

FCC MAIL SECTION

Before the
Federal Communications Commission
 Washington, D.C. 20554

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ons and other correctional facilities. Finally, we solicit comment on whether the Commission's rules should be amended to prescribe a time limit for updating the con-
 tained information posted on or near aggregator telephones in the event the presubscribed OSP has changed.

DISPATCHED BY

CC Docket No. 94-158

II. BACKGROUND

In the Matter of

Amendment of Policies and Rules
 Concerning Operator Service
 Providers and Call Aggregators

2. Pursuant to the Telephone Operator Consumer Services Improvement Act of 1990 (TOCSIA),⁴ the Commission adopted comprehensive regulations governing the practices and services of OSPs and the call aggregators with whom they contract to provide operator services.⁵ These regulations established rules concerning consumer information, call blocking, restrictions on certain charges, and equipment capabilities. Further, the Commission established minimum standards for OSPs to use in routing and handling emergency telephone calls.⁶ Subsequently, with the Telecommunications Authorization Act of 1992 (TAA),⁷ Congress amended Section 226(d)(4)(A) to require the Commission to establish minimum standards for aggregators, as well as OSPs, to use in routing and handling emergency calls.⁸

**NOTICE OF PROPOSED RULE MAKING
 AND NOTICE OF INQUIRY**

Adopted: December 28, 1994; Released: February 8, 1995

Comment Date: March 9, 1995

Reply Comment Date: March 24, 1995

III. DISCUSSION

By the Commission:

I. INTRODUCTION

A. Section 64.708 -- Definition of "Consumer" When Branding Collect Calls.

1. This Notice of Proposed Rule Making and Notice of Inquiry solicits comment on proposed changes to our rules and policies governing operator service providers (OSPs)¹ and call aggregators.² First, we propose to amend our rules to require branding³ to the parties on both ends of a collect call. Second, we propose to amend our rules to establish minimum standards for aggregators to follow in routing and handling emergency telephone calls. Third, we solicit comment on whether the definition of "aggregator" should be expanded to apply to correctional institutions and what, if any, changes should be made in our treatment of entities that provide interstate telecommunications services to pris-

3. Section 226(b)(1)(A) of the Communications Act of 1934, as amended (Act) and Section 64.703(a)(1) of the Commission's rules require an OSP to 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.⁹ This identification is known as "call branding."¹⁰ Section 226(a)(4) of the Act and Section 64.708(d) of the Commission's rules define a "consumer" as "a person initiating any interstate telephone call using operator services."¹¹

¹ For purposes of the Commission's operator service rules, Sections 64.703 through 64.707 and Section 68.318, "[o]perator 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." 47 C.F.R. § 64.708(g). "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." *Id.* § 64.708(i). In prescribing a mechanism for payphone compensation, we have said on two occasions that the second exclusion in the definition of "operator services" -- "completion through an access code used by the consumer, with billing to an account previously established with the carrier by the consumer" -- was not intended by Congress to apply in the payphone compensation context. Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, CC Docket No. 91-35: Second Report and Order, 7 FCC Rcd 3251, 3261 (1992); Memorandum Opinion and Order on Reconsideration, 8 FCC Rcd 7151, 7159 &

n.89 (1993).

² An "aggregator" is "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." 47 C.F.R. § 64.708(b).

³ "Call branding" is the process by which an OSP audibly and distinctly identifies itself to the consumer who uses its operator services. See 47 U.S.C. § 226(b)(1)(A); 47 C.F.R. § 64.703(a)(1).

⁴ Pub. L. No. 101-435, 104 Stat. 986 (1990) (codified as 47 U.S.C. § 226).

⁵ See generally Policies and Rules Concerning Operator Service Providers, CC Docket No. 90-313: Report and Order, 6 FCC Rcd 2744 (1991) (hereinafter *Report and Order*); Order on Reconsideration, 7 FCC Rcd 3882 (1992) (hereinafter *Reconsideration Order*). A complete discussion of the background of these rule making efforts is contained in the *Report and Order*, 6 FCC Rcd at 2746-48, and in the *Reconsideration Order*, 7 FCC Rcd at 3882-83.

⁶ 47 C.F.R. § 64.706.

⁷ Pub. L. 102-538, 106 Stat. 3543 (1992).

⁸ 47 U.S.C. § 226 (d)(4)(A), as amended.

⁹ 47 U.S.C. § 226(b)(1)(A); 47 C.F.R. § 64.703(a)(1).

¹⁰ See n.3, *supra*.

¹¹ 47 U.S.C. § 226(a)(4); 47 C.F.R. § 64.708(d).

4. OSPs offer collect calling services that raise an unresolved issue regarding branding.¹² The question of which party to a collect call should be treated as the "consumer," and is therefore entitled to branding, was not specifically addressed in Section 226 and the implementing regulations. Section 226, however, directed the Commission to conduct a rule making proceeding to prescribe regulations to ensure that consumers are protected from unfair and deceptive practices relating to their use of operator services and to ensure that consumers have the opportunity to make informed choices when placing operator service calls.¹³

5. Collect calls involve two parties making choices: the calling party chooses to place a collect call from the particular telephone to the called party, while the called party decides whether to accept the call and thereby incur the charges. It can be argued that the "consumer" in collect calling situations -- that is, the party initiating the call -- is the person at the originating end of the call, who selects the carrier to use for the call. In some cases, the caller may be placing the collect call to his or her own home or office number and may be ultimately responsible for the charges from the chosen carrier. On the other hand, it can be asserted that the collect call is initiated when the called party accepts the charges for the call and, hence, the party paying for the call is the "consumer." In this case, the called party may only wish to accept the charges for calls utilizing particular carriers. Both of these parties make decisions that require informed choices, and each may need protection from unfair and deceptive OSP practices that may have an impact on calling costs and call acceptance. Therefore, we tentatively conclude that both the calling party, who places the call, and the called party, who must accept the charges in order for the message portion of the call to begin, cooperatively initiate the call as consumers and should receive a brand before they commence their portion of the collect call transaction. Accordingly, we propose to amend Section 64.708(d) of the Commission's rules to redefine "consumer" to that effect and invite interested parties to comment on this proposed rule change. We specifically solicit data concerning both the cost of compliance with this proposed rule change and the ratio of collect calls to all operator-assisted calls.¹⁴

B. Section 64.706 -- Emergency Calls.

6. Section 226(d)(4)(A) of the Act directed the Commission to prescribe regulations establishing minimum standards for OSPs to use in routing and handling emergency telephone calls.¹⁵ In CC Docket No. 90-313, the Commis-

sion adopted Section 64.706 of the rules to implement this requirement.¹⁶ This rule states that "[u]pon 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."¹⁷ The Commission stated that "[o]ur goal in adopting a minimum standard is to ensure that OSPs receiving emergency calls efficiently route those calls to the appropriate emergency service provider."¹⁸ The Commission added that it was not necessary to prescribe more specific rules delineating the responsibilities of OSPs and that states were free to adopt more stringent requirements.¹⁹ On reconsideration, the Commission clarified that OSPs using automated equipment may route emergency calls to a live operator for handling.²⁰

7. As noted above, the TAA amended Section 226(d)(4)(A) of the Act and directed the Commission to establish minimum standards for aggregators, as well as OSPs, to use in routing and handling emergency telephone calls.²¹ In light of this amendment, we propose to modify our rules to require that aggregators be subject to the same requirements for routing and handling emergency calls that apply to OSPs. We solicit comment on this proposed rule change and whether the TAA or sound public policy support the adoption of additional requirements in order to ensure the prompt and proper handling of emergency calls from aggregator locations. For example, we seek comment on whether we should require aggregators, such as payphone owners, to program their equipment to recognize emergency dialing sequences and allow consumers to place such calls without charge.

C. Notice of Inquiry: Treatment of Inmate-Only Telephones in Correctional Institutions.

8. In the *Report and Order* in CC Docket No. 90-313,²² the Commission examined the question of whether correctional institutions providing inmate-only telephones should be excluded from the definition of "aggregator" and, therefore, exempt from the requirements of TOCSIA and the Commission's implementing regulations. The Commission concluded that providing such telephones to inmates presents an "exceptional set of circumstances" that warrant their exclusion from the definition of "aggregators." Accordingly, the Commission ruled that inmate-only telephones would not be subject to the requirements specified by TOCSIA or the implementing rules.²³

¹² For example, MCI Telecommunications Corporation recently introduced a collect calling service that is initiated by dialing "1-800-COLLECT." MCI identifies itself to the called party who is asked to accept the charges, but does not brand to the party at the originating end of the call. The American Telephone and Telegraph Company (AT&T) filed an informal complaint regarding this service on June 2, 1993. See IC-93-07605.

¹³ 47 U.S.C. § 226(d)(1)(A), (B); see S. Rep. No. 439, 101st Cong., 2d Sess. 1 (1990) ("The purpose of the bill 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."); see also H.R. Rep. No. 213, 101st Cong., 1st Sess. 2 (1989) (The purpose of the bill 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").

¹⁴ The text of the proposed rules is in the Appendix. In addition to the proposed substantive changes discussed in this Notice, we propose to modify the title of Subpart G, Part 64 to reflect the operator service and pay-per-call rules in that subpart.

¹⁵ 47 U.S.C. § 226(d)(4)(A).

¹⁶ 47 C.F.R. § 64.706.

¹⁷ *Id.*; see *Report and Order*, 6 FCC Rcd 2765-67.

¹⁸ *Report and Order*, 6 FCC Rcd at 2767.

¹⁹ *Id.*

²⁰ *Reconsideration Order*, 7 FCC Rcd at 3886.

²¹ 47 U.S.C. § 226(d)(4)(A).

²² *Report and Order*, 6 FCC Rcd at 2749-52.

²³ *Id.* at 2752.

9. Since release of the *Report and Order*, we have received numerous informal complaints regarding inmate-only telephones, and the matter has been raised by interested members of the public. In addition, staff members have been informed in various discussions that inmates are generally restricted to collect calling and that neither the inmate nor the called party has the option of selecting the entity that handles the call. The complaints frequently object to high rates charged by the presubscribed carrier for the inmate-only telephones.

10. In view of these concerns, we initiate this Notice of Inquiry to invite comment on the changes, if any, that should be made to the rules applicable to inmate-only telephones in correctional institutions.²⁴ Specifically, we seek comment on the needs of the inmate users; the resources and needs of correctional institutions in providing telephone service for inmates; and whether the goals of Section 226 and the public interest have been met through our current treatment of inmate-only telephones in correctional institutions.²⁵

D. Notice of Inquiry: Time Limit for Updating Consumer Information Posting on Aggregator Telephones.

11. Section 226(c)(1)(A) of the Communications Act and Section 64.703(b) of the Commission's rules require that each aggregator 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, to which the consumer may direct complaints regarding operator services. Neither the statute nor the Commission's rules specifies when this notice must be changed to reflect a change in the presubscribed carrier at the telephone location.

12. The Commission has received reports that some aggregators are not promptly updating this consumer information to reflect a change in the presubscribed OSP. In addition, the New York Consumer Protection Board has requested that the Commission take action to correct this disclosure problem.²⁶ Therefore, we seek comment on the extent of the problem caused by delays in updating the posted consumer information. We also seek comment on whether a specific time limit for updating the consumer information is necessary or desirable. If so, we invite parties to suggest a reasonable limit.

IV. PROCEDURAL MATTERS

13. This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 C.F.R. §§ 1.1202, 1.1203, and 1.1206(a).

14. We certify that the Regulatory Flexibility Act of 1980 does not apply to this rule making proceeding because if the proposed rule amendments are promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act. The Secretary shall send a copy of this Notice of Proposed Rule Making and Notice of Inquiry, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. See 5 U.S.C. § 601, *et seq.*

V. CONCLUSION

15. In this Notice of Proposed Rulemaking and Notice of Inquiry, we have outlined our proposals for modifying our operator service rules pertaining to the branding of collect calls and the treatment of emergency calls by aggregators. Further, we have sought comment on whether we should modify our current regulatory treatment of inmate-only telephones in correctional institutions. Finally, we have sought comment on whether the Commission should establish a specific time limit for updating the consumer information that is posted on aggregator telephones when the presubscribed OSP has changed.

VI. ORDERING CLAUSES

16. Accordingly, pursuant to Sections 1, 4(i), 4(j), 201-205, 218, 226, and 303(r) of the Communications Act, 47 U.S.C. §§ 151, 154(i), 154(j), 201-205, 218, 226, 303(r), a NOTICE OF PROPOSED RULE MAKING AND NOTICE OF INQUIRY IS ISSUED, proposing amendment of 47 C.F.R. Section 64.706 and 64.708(d) as set forth in the Appendix.

17. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, all interested parties may file comments on the matters discussed in this Notice and on the proposed rules contained in the Appendix by **March 9, 1995**. Reply comments are due by **March 24, 1995**. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants wish each Commissioner to have a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commis-

²⁴ In Policies and Rules Concerning Toll Fraud, CC Doc. No. 93-292: Notice of Proposed Rule Making, 8 FCC Rcd 8618 (1993), the Commission sought comment on measures to address toll fraud problems generally and to establish a federal policy on liability for charges resulting from toll fraud. The Commission now seeks comments from interested parties concerning the risks of toll fraud that might result from changes in our treatment of inmate-only telephones in correctional institutions.

²⁵ The Commission is currently considering the merits of an automated "billed party preference" routing methodology for 0+ interLATA payphone traffic and for other types of operator-assisted interLATA traffic. Billed Party Preference for 0+ InterLATA Calls, CC Docket No. 92-77: Further Notice of Proposed Rule Making, FCC 94-117 (adopted May 19, 1994).

²⁶ See Letter from Richard M. Kessel, State of New York, State Consumer Protection Board, to William Caton, FCC Acting Secretary, dated April 14, 1994.

sion, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 230) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

FEDERAL COMMUNICATIONS COMMISSION



William F. Caton
Acting Secretary

APPENDIX

PROPOSED RULE CHANGES

It is proposed that Part 64 of Title 47 of the Code of Federal Regulations be amended as follows:

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

Authority: Sec. 4, 48 Stat. 1066, as amended, 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201-4, 218, 225, 226, 227, 48 Stat. 1070, as amended, 1077; 47 U.S.C. §§ 201, 218, 225, 226, 227, unless otherwise noted.

2. The heading of Subpart G is revised to read as follows:

Subpart G - Furnishing of Enhanced Services and Customer-Premises Equipment by Communications Common Carriers; Telephone Operator Services; Pay-Per-Call Services.

3. Section 64.706 is revised to read as follows:

§ 64.706 Minimum standards for the routing and handling of emergency telephone calls.

Upon receipt of any emergency telephone call, providers of operator services and aggregators shall ensure immediate connection of 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.

4. Section 64.708 is amended by revising paragraph (d) to read as follows:

§ 64.708 Definitions

(d) *Consumer* means a person initiating any interstate telephone call using operator services. In collect calling arrangements, both the party on the originating end of the call and the party on the terminating end of the call are consumers under this definition;
