(''Certification to Consortium Leader of Compliance with the Children's Internet Protection Act''), which must be submitted to the billed entity consistent with paragraph (c)(1) or paragraph (c)(2) of this section:

(A) The recipient(s) of service under my administrative authority and represented in the Funding Request Number(s) for which you have requested or received Funding Commitments has (have) complied with the requirements of the Children's Internet Protection Act, as codified at 47 U.S.C. 254(h) and (l).

(B) Pursuant to the Children's Internet Protection Act, as codified at 47 U.S.C. 254(h) and (l), the recipient(s) of service under my administrative authority and represented in the Funding Request Number(s) for which you have requested or received Funding Commitments is (are) undertaking such actions, including any necessary procurement procedures, to comply with the requirements of CIPA for the next funding year, but has (have) not completed all requirements of CIPA for this funding year.

(C) The Children's Internet Protection Act, as codified at 47 U.S.C. 254(h) and (l), does not apply because the recipient(s) of service under my administrative authority and represented in the Funding Request Number(s) for which you have requested or received Funding Commitments is (are) receiving discount services only for telecommunications services; and

(ii) The billed entity for a consortium, as defined in paragraph (a)(3) of this section, must make one of the following two certifications on FCC Form 486: ''I certify as the Billed Entity for the consortium that I have collected duly completed and signed certifications from all eligible members of the consortium.''; or I certify as the Billed Entity for the consortium that the only services received under the universal service support mechanism by eligible members of the consortium are telecommunications services, and therefore the requirements of the Children's Internet Protection Act, as codified at 47 U.S.C. 254(h) and (l), do not apply.''; and

(iii) The billed entity for a consortium, as defined in paragraph (a)(3) of this section, who filed an FCC Form 471 as a ''consortium application'' and who is also a recipient of services as a member of that consortium must select one of the certifications under paragraph (c)(3)(i) of this section on FCC Form 486.

(d) *Failure to provide certifications.* (1) *Schools and libraries.* A school or library that knowingly fails to submit certifications as required by this section, shall not be eligible for discount services under the federal universal service support mechanism for schools and libraries until such certifications are submitted.

(2) *Consortia.* A billed entity's knowing failure to collect the required certifications from its eligible school and library members or knowing failure to certify that it collected the required certifications shall render the entire consortium ineligible for discounts under the federal universal service support mechanism for school and libraries.

(3) *Reestablishing eligibility.* At any time, a school or library deemed ineligible for discount services under the federal universal service support mechanism for schools and libraries because of failure to submit certifications required by this section, may reestablish eligibility for discounts by providing the required certifications to the Administrator and the Commission.

(e) *Failure to comply with the certifications.* (1) *Schools and libraries.* A school or library that knowingly fails to ensure the use of computers in accordance with the certifications required by this section, must reimburse any funds and discounts received under the federal universal service support mechanism for schools and libraries for the period in which there was noncompliance.

(2) *Consortia.* In the case of consortium applications, the eligibility for discounts of consortium members who ensure the use of computers in accordance with the certification requirements of this section shall not be affected by the failure of other school or library consortium members to ensure the use of computers in accordance with such requirements.

(3) *Reestablishing compliance.* At any time, a school or library deemed ineligible for discounts under the federal universal service support mechanism for schools and libraries for failure to ensure the use of computers in accordance with the certification requirements of this section and that has been directed to reimburse the program for discounts received during the period of noncompliance, may reestablish compliance by ensuring the use of its computers in accordance with the certification requirements under this section. Upon submittal to the Commission of a certification or other appropriate evidence of such remedy, the school or library shall be eligible for discounts under the universal service mechanism.

(f) *Waivers based on state or local procurement rules and regulations and competitive bidding requirements.* Waivers shall be granted to schools and libraries when the authority responsible for making the certifications required by this section, cannot make the required certifications because its state or local procurement rules or regulations or competitive bidding requirements, prevent the making of the certification otherwise required. The waiver shall be granted upon the provision, by the authority responsible for making the certifications on behalf of schools or libraries, that the schools or libraries will be brought into compliance with the requirements of this section, before the start of the third program year after December 21, 2000 in which the school is applying for funds under this title.

(g) *Funding year certification deadlines.* (1) *Funding Year 4.* For Funding Year 4, billed entities shall provide one of the certifications required under paragraph (c)(1), (c)(2) or (c)(3) of this section to the Administrator on an FCC Form 486 postmarked no later than October 28, 2001.

(2) *Funding Year 5 and subsequent funding years.* For Funding Year 5 and for subsequent funding years, billed entities shall provide one of the certifications required under paragraph (c)(1), (c)(2) or (c)(3) of this section in accordance with the existing program guidelines established by the Administrator.

[FR Doc. 01–9325 Filed 4–13–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket Nos. 96–61 and 98–183; FCC 01–98]

Policy and Rules Concerning the Interstate, Interexchange Marketplace; Review of Customer Premises Equipment and Enhanced Services Unbundling Rules in the Interexchange, Exchange Access and Local Exchange Markets

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document eliminates the bundling restriction, adopted in the Commission's *Computer II* proceeding, that limits the ability of common carriers to offer consumers bundled packages of telecommunications services and customer premises

equipment (CPE) at a discounted price. It also clarifies that all facilities-based carriers may offer bundled packages of enhanced services and basic telecommunications at a single price, subject to existing safeguards. This action should benefit consumers by allowing them to take advantage of packages of innovative services and equipment, and foster increased competition in the markets for CPE, enhanced and telecommunication services.

DATES: Effective May 16, 2001.

FOR FURTHER INFORMATION CONTACT: Jodie Donovan-May, Attorney Advisor, Policy and Program Planning Division, Common Carrier Bureau, (202) 418–1580.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* in CC Docket Nos. 96–61 and 98–183 released March 30, 2001. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS, Inc.), CY–B400, 445 12th Street, SW., Washington, DC. It is also available on the Commission's website at *http://www.fcc.gov/ccb/ppp/2001ord.html*

Synopsis of Report and Order

1. In light of the record developed in response to the *Further Notice* in this docket (63 FR 56892, Oct. 23, 1998), the Commission concludes that it is appropriate to eliminate the CPE bundling restriction in its entirety and clarify, but not eliminate, the enhanced services requirement, both adopted in the Commission's *Computer II* proceeding, Amendment of § 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), 77 FCC 2d 384 (1980), so that all carriers may offer consumers packages of equipment, enhanced services, and telecommunications services at a single price. The Commission finds that consumers can benefit significantly by relying on the competitive markets that exist for the components contained in a bundle, and that as a result of this competition, and existing safeguards that are applicable in certain instances, the Commission no longer needs to rely on the CPE bundling regulation to ensure that carriers do not restrict consumers from taking advantage of competitive suppliers of CPE. It also clarifies that under the existing rules, carriers may offer consumers bundles of enhanced and basic telecommunications services, subject to existing safeguards, thereby encouraging further options for consumers.

2. *CPE Bundling.* The Commission adopts its tentative conclusion to eliminate the bundling restriction codified in § 64.702(e) of its rules, 47 CFR 64.702(e), in order to allow nondominant interexchange carriers, including the nondominant interexchange affiliates of the incumbent local exchange carriers (LECs), to bundle CPE with their interstate, domestic, interexchange services. The Commission concludes that both the CPE market and the interstate, domestic, interexchange market are sufficiently competitive so that it is extremely unlikely that interexchange carriers could engage in anticompetitive behavior if the Commission permits them to provide packages of services and CPE bundled at a single price. The Commission also finds that incumbent LECs should be able to offer packages of service that include CPE and local exchange service at one price. It acknowledges that because the local exchange market is not substantially competitive and because incumbent LECs have market power, it must balance the risk that the incumbents can act anticompetitively with the public interest benefits associated with bundling. After undertaking this analysis, the Commission concludes that the risk of anticompetitive behavior by the incumbent LECs is low, not only because of the economic difficulty that even dominant carriers face in attempting to link forcibly the purchase of one component to another, but also because of the safeguards that currently exist to protect against this behavior. In particular, incumbent LECs will, under state law, offer local exchange service separately on an unbundled tariffed basis if they bundle such service with CPE. The Commission also requires them to offer exchange access service and any other service for which the Commission considers them to be dominant separately on nondiscriminatory terms if they bundle such service with CPE. The Commission also considered that the Telecommunications Act of 1996 (1996 Act) changed the telecommunications landscape from that which existed at the time that CPE bundling restriction was adopted originally, and that such changes, in conjunction with the benefits of bundling as seen in the wireless CPE context, supported a decision to eliminate the CPE bundling restrictions for all carriers, including incumbent LECs.

3. *Enhanced Services:* In the case of enhanced services, the Commission clarifies that there is currently no prohibition on the bundling of basic telecommunications service and enhanced service at a single, discounted price for any carrier. This clarification will allow carriers to offer innovative packages of enhanced services bundled with basic telecommunications service and CPE. In order to ensure that competitive enhanced service providers continue to have nondiscriminatory access to the underlying transmission capacity, the Commission does not eliminate the existing requirement that facilities-based carriers offer such capacity to these providers on the same terms and conditions under which they provide such service to their own enhanced service operations. For nondominant carriers, this safeguard is based on the Commission's existing *Computer II* requirements. For Bell Operating Companies (BOCs), the Commission's *Computer III* requirements (51 FR 24350, July 3, 1986) also require that the BOC offer the basic transmission service separately pursuant to tariff. All incumbent LECs are also subject to requirement to offer basic local exchange service on an unbundled, tariffed, nondiscriminatory basis, thereby enabling customers to purchase enhanced services from competitive suppliers and still obtain local service from the incumbent pursuant to tariff. Incumbent LECs are also subject to specific safeguards in sections 260, 274 and 275 of the 1996 Act, 47 USC 260, 274 and 275. The Commission's cost accounting rules also reduce the BOCs' incentive to misallocate costs between their regulated and unregulated service operations. Finally, the Commission emphasized that section 202 of the Act, 47 U.S.C. 202, applies to dominant and nondominant carriers that provide transmission service to competitive enhanced service providers.

4. *Universal Service Allocation.* Section 254 of the Act, 47 U.S.C. 254, requires every telecommunications carrier that provides interstate telecommunications service to ''contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.'' The Commission's rules require entities with interstate end-user revenues to contribute to the universal service fund. Further, contributions are based solely on end-user

telecommunications revenue, and thus exclude enhanced services and CPE.

5. When carriers generate revenues from stand-alone service or product offerings, the calculation of their universal service contributions is relatively straightforward. Carriers report revenues from telecommunications services and revenues from non-telecommunications offerings (including CPE and enhanced services revenues) in separate sections of the Commission's revenue worksheet, which is submitted semi-annually. Carriers are assessed universal service contributions only on their revenues from telecommunications services. If carriers generate revenues from bundled packages of telecommunications services and CPE/enhanced services, however, the calculation of their universal service contributions becomes more complicated.

6. In this Order, the Commission suggests two methods that contributors may use to allocate revenue when telecommunication services and CPE/enhanced services are offered as a bundled package. Its primary goal is to have a framework that deters carrier gaming while being competitively neutral, easy to administer, and simple to understand. The Commission's existing rules, 47 CFR 54.706, 54.709, require carriers to contribute to the universal service support mechanism based on interstate end-user telecommunications revenue. The Commission recognizes that carriers may bundle goods and services in a multitude of ways that cannot be anticipated, and thus it affords carriers the needed flexibility to determine the appropriate allocation of revenues for universal service support purposes. In reporting revenues, carriers should remain mindful of their contribution obligation under the current rule and are expected to exercise good faith in reporting revenues. Detailed further are two ways carriers could report revenues that would afford them ''safe harbor'' protection under the rule. The overriding intent is to maintain stability and predictability in funding the universal service support mechanisms.

7. First, contributors may elect to report revenues from bundled telecommunications and CPE/enhanced service offerings based on the unbundled service offering prices, with no discount from the bundled offering being allocated to telecommunications services. For example, assume that a carrier offers voice-mail service, an enhanced service, as a stand-alone offering for $6.00, and also offers basic phone service, a telecommunications service, for $20.00. The carrier offers the two services for the bundled price of $22.00, resulting in a discount of $4.00. Under this approach, the carrier would report telecommunications service revenue of $20.00 per month (the stand-alone price for the phone service) and non-telecommunications revenue of $2.00 per month (the stand-alone price for voice-mail minus the discount from the bundled offering). Carriers will likely continue to offer both bundled and unbundled telecommunications service offerings. Because incumbent local exchange carriers will continue to tariff services separately and nondominant carriers will likely continue to offer unbundled pricing to meet the needs of consumers, this method provides carriers with an easily ascertainable method of allocating revenues for purposes of calculating universal service contributions.

8. Alternatively, contributors may elect to treat all bundled revenues as telecommunications service revenue for purposes of determining their universal service obligations. For example, assume that a carrier offers a bundled package of voice-mail and basic phone service to end-users at $25.00 per month. The carrier decides that it cannot distinguish revenue for the basic service (the telecommunications service) from voice-mail (the non-telecommunications service). This carrier would report telecommunications revenue of $25.00 per month. This option would permit those contributors that are unable or unwilling to separate end-user telecommunications revenues from non-telecommunications revenue to comply with their universal service obligations when they generate revenues from bundled telecommunications services and CPE/enhanced service offerings.

9. These allocation methods are ''safe harbors'' and will be afforded a presumption of reasonableness in an audit or enforcement context. Both of the previously-described methods enable carriers to allocate revenues for purposes of universal service contributions in an easily ascertainable and reasonable manner. These methods also decrease the investigative burden in an audit or other enforcement proceeding because the necessary information is easily obtained and verified. Thus, these allocation methods provide certainty to both carriers and the Commission, and the Commission encourages their use.

10. Carriers may choose to use allocation methods other than the two described previously. Carriers should realize, however, that any other allocation methods may not be considered reasonable, and will be evaluated on a case-by-case basis in an audit or enforcement context. In evaluating the reasonableness of any alternative methods, the Commission will apply the standards underlying the safe harbors described previously. For example, carriers should not apply discounts to telecommunications services in a manner that attempts to circumvent a carrier's obligation to contribute to the universal service support mechanisms. Should an audit or enforcement proceeding be initiated, carriers will need to provide evidence that the amount of reported telecommunication revenues reflects compliance with the carrier's obligation to contribute to the universal service support mechanism based on interstate end-user telecommunications revenue.

11. The methods outlined are examples of how carriers may report revenues for universal service purposes, and carriers may choose to use a different method altogether. The Commission adopts this approach in recognition of the fact that, at this time, we cannot anticipate the various ways in which carriers may choose to bundle their goods and services. The Commission concludes that this flexible, simple, and easily administered approach will continue to maintain stability and predictability in the universal service fund, while granting carriers considerable freedom in deciding how to bundle their offerings. Finally, the Commission notes that as it gains experience with carrier practices, it may in the future seek comment on whether to adopt additional rules.

12. *Impact of Bundling on Network Disclosure and Part 68 Requirements.* The Commission concludes that its existing network disclosure policy and rules ensure that carriers that bundle CPE and transmission services will continue to provide CPE suppliers with access to information about the carriers' networks that the suppliers require to offer competitive products. The Commission believes that normal market forces pressure interexchange carriers to provide CPE suppliers with necessary network information, and that sections 201 and 202 of the Act safeguard against anticompetitive conduct in this area. It therefore does not find that any additional public disclosure requirements are necessary for interexchange carriers that bundle CPE with interstate, domestic, interexchange services.

13. The Commission's network disclosure rules, 47 CFR 51.325(a)(3), require incumbent LECs to disclose network changes that could affect the manner in which CPE is attached to their networks. The Commission also

concludes that allowing carriers to bundle CPE with transmission services will not affect the Commission's requirement that CPE not cause harm to the network, and does not affect the technical criteria that the telecommunications industry will now establish on its own, as a result of the Commission's action to streamline the CPE technical and registration procedures in 47 CFR part 68 (66 FR 7579, Jan. 24, 2001). The network disclosure rule, 47 CFR 51.327, which requires incumbent LECs to disclose publicly, at a minimum, complete information about network design, technical standards and planned changes to the network, will also continue to act as a safeguard to prevent incumbent LECs that bundle enhanced services with local exchange service from acting in an anticompetitive manner.

Final Regulatory Flexibility Act Analysis

14. The Regulatory Flexibility Act (RFA) [1] requires that regulatory flexibility analyses be prepared for notice and comment rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' [2] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [3] The RFA defines a ''small business'' to be the same as a ''small business concern'' under the Small Business Act.[4] Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).[5]

15. Consistent with the effort to reduce regulation wherever conditions warrant,[6] this Report and Order reviews the state of competition in the CPE and enhanced services market to determine if such competition warrants amending the bundling restrictions adopted in the *Computer II Order.* It also reviews the state of competition in the interstate, domestic interexchange, and local exchange markets to determine the likelihood that nondominant and incumbent carriers in these markets could engage in anticompetitive behavior if they are permitted to bundle such telecommunications services with CPE or enhanced services. In undertaking this analysis, the Report and Order acknowledges that because the local exchange market is not fully competitive and because incumbent LECs have market power, the Commission must balance the risk that incumbents can act anticompetitively with the public interest benefits of bundling. In light of the significant benefits of bundling outlined in the record developed in response to the *Further Notice* and the state of competition in the various component markets, the Report and Order finds that it is appropriate to eliminate the CPE bundling restriction for all carriers. In the case of enhanced services, it retains the requirement that facilities-based carriers continue to offer the underlying transmission service component of an enhanced service on nondiscriminatory terms, and clarifies that as long as the carriers meet this requirement, they may bundle enhanced services with telecommunications services at a single price.

16. The Commission considered the potential impact of the Report and Order on three categories of entities: ''small interexchange carriers;'' ''small incumbent LECs;'' and ''small non-incumbent LECs.'' The Report and Order will not have a significant economic impact on a substantial number of these entities because it relieves them of regulations that have prohibited them from offering consumers packages of telecommunications services and CPE at a single price. Removal of these rules will provide small entities the necessary flexibility to market services and CPE in a less restricted manner. In addition, these small entities will not have to incur certain transactional costs associated with separately offering and billing consumers for the components of a service package. In fact, it is expected that any economic impact will be a positive one. The Report and Order clarifies that small interexchange carriers, small incumbent LECs and small non-incumbent LECs may offer packages of enhanced services and telecommunications services at a single price, provided that they continue to comply with the existing requirements to offer competitive enhanced service providers access to the underlying transmission service component of an enhanced service on nondiscriminatory terms. By clarifying this requirement, the Report and Order provides regulatory certainty. Therefore, there is no significant economic impact on such entities.

17. In addition, the Commission considered the impact of the proposed rule revisions on information service providers (ISPs) and other competitive enhanced service providers. ISPs that described themselves as small businesses indicated in the record that they could suffer an economic impact from the rules proposed in the *Further Notice* if the Commission did not maintain the requirement that they be able to acquire underlying transmission capacity to provide enhanced services from the incumbent LECs on nondiscriminatory terms. We have maintained this requirement for all incumbent LECs. ISPs also indicated that they could not acquire the transmission service on nondiscriminatory terms if incumbent LECs were permitted to bundle CPE with telecommunications services. The Report and Order confirms that the transmission service component of CPE bundles will be separately available from the incumbent LECs on a nondiscriminatory basis. Therefore, there is no significant economic impact on small ISPs and small competitive enhanced service providers.

18. Accordingly, we certify that the Report and Order will not have a significant economic impact on a substantial number of small entities.

19. The Commission will send a copy of this Report and Order, including a copy of this final certification, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.[7] In addition, the Report and Order and this final certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**.[8]

List of Subjects in 47 CFR Part 64

Communications common carriers, Communications equipment, Enhanced services.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, 47 CFR part 64 is amended as follows:

[1] The Regulatory Flexibility Act, see 5 U.S.C. 601 *et seq.,* has been amended by the Contract With America Advancement Act of 1996, Public Law No. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Fairness Act of 1996 (SBREFA).

[2] 5 U.S.C. 605(b).

[3] 5 U.S.C. 601(6).

[4] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 5 U.S.C. 632).

[5] 15 U.S.C. 632.

[6] See 47 U.S.C. 161.

[7] 5 U.S.C. 801(a)(1)(A).

[8] 5 U.S.C. 605.

PART 64—MISCELLANEOUS RULES RELATING COMMON CARRIERS

1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 47 U.S.C. 225, 47 U.S.C. 251(e)(1).151, 154, 201, 202, 205, 218–220, 254, 302, 303, and 337 unless otherwise noted. Interpret or apply sections 201, 218, 225, 226, 227, 229, 332, 48 Stat. 1070, as amended. 47 U.S.C. 201–204, 208, 225, 226, 227, 229, 332, 501 and 503 unless otherwise noted.

2. Section 64.702 is amended by revising paragraph (e) to read as follows:

§ 64.702 Furnishing of enhanced services and customer-premises equipment.

* * * * *

(e) Except as otherwise ordered by the Commission, the carrier provision of customer premises equipment used in conjunction with the interstate telecommunications network may be offered in combination with the provision of common carrier communications services, except that the customer premises equipment shall not be offered on a tariffed basis.

[FR Doc. 01–9327 Filed 4–13–01; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

Radio Broadcasting Services

CFR Correction

In Title 47 of the Code of Federal Regulations, Parts 70 to 79, revised as of October 1, 2000, in part 73, § 73.202(b) is corrected in the Table of FM Allotments on page 111 under Texas by removing channel 233A and adding channel 223A at Wake Village; and on page 112, under Vermont by removing Middlebury, Channel 265A, and by adding Berlin, Channel 265C2 and Hardwick, Channel 290A.

[FR Doc. 01–55513 Filed 4–13–01; 8:45 am]

BILLING CODE 1505–01–D