Society of Broadcast Engineers, Inc.
National Exchange Carrier Association, Inc.
NEXTEL Communications, Inc.

Parties Filing Reply Comments

GE American Communications, Inc.

[FR Doc. 96–17640 Filed 7–11–96; 8:45 am]

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47 CFR Parts 61 and 64

[DA 96–1073]

Inmate Calling Services—Prison Payphones

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On January 30, 1996, the Commission adopted a Declaratory Ruling that inmate-only payphone instruments are customer premises equipment (CPE) that must be provided on an unregulated basis. The Commission additionally denied petitioner's request that certain inmate-only services be considered enhanced services.

Three petitions were filed with the Commission on March 21, 1996, and one on April 5, 1996, requesting that the Declaratory Ruling be stayed or waived pending the effective date of new rules, pursuant to Section 276 of the Telecommunications Act of 1996, that must be adopted for all payphones. One petitioner also argued that the Declaratory Ruling did not apply to smaller local exchange carriers (LECs). In this Order we deny the request in part and grant it in part, and the intended effect of this action is to ensure that the inmate-only payphone market is competitive.

EFFECTIVE DATE: July 12, 1996.

FOR FURTHER INFORMATION CONTACT: Alan Thomas, 202–418–2338.

SUPPLEMENTARY INFORMATION: This report summarizes the Commission's Order in the matter of Petition for Waiver and Partial Reconsideration or Stay of Inmate-Only Payphones Declaratory Ruling (DA 96–1073, adopted July 3, 1996 and released July 3, 1996). The file is available for inspection and copying in the Network Services Reference Room, room 220, 2000 M Street, NW., Washington, DC, during the weekday hours of 8:30 a.m. to 3:30 p.m. Monday through Thursday; 8:30 a.m. to 11:30 a.m. on Friday; closed between 12:30 p.m. and 1:30 p.m. Monday through Thursday; or copies may be purchased from the Commission's duplicating contractor, ITS, Inc. 2100 M St., NW., Suite 140, Washington, DC 20037, phone (202) 857–3800.

Analysis of Proceeding

2. Petitioners requested the Commission to stay, waive, or reconsider the effective date of the Declaratory Ruling pending the effective date of new rules that must be adopted for all payphones pursuant to Section 276 of the Telecommunications Act of 1996. Petitioners contended that compliance would be superfluous if accounting changes were required to be made solely for inmate-only payphones. Petitioners also argued that providing inmate-only payphones as unregulated CPE would constitute a new service, and that tariffs disclosing technical information regarding such new service must be filed with the Commission six or twelve months before introduction of the new service; thus, petitioners contended that this disclosure requirement made the September 2, 1996 deadline in the Declaratory Ruling impossible to meet. Petitioners also argued that the Declaratory Ruling is in conflict with Section 402 of the Telecommunications Act of 1996 because the former would require that cost allocation manuals (CAMs) be filed more than once annually. Finally, one of the petitioners separately argued that the Telecommunications Act of 1996 did not intend for the Declaratory Ruling to apply to smaller LECs.

3. In this Order, the Commission concluded that the petitioners generally had not satisfied their burden, as stated in *Washington Metropolitan Transit Comm'n* v. *Holiday Tours, Inc.*, 559 F.2d 841 (D.C. Cir. 1977), and thus denied the request for stay and waiver of the Declaratory Ruling. Petitioners did not satisfy their burden that, absent a stay, they would be irreparably injured; nor did they quantify or otherwise demonstrate specific activities that would be superfluous or burdensome. Petitioners also failed to address what effect a stay would have upon the public interest or the harm a stay poses to other parties. The Commission did, however, stay the requirement that CAM revisions be filed. Given that the Commission will soon address Section 402 as part of its ongoing implementation of the Telecommunications Act of 1996, petitioners' position regarding CAM filings did have sufficient merit. Carriers are still required, however, to begin separating their costs effective July 3, 1996.

4. The Commission also waived its requirement that tariffs for a new service such as unregulated payphones must be filed within six or twelve months. Adherence to the Commission's rule would have delayed implementation of the Declaratory Ruling, and the appropriate remedy is not to delay implementation, but rather to waive the normal time period.

5. Finally, the Commission based its Declaratory Ruling on longstanding CPE policies and not the Telecommunications Act of 1996; petitioners offered no bar to the Commission's continued application of these policies with regard to smaller LECs.

Ordering Clauses

6. *It is ordered,* pursuant to § 1.3 of the Commission's rules, 47 CFR 1.3, and authority delegated in § 0.91 of Commission's rules, 47 CFR 0.91, and § 0.291 of the Commission's rules, 47 CFR 0.291, that the Petition for Partial Reconsideration or Stay filed jointly by Bell Atlantic, BellSouth, NYNEX, and Pacific Bell and Nevada Bell; the Petition for Reconsideration and Stay filed by Cincinnati Bell; the Petition for Waiver filed by Southwestern Bell; and the Petition for Waiver filed by Pacific Bell and Nevada Bell are denied to the extent described above.

7. *It is further ordered* that pursuant to § 1.3 of the Commission's rules, 47 CFR 1.3, and authority delegated in § 0.91 of the Commission's rules, 47 CFR 0.91, and § 0.291 of the Commission's rules, 47 CFR 0.291, that we stay the requirement that petitioners file their CAM revisions on July 3, 1996, consistent with this order; however, carriers are still required to begin separating their costs effective July 3, 1996.

8. *It is further ordered* that pursuant to § 1.3 of the Commission's rules, 47 CFR 1.3, and authority delegated in § 0.91 of the Commission's rules, 47 CFR 0.91, and § 0.291 of the Commission's rules, 47 CFR 0.291, that we waive the network disclosure time requirements applicable to a new unbundled network service to the extent described above.

List of Subjects in 47 CFR Parts 61 and 64

Federal Communications Commission, Inmate-only payphone equipment, Telephones.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–17810 Filed 7–11–96; 8:45 am]

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47 CFR Part 66

[FCC 96–242]

Applications Relating to Consolidation, Acquisition, or Control of Telephone Companies

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Telecommunications Act of 1996 specifically repealed section 221(a) of the Communications Act of 1934. In 1956, the Commission had enacted part 66 of the rules to set out the contents of an application for authority to consolidate telephone companies. Since the Commission no longer has this authority, it has removed part 66 of its rules as unnecessary.

EFFECTIVE DATE: July 12, 1996.

FOR FURTHER INFORMATION CONTACT: R.J. Hertz, Enforcement Division, Common Carrier Bureau, (202) 418–0984.

SUPPLEMENTARY INFORMATION:

Adopted: May 29, 1996;
Released: June 4 , 1996.

1. On February 8, 1996, the Telecommunications Act of 1996 (the ''1996 Act'') became law.[1] Section 601(b)(2) of the 1996 Act[2] reads: ''(s)ubsection (a) of section 221 (47 U.S.C. 221(a)) is repealed.'' This Order removes part 66 of the Commission's rules,[3] which concerns the applications to be filed upon the consolidation, acquisition, or change of control of telephone companies. Section 1.527 of our rules contained the rules to implement Section 221(a) of the Communications Act of 1934, as amended.[4] In 1956, after Congress made minor changes to section 221(a), the Commission adopted part 66 to establish new procedures and delineate the information necessary for an application for Commission approval of the consolidation.[5]

2. Under section 221(a) of the Act, before a consolidation could take place,[6] the Commission was required to make a finding that it was not contrary to the public interest for a telecommunications carrier to acquire control, either by acquisition of the physical assets or the securities, of another carrier. Specifically, it provided that upon the filing of an application to consolidate, the Commission was to issue a notice to the areas affected by the consolidation so that the subscribers in those areas, as well as the state or local authorities, would have the opportunity to submit comments on the proposed consolidation. Then, if the Commission determined that the consolidation was in the public interest, it was to certify this fact so as to make inapplicable any other Act or Acts of Congress that would make the proposed transaction unlawful.

3. Congress enacted section 221(a) at a time when local telephone service was viewed as a natural monopoly; thus, section 221(a) allowed competing local telephone companies to merge without facing antitrust scrutiny.[7] According to the Joint Explanatory Statement:

[S]ection 221(a) could inadvertently undercut several of the provisions of the Telecommunications Act of 1996. The problem arises for at least two reasons. First, the crucial term ''telephone company'' is not defined. In the old world of regulated monopolies, a definition probably was not necessary. However, in the new world of competition, many companies will be able to argue plausibly that they are telephone companies.

Second, section 221(a) allows the Commission to confer immunity from any Act of Congress (including the Telecommunications Act of 1996) after performing a public interest review. Section 221(a) could be used to avoid the cable-telco buyout provisions of the Telecommunications Act of 1996. Any cable company that owned any telephone assets could become a telephone company and be bought out by a BOC by applying for immunity under this section.

In addition, if immunity were conferred under section 221(a), it would allow mergers between telecommunications giants to go forward without any antitrust or securities review. In the old world, the statute was usually used to confer immunity on mergers between noncompeting Bell operating subsidiaries or mergers between Bells and small independents within their territories. Neither of these situations involved competitive considerations.[8]

The Joint Explanatory Statement clarifies, however, that repeal of Section 221(a) would not affect the Commission's ability to conduct any review of a merger for Communications Act purposes but would simply end the Commission's ability to confer antitrust immunity.[9]

4. Because the part 66 rules were promulgated to effectuate a process that has been repealed by the 1996 Act, these rules are now unnecessary and should be removed. Accordingly, we find for good cause that further notice and comment are not necessary, nor required, under section 553(3)(B) of the Administrative Procedure Act,[10] because such changes are purely ministerial and necessary to conform our written rules to the Congressional mandate found in the 1996 Act.

5. Accordingly, *it is ordered,* pursuant to sections 4 (i) and (j) of the Communications Act of 1934, as amended, 47 U.S.C. 154 (i) and (j), and section 601(b)(2) of the Telecommunications Act of 1996, Pub. L. No. 104–104, sec. 601(b)(2), 110 Stat. 56 (1996), that part 66 of the rules *is hereby removed.*

List of Subjects in 47 CFR Part 66

Administrative practice and procedure, Communications Carriers, Federal Communications Commission, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Title 47 of the Code of Federal Regulations, part 66, is amended as follows:

PART 66—APPLICATIONS RELATING TO CONSOLIDATION, ACQUISITION, OR CONTROL OF TELEPHONE COMPANIES—[REMOVED]

1. The authority citation for part 66 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended: 47 U.S.C. 154.

2. Part 66 is removed.

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[1] Pub. L. No. 104–104, 110 Stat. 56 (1996).

[2] *Id.* sec. 601(b)(2).

[3] 47 CFR 66.11–66.15.

[4] 47 U.S.C. 221(a).

[5] *See* Transfer of Carrier's Property, 42 FCC 125 (1956).

[6] *See supra* note 4.

[7] *See* Joint Explanatory Statement of the Committee of Conference, S. Rep. No. 104–458, at 200 (1996) (*Joint Explanatory Statement*).

[8] *Id.* at 200–01.

[9] *Id.* at 201.

[10] 5 U.S.C. 553(3)(B).