State regulation	State effective date	EPA approved date	Comments
Subchapter 5, ''Registrations.'' Section: 5.12.	Dec. 6, 1999	January 22, 2002 [Insert FR page citation].	
Subchapter 15, ''New Jersey Licensed Motor Vehicle Dealers.'' Section: 15.7.	Dec. 6, 1999	January 22, 2002 [Insert FR page citation].	

* * * * * * *

[FR Doc. 02–1345 Filed 1–18–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 92–77; FCC 01–355]

Billed Party Preference for InterLATA 0+ Calls.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission clarifies that the price disclosure rules apply to all interstate non-access code operator service calls. The Commission confirms that section 226 of the Communications Act requires price disclosure for all interstate non-access code operator service calls. The Commission also clarifies that the disclosure of price information is limited to those charges that are billed by, or on behalf of, the interstate operator service provider. The Commission retains the requirement that oral rate information must be provided to both parties on a collect call. Finally, the Commission amends the rules to reflect that, in a bill-to-third-number situation, the rate disclosure option must be offered to the party to be billed, if the OSP contacts that person to secure approval for billing, as well as to the caller. These minor clarifications and changes will better ensure the effectiveness of the rules in enabling consumers to take advantage of competition in the operator services marketplace, while minimizing administrative burdens.

DATES: Effective Date: February 21, 2002.

Compliance Date: The oral rate disclosure requirement of § 64.703(a)(4) shall not apply to interstate intraLATA operator services until June 12, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Nadel, Attorney, or Michele Walters, Associate Chief, Accounting Policy Division, Common Carrier Bureau, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Order on Reconsideration in CC Docket No. 92–77, released on December 12, 2001. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC, 20554.

Introduction

1. In 1998, the Commission addressed the problem of widespread consumer dissatisfaction with the high rates charged by many operator services providers (OSPs) for calls from public phones and other aggregator locations such as hotels, hospitals, and educational institutions. At that time, an away-from-home caller who dialed ''0'' followed by an interexchange number typically did not know what rates the particular OSP would be charging. The Commission responded to this problem in the *Second Report and Order,* 63 FR 11612, March 10, 1998, by adopting price disclosure rules that apply to providers of interstate operator services from such phones and to providers of inmate operator services from phones set aside for use by inmates at correctional institutions. These rules were designed to ensure that consumers receive sufficient information about the rates they will pay for operator services at public phones and other aggregator locations, thereby fostering a more competitive OSP marketplace. In this Order, we largely affirm those rules and dispose of outstanding petitions for reconsideration. We make several minor modifications and clarifications to the rules.

2. Specifically, we clarify that the price disclosure rules apply to all interstate non-access code operator service calls, even those that are initiated by dialing 0-, if the consumer will be liable for interstate operator service charges for such calls. We confirm that section 226 of the Communications Act requires price disclosure for all interstate non-access code operator service calls and therefore decline to exempt interstate intraLATA toll calls from the price disclosure obligation under our rules. We also clarify that the disclosure of price information is limited to those charges that are billed by, or on behalf of, the interstate operator service provider and amend the rules accordingly. In view of the statutory definition of ''consumer'' in the context of operator services, we retain the requirement that oral rate information must be provided to both parties on a collect call. Finally, we amend the rules to reflect the finding in the *Second Report and Order* that, in a bill-to-third-number situation, the rate disclosure option must be offered to the party to be billed, if the OSP contacts that person to secure approval for billing, as well as to the caller. These minor clarifications and changes will better ensure the effectiveness of the rules in enabling consumers to take advantage of competition in the operator services marketplace, while minimizing administrative burdens.

3. The Commission has long been concerned about consumer dissatisfaction over high charges and certain practices of many OSPs with respect to calls from public phones at away-from-home aggregator locations. OSPs have historically competed with each other to receive operator service calls by offering commissions to payphone or premises owners on all such calls from a public phone. In exchange for this consideration, premises owners have agreed to designate a particular OSP as the presubscribed interexchange carrier (PIC) serving their payphones. Many OSPs using this strategy agreed to pay very high commissions to both premises owners and sales agents who sign up those premises owners and have claimed, as a consequence, that they had to impose very high usage charges on consumers placing calls from payphones. While this process generated added revenues for premises owners and sales agents, it forced callers to pay exceptionally high rates. As a result, some callers began to use access codes, such as 800 numbers, to reach their preferred, lower-priced OSPs and to avoid the payphone's presubscribed OSP. Because payphone owners and other aggregators did not earn

commissions on these so-called ''dial around'' calls until relatively recently, many aggregators blocked the use of access codes from their phones.

4. In 1990, Congress provided the Commission and consumers with tools to address these practices, through the passage of the Telephone Operator Consumer Services Improvement Act of 1990 (TOCSIA or Section 226 of the Communications Act.). Under TOCSIA and the Commission's implementing rules, an aggregator must, among other things, permit consumers to use an OSP of their choice by dialing an 800 or other number to reach that OSP, rather than having to use the OSP the aggregator has selected as its PIC for long-distance calls. The Commission also mandates, in accordance with TOCSIA, that each OSP ''brand'' its calls, that is, ''identify itself, audibly and distinctly, to the consumer at the beginning of each telephone call and before the consumer incurs any charge for the call. In 1996, in response to the forbearance provisions of the Telecommunications Act of 1996, the Commission sought comment on whether to forbear from applying the informational tariff filing requirements it had imposed under section 226, as well as whether to require all OSPs to disclose their rates on all 0+ calls. Based on that record, the Commission adopted its *Second Report and Order.*

5. In the *Second Report and Order,* the Commission amended its rules to require*, inter alia,* that operator service providers (OSPs) ''[d]isclose audibly and distinctly to the consumer, at no charge and before connecting any interstate, domestic, interexchange, non-access code operator service call, how to obtain the total cost of the call, including any aggregator surcharge, or the maximum possible total cost of the call, including any aggregator surcharge, before providing further oral advice to the consumer on how to proceed to make the call.''

6. The oral price disclosure rule also requires OSPs to instruct consumers that they may obtain applicable rate and surcharge quotations for 0+ calls either by, at the option of the OSP, dialing no more than two digits or remaining on the line. The Commission further amended its rules to require ''all providers of operator services from inmate-only telephones to identify orally themselves to the party to be billed for any interstate call and orally disclose to such party how, without having to dial a separate number, it may obtain the charge for the first minute of the call and the charge for additional minutes, prior to billing for any interstate call from such a telephone.''

7. The Commission ordered that the disclosure rules would become effective generally on July 1, 1998. The Commission extended the compliance date until October 1, 1999, for those carriers using store-and-forward payphones to provide operator services and stated that it would consider waiver requests on a specific factual showing of good cause.

8. Thereafter, Ameritech (now operating as SBC) petitioned for a stay of the new oral price disclosure rules to the extent that the *Second Report and Order* could be deemed to apply to interstate intraLATA toll services. In petitions for clarification or reconsideration, Ameritech and US West, Inc. (now operating as Qwest) asked the Commission to clarify, or, alternatively, to rule on reconsideration, that these rules do not apply to interstate intraLATA service. Because these petitions were pending and would not be resolved by the July 1, 1998 effective date, the Common Carrier Bureau (the Bureau) found that it would be in the public interest for the Commission to determine, prior to the compliance deadline, the applicability of the rules to interstate intraLATA toll operator services. For this reason, the Bureau stayed these requirements with respect to such intraLATA calls until 60 days after the release of an order addressing Ameritech's and US West's petitions. Seven other petitions for clarification and/or reconsideration of the price disclosure requirements were timely filed.

II. Discussion

Applicability of Rules to LECs and IntraLATA Calls

9. We affirm the application of our price disclosure rules to local exchange carriers (LECs) when they provide interstate operator services within their region. We note that the Telephone Operator Consumer Services Improvement Act of 1990 (TOCSIA) expressly defines ''operator services'' to include ''any interstate telecommunications service'' that meets specified criteria. Thus, there is no basis in the statute for exempting LEC-provided interstate operator services, which meet the statutory criteria, from the disclosure requirements. We disagree with US West's contention that LECs should be exempt from these rules because they have never been seen as the source of the kinds of problems that TOCSIA was intended to address. While there may have been relatively few complaints about interstate operator services provided by LECs, this may reflect the fact that LECs have not traditionally provided extensive interstate operator services. In view of the statutory language, and in the absence of forbearance, we do not believe a blanket exemption for LECs providing interstate operator services is warranted simply because companies other than LECs have been the primary subjects of complaints about high rates.

10. Some petitioners and commenters assert that we should decline to apply our price disclosure requirements to interstate intraLATA toll, or isolated so-called ''bubble LATA'' calls for various reasons. For example, Ameritech claims that its operator switches cannot distinguish between interstate and intrastate intraLATA traffic for this purpose and that, as a result, it would have to apply a price disclosure requirement in an overinclusive manner to all intraLATA calls. We recognize that most intraLATA toll calls are intrastate calls within the jurisdiction of the respective state regulatory agencies. We further note that many states have responded to consumer concerns over high rates and surcharges with regulations that cap rates of operator services providers and/or prohibit premises-imposed fees (PIFs). As commenters assert, requiring price disclosures may indirectly impose additional obligations with respect to all intrastate calls even though there are a relatively small number of interstate intraLATA toll calls. Commenters also assert that added expense may be required to ensure that consumers using operator services for interstate intraLATA calls receive price disclosures. Ameritech claims that the history of this proceeding demonstrates that the Commission did not intend to apply the oral disclosure rule adopted in the *Second Report and Order* to any intraLATA calls. Finally, Ameritech contends that the legislative history of TOCSIA supports its view that Congress did not intend for the statute to apply to interstate intraLATA calls, but only to interstate interLATA calls, despite the fact that the statute only uses the term ''interstate.''

11. Because the statute requires price disclosures to be made for any interstate operator service calls, we believe that exempting interstate intraLATA calls from our price disclosure requirement would be inconsistent with the statutory language, and we decline to do so. We will, however, grant US West's request for an additional six months after the release of this ruling to come into compliance with the price disclosure requirement for interstate intraLATA calls.

B. Disclosure of Premises-Imposed Fees

12. We amend our rules to make clear that the only charges that an OSP must disclose to a consumer upon request are those that the OSP, or its billing agent, will bill the consumer, including any location-specific charge or premises-imposed fee (PIF) charged by the OSP, and not those charged separately by the premises owner or aggregator. Our rules already require aggregators to disclose charges they impose and collect independently of OSPs, such as a hotel surcharge billed by a hotel. PIFs often vary widely among locations and premises owners. OSPs often are unaware of the specific surcharges imposed by aggregators, such as hotels, motels, and hospitals, on their guests for phone calls from their rooms. Further, depending on the particular facts and circumstances, aggregators could be subject to regulation as common carriers if they impose per call charges on interstate calls. For these reasons, the Commission has not required informational tariffs filed by OSPs to specify any PIF other than those directly billed and collected from consumers by the OSP, or its billing agent. Accordingly, we clarify that the tariff and rate disclosure requirements apply only to PIFs and other charges collected from consumers by the OSP, or any other entity that bills and collects on behalf of the OSP. We can revisit this determination, upon complaint or on our own motion, if we find that practices of OSPs allow aggregators to impose excessive or otherwise unreasonable surcharges on interstate calls.

C. Applicability of Rate Disclosure Rules to Collect Calls

13. We reject the requests by AT&T and SBC that we only require oral rate disclosures to be made to the party responsible for payment for collect calls, and not to the party initiating the call. We note, rather, that Congress expressly requires that disclosures be made to the ''consumer,'' which it defines as ''a person initiating any interstate telephone call using operator services.'' Under our current rules, the definition of ''consumer'' includes both parties to a collect call. Because we find that the statute specifies that callers making collect calls must receive rate disclosures, we do not eliminate that portion of the requirement. Furthermore, we observe that parties initiating collect calls have the option of selecting among OSPs, so requiring rate disclosures to them can help them make informed selections. Thus, for purposes of the rate disclosures required of the presubscribed OSP under TOCSIA, we will continue to define the term ''consumer'' to include both parties to a collect call.

D. Applicability of Rate Disclosure Rules to Bill-to-Third-Number Calls

14. We make a minor amendment to our rules with respect to bill-to-third-number calls when an OSP contacts the party to be billed to secure billing approval. For such calls, the rules currently only require disclosures to the caller, even if that person is not the party responsible for payment of the charges. Although, in the *Second Report and Order,* the Commission stated that it would ''require OSPs to make additional oral disclosure at the point of purchase of 0+ calls,'' the rules were not amended to reflect this requirement in the context of bill-to-third-number calls. To address this discrepancy, we amend the definition of ''consumer'' so that the oral rate disclosure requirement, in situations involving bill-to-third-number calls, will include the party to be billed if the OSP contacts that person to secure approval for billing. In any case, the OSP must provide the rate disclosure option to the caller, as required by the statute. We note that, in the context of inmate operator services, the Commission defines the term ''consumer'' as ''the party to be billed,'' which would include persons liable for bill-to-third-number calls, if any. Our amendment regarding bill-to-third-number calls will help ensure that consumers have the ability to make informed choices about the rates of OSPs and providers of inmate operator services.

E. Rate Disclosure in Calls by Prison Inmates

15. We retain the requirement of oral rate disclosure for operator service calls from inmates in correctional institutions. We reject the requests by US West that we vacate the Commission's decision to apply our rules to inmate calling or significantly modify those rules. As US West acknowledges, both of its proposed modifications are significantly flawed. US West suggests that we permit carriers to use a ''generic'' system upgrade that would provide a price quote for the highest possible rate the call might entail or, alternatively, that we designate a separate phone number for rate quotes. We believe that each of these alternatives will fail to meet an important goal. US West suggests the first option, the ''generic'' system upgrade, because it believes such an approach would be less expensive than implementing a system capable of providing the more specific rate disclosures required by the current rules. However, as US West observes, this approach would not provide accurate rate quotes, and excessive quotations might unnecessarily discourage calling. Permitting the provision of inflated rate quotes in an inmate environment where OSPs face no competitive pressures would be inconsistent with our statutory obligation to ''ensur[e] that consumers have the opportunity to make informed choices'' in using operator services to place interstate telephone calls. US West proposes the second modification option, the designation of a separate phone number for rate quotes from inmate phones, as another way to minimize the expense of compliance with the current rules. The drawback of this modification option, as US West also notes, is that it would ''open up'' the inmate calling system by giving inmates direct access to ''live outside lines,'' thereby threatening security. We agree that taking this approach could compromise the special security measures the Commission has acknowledged that inmate calls require. Because these two alternatives are problematic, US West urges us to vacate the rate disclosure requirement for operator service calls from inmates in correctional institutions and handle complaints about excessive rates for such calls on a case-by-case basis. We find that US West has not undermined the reasoning underlying the application of the rate disclosure rules to inmate calls, and we decline to vacate our rules. We recognize that, unlike persons making calls from aggregator locations, inmates typically do not have the option of dialing around the (PIC). In the *Second Report and Order,* the Commission concluded that recipients of collect calls from inmates ''require additional safeguards to avoid being charged excessive rates from a monopoly provider.'' The Commission adopted price disclosure rules for providers of inmate operator services that are similar to those applicable to OSPs in order to ''eliminate some of the abusive practices that have led to complaints.'' Finally, while Citizens United For Rehabilitation of Errants (CURE) asks us to require OSPs to provide copies of informational tariffs to prisons and other consumers, we agree with MCI that informational tariffs are already available and that prison officials can easily provide them to prisoners.

F. Rate Disclosure in Air-to-Ground Calls

16. We also retain the requirement of oral rate disclosure for air-to-ground calls. One of the principal reasons underlying the adoption of the rate prompt requirement was to ensure that prospective away-from-home callers are reminded of their right to obtain rate quotations from the presubscribed OSP because its rates generally are not posted at the aggregator location. Although AT&T asserts that oral rate disclosure for air-to-ground calls is unnecessary because airplane passengers typically sit for at least one hour with rate information directly before them, we find that the record is insufficient to support a finding that the applicable rates, including any surcharge billed and collected by the OSP, for air-to-ground operator services always are posted on or near the telephone instrument. Furthermore, for collect calls, such posting would not apprise the called parties, who are responsible for paying for the calls, of their right to know the price of a call at the time of purchase.

G. Use of Visual Rates Display

17. We decline to issue the ruling US West seeks that would permit OSPs to provide the rate quotation visually, if their embedded equipment and future business plans make oral presentations expensive. US West asserts that an oral alert tone, followed by a visual rate display on the caller's phone (*e.g.,* a visual display on the payphone), would enable OSPs to convey rate information effectively without incurring burdensome costs.

18. We disagree. The visual rate display on the telephone would provide rate information only to the caller, not to the called party. As previously noted with respect to inmate calls, as well as bill-to-third-number calls in certain circumstances, the consumer to whom the disclosure must be made is ''the party to be billed,'' which typically is not the caller. In the case of collect calls (and certain types of bill-to-third number calls), under our rules, the ''consumer'' who must receive the required notice includes both the party called and the caller. Furthermore, US West does not explain how persons with impaired vision would access the information in a visual rate display. Accordingly, we will retain the requirement that the rate disclosure must be oral.

H. 0− Calls

19. We clarify that the oral price disclosure requirement does not apply to a 0− call, unless the local operator routes the call to an IXC that completes an interstate non-access code toll call from an aggregator or prison location. As noted by both Bell Atlantic and BellSouth, the *Second Report and Order*, as originally adopted by the Commission, required OSPs to advise consumers how to obtain rate information for ''any interstate, domestic, interexchange 0+ call.'' As they further note, the Bureau subsequently issued an erratum, which, among other things, replaced the term ''0+ call'' with the phrase ''non-access code operator service call,'' in order to make the terminology in our rules more uniform. Bell Atlantic and BellSouth express concern that the change in wording from ''0+ calls'' to ''non-access code operator service calls'' could be interpreted as making a substantive change regarding ''0−'' calls. They observe that expanding the disclosure requirement to cover ''0− '' calls (*i.e.,* calls that merely require the caller to enter or dial ''0''), would be contrary to the express language of the *Second Report and Order*. AT&T asks the Commission to clarify that the erratum was not intended to override the text of the *Second Report and Order*, and it notes that such an interpretation would be inconsistent with the intent of this proceeding manifested in its title.

20. As is clear from the text of the *Second Report and Order*, the Commission intended the new price disclosure rules to apply to interstate 0+ calls from aggregator locations and prison inmates. The Commission stated that ''[a] 0+ call occurs when the caller enters ''0'' plus an interexchange number, without first dialing a carrier access code * * * .'' On the other hand, a 0− call occurs when the caller only dials 0, which routes the call to an operator for assistance in making local calls. We never intended our rules to cover such intrastate calls. As we said, however, our oral price disclosure prompt requirement is applicable if the local operator should route the call to a carrier that completes an interstate non-access code toll call from an aggregator or prison location. To alleviate any possible confusion on this issue, we hereby clarify that these rules are applicable to the carrier that provides an interstate call, or if consumers otherwise would be liable for interstate operator services charges.

I. AT&T's 2000 and 1000 Public Phone Sets

21. We grant AT&T's request for clarification regarding the applicability of the rules to approximately 8,700 of its Public Phone 2000 and Public Phone 1000 sets, which permit callers to ''swipe'' their calling or credit cards into the card-reading devices of the phones. This type of phone stores the card digits until after the caller dials the phone number of the called party and forwards them through the network at the same time that the caller would otherwise hear the announcement regarding the availability of rate information. We agree with AT&T that, under such circumstances, the phones qualify as ''store-and-forward'' payphones for purposes of the operator service rate disclosure rules.

J. Other Changes to Text of the Rules

22. Because a new Commission bureau, the Consumer Information Bureau, is now the appropriate recipient of consumer complaints about OSPs, we are amending § 64.703(b)(4) to require the new bureau's name and address to be posted on payphones in future postings. We are mindful of the need to avoid any unnecessary burdens on current payphone operators, and we therefore will not require them to correct their existing postings until they must replace those postings for other reasons. We will also ensure that consumer complaints sent to the old address (the Common Carrier Bureau's Enforcement Division, which no longer exists) will continue to be delivered to the Consumer Information Bureau.

23. We have removed the term ''domestic'' from the text of our rules. The rules are not applicable to foreign calls, but only to interstate calls, and the term ''domestic,'' which is not defined in the Communications Act, is redundant. We also have removed the term ''interexchange'' because not all interstate interexchange calls are long-distance toll calls covered by the rules. By removing these superfluous terms, we do not intend to change the scope or extent of our rules as clarified here.

24. Finally, as suggested by the CURE, we are revising the text of the rule applicable to providers of inmate operator services to more closely parallel the language of the comparable requirements for OSPs. This revision merely clarifies that each provider of inmate operator services must identify itself and disclose, audibly and distinctly to the consumer, at no charge, and before connecting any interstate, non-access code operator services call, how to obtain the total cost of the call, including any surcharge or premises-imposed fee, or the maximum possible total cost of the call, including any such surcharge or fee. The required oral disclosure must instruct consumers that they may obtain applicable rate and surcharge quotations either, at the

option of the provider of inmate operator services, by dialing no more than two digits or by remaining on the line. As the CURE and the Inmate Calling Service Providers Coalition observe, this editorial change does not affect the substance of the rule. For the reasons discussed, we do not permit OSPs to use generic, maximum call prices for inmate calls, where they would not have a competitive incentive to provide more accurate prices.

III. Conclusion

25. We believe that the clarifications and amendments adopted in this Order will make our price disclosure rules for operator services even more effective, while removing uncertainty and minimizing administrative costs.

IV. Supplemental Final Regulatory Flexibility Analysis

26. As required by the Regulatory Flexibility Act (RFA), a Final Regulatory Flexibility Analysis (FRFA) was incorporated in the *Second Report and Order*. The Commission received no written public comments on the FRFA. This Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) conforms to the RFA, as amended by the Contract With America Advancement Act of 1996 (CWAAA), Public Law No. 104–121, 110 Stat. 847 (1996). The Commission is issuing this *Second Order on Reconsideration* to clarify and amend rules it previously adopted in the *Second Report and Order* to protect consumers from excessive charges in connection with interstate non-access code operator services for payphone and prison inmate calls. Those rules sought to ensure that consumers are aware of their right to ascertain the specific cost for such calls so that they may hang up before incurring any charge that they believe is excessive.

1. Need for, and Objectives of, the Second Order on Reconsideration

27. In the 1996 Act, Congress sought to establish ''a pro-competitive, de-regulatory national policy framework'' for the United States telecommunications industry. One of the principal goals of the telephony provisions of the 1996 Act is promoting increased competition in all telecommunications markets, including those that are already open to competition, particularly long-distance services markets.

28. In this *Second Order on Reconsideration*, we grant, in part, several petitions seeking clarification of rules the Commission adopted in its *Second Report and Order*, requiring carriers to orally disclose to consumers how to obtain the charges for operator services for interstate calls from aggregator locations and from prison inmate-only telephones. The objective of the rules previously adopted, and as clarified and amended in this Order, is to further implement the national telecommunications policies embodied in the 1996 Act and to promote the development of competitive, deregulated markets envisioned by Congress. In doing so, we are mindful of the balance that Congress struck between this goal of bringing the benefits of competition to all consumers and Congressional concern toward the impact of the 1996 Act on small business entities.

2. Summary of Significant Issues Raised by the Public in Response to the FRFA

29. In the reconsideration petitions received by the Commission, no petitioner commented on the previous FRFA.

3. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

30. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the revised rules. The RFA defines a ''small business'' to be the same as a ''small business concern'' under the Small Business Act, 15 U.S.C. 632, unless the Commission has developed one or more definitions that are appropriate to its activities. A ''small business concern'' is one that: is independently owned and operated; is not dominant in its field of operation; and meets any additional criteria established by the Small Business Administration (the SBA). The SBA has defined a small business for North American Industry Classification System (NAICS) codes 51331 and 51333 (Wired Telecommunications Carriers and Telecommunications Resellers) to be small entities when they have no more than 1,500 employees. In the FRFA, we discussed generally the total number of telephone companies falling within these categories and estimated the number of carriers falling within relevant subcategories. Those sub-categories consisted of telephone companies, wireline carriers and service providers, interexchange carriers, resellers, operator service providers, and local exchange carriers. Except for updating the Operator Service Providers category in the following paragraph, we incorporate by reference that discussion into this Supplemental FRFA.

31. *Operator Service Providers.* According to the most recent *Trends in Telephone Service* data, 21 carriers reported that they were *primarily* engaged in the provision of operator services, but many other carriers provide operator services as a secondary business. Carriers engaged in providing interstate operator services from aggregator locations (OSPs) currently are required under section 226 of the Communications Act, and the Commission's rules and orders, to file and maintain informational tariffs at the Commission. The number of such tariffs on file thus appears to be the most reliable source of information regarding the number of OSPs nationwide, including small business concerns, that will be affected by decisions and rules adopted in this Order. As of September 1, 2000, approximately 725 carriers had informational tariffs on file at the Commission. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of OSPs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are 725 or fewer small entity OSPs that may be affected by the amended rules adopted in this Order.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

32. The rule amendments adopted in this Order clarify the current requirement that certain carriers disclose audibly to consumers how to obtain the price of a call before it is connected. Nondominant long-distance carriers, including small nondominant interchange carriers, currently are required to provide oral information to away-from-home callers, advising them how to obtain the cost of an interstate non-access code call, and similarly to disclose to the party to be billed for collect calls from telephones set aside for use by prison inmates how to obtain the cost of the call before they may be billed for such calls. The rule amendments adopted in this Order should not substantially affect the manner in which OSPs and providers of service from correctional institutions have been required to operate since the rules went into effect on July 1, 1998 (and with respect to store-and-forward telephones, on October 1, 1999). The changes, as noted throughout the text, are mere clarifications. For instance, even when we amend our rules to require disclosures to third parties when OSPs contact those parties to secure

approval for bill-to-third number calls, this merely addresses a discrepancy that existed between the Order and the Commission rules.

33. The rules adopted require that hundreds of non-dominant, long-distance carriers continue to disclose information regarding their rates, as well as any related fees they collect on behalf of the owners of the premises where the telephone instrument is located. Small entities may continue to feel some economic impact in additional message production, recording costs, and equipment retrofitting or replacement costs due to these policies and rules. Small providers of operator services also may experience greater live operator costs initially until automated terminal equipment and network systems are modified to replace the need for intervention of live operators.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

34. In this section, we describe the steps taken to minimize the economic impact of our decisions on small entities, including the significant alternatives considered and rejected. To the extent that any statement contained in this Supplemental FRFA Appendix is perceived as creating ambiguity with respect to our rules or statements made in this Order, the rules and statements set forth in the Order control.

35. Previously, in the *Second Report and Order*, we carefully considered and rejected several alternatives to the price disclosure requirements and rules adopted therein, as modified herein, finding them more burdensome to carriers. For example, we rejected a proposed billed party preference routing system, which would have seamlessly routed calls to the callers preferred carrier, due to its estimated implementation cost of one billion dollars. The costs of hardware and software upgrades would have been particularly burdensome to small carriers. We also rejected a benchmark pricing system that would have required small carriers to carefully monitor the rates of the three most popular carriers. Furthermore, we limited our disclosure requirements so that they would not apply to those types of calls for which they appeared unnecessary. This order attempts to clarify and fine tune those distinctions so that disclosure requirements only apply where we believe they are in the public interest. Thus, the rules, as clarified and modified herein, are applicable only to limited interstate, non-access code calls from payphones, or other aggregator locations, and from inmate phones in correctional institutions. They are not applicable to international calls, intrastate calls, and calls made by callers from their regular home or business. The rules also are inapplicable to calls that are initiated by dialing an access code prefix, such as 10–10–XXX or 1–800–XXX–XXXX, whereby callers can circumvent placing the call through the long-distance carrier that is presubscribed for that line.

36. Furthermore, although we find that the law requires rate disclosures to be made for interstate intraLATA calls, we are delaying the effective date of that requirement for 6 months. We believe that a 6-month delay should give the affected parties ample opportunity to come into compliance with this requirement.

37. In addition, a new bureau, the Consumer Information Bureau, is now the appropriate recipient of consumer complaints, rather than the Common Carrier Bureau's Enforcement Division, which no longer exists. While we will require the new bureau's name and address to be posted on payphones in future postings, we have acted to avoid any unnecessary burdens on current payphone operators. We will require them to make the appropriate correction whenever they next revise their postings, but we are not requiring them to replace their postings now. Instead, we are ensuring that mail sent to the old address will continue to be delivered to the Consumer Information Bureau.

38. We believe that our action requiring carriers to orally disclose how to obtain the price of their interstate non-access code operator services at the point of purchase will continue to facilitate the development of increased competition in this segment of the interstate market, thereby benefiting all consumers, some of which are small business entities. Specifically, we find that the rules adopted herein with respect to interstate non-access code operator services will continue to enhance competition among OSPs, promote competitive market conditions, and achieve other objectives that are in the public interest, including establishing market conditions that more closely resemble an unregulated environment.

6. Report to Congress

39. The Commission will send a copy of this Supplementary Final Regulatory Flexibility Analysis, along with this *Second Order on Reconsideration*, in a report to be sent to Congress pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Second Order on Reconsideration*, including the Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Second Order on Reconsideration* and this Supplemental FRFA will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

V. Ordering Clauses

40. *It is ordered*, pursuant to sections 1, 4(i), 4(j), 226, and 405 of the Communications Act of 1934, as amended, that the petitions for clarification or reconsideration filed on April 9, 1998, by Ameritech, AT&T, Bell Atlantic, BellSouth, Citizens United for Rehabilitation of Errants, Inmate Calling Service Providers Coalition, One Call Communications, Inc., US West, Inc., Cleartel Communications, Inc., Operator Services Company, and Teltrust Communications Services, Inc. are granted in part and denied in part to the extent discussed.

41. *It is further ordered* that the Commission's rules are amended as set forth, effective February 21, 2002, except that the oral rate disclosure requirement of § 64.703(a)(4) shall not apply to interstate intraLATA operator services until June 12, 2002.

42. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Second Order on Reconsideration, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Communications common carrier, Reporting and recordkeeping, Telecommunications, Telephone.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation continues to read as follows:

Authority: 47 U.S.C. 151,154, 201, 202, 205, 218, 220, and 332 unless otherwise noted. Interpret or apply sections 201, 218, 225, 226, 227, 229, 332, 48 Stat.1070, as amended, 47 U.S.C. 2201–204, 208, 225, 226, 227, 229, 332, 501 and 503 unless otherwise noted.

2. Amend § 64.703 by revising paragraph (a)(4), in paragraph (b)(2)

remove the word ''intestate'' and add in its place, the word ''interstate'', and revise paragraph (b)(4) to read as follows:

§ 64.703 Consumer information.

(a) * * *

(4) Disclose, audibly and distinctly to the consumer, at no charge and before connecting any interstate non-access code operator service call, how to obtain the total cost of the call, including any aggregator surcharge, or the maximum possible total cost of the call, including any aggregator surcharge, before providing further oral advice to the consumer on how to proceed to make the call. The oral disclosure required in this subsection shall instruct consumers that they may obtain applicable rate and surcharge quotations either, at the option of the provider of operator services, by dialing no more than two digits or by remaining on the line. The phrase ''total cost of the call'' as used in this paragraph means both the variable (duration-based) charges for the call and the total per-call charges, exclusive of taxes, that the carrier, or its billing agent, may collect from the consumer for the call. It does not include additional charges that may be assessed and collected without the involvement of the carrier, such as a hotel surcharge billed by a hotel. Such charges are addressed in paragraph (b) of this section.

(b) * * *

(4) The name and address of the Consumer Information Bureau of the Commission (Federal Communications Commission, Consumer Information Bureau, Consumer Complaints—Telephone, Washington, D.C. 20554), to which the consumer may direct complaints regarding operator services. An existing posting that displays the address that was required prior to the amendment of this rules (*i.e.,* the address of the Common Carrier Bureau's Enforcement Division, which no longer exists) may remain until such time as the posting is replaced for any other purpose. Any posting made after the effective date of this amendment must display the updated address (*i.e.,* the address of the Consumer Information Bureau).

* * * * *

3. Amend § 64.708 by revising paragraph (f) to read as follows:

§ 64.708 Definitions.

* * * * *

(f) *Consumer* means a person initiating any interstate telephone call using operator services. In collect calling arrangements handled by a provider of operator services, the term consumer also includes the party on the terminating end of the call. For bill-to-third-party calling arrangements handled by a provider of operator services, the term consumer also includes the party to be billed for the call if the latter is contacted by the operator service provider to secure billing approval.

* * * * *

4. Amend § 64.709 revising paragraph (a) to read as follows:

§ 64.709 Informational tariffs.

(a) Informational tariffs filed pursuant to 47 U.S.C. 226(h)(1)(A) shall contain specific rates expressed in dollars and cents for each interstate operator service of the carrier and shall also contain applicable per call aggregator surcharges or other per-call fees, if any, collected from consumers by, or on behalf of, the carrier.

* * * * *

5. Amend § 64.710 by revising paragraph (a)(1) and in paragraphs (b)(1) and (b)(4) remove all references to ''domestic, interexchange'' to read as follows:

§ 64.710 Operator services for prison inmate phones.

(a) * * *

(1) Identify itself and disclose, audibly and distinctly to the consumer, at no charge and before connecting any interstate, non-access code operator service call, how to obtain the total cost of the call, including any surcharge or premises-imposed-fee. The oral disclosure required in this paragraph shall instruct consumers that they may obtain applicable rate and surcharge quotations either, at the option of the provider of inmate operator services, by dialing no more than two digits or by remaining on the line. The phrase ''total cost of the call,'' as used in this paragraph, means both the variable (duration-based) charges for the call and the total per-call charges, exclusive of taxes, that the carrier, or its billing agent, may collect from the consumer for the call. Such phrase shall include any per-call surcharge imposed by the correctional institution, unless it is subject to regulation itself as a common carrier for imposing such surcharges, if the contract between the carrier and the correctional institution prohibits both resale and the use of pre-paid calling card arrangements.

* * * * *

[FR Doc. 02–1178 Filed 1–18–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 010823214–2009–02; ID. 080801A]

RIN 0648–AP47

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Rocket Launches at Vandenberg Air Force Base, CA

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

ACTION: Final rule.

SUMMARY: NMFS, upon application from the 30th Space Wing, U.S. Air Force, has issued a modification to regulations and the annual Letter of Authorization (LOA) that authorizes the take of small numbers of marine mammals incidental to missile and rocket launches, aircraft flight test operations, and helicopter operations at Vandenberg Air Force Base, CA (VAFB). The 30th Space Wing requested that the current monitoring requirements be modified so that biological monitoring is required only during the Pacific harbor seal pupping season (March 1 to June 30). By this document, NMFS is amending the regulations governing the take of marine mammals incidental to rocket launches at VAFB. NMFS, in issuing the regulation to which a modification is sought previously determined that rocket launches at VAFB would have a negligible impact on the affected species and stocks of marine mammals. In order to make the requested amendment to the regulation, NMFS has determined that the monitoring program at VAFB and the resultant data from pre- and post-launch marine mammal observations have effectively shown that rocket launch activities have a negligible impact on marine mammal populations and stocks.

DATES: The amendment to 50 CFR 216.125 is effective on January 25, 2002. The modified annual LOA is effective from January 25, 2002, until May 23, 2002.

ADDRESSES: All inquiries on this final rule and LOA should be addressed to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225.