

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]

BILLING CODE 6712-01-P

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 the 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]

BILLING CODE 6712-01-P