:

#### PART 68—CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORK

1. The authority citation for Part 68 is amended to read as follows:

**Authority:** 47 U.S.C. 154, 303.

2. Section 68.2 is amended by revising paragraphs (j) and (k) as follows:

##### § 68.2 Scope

\* \* \* \* \*

(j)(1) Terminal equipment, including its premises wiring directly connected to PSDS (Type I, II or III) on or before November 13, 1996, may remain for service life without registration, unless subsequently modified. Service life means the life of the equipment until retired from service. Modification means changes to the equipment that affect compliance with part 68 rules.

(2) New installation of terminal equipment, including its premises wiring, may occur until May 13, 1998, without registration of any terminal equipment involved, provided that the terminal equipment is of a type directly connected to PSDS (Type I, II or III) as of November 13, 1996. This terminal equipment may remain connected and be reconnected to PSDS (Type I, II or III) for service life without registration unless subsequently modified.

(k)(1) Terminal equipment, including premises wiring directly connected to ISDN BRA or PRA on November 13, 1996, may remain connected to ISDN BRA or PRA for service life without registration, unless subsequently modified.

(2) New installation of terminal equipment, including premises wiring, may occur until May 13, 1998, without registration of any terminal equipment involved, provided that the terminal equipment is of a type directly connected to ISDN BRA or PRA as of November 13, 1996. This terminal equipment may remain connected and be reconnected to ISDN BRA or PRA for service life without registration unless subsequently modified.

\* \* \* \* \*