

discriminating focus.” The court also found that the Commission’s policy was not sufficiently explained.

In *Litigation Costs Decision*, (939 F.2d at 1042), the court remanded the Commission’s *Litigation Costs Proceeding* because: (1) The Commission did not adequately justify application of the rules to violations of federal law other than antitrust law; and (2) the Commission did not sufficiently consider the probable effects of its rule on the companies’ incentives to either settle or litigate lawsuits. The court also stated that the Commission had failed to explain why its reclassification of litigation costs was not retroactive ratemaking. Although the court vacated the Commission’s orders, it specifically acknowledged the Commission’s “special responsibility * * * regarding the competitive behavior of the common carriers subject to its oversight.” In discussing the accounting treatment for antitrust judgments, the court stated that the Commission may disallow any expense incurred as a result of carrier conduct that cannot reasonably be expected to benefit ratepayer and that the Commission acted reasonably in aligning the presumption against recovery with the majority of antitrust cases in which consumers do not benefit from the conduct occasioning liability. The court found no fault with the Commission’s treatment of either adverse antitrust judgments or pre-judgment settlements in antitrust cases, although it faulted the Commission for failing to consider the possible perverse incentives arising from its asymmetric treatment of post-judgment settlements, which ultimately could also increase the amount recoverable from ratepayer. The court agreed that the same rationale that the Commission used in determining that an ILEC could not recover an antitrust judgment also applies with respect to litigation expenses because the reasonableness of the underlying conduct, not the defense of the conduct, determines whether the expense is reasonable.

In this proceeding, the Commission has concluded that its rules should require that adverse antitrust judgments be accounted for below-the-line in Account 7370. This would include any associated interest and awards of attorneys fees to adversaries. Fines and penalties have always been accounted for below-the-line, and this practice will continue. The Commission has also concluded that settlement costs paid by carriers to resolve antitrust litigation should be accounted for below-the-line in Account 7370, but it modified its proposal to allow carriers to recover in ratemaking the saved litigation expenses

of both pre- and post-judgment settlements entered before any adjudication of anticompetitive misconduct becomes final. The Commission has also concluded it should change how we treated the costs of defending antitrust litigation. In the previous rulemaking, it allowed litigation expenses associated with an adverse judgment or a post-judgment settlement to be recorded above-the-line but made them subject to “recapture.” This recapture doctrine created a presumption that these expenses would be excluded from a carrier’s revenue requirements (*See Depreciation Simplification NPRM*, 8 FCC Rcd at 6656). In the present rulemaking, the Commission altered the presumption to provide that these costs may continue to be recorded above the line in operating accounts. Finally, the Commission has concluded that the record before us provides insufficient basis for changing the current accounting treatment of alleged or adjudicated violations of state or federal laws other than federal antitrust laws. This means that only costs related to judgments or settlements in lawsuits stemming from violations of federal antitrust laws will be recorded below-the-line (*See Second Litigation Costs Order*) (Docket No. 93-240, FCC 97-80 at ¶¶ 18). With regard to settlements of such lawsuits, there will be a presumption that carriers can recover the portion of the settlement that represents the avoidable costs of litigation, provided that the carrier makes the required showing (*See Second Litigation Costs Order* at ¶¶ 45-46).

Ordering Clauses

Accordingly, pursuant to Sections 1, 4(i), 219, 220 and 221(c) and 410(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 219, 220, Part 32 of the Rules *is revised*.

It is Further Ordered that, pursuant to Sections 1, 4(i), 220, and 221(c) and 410(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 220, and 221(c), Part 32 of the Commission’s Rules and Regulations, is amended as shown below.

List of Subjects in 47 CFR Part 32

Communications common carriers, Reporting and recordkeeping requirements, Telephone, Uniform System of Accounts.

Federal Communications Commission.
LaVera F. Marshall,
Acting Secretary.

Rule Changes

Part 32 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 32—UNIFORM SYSTEM OF ACCOUNTS FOR TELECOMMUNICATIONS COMPANIES

1. The authority citation for part 32 continues to read as follows:

Authority: 47 U.S.C. 154.

2. Section 32.7370 is amended by revising paragraph (d) to read as follows:

§ 32.7370 Special charges.

* * * * *

(d) Penalties and fines paid on account of violations of statutes. This account shall also include penalties and fines paid on account of violations of U.S. antitrust statutes, including judgments and payments in settlement of civil and criminal suits alleging such violations; and

* * * * *

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

[CC Docket No. 95-155; FCC 97-123]

Toll Free Service Access Codes

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On April 11, 1997, the Commission released a Second Report and Order adopting various measures related to toll free service access codes. The Second Report and Order is intended to ensure the fair, efficient, and orderly allocation of toll free numbers.

EFFECTIVE DATE: May 27, 1997.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Erin Duffy, Attorney, Network Services Division, Common Carrier Bureau, (202) 418-2340.

SUPPLEMENTARY INFORMATION: This summarizes the Commission’s Second Report and Order in the matter of Toll Free Service Access Codes, FCC 97-123, adopted April 4, 1997, and released

April 11, 1997. The Commission concurrently released a Further Notice of Proposed Rulemaking in the same docket. The file is available for inspection and copying during the weekday hours of 9 a.m. to 4:30 p.m. in the Commission's Reference Center, room 239, 1919 M St., N.W., Washington, D.C., or copies may be purchased from the Commission's duplicating contractor, ITS, Inc., 2100 M St., N.W., Suite 140, Washington, D.C. 20037, phone (202) 857-3800.

Analysis of Proceeding

1. In the *Second Report and Order*, the Commission takes several actions to conserve toll free numbers and make them available to subscribers. It concludes that the warehousing of toll free numbers is an unreasonable practice that violates section 201(b) of the Communications Act and also is inconsistent with the Commission's obligation under section 251(e) of the Communications Act, as amended, to ensure that numbers are made available on an equitable basis. It ensures greater accountability by RespOrgs (the entities responsible for managing toll free subscribers' records in the toll free database) by making the act of reserving a number serve as a certification by a RespOrg that it is not warehousing numbers, and states that RespOrgs warehousing numbers will be subject to penalties. It concludes that the practices of hoarding and brokering toll free numbers are not in the public interest and that parties that hoard or broker numbers will be subject to penalties. The Commission shortens several of the "lag time" intervals established by the industry. "Lag time" refers to the interval between a toll free number's reservation in the Service Management System (SMS) database and its conversion to working status, as well as the time between disconnection or cancellation of a toll free number and the point when that toll free number may be reassigned to another subscriber. The reserved period is shortened from 60 to 45 days. The assigned period is shortened from 12 months to 6 months. The disconnected period is shortened from 6 months to 4 months. The suspended period is shortened from 12 months to 8 months, with only numbers involved in billing disputes being eligible for such status. The Commission also caps the total number of toll free numbers a RespOrg may have in reserved status to the greater of 7.5 percent of the RespOrg's total working numbers or 2000 numbers, and concludes that no RespOrg may have in reserved status, at any time, more than three percent of the numbers that were

in the spare pool for general reservation from the database at 12:01 a.m. ET of the preceding Sunday.

2. It is ordered, pursuant to Sections 1, 4(i), 201-205, 218, and 251 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 154(i), 201-205, 218, and 251, that the Second Report and Order is hereby adopted.

3. It is further ordered that all policies, rules, and requirements set forth herein are effective on May 27, 1997, except for collections of information subject to approval by the Office of Management and Budget ("OMB"), which are effective September 22, 1997.

4. It is further ordered that the Common Carrier Bureau is delegated authority to establish, modify, and monitor conservation plans for toll free numbers if exigent circumstances make such action necessary.

List of Subjects in 47 CFR Part 52

Local exchange carrier, Numbering, Telecommunications.

Federal Communications Commission

William F. Caton,

Acting Secretary.

Rule Changes

Accordingly, part 52 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 52—NUMBERING

1. The authority citation for part 52 continues to read as follows:

Authority: Sections 1, 2, 4, 5, 48 Stat. 1066, as amended; 47 U.S.C. §§ 151, 152, 154, 155 unless otherwise noted. Interpret or apply secs. 3, 4, 201-05, 207-09, 218, 225-7, 251-2, 271 and 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. §§ 153, 154, 201-05, 207-09, 218, 225-7, 271 and 332 unless otherwise noted.

2. Subpart D is added to part 52 to read as follows:

Subpart D—Toll Free Numbers

Sec.

- 52.101 General definitions.
- 52.103 Lag times.
- 52.105 Warehousing.
- 52.107 Hoarding.
- 52.109 Permanent cap on number reservations.

Subpart D—Toll Free Numbers

§ 52.101 General definitions.

As used in this part:

(a) *Number Administration and Service Center ("NASC")*. The entity that provides user support for the Service Management System database and administers the Service Management System database on a day-to-day basis.

(b) *Responsible Organization ("RespOrg")*. The entity chosen by a toll free subscriber to manage and administer the appropriate records in the toll free Service Management System for the toll free subscriber.

(c) *Service Control Points*. The regional databases in the toll free network.

(d) *Service Management System Database ("SMS Database")*. The administrative database system for toll free numbers. The Service Management System is a computer system that enables Responsible Organizations to enter and amend the data about toll free numbers within their control. The Service Management System shares this information with the Service Control Points. The entire system is the SMS database.

(e) *Toll Free Subscriber*. The entity that requests a Responsible Organization to reserve a toll free number from the SMS database.

(f) *Toll Free Number*. A telephone number for which the toll charges for completed calls are paid by the toll free subscriber. The toll free subscriber's specific geographic location has no bearing on what toll free number it can obtain from the SMS database.

§ 52.103 Lag times.

(a) *Definitions*. As used in this section, the following definitions apply:

(1) *Assigned Status*. A toll free number record that has specific subscriber routing information entered by the Responsible Organization in the Service Management System database and is pending activation in the Service Control Points.

(2) *Disconnect Status*. The toll free number has been discontinued and an exchange carrier intercept recording is being provided.

(3) *Lag Time*. The interval between a toll free number's reservation in the Service Management System database and its conversion to working status, as well as the period of time between disconnection or cancellation of a toll free number and the point at which that toll free number may be reassigned to another toll free subscriber.

(4) *Reserved Status*. The toll free number has been reserved from the Service Management System database by a Responsible Organization for a toll free subscriber.

(5) *Seasonal Numbers*. Toll free numbers held by toll free subscribers who do not have a year-round need for a toll free number.

(6) *Spare Status*. The toll free number is available for assignment by a Responsible Organization.

(7) *Suspend Status*. The toll free service has been temporarily disconnected and is scheduled to be reactivated.

(8) *Unavailable Status*. The toll free number is not available for assignment due to an unusual condition.

(9) *Working Status*. The toll free number is loaded in the Service Control Points and is being utilized to complete toll free service calls.

(b) *Reserved Status*. Toll free numbers may remain in reserved status for up to 45 days. There shall be no extension of the reservation period after expiration of the initial 45-day interval.

(c) *Assigned Status*. Toll free numbers may remain in assigned status until changed to working status or for a maximum of 6 months, whichever occurs first. Toll free numbers that, because of special circumstances, require that they be designated for a particular subscriber far in advance of their actual usage shall not be placed in assigned status, but instead shall be placed in unavailable status.

(d) *Disconnect Status*. Toll free numbers may remain in disconnect status for up to 4 months. No requests for extension of the 4-month disconnect interval shall be granted. All toll free numbers in disconnect status must go directly into the spare category upon expiration of the 4-month disconnect interval. Responsible Organizations shall not retrieve a toll free number from disconnect status and return that number directly to working status at the expiration of the 4-month disconnect interval.

(e) *Suspend Status*. Toll free numbers may remain in suspend status until changed to working status or for a maximum of 8 months, whichever occurs first. Only numbers involved in billing disputes shall be eligible for suspend status.

(f) *Unavailable Status*. (1) Written requests to make a specific toll free number unavailable must be submitted to DSMI by the Responsible Organization managing the records of the toll free number. The request shall include the appropriate documentation of the reason for the request. DSMI is the only entity that can assign this status to or remove this status from a number. Responsible Organizations that have a toll free subscriber with special circumstances requiring that a toll free number be designated for that particular subscriber far in advance of its actual usage may request that DSMI place such a number in unavailable status.

(2) Seasonal numbers shall be placed in unavailable status. The Responsible Organization for a toll free subscriber who does not have a year round need

for a toll free number shall follow the procedures outlined in § 52.103(f)(1) of these rules if it wants DSMI to place a particular toll free number in unavailable status.

§ 52.105 Warehousing.

(a) As used in this section, warehousing is the practice whereby Responsible Organizations, either directly or indirectly through an affiliate, reserve toll free numbers from the Service Management System database without having an actual toll free subscriber for whom those numbers are being reserved.

(b) Responsible Organizations shall not warehouse toll free numbers. There shall be a rebuttable presumption that a Responsible Organization is warehousing toll free numbers if:

(1) The Responsible Organization does not have an identified toll free subscriber agreeing to be billed for service associated with each toll free number reserved from the Service Management System database; or

(2) The Responsible Organization does not have an identified toll free subscriber agreeing to be billed for service associated with a toll free number before switching that toll free number from reserved or assigned to working status.

(c) Responsible Organizations shall not maintain a toll free number in reserved status if there is not a prospective toll free subscriber requesting that toll free number.

(d) A Responsible Organization's act of reserving a number from the Service Management System database shall serve as that Responsible Organization's certification that there is an identified toll free subscriber agreeing to be billed for service associated with the toll free number.

(e) *Tariff Provision*. The following provision shall be included in the Service Management System tariff and in the local exchange carriers' toll free database access tariffs:

[T]he Federal Communications Commission ("FCC") has concluded that warehousing, which the FCC defines as Responsible Organizations, either directly or indirectly through an affiliate, reserving toll free numbers from the SMS database without having an identified toll free subscriber from whom those numbers are being reserved, is an unreasonable practice under § 201(b) of the Communications Act and is inconsistent with the Commission's obligation under § 251(e) of the Communications Act to ensure that numbers are made available on an equitable basis; and if a Responsible Organization does not have an identified toll free subscriber agreeing to be billed for service associated with each toll free number reserved from the database, or if a

Responsible Organization does not have an identified, billed toll free subscriber before switching a number from reserved or assigned to working status, then there is a rebuttable presumption that the Responsible Organization is warehousing numbers. Responsible Organizations that warehouse numbers will be subject to penalties.

§ 52.107 Hoarding.

(a) As used in this section, hoarding is the acquisition by a toll free subscriber from a Responsible Organization of more toll free numbers than the toll free subscriber intends to use for the provision of toll free service. The definition of hoarding also includes number brokering, which is the selling of a toll free number by a private entity for a fee.

(1) Toll free subscribers shall not hoard toll free numbers.

(2) No person or entity shall acquire a toll free number for the purpose of selling the toll free number to another entity or to a person for a fee.

(3) Routing multiple toll free numbers to a single toll free subscriber will create a rebuttable presumption that the toll free subscriber is hoarding or brokering toll free numbers.

(b) *Tariff Provision*. The following provision shall be included in the Service Management System tariff and in the local exchange carriers' toll free database access tariffs:

[T]he Federal Communications Commission ("FCC") has concluded that hoarding, defined as the acquisition of more toll free numbers than one intends to use for the provision of toll free service, as well as the sale of a toll free number by a private entity for a fee, is contrary to the public interest in the conservation of the scarce toll free number resource and contrary to the FCC's responsibility to promote the orderly use and allocation of toll free numbers.

§ 52.109 Permanent cap on number reservations.

(a) A Responsible Organization may have in reserve status, at any one time, either 2000 toll free numbers or 7.5 percent of that Responsible Organization's numbers in working status, whichever is greater.

(b) A Responsible Organization shall never reserve more than 3 percent of the quantity of toll free numbers in spare status as of the previous Sunday at 12:01 a.m. Eastern Time.

(c) The Common Carrier Bureau shall modify the quantity of numbers a Responsible Organization may have in reserve status or the percentage of numbers in the spare pool that a Responsible Organization may reserve when exigent circumstances make such action necessary. The Common Carrier Bureau shall establish, modify, and monitor toll free number conservation

plans when exigent circumstances necessitate such action.

[FR Doc. 97-10488 Filed 4-24-97; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961107312-7021-02; I.D. 042197A]

Fisheries of the Exclusive Economic Zone Off Alaska; Shortraker and Rougheye Rockfish in the Aleutian Islands Subarea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason adjustment; request for comments.

SUMMARY: NMFS issues an inseason adjustment prohibiting retention of Atka mackerel and rockfish of the genus *Sebastes* and *Sebastolobus* in the Aleutian Islands subarea of the Bering Sea and Aleutian Islands management area (BSAI) by vessels using trawl gear. This action is necessary to prevent overfishing of the shortraker/rougheye rockfish species group.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 21, 1997, until 2400 hrs, A.l.t., December 31, 1997.

Comments must be received at the following address no later than 1630 hrs, A.l.t., May 6, 1997.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 [Attn. Lori Gravel], or be delivered to the fourth floor of the

Federal Building, 709 West 9th Street, Juneau, AK.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Magnuson-Stevens Act requires that conservation and management measures prevent overfishing. The 1997 overfishing level for the shortraker/rougheye rockfish species group in the Aleutian Islands subarea of the BSAI is established by the Final 1997 Harvest Specifications for Groundfish for the BSAI (62 FR 7168, February 18, 1997) as 1,250 metric tons (mt) and the acceptable biological catch as 938 mt. As of April 12, 1997, 1,100 mt of shortraker/rougheye rockfish have been caught.

NMFS closed directed fishing for shortraker/rougheye rockfish in the Aleutian Islands subarea in the Final 1997 Harvest Specifications of Groundfish and prohibited retention of shortraker/rougheye rockfish on April 2, 1997 (62 FR 16736, April 8, 1997). Without this action substantial trawl fishing effort would be directed at remaining amounts of Atka mackerel and rockfish in the Aleutian Islands subarea during 1997. These fisheries can have significant bycatch of shortraker/rougheye rockfish.

The Administrator, Alaska Region, NMFS, has determined, in accordance with § 679.25(a)(1)(i) and (a)(2)(iii), that

closing the season by prohibiting retention of Atka mackerel and rockfish of the genus *Sebastes* and *Sebastolobus* by vessels using trawl gear is necessary to prevent overfishing of the shortraker/rougheye rockfish species group, and is the least restrictive measure to achieve that purpose. Without this prohibition of retention, significant incidental catch of shortraker/rougheye rockfish would occur by trawl vessels targeting Atka mackerel and rockfish.

Therefore, NMFS is requiring that further catches of Atka mackerel and rockfish of the genus *Sebastes* and *Sebastolobus* by vessels using trawl gear in the Aleutian Islands subarea of the BSAI be treated as prohibited species in accordance with § 679.21(b)(2).

The Assistant Administrator for Fisheries, NOAA, finds for good cause that providing prior notice and public comment or delaying the effective date of this action is impracticable and contrary to the public interest. Immediate effectiveness is necessary to prevent overfishing of shortraker/rougheye rockfish in the Aleutian Islands subarea of the BSAI. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until May 6, 1997.

Classification

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 21, 1997.

Gary Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97-10675 Filed 4-21-97; 4:29 pm]

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