

CHRONOLOGY OF FCC ACTION ON RULE 69.5(B) (“ESP EXEMPTION”)

Date (rel.)	Item	Description
2/28/1983	<i>MTS and WATS Market Structure</i> , Third Report and Order, 93 FCC 2d 241	FCC adopts initial access charge rules.
8/22/1983	<i>MTS and WATS Market Structure</i> , Memorandum Opinion and Order, 97 FCC 2d 682, App. A.	FCC adopts “ESP exemption.” FCC adds Rule 69.5, including subsections (a) (“End user charges shall be computed and assessed upon end users, as defined in this Subpart”); and (b) (“Carrier’s carrier charges shall be computed and assessed upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services”).
7/17/1987	<i>Amendments of Part 69 of the Commission’s Rules Relating to Enhanced Service Providers</i> , Notice of Proposed Rulemaking, 2 FCC Rcd. 4305, App. A.	FCC adopts an NPRM tentatively concluding that it should eliminate the ESP exemption, and proposing to modify Rule 69.5(b) to read: “Carrier’s carrier charges shall be computed and assessed upon all interexchange carriers <i>or enhanced service providers</i> that use local exchange switching facilities for the provision of interstate or foreign telecommunications services <i>or enhanced services.</i> ” (emphasis added). FCC also proposed to modify the definition of “end user” to exclude ESPs.
4/27/1988	<i>Amendments of Part 69 of the Commission’s Rules Relating to Enhanced Service Providers</i> , Order, 3 FCC Rcd. 2631, 2633 ¶ 20 & n.53.	FCC declines to modify ESP exemption, finding that “this is not an appropriate time to assess interstate access charges <i>on the enhanced services industry</i> ” (emphasis added) and that “the current treatment of enhanced service providers for access charge purposes will continue. At present, enhanced service providers are treated as end users and thus may use local business lines for access for which they pay local business rates and subscriber line charges.”
5/9/1989	<i>Amendments of Part 69 of the Commission’s Rules Relating to the Creation of Subelements for Open Network Architecture</i> , Notice of Proposed Rulemaking, 4 FCC Rcd. 3983, 3987-89 & n.71	FCC begins reexamination of whether to modify the ESP exemption, but with tentative view to maintain it unchanged. FCC notes, “The access charge exemption for enhanced services is implemented by treating ESPs as end users for the purposes of Part 69.”

7/11/1991	<p><i>Amendments of Part 69 of the Commission’s Rules Relating to Subelements for Open Network Architecture Policy and Rules Concerning Rates for Dominant Carriers, Report and Order and Order on Reconsideration and Supplemental Notice of Proposed Rulemaking, 6 FCC Rcd. 4524, 4535 ¶ 60</i></p>	<p>FCC decides “We conclude that the best approach is the adoption of the tentative conclusion of the Notice: retention of the current form of the exemption.”</p>
12/24/1996	<p><i>Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing Usage of the Public Switched Network by Information Service and Internet Access Providers, Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry, 11 FCC Rcd. 21,354, 21,478, 21,480 ¶¶ 284, 288</i></p>	<p>FCC seeks comment on whether to retain the ESP exemption. FCC states, “In the 1983 Access Charge Reconsideration Order, we decided that, although enhanced service providers (ESPs) may use incumbent LEC facilities to <i>originate and terminate</i> interstate calls, ESPs should not be required to pay interstate access charges.” (¶ 284, emphasis added).</p> <p>FCC tentatively concludes “that information service providers should not be required to pay interstate access charges as currently constituted.” FCC explains, “Although our original decision in 1983 to treat ESPs as end users rather than carriers was explained as a temporary exemption, we tentatively conclude that the current pricing structure should not be changed so long as the existing access charge system remains in place.” (¶ 288)</p>
5/16/1997	<p><i>Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing End User Common Line Charges, First Report and Order, 12 FCC Rcd. 15982, 16,131-34 ¶¶ 341, 344, 348</i></p>	<p>FCC declines to apply access charges to information services.</p> <ul style="list-style-type: none"> • “In the 1983 Access Charge Reconsideration Order, the Commission decided that, although information service providers (ISPs) may use incumbent LEC facilities to <i>originate and terminate</i> interstate calls, ISPs should not be required to pay interstate access charges.” (¶ 341, emphasis added) • “We conclude that the existing pricing structure for ISPs should remain in place and incumbent LECs will not be permitted to assess interstate per-minute access charges on ISPs.” (¶ 344) • “We therefore conclude that ISPs should remain classified as end users for purposes of the access charge system.” (¶ 348)