

evaluate Petitioners' proposals. In addition, the need for swift consideration of these proposals, in order to enhance the competitiveness of the wireless cable industry and expedite educational institutions' access to the Internet via ITFS frequencies, may be defeated by implementing a potentially lengthy negotiated rulemaking procedure. Thus, we reject CTN's proposal for a negotiated rulemaking at this time. Should circumstances warrant, however, we reserve the option to revisit our decision on this issue at a later date. Conversely, SWM requests the issuance of an NPRM in this proceeding, and noting that many of the parties which filed comments in the initial round of this proceeding are ITFS entities, requests an early Fall comment date in light of the academic schedules which predominate amongst these entities. The comment period that we establish here, therefore, should enhance the ability of ITFS entities to file carefully considered comments and reply comments. We solicit comment in the NPRM on other substantive and procedural alternatives to adoption of the proposed two-way digital transmission scheme.

Federal Rules that Overlap, Duplicate or Conflict With the Proposed Rule

None.

List of Subjects

47 CFR Part 1

Environmental impact statements

47 CFR Part 21

Communications common carriers, Communications equipment, Reporting and recordkeeping requirements, Television.

47 CFR Part 74

Communications equipment, Education, Reporting and recordkeeping requirements, Television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97-29346 Filed 11-5-97; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket 96-128; DA 97-2162]

Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for waiver.

SUMMARY: On October 7, 1997, the Common Carrier Bureau granted, on its own motion, a limited waiver of five months, until March 9, 1998, to those local exchange carriers and payphone service providers that cannot provide payphone-specific digits as required by orders in this proceeding. This limited waiver applied to the requirement that local exchange carriers provide payphone-specific coding digits to payphone service providers, and that payphone service providers provide coding digits from their payphones before they can receive per-call compensation from interexchange carriers for subscriber 800 and access code calls, and 0+ and inmate calls. The limited waiver recognized that three parties had filed petitions for waiver of the payphone-specific coding digit requirements.

EFFECTIVE DATE: October 7, 1997.

FOR FURTHER INFORMATION CONTACT: Rose Crellin or Greg Lipscomb, Formal Complaints and Information Branch, Enforcement Division, Common Carrier Bureau. (202) 418-0960.

SUPPLEMENTARY INFORMATION: A toll-free call transmitted by a local exchange carrier (LEC) to an interexchange carrier (IXC) carries with it billing information codes, called automatic number identification (ANI), supplied by the LEC that assist the IXC in properly billing the call. Currently, however, not all payphone calls carry the payphone-specific coding digits necessary to identify the calls as payphone calls, making per-call tracking and blocking more difficult.

In the *Payphone Orders*,¹ we imposed a requirement that LECs provide payphone-specific coding digits to payphone service providers (PSPs), and that PSPs provide those digits from their

payphones before the PSPs can receive per-call compensation from IXCs for subscriber 800 and access code calls.² In the *Order on Reconsideration*, we clarified that, to be eligible for per-call compensation beginning October 7, 1997, payphones are required to transmit specific payphone coding digits as a part of their ANI, which will assist in identifying payphones to compensation payers.³ Each payphone must transmit coding digits that specifically identify it as a payphone, and not merely as a restricted line.⁴ We also clarified that by October 7, 1997, LECs must make available to PSPs, on a tariffed basis, such coding digits as a part of the ANI for each payphone.

We have received three requests for a waiver of the payphone-specific coding digit requirements.⁵ Meanwhile, we have granted, on our own motion, pursuant to § 1.3 of our rules, a limited waiver, until March 9, 1998, of the payphone-specific coding requirement for those LECs and PSPs not yet able to provide transmission of such digits. Those LECs and PSPs that are able to transmit the required coding digits by October 7, 1997, remain obligated to do so. Similarly, the remaining LECs and PSPs are obligated to transmit the required coding digits as soon as they are technically capable, but in any event no later than March 9, 1998.

During the period between October 7, 1997, and March 9, 1998, payphones appearing on the LEC-provided lists of payphones will be eligible for per-call compensation even if they do not transmit payphone-specific codes. This waiver of the requirements applicable to LECs and PSPs will provide LECs, IXCs, and PSPs with additional time that the record indicates is necessary to implement the procedures needed to transmit payphone-specific coding digits, without further delaying the payment of per-call compensation required by section 276 of the Act.⁶

² See *Report and Order*, 11 FCC Rcd at 20,591, paras. 98-99; *Order on Reconsideration*, 11 FCC Rcd at 21,265-66, para. 64, and 21,278-80, paras. 93-99.

³ See *Order on Reconsideration*, 11 FCC Rcd at 21,265-66, para. 64, and 21,278-80, paras. 93-99.

⁴ See *id.*

⁵ Requests were received from the United States Telephone Association (USTA), the LEC ANI Coalition and TDS Communications Corporation. Those petitions have been placed on public notice for comments. See DA 97-2214, Pleading Cycle Established for Petitions to Waive Payphone Coding Digits Requirements, October 20, 1997.

⁶ This waiver does not change the obligations of LECs pursuant to our requirements in *Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, Third Report and Order*, CC Docket No. 91-35, 61 FR 26466 (May 28, 1996), 11 FCC Rcd 17,021 (1996).

¹ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Report and Order, 61 FR 52307 (October 7, 1996), 11 FCC Rcd 20,541 (1996), ("Report and Order"); Order on Reconsideration, 61 FR 65341 (December 12, 1996), 11 FCC Rcd 21,233 (1996) ("Order on Reconsideration") (together the "Payphone Orders").

We also include LECs that have non-equal-access switches in the general coverage of this waiver. We do not address in this order the special problems presented by non-equal-access switches that were raised in the USTA Petition.⁷ We will be addressing in a separate order the issues raised by parties regarding the provision of payphone-specific coding digits by non-equal-access switches.

This waiver is effective immediately in order to ensure that all PSPs receive per-call compensation effective October 7, 1997, as required by the *Payphones Orders*.

This waiver is appropriate because special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.⁸ The special circumstances are that transmission of payphone-specific coding digits is not yet ready for implementation for certain payphones. The industry is, however, working on an expeditious resolution of this situation. The public interest is served by this waiver because it allows the Commission to move forward in implementing the statutory requirement⁹ that PSPs receive fair compensation for calls placed from their payphones. Refusal to waive this requirement would lead to the inequitable result that many payphone providers, particularly independent providers who do not control the network modifications necessary to permit payphone-specific coding digits to be transmitted, would be denied any compensation while implementation issues are being resolved by the industry. This limited waiver, moreover, will not significantly harm any parties. The unavailability of these coding digits, for instance, will not preclude IXCs from identifying payphone calls for the purpose of determining the number of calls for which compensation is owed. Nor will the waiver interfere with the possibly sixty percent of payphones that currently are able to transmit payphone-specific coding digits.

Accordingly, pursuant to authority contained in sections 1, 4, 201-205, 218, 226, and 276 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 201-205, 218, 226, and 276, and §§ 0.91, 0.291 and 1.3 of the Commission's rules, 47 CFR 0.91, 0.291 and 1.3, *it is ordered* on the Commission's own motion that the time before payphone-specific coding digits are required for per-call compensation is

extended until March 9, 1998, to the extent described herein.

It is further ordered that this order is effective upon release thereof, and that the waiver included in this order is effective October 7, 1997.

List of Subjects in 47 CFR Part 64

Communications common carriers, Operator service access, Payphone compensation, Telephone.

Federal Communications Commission.

A. Richard Metzger, Jr.,

Acting Chief, Common Carrier Bureau.

[FR Doc. 97-29305 Filed 11-5-97; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 385

[FHWA Docket Nos. MC-94-22 and MC-96-18; FHWA-97-2252]

RIN 2125-AC 71

Safety Fitness Procedure; Safety Ratings

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This document incorporates a Safety Fitness Rating Methodology (SFRM) as an appendix to the Motor Carrier Safety Fitness Procedures regulations. The SFRM will be used to measure the safety fitness of motor carriers against the safety fitness standard contained in 49 CFR Part 385. By this action the FHWA will supersede the interim final rule promulgated on May 28, 1997, effective May 28, 1997 until November 28, 1997 (62 FR 28807). That rule incorporated an SFRM to calculate the safety fitness of motor carriers transporting hazardous materials in quantities for which vehicle placarding is required, or transporting 15 or more passengers including the driver. The rule also includes a procedure which provides a notice period of 45 days during which a proposed rating can be challenged before it becomes effective.

DATES: The effective date of this regulation is November 28, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. William C. Hill, Vehicle and Operations Division, Office of Motor Carrier Research and Standards, (202) 366-4009, or Mr. Charles Medalen, Office of the Chief Counsel, (202) 366-1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Introduction

The FHWA is taking this action largely in response to a finding of the District of Columbia Circuit Court of Appeals, *infra*. This final rule is required to meet the FHWA's responsibility to maintain a system to determine the safety fitness of motor carriers operating in interstate commerce, but the agency is considering other means to achieve that goal.

Some commenters to this docket argued that a performance-based system modeled on SafeStat would be fair, and perhaps preferable to the system proposed in the FHWA's May 28 NPRM, *infra*, but that improvements are needed in the generation and use of data.

The FHWA's goal is to create a more performance-based means of determining when carriers are not fit to conduct commercial motor vehicle (CMV) operations safely in interstate commerce. A future rating system using a pass-fail test is conceivable. The FHWA will publish an advanced notice of proposed rulemaking shortly in the **Federal Register** requesting comments and supporting data on the future of a rating system that can be used both in making safety fitness determinations and in meeting the demands of shippers, insurers and other present and potential users interested in evaluating motor carrier performance.

Background

The U.S. Court of Appeals for the District of Columbia Circuit ruled on March 19, 1997, that the FHWA's procedures for assigning safety ratings were adopted contrary to law. *MST Express and Truckers United for Safety v. Department of Transportation and Federal Highway Administration*, 108 F.3d 401 (D.C. Cir. 1997). The court found the FHWA had failed to carry out its statutory obligation to establish, by regulation, a means of determining whether a motor carrier has complied with the safety fitness requirements of the Motor Carrier Safety Act of 1984 (MCSA) (codified at 49 U.S.C. 31144) because the SFRM had not been adopted pursuant to notice and comment rulemaking, as 49 U.S.C. 31144(a) requires. The safety rating of MST Express was determined using the SFRM, and the petitioner's *conditional* safety rating was therefore vacated and the matter remanded to the FHWA "for such further action as it may wish to take, consistent with the decision."

⁷ USTA Petition at 9, 11.

⁸ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

⁹ 47 U.S.C. 276(b)(A).