

son, regardless of whether the maker of such communication placed the call; or

“(B) permits any telephone facility under such person’s control to be used for an activity prohibited by clause (i), shall be fined not more than \$50,000 or imprisoned not more than six months, or both.”

1988—Subsec. (b). Pub. L. 100-690 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

“(1) Whoever knowingly—

“(A) in the District of Columbia or in interstate or foreign communication, by means of telephone, makes (directly or by recording device) any obscene or indecent communication for commercial purposes to any person, regardless of whether the maker of such communication placed the call; or

“(B) permits any telephone facility under such person’s control to be used for an activity prohibited by subparagraph (A), shall be fined not more than \$50,000 or imprisoned not more than six months, or both.

“(2) In addition to the penalties under paragraph (1), whoever, in the District of Columbia or in interstate or foreign communication, intentionally violates paragraph (1)(A) or (1)(B) shall be subject to a fine of not more than \$50,000 for each violation. For purposes of this paragraph, each day of violation shall constitute a separate violation.

“(3)(A) In addition to the penalties under paragraphs (1) and (2), whoever, in the District of Columbia or in interstate or foreign communication, violates paragraph (1)(A) or (1)(B) shall be subject to a civil fine of not more than \$50,000 for each violation. For purposes of this paragraph, each day of violation shall constitute a separate violation.

“(B) A fine under this paragraph may be assessed either—

“(i) by a court, pursuant to a civil action by the Commission or any attorney employed by the Commission who is designated by the Commission for such purposes, or

“(ii) by the Commission after appropriate administrative proceedings.

“(4) The Attorney General may bring a suit in the appropriate district court of the United States to enjoin any act or practice which violates paragraph (1)(A) or (1)(B). An injunction may be granted in accordance with the Federal Rules of Civil Procedure.”

Pub. L. 100-297, in par. (1)(A), struck out “under eighteen years of age or to any other person without that person’s consent” after “to any person”, redesignated par. (3) as (2) and struck out former par. (2) which read as follows: “It is a defense to a prosecution under this subsection that the defendant restricted access to the prohibited communication to persons eighteen years of age or older in accordance with procedures which the Commission shall prescribe by regulation.”, redesignated par. (4) as (3) and substituted “under paragraphs (1) and (2)” for “under paragraphs (1) and (3)”, and redesignated par. (5) as (4).

1983—Subsec. (a). Pub. L. 98-214, §8(a)(1), (2), designated existing provisions as subsec. (a) and substituted “\$50,000” for “\$500” in provisions after par. (2).

Subsec. (a)(2). Pub. L. 98-214, §8(b), inserted “facility” after “telephone”.

Subsec. (b). Pub. L. 98-214, §8(a)(3), added subsec. (b).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1998 AMENDMENTS

Pub. L. 105-277, div. C, title XIV, §1406, Oct. 21, 1998, 112 Stat. 2681-741, provided that: “This title [enacting section 231 of this title, amending this section and section 230 of this title, and enacting provisions set out as notes under sections 231 and 609 of this title] and the amendments made by this title shall take effect 30 days after the date of enactment of this Act [Oct. 21, 1998].”

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see sec-

tion 3 of Pub. L. 105-244, set out as a note under section 1001 of Title 20, Education.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-166 effective 120 days after Nov. 21, 1989, see section 521(3) of Pub. L. 101-166, set out as a note under section 152 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-297 effective July 1, 1988, see section 6303 of Pub. L. 100-297, set out as a note under section 1071 of Title 20, Education.

CONSTRUCTION OF 2006 AMENDMENT

Pub. L. 109-162, title I, §113(b), Jan. 5, 2006, 119 Stat. 2987, provided that: “This section [amending this section] and the amendment made by this section may not be construed to affect the meaning given the term ‘telecommunications device’ in section 223(h)(1) of the Communications Act of 1934 [47 U.S.C. 223(h)(1)], as in effect before the date of the enactment of this section [Jan. 5, 2006].”

EXPEDITED REVIEW

Pub. L. 104-104, title V, §561, Feb. 8, 1996, 110 Stat. 142, provided that:

“(a) THREE-JUDGE DISTRICT COURT HEARING.—Notwithstanding any other provision of law, any civil action challenging the constitutionality, on its face, of this title [see Short Title of 1996 Amendment note set out under section 609 of this title] or any amendment made by this title, or any provision thereof, shall be heard by a district court of 3 judges convened pursuant to the provisions of section 2284 of title 28, United States Code.

“(b) APPELLATE REVIEW.—Notwithstanding any other provision of law, an interlocutory or final judgment, decree, or order of the court of 3 judges in an action under subsection (a) holding this title or an amendment made by this title, or any provision thereof, unconstitutional shall be reviewable as a matter of right by direct appeal to the Supreme Court. Any such appeal shall be filed not more than 20 days after entry of such judgment, decree, or order.”

REGULATIONS; DISPOSITION OF COMPLAINTS PENDING ON DECEMBER 8, 1983

Pub. L. 98-214, §8(c), (d), Dec. 8, 1983, 97 Stat. 1470, provided that the Federal Communications Commission (FCC) issue regulations pursuant to subsec. (b)(2) of this section not later than 180 days after Dec. 8, 1983, and that the FCC was to act on all complaints alleging violation of this section pending on Dec. 8, 1983, within 90 days of that date.

§ 224. Pole attachments

(a) Definitions

As used in this section:

(1) The term “utility” means any person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications. Such term does not include any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State.

(2) The term “Federal Government” means the Government of the United States or any agency or instrumentality thereof.

(3) The term “State” means any State, territory, or possession of the United States, the District of Columbia, or any political subdivision, agency, or instrumentality thereof.

(4) The term “pole attachment” means any attachment by a cable television system or pro-

vider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility.

(5) For purposes of this section, the term “telecommunications carrier” (as defined in section 153 of this title) does not include any incumbent local exchange carrier as defined in section 251(h) of this title.

(b) Authority of Commission to regulate rates, terms, and conditions; enforcement powers; promulgation of regulations

(1) Subject to the provisions of subsection (c) of this section, the Commission shall regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable, and shall adopt procedures necessary and appropriate to hear and resolve complaints concerning such rates, terms, and conditions. For purposes of enforcing any determinations resulting from complaint procedures established pursuant to this subsection, the Commission shall take such action as it deems appropriate and necessary, including issuing cease and desist orders, as authorized by section 312(b) of this title.

(2) The Commission shall prescribe by rule regulations to carry out the provisions of this section.

(c) State regulatory authority over rates, terms, and conditions; preemption; certification; circumstances constituting State regulation

(1) Nothing in this section shall be construed to apply to, or to give the Commission jurisdiction with respect to rates, terms, and conditions, or access to poles, ducts, conduits, and rights-of-way as provided in subsection (f), for pole attachments in any case where such matters are regulated by a State.

(2) Each State which regulates the rates, terms, and conditions for pole attachments shall certify to the Commission that—

(A) it regulates such rates, terms, and conditions; and

(B) in so regulating such rates, terms, and conditions, the State has the authority to consider and does consider the interests of the subscribers of the services offered via such attachments, as well as the interests of the consumers of the utility services.

(3) For purposes of this subsection, a State shall not be considered to regulate the rates, terms, and conditions for pole attachments—

(A) unless the State has issued and made effective rules and regulations implementing the State’s regulatory authority over pole attachments; and

(B) with respect to any individual matter, unless the State takes final action on a complaint regarding such matter—

(i) within 180 days after the complaint is filed with the State, or

(ii) within the applicable period prescribed for such final action in such rules and regulations of the State, if the prescribed period does not extend beyond 360 days after the filing of such complaint.

(d) Determination of just and reasonable rates; “usable space” defined

(1) For purposes of subsection (b) of this section, a rate is just and reasonable if it assures a

utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct or conduit capacity, which is occupied by the pole attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole, duct, conduit, or right-of-way.

(2) As used in this subsection, the term “usable space” means the space above the minimum grade level which can be used for the attachment of wires, cables, and associated equipment.

(3) This subsection shall apply to the rate for any pole attachment used by a cable television system solely to provide cable service. Until the effective date of the regulations required under subsection (e), this subsection shall also apply to the rate for any pole attachment used by a cable system or any telecommunications carrier (to the extent such carrier is not a party to a pole attachment agreement) to provide any telecommunications service.

(e) Regulations governing charges; apportionment of costs of providing space

(1) The Commission shall, no later than 2 years after February 8, 1996, prescribe regulations in accordance with this subsection to govern the charges for pole attachments used by telecommunications carriers to provide telecommunications services, when the parties fail to resolve a dispute over such charges. Such regulations shall ensure that a utility charges just, reasonable, and nondiscriminatory rates for pole attachments.

(2) A utility shall apportion the cost of providing space on a pole, duct, conduit, or right-of-way other than the usable space among entities so that such apportionment equals two-thirds of the costs of providing space other than the usable space that would be allocated to such entity under an equal apportionment of such costs among all attaching entities.

(3) A utility shall apportion the cost of providing usable space among all entities according to the percentage of usable space required for each entity.

(4) The regulations required under paragraph (1) shall become effective 5 years after February 8, 1996. Any increase in the rates for pole attachments that result from the adoption of the regulations required by this subsection shall be phased in equal annual increments over a period of 5 years beginning on the effective date of such regulations.

(f) Nondiscriminatory access

(1) A utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it.

(2) Notwithstanding paragraph (1), a utility providing electric service may deny a cable television system or any telecommunications carrier access to its poles, ducts, conduits, or rights-of-way, on a non-discriminatory¹ basis where there is insufficient capacity and for rea-

¹ So in original. Probably should be “nondiscriminatory”.

sons of safety, reliability and generally applicable engineering purposes.

(g) Imputation to costs of pole attachment rate

A utility that engages in the provision of telecommunications services or cable services shall impute to its costs of providing such services (and charge any affiliate, subsidiary, or associate company engaged in the provision of such services) an equal amount to the pole attachment rate for which such company would be liable under this section.

(h) Modification or alteration of pole, duct, conduit, or right-of-way

Whenever the owner of a pole, duct, conduit, or right-of-way intends to modify or alter such pole, duct, conduit, or right-of-way, the owner shall provide written notification of such action to any entity that has obtained an attachment to such conduit or right-of-way so that such entity may have a reasonable opportunity to add to or modify its existing attachment. Any entity that adds to or modifies its existing attachment after receiving such notification shall bear a proportionate share of the costs incurred by the owner in making such pole, duct, conduit, or right-of-way accessible.

(i) Costs of rearranging or replacing attachment

An entity that obtains an attachment to a pole, conduit, or right-of-way shall not be required to bear any of the costs of rearranging or replacing its attachment, if such rearrangement or replacement is required as a result of an additional attachment or the modification of an existing attachment sought by any other entity (including the owner of such pole, duct, conduit, or right-of-way).

(June 19, 1934, ch. 652, title II, §224, as added Pub. L. 95-234, §6, Feb. 21, 1978, 92 Stat. 35; amended Pub. L. 97-259, title I, §106, Sept. 13, 1982, 96 Stat. 1091; Pub. L. 98-549, §4, Oct. 30, 1984, 98 Stat. 2801; Pub. L. 103-414, title III, §304(a)(7), Oct. 25, 1994, 108 Stat. 4297; Pub. L. 104-104, title VII, §703, Feb. 8, 1996, 110 Stat. 149.)

Editorial Notes

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104-104, §703(1), inserted first sentence and struck out former first sentence which read as follows: “The term ‘utility’ means any person whose rates or charges are regulated by the Federal Government or a State and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for wire communication.”

Subsec. (a)(4). Pub. L. 104-104, §703(2), inserted “or provider of telecommunications service” after “system”.

Subsec. (a)(5). Pub. L. 104-104, §703(3), added par. (5).

Subsec. (c)(1). Pub. L. 104-104, §703(4), inserted “, or access to poles, ducts, conduits, and rights-of-way as provided in subsection (f),” after “conditions”.

Subsec. (c)(2)(B). Pub. L. 104-104, §703(5), substituted “the services offered via such attachments” for “cable television services”.

Subsec. (d)(3). Pub. L. 104-104, §703(6), added par. (3).

Subsecs. (e) to (i). Pub. L. 104-104, §703(7), added subsecs. (e) to (i).

1994—Subsec. (b)(2). Pub. L. 103-414 substituted “The Commission” for “Within 180 days from February 21, 1978, the Commission”.

1984—Subsec. (c)(3). Pub. L. 98-549 added par. (3).

1982—Subsec. (e). Pub. L. 97-259 struck out subsec. (e) which provided that, upon expiration of 5-year period that began on Feb. 21, 1978, provisions of subsec. (d) of this section would cease to have any effect.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-549 effective 60 days after Oct. 30, 1984, except where otherwise expressly provided, see section 9(a) of Pub. L. 98-549, set out as a note under section 521 of this title.

EFFECTIVE DATE

Section effective on thirtieth day after Feb. 21, 1978, see section 7 of Pub. L. 95-234, set out as an Effective Date of 1978 Amendment note under section 152 of this title.

§ 225. Telecommunications services for hearing-impaired and speech-impaired individuals

(a) Definitions

As used in this section—

(1) Common carrier or carrier

The term “common carrier” or “carrier” includes any common carrier engaged in interstate communication by wire or radio as defined in section 153 of this title and any common carrier engaged in intrastate communication by wire or radio, notwithstanding sections 152(b) and 221(b) of this title.

(2) TDD

The term “TDD” means a Telecommunications Device for the Deaf, which is a machine that employs graphic communication in the transmission of coded signals through a wire or radio communication system.

(3) Telecommunications relay services

The term “telecommunications relay services” means telephone transmission services that provide the ability for an individual who is deaf, hard of hearing, deaf-blind, or who has a speech disability to engage in communication by wire or radio with one or more individuals, in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services by wire or radio.

(b) Availability of telecommunications relay services

(1) In general

In order to carry out the purposes established under section 151 of this title, to make available to all individuals in the United States a rapid, efficient nationwide communication service, and to increase the utility of the telephone system of the Nation, the Commission shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.

(2) Use of general authority and remedies

For the purposes of administering and enforcing the provisions of this section and the regulations prescribed thereunder, the Com-