

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 91-116
38146

In the Matter of)
)
Policies and Rules Concerning) CC Docket No. 90-313
Operator Service Providers)
) RM-6767

REPORT AND ORDER

Adopted: April 9, 1991 ; Released: April 15, 1991

By the Commission:

TABLE OF CONTENTS

<u>Topic</u>	<u>Paragraph No.</u>
INTRODUCTION	1
BACKGROUND	2 - 5
DISCUSSION AND DECISIONS	6 - 67
Section 64.708 - Definitions	7 - 23
Section 64.703 - Consumer Information	24 - 41
Section 64.704 - Prohibition on Call Blocking	42 - 46
Section 64.705 - Restrictions on Charges	47 - 53
Section 64.706 - Emergency Calls	54 - 62
Section 64.707 - Public Dissemination of Information	63 - 67
Section 68.318 - Equipment Capabilities	68 - 70

FINAL REGULATORY FLEXIBILITY ANALYSIS

71 - 74

ORDERING CLAUSES

75 - 78

I. INTRODUCTION

1. With this Report and Order, we amend Parts 64 and 68 of our rules to implement provisions and establish policies and standards of the Telephone Operator Consumer Services Improvement Act of 1990.¹ This action establishes rules for operator service providers (OSPs) and call aggregators regarding consumer information, call blocking, restrictions on certain charges, and equipment capabilities. In addition, we establish minimum standards for the handling of emergency calls and adopt requirements for the public dissemination by OSPs of information about the operator services industry.

II. BACKGROUND

2. On June 14, 1990, this Commission adopted the initial Notice of Proposed Rule Making in CC Docket No. 90-313² in response to a petition for rule making filed by the National Association of Regulatory Utility Commissioners (NARUC).³ In the NPRM, we proposed specific rules aimed at solving problems in the operator services industry that had persisted despite previous Commission action and we asked interested parties to express their views on a number of related issues.⁴

3. During the first week of October 1990, Congress passed the Operator Services Act, which the President signed into law shortly thereafter. The purpose of the Operator Services Act is "to protect consumers who make interstate operator services calls from pay telephones, hotels, and other public locations against unreasonably high rates and anticompetitive practices."⁵ Under the Act, this Commission must, inter alia, conduct a

¹ Pub. L. No. 101-435, 104 Stat. 986 (1990) (to be codified at 47 U.S.C. § 226) ("Operator Services Act" or "Act"). The text of the Act, in relevant part, is attached as Appendix B.

² Policies and Rules Concerning Operator Service Providers, Notice of Proposed Rulemaking, 5 FCC Rod 4630 (1990) (hereinafter NPRM). A full discussion of the development of the operator services industry and the proceedings related to operator service issues is contained in the NPRM at 4630-4631.

³ See Petition of the National Association of Regulatory Utility Commissioners, RM-6767 (filed April 17, 1989).

⁴ Id. at 4631-35, 4637-38 (these related issues included double branding, charging for unanswered or uncompleted calls, and standards for the handling of emergency calls).

⁵ S. Rep. No. 439, 101st Cong., 2d Sess. 1 (1990); see also H.R. Rep. No. 213, 101st Cong., 1st Sess. 2 (1989) ("The purpose of [the Act] is to protect telephone consumers against unfair prices and practices of some operator service providers (OSPs), yet allow the legitimate companies in the industry the opportunity to compete in the market.").

"general" rule making proceeding to prescribe regulations that will implement statutory provisions and establish certain standards and policies, and a monitoring/reporting proceeding that will ultimately result in three reports to Congress.⁶ On December 21, 1990, we released a Further Notice of Proposed Rule Making⁷ in order to: (1) "initiate" the general rule making and monitoring/reporting proceedings required by the Operator Services Act;⁸ (2) propose the required rules; (3) invite any additional comments that are necessary beyond those submitted in response to our initial NPRM in CC Docket No. 90-313; (4) solicit such further information as is necessary to ensure that the objectives of the Act are satisfied;⁹ and (5) declare that, under the Act, the access and payphone compensation issues must be considered in a separate proceeding.¹⁰ The rules proposed in the FNPRM supplanted those proposed in the initial NPRM.¹¹

4. In addition, Section 226(h)(3) of the Operator Services Act directs the Commission to initiate a proceeding to determine whether the regulatory objectives specified in Section 226(d)(1) of the Act are being achieved and to report our findings to Congress. The objectives of the Act are to ensure that consumers are protected from unfair and deceptive practices relating to their use of operator services to place interstate long distance calls and, second, to ensure that consumers have the opportunity to make informed choices in making such calls. Toward this end, the Act directs the Commission to monitor OSP rates, complaints filed against OSPs, various costs of providing operator service, innovations in the provision of operator services, and compliance with the requirements of the Operator Services Act. The FNPRM initiated this proceeding as Phase II of this docket and proposed to require OSPs to file reports to assist us in preparing the reports

6 47 U.S.C. § 226(d), (h)(3).

7 Policies and Rules Concerning Operator Service Providers, Further Notice Of Proposed Rule Making, 6 FCC Rcd 120 (1990) (hereinafter "FNPRM"). Comments were due by January 22, 1991, with reply comments due by February 6, 1991. The monitoring/reporting proceeding will be conducted in Phase II of this docket.

8 47 U.S.C. § 226(d)(2), (h)(3)(A).

9 See id. § 226(h)(3)(A).

10 See id. § 226(e). This proceeding has been initiated. See Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, Notice of Proposed Rule Making, CC Docket No. 91-35, FCC 91-53, 56 Fed. Reg. 11,136 (1991) (hereinafter Access/Compensation NPRM).

11 To the extent comments in the NPRM were relevant to the proposals in the FNPRM, they were considered. Comments that went to proposals in the NPRM that were not subsequently proposed in the FNPRM are moot and were not considered. Comments made in the NPRM that are relevant to issues raised in the Access/Compensation proceeding will be considered in that docket.

required by the Act.¹² We delegate to the Chief, Common Carrier Bureau, authority to impose such reporting requirements as the Bureau shall deem necessary to fulfill the obligations imposed by Section 226(h)(3)(B) of the Act.

5. In response to the NPRM, over 400 parties filed comments and reply comments. In response to the FNPRM,¹³ over 50 parties filed comments and reply comments. A list of all parties is contained in Appendix A. The Commission is required by the Operator Services Act to complete this rule making within 210 days of the statute's enactment, that is by May 15, 1991.

III. DISCUSSION

6. The majority of commenters agreed with the rules as proposed by the Commission in the FNPRM. With the exception of rules for which clarification or modification was requested, we will adopt those rules as proposed and without discussion.¹⁴

A. Section 64.708 - Definitions

7. Section 64.708¹⁵ of the proposed rules defines a number of fundamental terms. In the FNPRM, we proposed to amend our rules to adopt, inter alia, definitions of aggregator, operator services, and provider of operator services. Comments were sought on the definitions of these terms and the other terms as set forth in Section 64.708 of the proposed rules.

1. Section 64.708(b) - "Aggregator"

8. Proposal. The term "aggregator" is defined in paragraph (b) of

¹² See FNPRM, 6 FCC Rcd at 121-122.

¹³ Two sets of comments have been filed in this proceeding. Comments filed in response to the NPRM will be referred to as "NPRM Comments" or "NPRM Reply Comments" as appropriate. Comments filed in response to the FNPRM will be referred to as "FNPRM Comments" and "FNPRM Reply Comments" as appropriate. In addition, the Commission has considered the issues raised in informal complaints filed with regard to operator services. Finally, the Commission will not consider comments that address issues not raised in the NPRM or FNPRM.

¹⁴ The rules requiring OSPs to ensure aggregators' compliance by contract or tariff with certain requirements were unopposed. See Section 64.703(e) (posting requirements), Section 64.704(b)(1) (call blocking), and Section 64.705(a)(5) (charges for access code calls). Commenters did not request clarification with respect to the majority of definitions proposed in Section 64.708, specifically, subsections (a), (c), (d), (f), and (h). Section 64.704(a), which requires that "800" and "950" access be unblocked, was supported by the commenters.

¹⁵ See 47 U.S.C. §226(a).

Section 64.708¹⁶ of the proposed rules as follows: "any person that, in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises, for interstate telephone calls using a provider of operator services."

9. Comments. Many parties submitted comments on the proposed definition of "aggregator." A number of parties filed comments stating that correctional institutions are not aggregators with respect to inmate-only phones. The parties argued that such institutions do not make these phones available to the "public" or to "transient users," but rather that these phones are only made available to persons who are involuntarily detained. The commenters note that often administrators of correctional institutions require that inmate-only phones allow only collect calls and that phone numbers for certain individuals such as judges, witnesses, and jury members be blocked.¹⁷ They request that we either exclude correctional institutions from the definition of "aggregator" or grant them an exemption under the fraud provision of the Operator Services Act, 47 U.S.C. § 226(g).¹⁸ There were no comments filed contrary to this position.

10. Comments filed by the Federal Executive Agencies (FEA) in response to the FNPRM stated that the proposed definition of "aggregator" did not encompass the federal executive agencies because "governmental agencies" are not included in the definition of "person" in Section 3(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 153(i), and the Operator Services Act did not redefine "person" to include them.¹⁹ The FEA operate hospitals, universities, hotel-like institutions and other facilities that provide telephones to transient users.²⁰

11. Additionally, many parties filed comments requesting that

¹⁶ See 47 U.S.C. § 226(a)(2).

¹⁷ See, e.g., FNPRM Comments of Gateway Technologies, Inc. (Gateway) at 3-4; FNPRM Reply Comments of Robert Cefail & Associates American Inmate Communications Inc. (Cefail) at 2.

¹⁸ See, e.g., NPRM Comments of the Ameritech Operating Companies. (Ameritech) at p. 3, n. 3; NPRM Comments of Southwestern Bell Telephone Company (Southwestern Bell) at 6; NPRM Comments of Pacific Bell and Nevada Bell at 4; NPRM Comments of U S West Communications (US West) at 7-8; NPRM Comments of the Bell Atlantic Telephone Companies (Bell Atlantic) at 6; FNPRM Comments of the American Public Communications Council (APCC) at 4-6; FNPRM Comments of Gateway; FNPRM Reply Comments of Chillicothe Telephone Co. at 2-3; FNPRM Reply Comments of Rochester Telephone Co.; FNPRM Reply Comments of MCI Telecommunications Corporation (MCI) at 2-3; FNPRM Reply Comments Cefail.

¹⁹ FNPRM Comments of Federal Executive Agencies at 2.

²⁰ Id.

universities²¹ and hospitals²² be excluded from the definition of "aggregator." Generally, universities argue that they are users of communications services and not sellers of such services. They believe that their students are long-term residential users and should not be grouped with hotel patrons, travelers or hospital patients.²³ Hospitals have generally argued that they are not common carriers and, therefore, are not subject to the Commission's jurisdiction.

12. Also with respect to this definition, several parties have asked us to clarify whether it is the premises owner or the owner of the pay telephone who is responsible as the "aggregator" for compliance with the Operator Services Act. This request has been presented to us in various forms. For example, Americall Systems of Louisville (Americall) and its joint commenters suggest that the entity that owns and controls the telephone equipment should be the "aggregator" for purposes of compliance with the Operator Services Act and the Commission's rules.²⁴ Americall states that, in situations where the payphone owner, rather than the premises owner, controls the telephone, the payphone owner should be considered the "aggregator."²⁵ Contrary to this position, the National Telephone Cooperative Association (NTCA) requests that the Commission declare that it is the premises owner that is responsible for complying with the Operator Services Act and the Commission's rules.²⁶ NTCA argues that premises owners

21 See, e.g., NPRM Comments of the University of Missouri at 1-2; FNPRM Comments of the National Association of College and University Business Officers at 1; FNPRM Reply Comments of the Association of College and University Telecommunications Administrators.

22 NPRM Comments of Ohio Hospital Association; NPRM Comments of Baylor University Medical Center; NPRM Comments of Texoma Medical Center; NPRM Reply Comments of Lorain Community Hospital.

23 See, e.g., Joint NPRM Comments of The American Council on Education and the National Association of College and University Business Officers at 2; NPRM Reply Comments of Trustees of the University of Pennsylvania at 6-7.

24 See, e.g., Joint FNPRM Comments of Americall, et al., at 4.

25 Id. NYCOM Information Services, Inc. (NYCOM) takes the same position ("Without such clarification the premises owner could be considered the aggregator even though they may have no control over the payphone and no authority to ensure that the proper signage is in place."). FNPRM Comments of NYCOM at 9-10. See also NPRM Reply Comments of United Telecommunications, Inc. at 8 ("...placing the posting responsibility on the owner of the pay telephone will facilitate compliance with the Operator Services Act and will prevent premises owners from inadvertently covering up, with the signage required by the Act, other useful information on the telephone.")

26 FNPRM Comments of NTCA at 4.

who have contracts with OSPs should have to comply with these requirements; the local exchange company who leases the equipment to the premises owner has no control over the leased equipment, over the premises where that equipment is located, or over the OSP with whom the premises owner has contracted.²⁷

13. Decision. After reviewing all the relevant comments and replies, we believe that the proposed definition should be adopted. We do agree with the commenters, however, that some clarification is necessary.

14. An "aggregator" has certain enumerated responsibilities under the Act and our rules, among them posting the required information on or near the telephone and ensuring that its telephones do not block "800" or "950" access. We believe that the "aggregator" is the entity that is in the position to comply with these requirements through its access to and control of the telephone equipment, a determination that must be based on the facts of each situation. Congress has made clear that pay telephone owners, hotels and other premises owners may be aggregators under the Act. Therefore, a blanket determination by the Commission regarding who the aggregator is with regard to all payphones will not help to meet our goals of ensuring the availability of consumer information and consumer choice. Instead, we will interpret the definitions broadly enough to ensure compliance with the goals of our rules and the Act. Each entity that exercises control over telephone equipment, whether through ownership of the equipment, control of access to the equipment or some other means, will be responsible as an "aggregator" under the Act and our rules. In some situations the premises owner and the pay telephone owner will be jointly responsible as "aggregators" by virtue of their joint access to and control over the telephone equipment;²⁸ in some situations the "provider of operator services" will also be an "aggregator" who must comply with the provisions of the Act and our rules. In order to remove any ambiguity and to avoid debate

27 Id. at 3-4. Another commenter requests that we clarify that the premises owner, not the owner of the equipment, is the aggregator. FNPRM Comments of Southwestern Bell at 2. The United States Telephone Association (USTA) also supports this position stating that, absent an agreement, the premises owner should be considered the aggregator when a payphone is located on private premises. FNPRM Reply Comments of USTA at 1, n.1.

28 This interpretation is consistent with the intent of the Operator Services Act. "Telephones made available to the general public include telephones in hotels, hospitals, universities, airports, and other pay telephones." S.Rep. No. 439, 101st Cong., 2d Sess. n. 2 (1990); "Aggregators include hotels and motels, hospitals, universities, airports, gas stations, pay telephone owners, and others." Id. at 10. It is clear that Congress intended that all pay telephones be covered by the legislation whether located in, for example, hotels and universities or stand-alone payphones not located in a particular premise. OSPs must ensure aggregator compliance by tariff or contract with Section 64.703(e) (posting requirements), Section 64.704(b)(1) (call blocking prohibition) and Section 64.705(a)(5) (charges for access code calls).

over who is responsible for ensuring compliance with the Act and the Commission's rules, joint aggregators will be equally responsible for complying with the Act and the rules.

15. We conclude that the definition of "aggregator" does not apply to correctional institutions in situations in which they provide inmate-only phones. We are persuaded that the provision of such phones to inmates presents an exceptional set of circumstances that warrants their exclusion from the regulation being considered herein.²⁹ Accordingly, inmate-only phones at correctional institutions will not be subject to any requirements under the Act or the Commission's rules.³⁰ Phones provided for the use of the public, however, such as those in visitation areas, would be covered by the Operator Services Act and the rules.

16. We also find that hospitals and universities are clearly within the scope of the definition of "aggregator."³¹ In discussing the definition, the Senate Committee said that "[a]ggregators include hotels and motels, hospitals, universities, airports, gas stations, pay telephone owners, and others."³²

17. In addition, we are not persuaded that the federal executive

29 Both the Act and the legislative history are silent with respect to the inclusion of correctional institutions within the definition of "aggregator" with regard to inmate-only phones.

30 Additionally, the carrier providing service to inmate-only phones at correctional institutions would not fall under the definition of "provider of operator services" as such service is not provided at an "aggregator" location with respect to inmate-only phones. A carrier that provides service to phones at correctional institutions that are made available to the public or to transient users would have to comply with the requirements of the Commission's Rules and the Operator Services Act.

31 "Aggregators include, for example, hotels, hospitals, airports, and universities." NPRM, 5 FCC Red at 4638, n.6. We will clarify that a university that allows students complete freedom in choosing their own interexchange carriers for operator service would not come within the scope of the definition. In this instance, the university is providing nothing more than would a typical apartment building wherein each tenant is responsible for choosing his or her long-distance carrier; consumers (the students) would have made their own informed choice of OSP. Additionally, we clarify that aggregators "only include persons who make telephones available for interstate calls." S.Rep. No. 439, 101st Cong., 2d Sess. 10 (1990). For example, local exchange companies (LECs) would be "aggregators" to the extent that they make telephones available to the general public or transient users for interstate calls using a provider of operator services.

32 S.Rep. No. 439, 101st Cong., 2d Sess. 10 (1990).

agencies should be excluded from the definition of "aggregator." This Commission has previously found that governmental entities are subject to its jurisdiction.³³ First, the Communications Act has conferred upon the Commission broad and expansive regulatory authority over interstate communications by wire and radio. Second, while the term "person" in the Communications Act is defined to include certain entities, there is no indication that the list is all-inclusive and that entities not specifically mentioned are to be excluded.³⁴ Finally, when Congress has sought to exclude governmental entities from our jurisdiction they have done so explicitly.³⁵ We also note that the legislative intent of Congress would be frustrated by excluding "governmental entities" from regulation under the Operator Services Act and our rules. Hence, to the extent such agencies make phones available to the public or to transient users for the placing of operator-assisted interstate telephone calls, they clearly provide the type of service contemplated by the Operator Services Act and therefore come within the statutory requirements of the Act and under the Commission's rules.

2. Section 64.708(g) and (i) - "Operator Services" and "Provider of Operator Services"

18. Proposal, The term "operator services" is defined in paragraph (g) of Section 64.708³⁶ of the proposed rules as follows:

33 Graphnet Systems, Inc., 73 FCC 2d 283 (1979) (finding that the United States Postal Service was not exempt from Commission jurisdiction due to its status as a governmental entity).

34 Additionally, the Operator Services Act and its legislative history evidence no intent to exclude governmental entities from our jurisdiction. For example, we note that Congress has defined "aggregator" to include hospitals among other entities. There has been no distinction drawn between non-governmental and governmental hospitals, and we shall not draw that distinction.

35 For example, radio stations operated by the United States are excluded from regulation under Title III of the Communications Act. The FEA, however, points to the explicit inclusion of "governmental entities" within a definition of person included in the Cable Franchise Policy and Communications Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779 (Title VI of the Communications Act) as dispositive with regard to the issue of jurisdiction over "governmental entities." The FEA contends that when Congress wants to include governmental entities within our jurisdiction, they do so explicitly. There is no merit to this argument as the definition of "person" in Title VI of the Communications Act is for the purposes of Title VI specifically and was not meant to limit generally the definition of "person" in Title I. The fact that Congress has explicitly confirmed that a governmental entity is a "person" under Title VI does not mean a governmental entity is not also a person under the Title I definition.

36 See 47 U.S.C. § 226(a)(7).

any interstate telecommunications service initiated from an aggregator location that includes, as a component, any automatic or live assistance to a consumer to arrange for billing or completion, or both, of an interstate telephone call through a method other than--

(1) automatic completion with billing to the telephone from which the call originated; or

(2) completion through an access code used by the consumer, with billing to an account previously established with the carrier by the consumer.

19. The term "provider of operator services" is defined in paragraph (i) of Section 64.708³⁷ of the proposed rules as "any common carrier that provides operator services or any other person determined by the Commission to be providing operator services."

20. Comments. A number of parties have sought clarification that "operator services" and "provider of operator services" include "bong-in-the-box," "store-and-forward,"³⁸ and other similar automated technologies.³⁹ Generally, these parties state that there is no basis for distinguishing between live or automated off-site services and the "store-and-forward" and "bong-in-the-box" devices located within telephones and PBXs.⁴⁰ HF Communications Corporation has requested that we clarify that a hotel that provides automated billing functions only to its patrons is not an OSP under the Act and our rules.⁴¹ It argues that there are distinctions between a hotel that provides services to its patrons and OSPs that provide services to any and all aggregators -- hotels have a direct relationship with the caller and there are many more hotels than OSPs.⁴²

³⁷ See 47 U.S.C. § 226(a)(9).

³⁸ "Store-and-forward" and "bong-in-the-box" devices are microprocessors located within telephones that perform automated call completion and billing services.

³⁹ See, e.g., NPRM Comments of Com Systems, Inc. at 6-9; NPRM Reply Comments of MLD Long Distance, Inc. at 2-3; Joint NPRM Reply Comments of Operator Service Providers of America (OSPA) and NYCOM at 25-26; NPRM Reply Comments of Competitive Telecommunications Association (CompTel) at 3-4; Joint FNPRM Comments of Americall, et al. at 7-9.

⁴⁰ See, e.g., Joint FNPRM Comments of Americall, et al. at 7-9.

⁴¹ Joint NPRM Reply Comments of HF Communications Corporation and Value-Added Communications, Inc. and FNPRM Reply Comments of HF Communications Corporation.

⁴² FNPRM Reply Comments of HF Communications Corporation at 4.

21. Decision. Sections 64.708(g) and (i) will be adopted as proposed. The legislative history of the Operator Services Act states that "operator services" include

interstate telecommunications services that involve any assistance to a consumer to arrange for billing other than to the number from which the call was placed. This definition includes assistance provided either by a "live" person or by automation, such as voice recordings or "bong-in-a-box" services. Carriers may not escape this definition by employing a particular technology that does not involve a "live" operator.⁴³

Clearly, Congress intended that automated technologies be included within the definition of "operator services" and that those who provide service through such automated technologies are "providers of operator services" under the Act and the Commission's rules. We emphasize that "store-and-forward" and "bong-in-the-box" as well as other automated technologies do not fall within the exemption to the definition of "operator services" found in Section 64.708(g)(1) of the rules.⁴⁴ We are not persuaded that a distinction should be drawn between automated billing provided by a hotel vis-a-vis similar services provided by entities that offer such services as their primary business. Hotels providing automated billing fall within the definition of "provider of operator services" and must comply with the Act and our rules.

3. Other definitions.

22. The remainder of the definitions in the proposed rules were generally supported by commenters. MCI asks that we make a technical change to Section 64.708(e), the definition of "equal access."⁴⁵ The rule as proposed would have required that "equal access" be defined as that term is used in Appendix B of the Modification of Final Judgment as amended by court orders issued prior to the effective date of the rule. The MCI modification would include only those orders issued prior to the date of enactment of the Operator Services Act, October 17, 1990.

23. Consistent with the Act, we will modify Section 64.708(e) to reflect the inclusion of only those orders amending the Modification of Final Judgment issued prior to October 17, 1990. The remainder of the definitions in Section 64.708 will be adopted as proposed. We believe that the legislative history and intent of the Act provide sufficient guidance regarding the definitions adopted and that adoption of those terms precisely

⁴³ S.Rep. No. 439, 101st Cong., 2d Sess. 11 (1990).

⁴⁴ This section exempts from the definition of "operator services" the provision of interstate telecommunications services from aggregator locations that are automatically completed with billing to the telephone from which the call originated. See 47 U.S.C. § 226(a)(7)(A).

⁴⁵ FNPRM Comments of MCI at 3-4.

as stated in the Operator Services Act is a necessary part of our implementation process.

B. Section 64.703 - Consumer Information

1. Section 64.703(a) - OSP Requirements

24. Proposal. Section 64.703(a)⁴⁶ of the proposed rules would require OSPs to brand calls,⁴⁷ to allow consumers to terminate calls without incurring a charge before connection, and to disclose immediately to consumers certain information regarding rates and charges. These proposed rules are necessary both to allow the consumer "to make a free and knowledgeable choice among OSPs and to help avoid or resolve disputes over charges."⁴⁸

25. Comments. The commenters generally supported the proposed requirements for OSPs.⁴⁹ Additionally, commenters generally believe that these requirements should apply to both "live" and "automated" operators.⁵⁰

26. There is some question over the timing of the first brand. APCC asks that we clarify that the timing of the first brand should be left to the discretion of the OSP. Specifically, APCC suggests, with respect to "store-and-forward" ("S&F") technology, the first brand should occur after billing validation, that is after the bong tone.⁵¹ MCI, on the other hand, argues that the first brand should occur prior to the bong tone because a consumer may be entering his or her billing number and not hear a brand after the bong tone.⁵² APCC also asks that we clarify that the entity named in the brand is subject to agreement between the parties, should more than one party be

⁴⁶ See 47 U.S.C. § 226(b)(1)(A), (B), (C).

⁴⁷ Call branding "is the process by which an OSP audibly and distinctly identifies itself to every person who uses its operator services." NPRM, 5 FCC Rcd at 4632.

⁴⁸ Id.

⁴⁹ See, e.g., NPRM Comments of Capital Network System, Inc. (CNS) at 8-10 ("CNS believes that customer information sufficient to make informed choices is not only good public policy but is good business."); NPRM Comments of Ameritech at 13; NPRM Comments of US West at 3; NPRM Comments of ComTel Computer Corp. at 5.

⁵⁰ See, e.g., NPRM Comments of Cleartel Communications, Inc. at 14; NPRM Comments of Com Systems, Inc. at 4, 6.

⁵¹ FNPRM Comments of APCC at 9.

⁵² MCI also argues that should the first brand occur after validation, there would be no distinction between the first and second brand. FNPRM Reply Comments of MCI at 4.

involved in rate-setting.⁵³

27. APCC argues that the proposal to require rate disclosure, collection methods and dispute resolution practices may have to be modified with regard to S&F technology. APCC claims that because the S&F device itself may be unable to answer questions, a consumer may have to dial a separate toll-free number to obtain rate and other information. APCC requests that we modify or clarify the rule to allow competitive public payphone providers that employ S&F technology to instruct a consumer to dial a separate toll-free number for information.⁵⁴

28. Decision. After examining the record, we believe that Section 64.703(a) should be adopted without modification. These requirements apply to both "live" operators and automated technologies. The first brand must occur "at the beginning of the call."⁵⁵ APCC asks that we allow the first brand to occur after the consumer has entered a billing number and that number has been validated. We do not believe that a brand at that time is "at the beginning of the call." For automated systems, we require that the first brand occur prior to the bong tone, since the bong tone usually signals callers to begin entering a billing number. This requirement will help ensure that consumers hear all of the branding information and have the opportunity to make an informed choice to use a particular OSP.

29. We see no reason for prohibiting parties involved in rate-setting from deciding which party will be named in the brand. However, we prohibit parties from branding in the name of another party if rates are merely modeled on or copied from that party's rates and that party has not consented to the use of its name in the brand.

30. We believe that, with regard to automated technologies only, the provision of rate and other information via the use of a separate toll-free number is a reasonable method of compliance with our rule. We caution, however, that as technology is developed that eliminates the necessity for a separate number, the use of that number should also be eliminated. We will also clarify that any rates quoted by an OSP must be exact rather than approximate. The Operator Services Act is clear that quotes for rates or charges must be for "the call"⁵⁶ not for some hypothetical call. Rates should be quoted based on the pricing of the specific call.

53 FNPRM Comments of APCC at 7.

54 Id. at 8.

55 See 47 U.S.C. § 226(b)(1)(A).

56 See 47 U.S.C. § 226(b)(1)(C)(i).

2. Section 64.703(b) and Section 64.703(d) -
Aggregator Posting Requirements and State Requirements

31. Proposal. Section 64.703(b),⁵⁷ as proposed, would require aggregators to post on or near telephones in plain view of consumers certain information to help ensure that consumers are fully informed when choosing an OSP. This information includes i) the name, address and toll-free number of the OSP; ii) a written disclosure that, upon request, rates are available for all operator-assisted calls and that consumers have the right to use their preferred interstate common carrier and may contact that carrier for information on accessing its services, and iii) the name and address of the Common Carrier Bureau's Enforcement Division to which a consumer may direct complaints.

32. Proposed Section 64.703(d) provides that the posting requirement of 64.703(b) will not apply if state law or regulation requires an aggregator to take actions that are substantially the same as the requirements of Section 64.703(b). The purpose of this proposed rule is to avoid duplicative posting requirements and to ensure that there is adequate disclosure to consumers through either federal or state regulation.⁵⁸

33. Comments. Commenters were generally supportive of the proposed rules.⁵⁹ NTCA requests that we declare that the Section 64.703(b) posting requirement does not apply to payphones in non-equal access areas of the country.⁶⁰ NTCA believes that such disclosure "is meaningless unless the consumer in fact has a choice of available carriers."⁶¹ NTCA contends that in non-equal access areas payphones are only capable of accessing one interstate carrier.⁶²

34. A number of parties commented on the placement of the required information. Some commenters believe that, under certain circumstances, aggregators should be allowed to hand the required information to their

57 47 U.S.C. § 226(c)(1)(A).

58 S.Rep. No. 439, 101st Cong., 2d Sess. 18 (1990).

59 See, e.g., NPRM Comments of CompTel at 4; NPRM Comments of MCI at 3.

60 FNPRM Comments of NTCA at 4. A number of parties commented that information that is required to be posted should be kept at a minimum both due to space considerations and replacement costs. See, e.g., NPRM Comments of US West at 6; NPRM Comments of United Telecommunications, Inc. at 8-10.

61 FNPRM Comments of NTCA at 4.

62 Id.

patrons, such as at check-in for hotel patrons and hospital patients.⁶³ NARUC, on the other hand, believes that the information should be attached to the phone or displayed prominently nearby so that it is certain that all potential users of the phone receive the required information.⁶⁴

35. Some parties have requested that we provide guidance as to the meaning of "substantially the same" in Section 64.703(d) and that we look at each state's requirements and determine whether they are "substantially the same."⁶⁵

36. Decision. After examining the record, we believe that Section 64.703(b) and Section 64.703(d) should be adopted as proposed. Consumers in non-equal access areas should be able to reach carriers that use "800" or "950" access numbers. We therefore find that all aggregator telephones, including those in non-equal access areas, are subject to the posting requirements.

37. We also want to make clear that the required information must be posted on or near all aggregator telephones. For example, it is not sufficient that the required information is posted on or near only one telephone in a hotel suite or room with more than one telephone.⁶⁶ Further, it is not sufficient that tent cards or stickers on or near a telephone merely refer the consumer to another source of information such as a pamphlet or hand-out that is not itself within plain view of the consumer.⁶⁷

38. The posting requirement adopted in these rules is a minimum standard. State requirements that include all the information required by

63 Joint NPRM Comments of Telesphere Communications, Inc. (Telesphere) and National Telephone Services, Inc. (NTS) at 26. See also NPRM Comments of OSPA at 8-9; Joint NPRM Reply Comments of OSPA and NYCOM at 27-28.

64 NPRM Comments of NARUC at 9-10. See also NPRM Comments of Independent Telecommunications Network, Inc. at 2; NPRM Comments of Communications Workers of America at 7-8 ("A hospital patient arguably has major health considerations on her/his mind at check-in time, a situation guaranteeing that literature on an abstruse operator services matter simply placed in hand will go unread and unattended. A hotel guest may be occupied with business matters on arrival.")

65 NPRM Reply Comments of United Telecommunications, Inc. (United Telecom) at 9; APCC also requests that we provide guidance regarding state requirements when it is unclear that they are "substantially the same" as federal requirements. FNPRM Comments of APCC at 10.

66 "Hotels, motels and hospitals are expected to set up 'tent cards' that rest on or near the telephone in each room." S.Rep. No. 439, 101st Cong., 2d Sess. 17 (1990).

67 "This information [that aggregators are required to post] must be placed so that it is plainly visible to a caller." Id.

our rule, though the wording may be different, will be "substantially the same." Aggregators are responsible for complying with the Act and our rules. Aggregators are also responsible for reviewing and complying with any additional state requirements, where they exist.

3. Section 64.703(c) - Double Branding

39. Proposal. Section 64.703(c)⁶⁸ would require that OSPs double brand, that is, identify itself twice, for three years from the effective date of the rule. Double branding, "by emphasizing the identity of the operator service company, [would] more fully ensure that the customer has freely chosen to use that company's services."⁶⁹

40. Comments. The majority of the commenting parties are opposed to the double branding requirement.⁷⁰ OSPA and CompTel have requested that smaller OSPs be exempted from this requirement, as it may not be technically or financially feasible for smaller OSPs.⁷¹ A number of commenters have asked that we clarify that double branding applies to collect calls.⁷² Additionally, one party requested that we change the sunset provision of the rule to mirror that of the legislation, that is, to three years and 90 days from enactment of the legislation or through January 14, 1994.⁷³

41. Decision. The Act mandates that OSPs double brand for the three-year period commencing 90 days after its enactment.⁷⁴ We will modify Section 64.703(c) to provide that OSPs must double brand through January 14, 1994 in conformance with the Act. This rule applies to all OSPs regardless of size and to all calls including collect calls. Double branding should more fully inform consumers of the identity of the OSP handling a call and that they have the right to freely choose whether to use that OSP's

68 See 47 U.S.C. § 226(b)(2).

69 NPRM, 5 FCC Red at 4632.

70 But see NPRM Comments of the Alabama Public Service Commission (PSC) at 2 ("Double branding will provide an additional opportunity for consumer identification, consumer education and consumer choice."); NPRM Comments of the Missouri Public Service Commission at 2 (supports double branding requirement "...in order to more fully ensure that the customer has freely chosen to use that company's services."); NPRM Comments of the Arkansas Public Service Commission at 5.

71 Joint NPRM Reply Comments of OSPA and NYCOM at 29-31; NPRM Reply Comments of CompTel at 4.

72 See, e.g., NPRM Comments of the Missouri Office of Public Council at 3.

73 FNPRM Comments of MCI at 3-4.

74 See note 68, *supra*.

services.⁷⁵

C. Section 64.704 - Prohibition on Call Blocking

42. Proposal. Section 64.704⁷⁶ would require each aggregator to ensure that telephones presubscribed to an OSP not block "800" and "950" access number calls. OSPs are required to ensure by contract or tariff that aggregators comply with this rule. In addition, an OSP is required to withhold compensation⁷⁷ to aggregators it reasonably believes are blocking in violation of this rule. This requirement would place the burden on OSPs to ensure compliance and would subject them to penalties under the Communications Act of 1934 should they continue to pay compensation.⁷⁸

43. Comments. In general, commenters have supported the unblocking of "800" and "950" access as required by Section 64.704(a) of the proposed rules.⁷⁹ They say that the unblocking of "800" and "950" does not present the fraud problems associated with "10XXX" unblocking.⁸⁰ Some clarification has been requested with respect to the withholding of compensation to aggregators under Section 64.704(b)(2). NYCOM Information Services, Inc. (NYCOM) believes that OSPs should not be required to withhold compensation unless they have received notification from a regulatory agency that blocking has occurred at a particular location.⁸¹ OSPA asks us to consider other enforcement methods, including direct Commission action against aggregators or a program in which OSPs would report to the Commission and we would issue

75 NPRM, 5 FCC Rcd at 4632.

76 See 47 U.S.C. § 226(c)(1)(B), (b)(1)(D)-(E).

77 "'[C]ompensation' refers to any type of compensation which is paid by any means or device, including, but not limited to, indirect compensation, discounts, and payments by means other than cash." S.Rep. No. 439, 101st Cong., 2d Sess. 13 (1990).

78 S.Rep. No. 439, 101st Cong., 2d Sess. 13 (1990).

79 See, e.g., NPRM Comments of Public Telecommunications Council at 22; Joint NPRM Comments of Americall and First Phone of New England, Inc. at 15.

80 See, e.g., NPRM Comments of the American Hotel and Motel Association at 26; NPRM Comments of OSPA at 14; NPRM Comments of CNS at 13.

81 FNPRM Comments of NYCOM at 8-9; see also Joint NPRM Reply Comments of OSPA and NYCOM at 32; NPRM Comments of MCI at 5 (asking that the Commission clarify that OSPs should not pay compensation at locations where the Commission has determined that blocking has occurred). See also NPRM Comments of Cleartel Communications, Inc. at 10 (OSPs should receive notice that blocking has occurred); accord, NPRM Comments of U.S. Long Distance, Inc. at 14-15.

a Public Notice reporting blocking practices of aggregators.⁸²

44. Decision. With respect to "800" and "950" access numbers, Congress has stated, as we have, that "consumers must have...the ability to choose their desired carriers and therefore must be permitted to reach those carriers by dialing the access code associated with that carrier."⁸³ We believe that the unblocking of "800" and "950" access is an important step in allowing consumer choice.⁸⁴

45. The Commission will not provide notice of blocking to an OSP before the OSP is required to withhold compensation from an aggregator nor will we compile for public dissemination listings of aggregators who purportedly block. The purpose of this rule is to provide additional incentive to OSPs to ensure that aggregators do not block "800" and "950" access. We expect that OSPs will take steps necessary to ensure such compliance. The listing by the Commission of aggregators who block will neither ensure compliance nor deter an aggregator from blocking. Preparation of such a list would merely engender delay. Unlike the Commission, OSPs have direct and regular contact with aggregators. Diligent OSP monitoring and remedial action, in the form of withholding compensation, should deter blocking and help to reach the Commission's goal of providing consumers with access to their carrier of choice.

46. The Commission will make appropriate use of its forfeiture authority against offending OSPs and aggregators. Under Section 503 of the Communications Act,⁸⁵ we can impose substantial forfeitures for willful or repeated violations of the Communications Act or our rules, regulations, or orders: for common carriers subject to the Communications Act, up to \$100,000 for each violation or each day of a continuing violation, up to a total of \$1,000,000 for a continuing violation; and for others, up to \$10,000 for each violation or day of a continuing violation, up to a total of \$75,000 for a continuous violation. This Commission will not hesitate to use our forfeiture authority against violators of our rules.

82 NPRM Comments of OSPAs at 21-22.

83 S.Rep. No. 439, 101st Cong., 2d Sess. 17 (1990). See also NPRM, 5 FCC Rcd at 4632 ("Our goal in addressing this problem is to allow all customers access to their carriers of choice through alternative access methods.")

84 The Commission initially proposed that "800," "950," and "10XXX-0+" access codes be unblocked. NPRM, 5 FCC Rcd at 4632-33. Unblocking of "10XXX" access is being considered in a separate proceeding. See note 10, supra.

85 47 U.S.C. § 503(b)(1), (2).

D. Section 64.705 - Restrictions on Charges

47. Proposal. Section 64.705(a)(1) and (2)⁸⁶ would prohibit OSPs from billing for unanswered calls in areas where equal access is available and would prohibit "knowingly" billing for such calls where equal access is not available.

48. Section 64.705(a)(3) and (4)⁸⁷ would prohibit OSPs from call splashing⁸⁸ except when the consumer specifically requests that the call be completed anyway and the consumer is informed that the bill for the call may reflect a different originating location and the consumer consents to having the call splashed. OSPs are prohibited from billing for a call that does not reflect the originating location of the call except when call splashing has been agreed to by the consumer.

49. Under Section 64.705(b),⁸⁹ aggregators are prohibited from charging more for access code calls than for calls placed using a presubscribed OSP. Consumers should not incur extra charges at aggregator telephones because they desire to use the carrier of their choice.⁹⁰ Prohibiting any additional charges for access code calls furthers this Commission's goals of ensuring consumer choice and consumer access.

50. Comments. CompTel and OSPA request that we clarify that answer supervision is only available for Feature Group (FG) D access and not in all situations from equal access end offices.⁹¹ US West, on the other hand, states that answer supervision is available for FG B, FG C and FG D (trunk-side services), but it is not available with line-side access connections of the type that connect customer premises equipment to the local end office

86 See 47 U.S.C. § 226(b)(1)(F), (G).

87 See 47 U.S.C. § 226(b)(1)(H), (I).

88 "Call splashing means the transfer of a telephone call from one provider of operator services to another such provider in a manner that the subsequent provider is unable or unwilling to determine the location of the origination of the call and, because of such inability or unwillingness, is prevented from billing the call on the basis of such location." 47 U.S.C. § 226(a)(3).

89 See 47 U.S.C. § 226(c)(1)(C). OSPs must ensure compliance with this requirement by contract or tariff. See Section 64.705(a)(5) of the proposed rules.

90 "This provision is intended to ensure that consumers are not discouraged from choosing their desired OSPs through access codes." S.Rep. No. 439, 101st Cong., 2d Sess. 18 (1990).

91 Joint FNPRM Comments of CompTel and OSPA at 3; see also NPRM Comments of International Telecharge, Inc. (ITI) at 30-31.

(e.g., PBX, private pay phone and FG A).⁹² The Rock Hill Telephone Co. has argued that these requirements be tied to removal of FG A circuits in a given exchange area.⁹³

51. MessagePhone, Inc. (MPI) requests that we clarify that automated message delivery services (AMDS) are permitted to charge for attempting to deliver a message. With AMDS, when a consumer receives a busy signal or no answer, the consumer is given the option automatically to leave a message for subsequent delivery. Where the consumer has accepted the service (the attempt(s) to complete the call), MPI argues it should be allowed to bill for that service.⁹⁴

52. Decision. After review of the record, we believe that Section 64.705 should be adopted as proposed. As answer supervision is available in equal access end offices, we agree that "...there is no reason why a carrier cannot subscribe to a form of access that provides 'answer supervision' capability."⁹⁵ OSPs in equal access areas are prohibited from billing for unanswered calls. The rule clearly recognizes, however, that answer supervision is not available in non-equal access areas and requires that OSPs not 'knowingly' bill for unanswered calls in non-equal access areas. With regard to MPI's comments, we agree that a provider of AMDS should be allowed to bill for the provision of AMDS service. We wish to make clear, however, that an AMDS provider may not bill for the initial call when it is unanswered or uncompleted as provided for in Section 64.705.

53. The prohibition of splashing unless the consumer is informed and consents strikes the appropriate balance in protecting consumers from being billed for calls that do not reflect their originating points and allowing consumers to make an informed decision to have calls splashed. Finally, by prohibiting aggregators from imposing surcharges on access code calls that are not charged for calls using the presubscribed OSPs, we further ensure that consumers have the ability to choose their preferred carrier in a competitive marketplace.⁹⁶

92 NPRM Comments of US West at 9.

93 NPRM Comments of the Rock Hill Telephone Company, Inc. at 4.

94 NPRM Reply Comments of MPI at 10-11. MPI also has suggested that when the initial call is not completed, it will not bill for that call. The consumer would only be billed for the AMDS service. Id.

95 S.Rep. No. 439, 101st Cong., 2d Sess. 14 (1990).

96 We note that this prohibition applies to the use of any access code including 10XXX access codes. "This prohibition on charging for the use of access codes also applies to the use of the '10XXX' code and other equal access codes." S.Rep. No. 439, 101st Cong., 2d Sess. 18 (1990).

E. Section 64.706 - Emergency Calls

54. Proposal. Section 64.706⁹⁷ of the proposed rules would require OSPs to connect emergency calls to the appropriate emergency service that serves the caller's location. While we have traditionally deferred to the states in this area because of the local nature of emergency calls,⁹⁸ the Operator Services Act requires that we establish minimum standards for the efficient routing of emergency calls by OSPs.

55. Comments. Many comments were filed with respect to this proposed rule. The National Association of Regulatory Utility Commissioners (NARUC) asked that we make clear that "alternate or more restrictive" state regulations are not preempted by the Commission's regulation.⁹⁹ A number of commenters believe that emergency service number data bases maintained by LECs should be made available to OSPs for a nominal cost¹⁰⁰ or at no charge.¹⁰¹ In response, a number of LECs have commented that their emergency number data bases are available to OSPs, but LECs have incurred costs for collecting and compiling this information and they should be allowed to

97 See 47 U.S.C. § 226(d)(4)(A).

98 NPRM, 5 FCC Rcd at 4635 and FNPRM, 6 FCC Rcd at 121.

99 NPRM Reply Comments of NARUC at I(B) and FNPRM Comments of NARUC at II. See also FNPRM Comments of Intellicall, Inc. (Intellicall) at 4-5. The New York Department of Public Service recommends that 911 calls be routed into the local exchange network for immediate connection to the appropriate emergency service provider. FNPRM Comments at 1-2. The Alabama PSC has adopted a rule that requires all emergency calls be routed to the local exchange network. The Alabama PSC believes that this is a better approach than that in the proposed rule. FNPRM Comments at 4. The Public Utilities Commission of Ohio has ordered that OSPs should not receive, intercept, or attempt to process a 911 call. OSPs who do receive such calls must connect the call to a 911 dispatch service center immediately. FNPRM Comments at 2-3. The Nevada Public Service Commission requires that emergency calls be directed to the LEC "...because it will allow the customer to talk to people who are familiar with the area and who traditionally handled these calls." NPRM Comments at 7. See also FNPRM Reply Comments of New York City Department of Telecommunications and Energy at 5-9.

100 Joint FNPRM Comments of the CompTel and the OSPA at 5.

101 See, e.g., FNPRM Comments of NYCOM at 7 (rule is not equitable unless LECs are required to provide free access to emergency number databases because LECs maintain exclusive control over these databases). See also FNPRM Comments of Telesphere Limited (Telesphere) at 8-9; FNPRM Comments of ITI at 4-5; FNPRM Comments of MCI at 2.

recover these costs.¹⁰²

56. A number of commenters requested that we clarify that OSPs should be allowed to refer emergency callers to the LEC operator for emergency services or provide emergency services by accessing the LEC operator.¹⁰³ Bell Atlantic disagrees and argues that OSPs should not be allowed to refer emergency calls back to the LEC operator;¹⁰⁴ this transfer would create unnecessary delay in the routing of emergency calls.¹⁰⁵ Additionally, some commenters believe that an OSP operator handling an emergency call should stay bridged on the line until the OSP operator is satisfied that the appropriate emergency service has responded to the call.¹⁰⁶

57. With regard to the inclusion of certain dialing sequences within the rule, commenters have stated that "911" calls cannot be received by OSPs and are routed to the local network.¹⁰⁷ Others have asked that we include "00-" calls within the rule.¹⁰⁸

58. The Bell Atlantic Companies ask that we modify the rule to allow for situations where the location from which the emergency call originates

102 FNPRM Reply Comments of Bell Atlantic at 1-2; FNPRM Reply Comments of US West at 5-6; FNPRM Reply Comments of Ameritech at 4-5; FNPRM Reply Comments of Southwestern Bell at 3-4; FNPRM Reply Comments of GTE Service Corporation at 3-5. United Telecom states that non-LEC entities are currently able to purchase emergency databases from Regional Bell Operating Companies. FNPRM Comments at 3.

103 See, e.g., FNPRM Comments of United Telecom at 2; FNPRM Comments of MCI at 2 (emergency calls should be routed to LECs for handling because it is primarily their responsibility).

104 FNPRM Reply Comments of Bell Atlantic at 2; see also FNPRM Reply Comments of Ameritech at 2-3.

105 FNPRM Reply Comments of Bell Atlantic at 2; see also FNPRM Reply Comments of US West at 3.

106 See, e.g., FNPRM Comments of Telesphere at 7-8; FNPRM Comments of Alabama PSC at 4; FNPRM Reply Comments of USTA at 6.

107 FNPRM Comments of US West at 4.

108 FNPRM Comments of Bell Atlantic at 2 ("because '00' calls bypass the exchange carrier's operators...and connect to the operators of the presubscribed OSP, these are the calls for which it is most important that specific handling requirements be established."); FNPRM Comments of US West at 5 ("It is conceivable that a frantic caller faced with an emergency might hit the '0' key twice and be routed to the presubscribed carrier's operator service system.").

is different from the location of the emergency.¹⁰⁹

59. Decision. We reiterate that the subject of emergency calls is an area that the Commission has traditionally left to the states. We stress that we are adopting a minimum standard that is not intended to preempt state requirements.¹¹⁰ Our goal in adopting a minimum standard is to ensure that OSPs receiving emergency calls efficiently route those calls to the appropriate emergency service provider. We note that this standard applies to "store-and-forward," "bong-in-a-box" and other automated technologies.

60. As a preliminary matter, we believe there is merit in the request that we modify the rule to require that, in instances where the originating call location is different from the site of the emergency and the site of the emergency is known, the call be connected to the appropriate emergency service for the reported site of the emergency. Section 64.706 will be adopted with this requested modification.

61. Many commenters have asked us to prescribe very specific requirements for OSPs handling emergency calls. The purpose of our rule is to provide a minimum standard to ensure that OSPs handle emergency calls appropriately. We require OSPs (i) to immediately connect an emergency call (ii) to the emergency service provider that responds to the type of reported emergency (iii) at the site of the emergency, if known, or, if not known, to the originating location of the emergency call. It is not necessary to prescribe specific rules for an OSP to meet its responsibilities. We note that some commenters have stated that emergency number databases are available from LECs; one commenter has even stated that it has developed its own database.¹¹¹ While not reaching the issue of charges by LECs for emergency number databases and updates to such databases, we believe that provision of these databases by LECs to others is important. States may adopt rules that go beyond our standard.

62. We have modified the rule to exclude specific examples of dialing sequences that might initiate an emergency call. All emergency calls, no matter how initiated, are covered by our rule. It is important that OSPs receiving an emergency call be able immediately to connect that call to the appropriate emergency service at the appropriate location.

109 For example, "a call from a cellular customer reporting an emergency ... passed on the road." FNPRM Comments of Bell Atlantic at 2; accord, FNPRM Reply Comments of USTA at 6-7.

110 See S.Rep. No. 439, 101st Cong., 2d Sess. 18 (1990). ("The purpose of this provision is simply to ensure that the telephones supplied by aggregators allow the consumer to obtain access to all the emergency services provided according to State regulation or practices. This provision is not intended to preempt State authority over the routing and handling of emergency calls.")

111 FNPRM Comments of CNS at 7.

F. Section 64.707 - Public Dissemination of Information

63. Proposal. We proposed in Section 64.707¹¹² that each OSP make available, upon request, written information that describes its own services, recent changes to those services, and services and trends in the industry as a whole. Descriptions of any recent changes in the choices available to consumers in the operator services market and the methods by which consumers may exercise those choices were to be included in the information.

64. Comments. Many parties are concerned that our requirement for the inclusion of descriptions of services and trends in the industry as a whole will subject them to a panoply of legal problems. For example, parties contend that the provision of this information 1) could subject them to potential liability for libel, misrepresentation, and other business torts;¹¹³ 2) could subject them to allegations of anticompetitive activity, trade libel, or other actionable wrongs;¹¹⁴ and 3) is a prohibited information service under the Modification of Final Judgment.¹¹⁵ Instead, commenters believe that they should provide information only with respect to their own services and that the Commission should provide information with respect to the industry as a whole.¹¹⁶ Still other parties have stated that the rule is vague and that the Commission should prescribe the information that should be made available by OSPs to consumers.¹¹⁷ Intellicall requests that the Commission adhere to its "traditional practice of imposing reporting and dissemination requirements only on carriers of a certain size."¹¹⁸ Smaller OSPs should not be required to comply with Section 64.707, it argues.

65. Decision. After a complete review of the record, we adopt Section 64.707 as proposed. The Act requires that this Commission "establish a policy for requiring providers of operator services to make public information about recent changes in operator services and choices available to consumers in that market."¹¹⁹ We note that Congress requires that we establish a policy that requires OSPs to inform consumers about the "market"

¹¹² See 47 U.S.C. § 226(d)(4)(B).

¹¹³ FNPRM Comments of NYCOM at 5.

¹¹⁴ FNPRM Comments of MCI at 3.

¹¹⁵ FNPRM Comments of Southwestern Bell at 5.

¹¹⁶ See, e.g., FNPRM Comments of MCI at 3; Joint FNPRM Comments of CompTel and OSPA at 5-6; FNPRM Comments of NYCOM at 5-7.

¹¹⁷ See, e.g., FNPRM Comments of Telesphere at 11; FNPRM Comments of Intellicall at 7.

¹¹⁸ FNPRM Comments of Intellicall at 8.

¹¹⁹ 47 U.S.C. § 226(d)(4)(B).

in general. In order that consumers are aware of changes in the marketplace and "do not become victims of future changes in the operator services market,"¹²⁰ we believe it is necessary for each OSP to provide information not only about itself, but about the market within which it is providing service. Accordingly, OSPs will be required to disseminate information, upon request, that describes their own services, recent changes in those services, and services and trends in the industry as a whole. As we stated in the FNPRM, "we do not intend that OSPs be required to publish lengthy details about their competitors' rates and services."¹²¹ Detailed descriptions of rates, charges, and offerings of competitors were never contemplated by the Commission. Rather, the Commission would expect OSPs to make available generic descriptions of any recent changes or innovations in operator services. We believe such descriptions may be done in a fashion that complies with other applicable legal requirements.¹²²

66. OSPs are more quickly aware of changes in their market than is the Commission and the requirement that they educate consumers about such changes is appropriate. It is in the interest of OSPs to provide accurate and complete information to consumers, and we do not believe that it is necessary, at this time, to dictate exactly what information should be disseminated, beyond what we have already discussed.

67. We see no reason to adopt an exception for smaller OSPs as requested by some parties. Consumers using even the smallest OSPs have the right to request and receive information regarding that OSP's own rates and services as well as general information regarding the operator services market.

G. Section 68.318 - Equipment Capabilities

68. Proposal. Section 68.318(d) of the proposed rules¹²³ would require

¹²⁰ S.Rep. No. 439, 101st Cong., 2d Sess. 18 (1990). Congress is concerned that "there is a danger that future changes in the operator services market once again may cause confusion to the detriment of the public." Id. at 18-19.

¹²¹ FNPRM, 6 FCC Rcd at 121.

¹²² With respect to the argument that the requirement would violate the information services restriction of the MFJ, we note that matters requiring interpretation of the MFJ are properly within the jurisdiction of the district court. See NYSMSA Limited Partnership, 58 RR 2d 525, 530 (1985). However, since no use of transmission capability would be required to comply with the Act, it is unclear how the MFJ is implicated.

¹²³ The rule as originally proposed in the NPRM would have required both new equipment and existing equipment to provide access via all access methods (Section 68.318(d)(1) and Section 68.318(d)(2), respectively). We considered those NPRM comments addressing the original Section

that aggregator equipment or software manufactured or imported on or after April 17, 1992, be technologically capable of providing access to OSPs via equal access codes, that is, via 10XXX access codes.¹²⁴

69. Comments. Commenters were generally supportive of the proposed rule.¹²⁵ CompTel stated that this requirement should be subject to a fraud investigation under Section 226(g) of the Act.¹²⁶ The North American Telecommunications Association (NATA), while supporting the proposed rule, suggested that we limit the requirement to the 10XXX access code for the April 17, 1992 deadline and not include access codes that have not been approved by the Commission.¹²⁷

70. Decision. The Act mandates that aggregator software and equipment manufactured or imported on or after April 17, 1992, be technologically capable of providing access to OSPs via equal access codes. The Commission finds merit in the request that it limit the equipment capabilities requirement to 10XXX capability for the 1992 deadline. The Commission expects aggregator equipment that is the subject of the rule to be technologically capable of providing access via the 10XXX access code. The Commission will address issues relating to fraud and unblocking of the 10XXX access code in a separate proceeding.¹²⁸

V. FINAL REGULATORY FLEXIBILITY ANALYSIS

71. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

72. Need and purpose of this action. This Report and Order adopts regulations to implement the Telephone Operator Consumer Services Improvement Act of 1990, Pub. L. No. 101-435, 104 Stat. 986 (1990). The adopted rules

68.318(d)(1), as that section is similar to the proposal for equipment capabilities contained in the FNPRM.

124 See 47 U.S.C. § 226(f). An 'equal access code' "means an access code that allows the public to obtain an equal access connection to the carrier associated with that code." 47 U.S.C. § 226(a)(6).

125 See, e.g., NPRM Comments of APCC at 87; NPRM Comments of CNS at 18; NPRM Comments of American Telephone and Telegraph Company at 10-11; NPRM Comments of ITI at 25-26; Joint NPRM Comments of Telesphere and NTS at 82; NPRM Comments of United Telecom at 10-11; FNPRM Comments of American Hospital Association.

126 NPRM Reply Comments of CompTel at 7.

127 NPRM Reply Comments of NATA at 5-8.

128 Access/Compensation NPRM, CC Docket No. 91-35, FCC 91-53, 56 Fed. Reg. 11,136 (1991).

are intended to protect consumers from unfair and deceptive practices related to their use of operator services to place interstate telephone calls and to ensure that consumers have the opportunity to make informed choices in making such calls.

73. **Summary of the issues raised by the public comments in response to the Initial and Further Initial Regulatory Flexibility Analysis.** There were no comments submitted in response to the Initial or Further Regulatory Flexibility Analyses that are relevant to the rules adopted herein.

74. **Significant alternatives considered and rejected.** The Notice of Proposed Rule Making (NPRM) and Further Notice of Proposed Rule Making (FNPRM) in this proceeding offered many proposals. The commentors supported the basic thrust of this proceeding, with many suggesting modifications to the Commission's proposals. The Commission considered all of the alternatives presented in the proceeding and considered all of the timely filed comments directed to the various issues in the NPRM and FNPRM. After carefully weighing all aspects of the issues and comments in this proceeding, the Commission has taken the most reasonable course of action under the mandate of the Operator Services Act.

VII. ORDERING CLAUSES

75. Accordingly, IT IS ORDERED, pursuant to Sections 1, 4(i), 4(j), 201-205, 226, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201-205, 226, 303(r), that Parts 64 and 68 of the Commission's Rules, 47 C.F.R. Parts 64 and 68, ARE AMENDED as set forth in Appendix C.

76. IT IS FURTHER ORDERED that the Motion for Supplemental Notice of Proposed Rulemaking filed on August 14, 1990 by the American Public Communications Council IS DENIED; the Request for Short Extension of Time filed on October 3, 1990 by the American Public Communications Council IS DENIED; the Request for Extension of Time filed on October 4, 1990 by the Operator Service Providers of America IS DENIED.

77. IT IS FURTHER ORDERED that the Motion to Accept Late-Filed Comments filed on September 10, 1990 by the People of the State of California and the Public Utilities Commission of California IS GRANTED; the Motion to Accept Late Filing filed on October 1, 1990 by the American Public Communications Council IS GRANTED; the Motion to Accept Late Filed Comments filed on January 23, 1991 by International Telecommunications Service, Inc. IS GRANTED.

78. IT IS FURTHER ORDERED that this Report and Order will be effective thirty (30) days after publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX A

List of Commenters

NPRM Comments

1. Alabama Public Service Commission
2. Americall Systems of Louisville and First Phone of New England, Inc.
3. American Council on Education and National Association of College and University Business Officers
4. American Cyanamid Company
5. American Hospital Association
6. American Hotel and Motel Association
7. American Public Communications Council
8. American Telephone and Telegraph Company
9. Ameritech Operating Companies
10. Arkansas Public Service Commission
11. Association of College & University Telecommunications Administrators
12. ARCO
13. Baylor University Medical Center
14. Bell Atlantic Telephone Companies
15. BellSouth Telephone Companies
16. Call Technology Corporation
17. Capital Network System, Inc.
18. Central Telephone Company
19. Clearitel Communications, Inc.
20. Colorado Office of Consumer Counsel and National Association of State Utility Consumer Advocates
21. Colorado Public Utilities Commission
22. Colorado State University
23. Communications Workers of America
24. Competitive Telecommunications Association
25. ComTel Computer Corp.
26. Com Systems, Inc.
27. Consolidated Papers, Inc.
28. Contel Asc
29. Contel Corporation
30. Credit Card Calling Systems, Inc.
31. Dallas-Fort Worth Hospital Council
32. Robert H. Daniels
33. John M. Dollar
34. Emerson
35. Federation of American Health Systems
36. Fisher-Titus Medical Center
37. Florida Public Service Commission
38. Georgia Hospital Association
39. Edmund Goppelt
40. GTE Service Corporation
41. Healthcare Information and Management Systems Society
42. The Hertz Corporation
43. Hewlett Packard Company
44. Holiday Inn Airport/South

45. Holiday Inn Dallas Downtown
46. Holiday Inn-Downtown
47. Holiday Inn North (Colorado Springs, CO)
48. Holiday Inn North (Jackson, MS)
49. Holiday Inn-Park Central
50. Holiday Inn Powers Ferry
51. Holiday Inn Scottsdale
52. Holiday Inn Southwest
53. Holiday Inn I-10 West/Gessner
54. Hospital Corporation of America
55. Independent Coin Payphone Association
56. Independent Telecommunications Network, Inc.
57. International Communications Association
58. International Operators, Inc.
59. International Telecharge, Inc.
60. Robert V. Lang
61. Mankato Citizens Telephone Company
62. Maryland People's Counsel
63. MCI Telecommunications Corporation
64. MessagePhone, Inc.
65. Gerald A. Michaelson
66. Millicom Telecommunications Services, Inc.
67. Missouri Office of Public Counsel
68. Missouri Public Service Commission
69. Missouri Telephone Company
70. Mr. Pride Car Wash
71. MLD Long Distance, Inc.
72. National Association of Regulatory Utility Commissioners
73. National Telephone Cooperative Association
74. Ken Nelson & Company
75. Nevada Public Service Commission
76. New York City Department of Telecommunications
77. New York State Department of Public Service
78. New York University
79. North American Telecommunications Association
80. NYCOM Information Services, Inc.
81. NYNEX Telephone Companies
82. Ohio Hospital Association
83. Operator Service Providers of America
84. Pacific Bell and Nevada Bell
85. Parkland Memorial Hospital
86. People of the State of California and the Public Utilities Commission
of the State of California
87. Public Service Commission of Wyoming
88. Public Telecommunications Council
89. Public Utility Commission of Texas
90. Debra M. Riggerbach
91. Roanoke & Botetourt Telephone Co.
92. Rock Hill Telephone Company, Inc.
93. Rodeway Inn-Jacksonville, FL
94. Southwestern Bell Telephone Company
95. Stanford Telephone Service Consumers and Jotham S. Stein

96. The Stanley Works
97. B.T. Stimmel
98. Strategic Telecom, Inc.
99. Telecommunications Research and Action Center and Consumer Action
100. Telesphere Communications, Inc. and National Telephone Services, Inc.
101. Texoma Medical Center
102. United Artists Payphone Corporation
103. United Inns, Inc. (Electronics Division)
104. United Inns, Inc. (Far West Regional Office)
105. United Inns, Inc. (Gary Hotels Courts, Inc.)
106. United Inns, Inc. (Kizer Motel Courts, Inc.)
107. United Inns, Inc. (Transcontinental Motor Hotels, Inc.)
108. United States Telephone Association
109. United Telecommunications, Inc.
110. University of Missouri
111. University of Pittsburgh
112. U.S. Fiberline Communications, Inc.
113. U.S. Intelco Networks, Inc.
114. U.S. Long Distance, Inc.
115. U S West Communications
116. Various Individuals
117. Washington University
118. Washington Utilities and Transportation Commission
119. Wisconsin Hospital Association

NPRM Reply Comments

1. Air Line Pilots Association
2. American Airlines
3. American Federation of Grain Millers
4. American Hotel & Motel Association
5. American Public Communications Council
6. American Sterling
7. American Telephone and Telegraph Company
8. Ameritech Operating Companies
9. Arvig Telephone Co.
10. Ashland Chemical, Inc.
11. Asten Forming Fabrics, Inc.
12. Association of Independent Airmen
13. Bell Atlantic Telephone Companies
14. Baylor Medical Center at Waxahachie
15. BellSouth Telephone Companies
16. The BFGoodrich Company
17. California State University
18. Capital Network System, Inc.
19. Caterpillar Inc.
20. Central Telephone Company
21. Children's Medical Center of Dallas
22. ClearTel Communications, Inc., Call Technology Corporation, U.S. Long Distance, Inc. and ComTel Computer Corp.
23. The Coleman Company, Inc.

24. Colonial Insurance Company of California
25. Colorado Office of Consumer Counsel and National Association of State Utility Consumer Advocates
26. Competitive Telecommunications Association
27. Communication Workers of America
28. Concord Telephone Company
29. Cowen & Company
30. Credit Card Calling Systems, Inc.
31. CyCare Systems, Inc.
32. Cypress Industrial Minerals Company
33. Dallas Rehabilitation Institute
34. Denison University
35. Dewey Electronics Corporation
36. Dow Chemical U.S.A.
37. 800-Cocaine
38. Ellensburg Telephone Company
39. Frederick & Warinner
40. GenCorp.
41. Good Samaritan Hospital
42. H&C Road Boring & Tunneling, Inc.
43. Hadson Power Systems
44. HF Communications Corporation and Value-Added Communications, Inc.
45. Hubinger
46. Huguley Memorial Medical Center
47. Independent Coin Payphone Association
48. Integon Insurance
49. International Brotherhood of Electrical Workers
50. International Communications Association
51. International Telecharge, Inc.
52. Iowa Utilities Board
53. Kimberly-Clark Corporation
54. Kintronix, Inc.
55. Lorain Community Hospital
56. John P. McGuffee and Associates
57. MCI Telecommunications Corporation
58. MessagePhone, Inc.
59. Michigan Public Service Commission Staff
60. Millicom Telecommunications Services, Inc.
61. Missouri Office of the Public Counsel
62. Missouri Public Service Commission
63. Mitel, Inc.
64. MLD Long Distance, Inc.
65. Molalla Telephone Company
66. Monitor Cooperative Telephone Co.
67. National Association of Regulatory Utility Commissioners
68. National Telephone Cooperative Association
69. NatureMost Laboratories
70. NCR Corporation
71. Nihon Kohden America, Inc.
72. North American Telecommunications Association
73. NYNEX Telephone Companies

74. Operator Service Providers of America and NYCOM Information Services, Inc.
75. Pacific Bell and Nevada Bell
76. Pacific Lutheran University
77. Public Service Commission of Wisconsin
78. Public Telecommunications Council
79. Public Utility Commission of Oregon
80. St. Paul Medical Center
81. Scio Mutual Telephone Association
82. The 1625 Massachusetts Avenue N.W., Corp.
83. Southwestern Bell Telephone Company
84. Stanford Telephone Service Consumers and Jotham S. Stein
85. Stanford University
86. Telesphere Communications, Inc.
87. Textron
88. Trumbull Memorial Hospital
89. Trustees of the University of Pennsylvania
90. Unisys Corporation
91. United Artists Payphone Corporation
92. United States Telephone Association
93. United Telecommunications, Inc.
94. Various Individuals
95. Vencor Hospital Dallas
96. Weight Watchers International, Inc.
97. Wetterau Incorporated
98. Yelm Telephone Company

FNPRM Comments

1. Alabama Public Service Commission
2. Americall Systems of Louisville, Cleartel Communications, Inc., First Phone of New England, Inc. and Long Distance Service of Washington, Inc.
3. American Hospital Association
4. American Public Communications Council
5. American Telephone and Telegraph Company
6. Bell Atlantic Telephone Companies
7. Capital Network System, Inc.
8. Central Telephone Company
9. Competitive Telecommunications Association and Operator Service Providers of America
10. Equicom Communications, Inc.
11. Federal Executive Agencies
12. Gateway Technologies, Inc.
13. Healthcare Information and Management Systems Society
14. Intellicall, Inc.
15. International Telecharge, Inc.
16. International Telecommunications Service, Inc.
17. MCI Telecommunications Corporation
18. National Association of College and University Business Officers
19. National Association of Regulatory Utility Commissioners

20. National Telephone Cooperative Association
21. New York State Department of Public Service
22. NYCOM Information Services, Inc.
23. NYNEX Telephone Companies
24. Public Utilities Commission of Ohio
25. RCI Network Services, Inc. and RCI Long Distance, Inc.
26. Southwestern Bell Telephone Company
27. Telesphere Limited
28. Various Individuals
29. United States Telephone Association
30. United Telecommunications, Inc.
31. University of Wisconsin-Stevens Point
32. U S West Communications, Inc.

FNPRM Reply Comments

1. Americall Systems of Louisville, Cleartel Communications, Inc., First Phone of New England, Inc. and Long Distance Service of Washington, Inc.
2. American Public Communications Council
3. American Telephone and Telegraph Company
4. Ameritech Operating Companies
5. Association of College and University Telecommunications Administrators
6. Bell Atlantic Telephone Companies
7. BellSouth Telephone Companies
8. Capital Network System, Inc.
9. Robert Cefail & Associates American Inmate Communications Inc.
10. Chillicothe Telephone Company
11. Equicom Communications, Inc.
12. HF Communications Corporation
13. GTE Service Corporation
14. International Telecharge, Inc.
15. MCI Telecommunications Corporation
16. New York City Department of Telecommunications and Energy
17. Rochester Telephone Corporation
18. Southwestern Bell Telephone Company
19. Telesphere Limited, Inc.
20. Various Individuals
21. United Methodist Church-Wisconsin Conference (Southwest District)
22. United States Telephone Association
23. U S West Communications, Inc.

APPENDIX B

THE TELEPHONE OPERATOR CONSUMER SERVICES
IMPROVEMENT ACT OF 1990, as amended

Pub. L. No. 101-435, 104 Stat. 986 (1990)

SEC. 3. AMENDMENT.

Title II of the Communications Act of 1934 is amended by inserting immediately after section 225 (47 U.S.C. § 225) the following new section:

"SEC. 226. TELEPHONE OPERATOR SERVICES.

"(a) Definitions.--As used in this section--

"(1) The term 'access code' means a sequence of numbers that, when dialed, connect the caller to the provider of operator services associated with that sequence.

"(2) The term 'aggregator' means any person that, in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises, for interstate telephone calls using a provider of operator services.

"(3) The term 'call splashing' means the transfer of a telephone call from one provider of operator services to another such provider in such a manner that the subsequent provider is unable or unwilling to determine the location of the origination of the call and, because of such inability or unwillingness, is prevented from billing the call on the basis of such location.

"(4) The term 'consumer' means a person initiating any interstate telephone call using operator services.

"(5) The term 'equal access' has the meaning given that term in Appendix B of the Modification of Final Judgment entered August 24, 1982, in United States v. Western Electric, Civil Action No. 82-0192 (United States District Court, District of Columbia), as amended by the Court in its orders issued prior to the enactment of this section.

"(6) The term 'equal access code' means an access code that allows the public to obtain an equal access connection to the carrier associated with that code.

"(7) The term 'operator services' means any interstate telecommunications service initiated from an aggregator location that includes, as a component, any automatic or live assistance to a consumer to arrange for billing or completion, or both, of an interstate telephone call through a method other than--

"(A) automatic completion with billing to the telephone from which the call originated; or

"(B) completion through an access code used by the consumer, with billing to an account previously established with the carrier by the consumer.

"(8) The term 'presubscribed provider of operator services' means the interstate provider of operator services to which the consumer is connected when the consumer places a call using a provider of operator services without dialing an access code.

"(9) The term 'provider of operator services' means any common carrier that provides operator services or any other person determined by the Commission to be providing operator services.

"(b) Requirements for Providers of Operator Services.--

"(1) In general.--Beginning not later than 90 days after the date of enactment of this section, each provider of operator services shall, at a minimum--

"(A) 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;

"(B) permit the consumer to terminate the telephone call at no charge before the call is connected;

"(C) disclose immediately to the consumer, upon request, and at no charge to the consumer--

"(i) a quote of its rates or charges for the call;

"(ii) the methods by which such rates or charges will be collected; and

"(iii) the methods by which complaints concerning such rates, charges, or collection practices will be resolved;

"(D) ensure, by contract or tariff, that each aggregator for which such provider is the presubscribed provider of operator services is in compliance with the requirements of subsection (c) and, if applicable, subsection (e)(1);

"(E) withhold payment (on a location-by-location basis) of any compensation, including commissions, to aggregators if such provider reasonably believes that the aggregator (i) is blocking access by means of "950" or "800" numbers to interstate common carriers in violation of subsection (c)(1)(B) or (ii) is blocking access to equal access codes in violation of rules the Commission

may prescribe under subsection (e)(1);

"(F) not bill for unanswered telephone calls in areas where equal access is available;

"(G) not knowingly bill for unanswered telephone calls where equal access is not available;

"(H) not engage in call splashing, unless the consumer requests to be transferred to another provider of operator services, the consumer is informed prior to incurring any charges that the rates for the call may not reflect the rates from the actual originating location of the call, and the consumer then consents to be transferred; and

"(I) except as provided in subparagraph (H), not bill for a call that does not reflect the location of the origination of the call.

"(2) Additional requirements for first 3 years.--In addition to meeting the requirements of paragraph (1), during the 3-year period beginning on the date that is 90 days after the date of enactment of this section, each presubscribed provider of operator services shall identify itself audibly and distinctly to the consumer, not only as required in paragraph (1)(A), but also for a second time before connecting the call and before the consumer incurs any charge.

"(c) Requirements for Aggregators--

"(1) In general.--Each aggregator, beginning not later than 90 days after the date of enactment of this section, shall--

"(A) post on or near the telephone instrument, in plain view of consumers--

"(i) the name, address, and toll-free telephone number of the provider of operator services;

"(ii) a written disclosure that the rates for all operator-assisted calls are available on request, and that consumers have a right to obtain access to the interstate common carrier of their choice and may contact their preferred interstate common carriers for information on accessing that carrier's service using that telephone; and

"(iii) the name and address of the enforcement division of the Common Carrier Bureau of the Commission, to which the consumer may direct complaints regarding operator services;

"(B) ensure that each of its telephones presubscribed to a provider of operator services allows the consumer to use "800" and

"950" access code numbers to obtain access to the provider of operator services desired by the consumer; and

"(C) ensure that no charge by the aggregator to the consumer for using an "800" or "950" access code number, or any other access code number, is greater than the amount the aggregator charges for calls placed using the presubscribed provider of operator services.

"(2) Effect of state law or regulation.--The requirements of paragraph (1)(A) shall not apply to an aggregator in any case in which State law or State regulation requires the aggregator to take actions that are substantially the same as those required in paragraph (1)(A).

"(4) Additional requirements to be implemented by regulations.--The regulations prescribed under this section shall, at a minimum--

"(A) establish minimum standards for providers of operator services to use in the routing and handling of emergency telephone calls; and

"(B) establish a policy for requiring providers of operator services to make public information about recent changes in operator services and choices available to consumers in that market.

"(f) Technological Capability of Equipment.--Any equipment and software manufactured or imported more than 18 months after the date of enactment of this section and installed by any aggregator shall be technologically capable of providing consumers with access to interstate providers of operator services through the use of equal access codes.

"(g) Fraud.--In any proceeding to carry out the provisions of this section, the Commission shall require such actions or measures as are necessary to ensure that aggregators are not exposed to undue risk of fraud.

APPENDIX C

RULES

Part 64 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 64 is amended to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended, 47 U.S.C. § 154, unless otherwise noted. Interpret or apply secs. 201, 218, 226, 48 Stat. 1070, as amended, 1077, 47 U.S.C. §§ 201, 218, 226, unless otherwise noted.

2. A new Section 64.703 is added to read as follows:

§ 64.703 Consumer information.

- (a) Each provider of operator services shall:

- (1) 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;

- (2) permit the consumer to terminate the telephone call at no charge before the call is connected; and

- (3) disclose immediately to the consumer, upon request and at no charge to the consumer,

- (A) a quotation of its rates or charges for the call;

- (B) the methods by which such rates or charges will be collected; and

- (C) the methods by which complaints concerning such rates, charges, or collection practices will be resolved.

- (b) Each aggregator shall post on or near the telephone instrument, in plain view of consumers:

- (1) the name, address, and toll-free telephone number of the provider of operator services;

- (2) a written disclosure that the rates for all operator-assisted calls are available on request, and that consumers have a right to obtain access to the interstate common carrier of their choice and may contact their preferred interstate common carriers for information on accessing that carrier's service using that telephone; and

- (3) the name and address of the Enforcement Division of the Common Carrier Bureau of the Commission (FCC, Enforcement Division, CCB, Room 6202, Washington, D.C. 20554), to which the consumer may direct

complaints regarding operator services.

(c) Additional requirements for first 3 years. In addition to meeting the requirements of paragraph (a), each presubscribed provider of operator services shall, until January 15, 1994, identify itself audibly and distinctly to the consumer, not only as required in paragraph (a)(1), but also for a second time before connecting the call and before the consumer incurs any charge.

(d) Effect of state law or regulation. The requirements of paragraph (b) shall not apply to an aggregator in any case in which State law or State regulation requires the aggregator to take actions that are substantially the same as those required in paragraph (b).

(e) Each provider of operator services shall ensure, by contract or tariff, that each aggregator for which such provider is the presubscribed provider of operator services is in compliance with the requirements of paragraph (b).

3. A new Section 64.704 is added to read as follows:

§ 64.704 Call blocking prohibited.

(a) Each aggregator shall ensure that each of its telephones presubscribed to a provider of operator services allows the consumer to use "800" and "950" access code numbers to obtain access to the provider of operator services desired by the consumer.

(b) Each provider of operator services shall:

(1) ensure, by contract or tariff, that each aggregator for which such provider is the presubscribed provider of operator services is in compliance with the requirements of paragraph (a); and

(2) withhold payment (on a location-by-location basis) of any compensation, including commissions, to aggregators if such provider reasonably believes that the aggregator is blocking access to interstate common carriers in violation of paragraph (a).

4. A new Section 64.705 is added to read as follows:

§ 64.705 Restrictions on charges related to the provision of operator services.

(a) A provider of operator services shall:

(1) not bill for unanswered telephone calls in areas where equal access is available;

(2) not knowingly bill for unanswered telephone calls where equal access is not available;

(3) not engage in call splashing, unless the consumer requests to be transferred to another provider of operator services, the consumer is informed prior to incurring any charges that the rates for the call may not reflect the rates from the actual originating location of the call, and the consumer then consents to be transferred;

(4) except as provided in paragraph (3), not bill for a call that does not reflect the location of the origination of the call; and

(5) ensure, by contract or tariff, that each aggregator for which such provider is the presubscribed provider of operator services is in compliance with the requirements of paragraph (b).

(b) An aggregator shall ensure that no charge by the aggregator to the consumer for using an "800" or "950" access code number, or any other access code number, is greater than the amount the aggregator charges for calls placed using the presubscribed provider of operator services.

5. A new Section 64.706 is added to read as follows:

§ 64.706 Minimum standards for the routing and handling of emergency telephone calls. Upon receipt of any emergency telephone call, a provider of operator services shall immediately connect the call to the appropriate emergency service of the reported location of the emergency, if known, and, if not known, of the originating location of the call.

6. A new Section 64.707 is added to read as follows:

§ 64.707 Public dissemination of information by providers of operator services. Providers of operator services shall regularly publish and make available at no cost to inquiring consumers written materials that describe any recent changes in operator services and in the choices available to consumers in that market.

7. A new Section 64.708 is added to read as follows:

§ 64.708 Definitions. As used in sections 64.703 through 64.707 and 68.318, 47 C.F.R. §§ 64.703-64.707, 68.318:

(a) the term "access code" means a sequence of numbers that, when dialed, connect the caller to the provider of operator services associated with that sequence;

(b) the term "aggregator" means any person that, in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises, for interstate telephone calls using a provider of operator services;

(c) the term "call splashing" means the transfer of a telephone call from one provider of operator services to another such provider in such a manner that the subsequent provider is unable or unwilling to determine the location of the origination of the call and, because of such inability or

unwillingness, is prevented from billing the call on the basis of such location;

(d) the term "consumer" means a person initiating any interstate telephone call using operator services;

(e) the term "equal access" has the meaning given that term in Appendix B of the Modification of Final Judgment entered by the United States District Court on August 24, 1982, in United States v. Western Electric, Civil Action No. 82-0192 (D.D.C. 1982), as amended by the Court in its orders issued prior to October 17, 1990;

(f) the term "equal access code" means an access code that allows the public to obtain an equal access connection to the carrier associated with that code;

(g) the term "operator services" means any interstate telecommunications service initiated from an aggregator location that includes, as a component, any automatic or live assistance to a consumer to arrange for billing or completion, or both, of an interstate telephone call through a method other than:

(1) automatic completion with billing to the telephone from which the call originated; or

(2) completion through an access code used by the consumer, with billing to an account previously established with the carrier by the consumer;

(h) the term "presubscribed provider of operator services" means the interstate provider of operator services to which the consumer is connected when the consumer places a call using a provider of operator services without dialing an access code;

(i) the term "provider of operator services" means any common carrier that provides operator services or any other person determined by the Commission to be providing operator services.

Part 68 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 68 is amended to read as follows:

Authority: Secs. 4, 201, 202, 203, 204, 205, 208, 215, 218, 226, 313, 314, 403, 404, 410, 602, 48 Stat., as amended, 1066, 1070, 1071, 1072, 1073, 1076, 1077, 1087, 1094, 1098, 1102, 47 U.S.C. §§ 154, 201, 202, 203, 204, 205, 208, 215, 218, 226, 313, 314, 403, 404, 410, 602, unless otherwise noted.

2. Section 68.318 is amended by adding paragraph (d) to read as follows:

§ 68.318 Additional limitations.

(d) Requirement that registered equipment allow access to common carriers. Any equipment or software manufactured or imported on or after April 17, 1992, and installed by any aggregator shall be technologically capable of providing consumers with access to interstate providers of operator services through the use of equal access codes. The terms used in this paragraph shall have the meanings defined in Section 64.708, 47 C.F.R. § 64.708.