Federal Communications Commission
2004 Biennial Regulatory Review
Docket No. CG 04-175

Consumer & Governmental Affairs Bureau
Staff Report
January 5, 2005

Part 1 – Practice and Procedure – Sections 1.716 through 1.719 set forth rules for the filing of informal complaints.

Part 6 – Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities – Outlines the obligations of manufacturers and providers of telecommunications services to ensure that their equipment and services are accessible to persons with disabilities.

Part 7 – Access to Voicemail and Interactive Menu Services and Equipment by People with Disabilities – Outlines the obligations of providers of voicemail and interactive menu services and manufacturers of telecommunications equipment which performs a voicemail or interactive menu function to ensure that these services and functions are accessible to persons with disabilities.

Part 64 – Miscellaneous Rules Relating to Common Carriers – Addresses a broad range of common carrier issues. Specifically: Subpart B (Indecent Telephone Message Services); Subpart F (Telecommunications Relay Services); Subpart G (Telephone Operator Services - sections 64.703-705, 64.707-710); Subpart K (Changing Long Distance Service); Subpart L (Restrictions on Telephone Solicitation); Subpart O (Interstate Pay-Per-Call and Other Information Services); Subpart P (Calling Party Telephone Number; Privacy); Subpart Y (Truth-in-Billing Requirements for Common Carriers).

Part 68 – Connection of Terminal Equipment to the Telephone Network – Establishes conditions for direct connection to the network of registered terminal equipment to prevent network harm and ensure that telephones are compatible with hearing aids. (CGB is only responsible for the rules in this part relating to hearing aid compatibility and, in addition, section 68.318(c) (Line seizure by automatic telephone dialing systems) and section 68.318(d) (Telephone facsimile machines; Identification of the sender of the message)).

III. RECENT ACTIVITIES

7. Telecommunications Relay Services. The Commission has taken several actions in its continuing efforts to ensure that telecommunications services are accessible to persons with disabilities. On June 17, 2003, the Commission released a *Second Report and Order, Order on Reconsideration, and Notice of Proposed Rulemaking* adopting new TRS services and features, and proposing additional TRS services and features, consistent with the goal of functional equivalency.[4]

8. On June 30, 2003, CGB released the 2003-2004 TRS rate *Order*, which adopted the per-minute compensation rates for traditional TRS and IP Relay, Speech-to-Speech, and Video Relay Service (VRS).[5] In this order, CGB examined the cost and demand data submitted by the providers, and determined that some of the costs submitted for the provision of VRS were

[4] *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Second Report and Order, Order on Reconsideration, and Notice of Proposed Rulemaking, 18 FCC Rcd 12379 (2003).

[5] *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, 18 FCC Rcd 12823 (2003).

not allowable under the statute and cost recovery regulations. Therefore, CGB disallowed some costs for VRS, and as a result, did not adopt the National Exchange Carrier Association's (NECA) proposed compensation rate for VRS of approximately $14 per minute, but instead adopted a rate of approximately $7 per minute. As a result, the size of the Interstate TRS Fund was decreased by over $15 million, money ultimately saved by consumers.

9. On August 1, 2003, the Commission released the captioned telephone voice carry over (VCO) service *Declaratory Ruling,* which recognized this service as another form of TRS eligible for compensation from the Interstate TRS Fund.[6] Captioned telephone VCO service uses a telephone that looks similar to a traditional telephone but also has a text display that allows the user, on one standard telephone line, to both listen to the other party speak and simultaneously read captions of what the other party is saying. This way, a typical user of this service, who has the ability to speak and some residual hearing, can both listen to what is said over the telephone and read captions for clarification.

10. On June 30, 2004, the Commission released a *Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking* that comprehensively addressed the provision, regulation, and compensation of the various forms of TRS.[7] That order generally affirmed the June 30, 2003, Bureau rate order, but revised upward the VRS compensation rate. In addressing cost recovery issues, that order clarified that determining the annual compensation rates is not "rate making," that the "reasonable" costs for which providers may be compensated do not include profits or a markup on expenses, and that engineering and research and development costs that relate to providing services and features beyond the applicable mandatory minimum standards are not compensable. The order emphasized that the purpose of the cost recovery scheme is to permit providers to recovery their reasonable costs of providing TRS, which they are obligated to do as an accommodation for persons with certain disabilities.

11. Finally, also on June 30, 2004, the CGB released the 2004-2005 TRS rate *Order*, which adopted NECA's recommended per-minute compensation rates for traditional TRS and IP Relay, Speech-to-Speech, and Video Relay Service (VRS).[8]

12. Slamming. In order to further aid consumers, on March 17, 2003, the Commission released a *Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking, Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996/Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance in Docket No.94-129* amending the Part 64, Subpart K rules to clarify and strengthen its telephone slamming rules and ask for comment on whether to expand the minimum content requirements for third party verifications. The Commission clarified that local exchange carriers executing carrier change requests can be held liable for unauthorized carrier changes; modified the "drop-off" requirement to allow sales agents, in certain circumstances, to

[6] *In the Matter of Telecommunications Relay Services, and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling, 18 FCC Rcd 16121 (2003).

[7] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 12475 (2004).

[8] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, 19 FCC Rcd 12224 (2004).

remain silent on the line during verification; and discontinued the requirement that carriers file FCC Form 478. These changes became effective on July 21, 2003.

13. On July 16, 2004, as part of the 2000 Biennial Review effort, the Commission released a *First Order on Reconsideration in Docket 00-257 and Fourth Order on Reconsideration in Docket 94-129* amending the Part 64, Subpart K rules to address issues raised in petitions for reconsideration of our *Streamlining Order* and certain ancillary slamming issues relating to switchless resellers that were raised in these dockets, but had not yet been resolved. The Commission clarified that acquiring carriers will continue to pay switching fees for acquired customers unless a state regulatory agency has ordered the exiting carrier to pay, denied requests for modification of our notice requirements under our streamlined carrier change procedures, denied a request for a change to our carrier freeze rules, and denied a request that switchless resellers must obtain carrier identification codes.

14. In addition, on November 24, 2004, the Commission released a *Fifth Order on Reconsideration in Docket 94-129* which denied petitions filed by a number of independent LECs seeking reconsideration of the Commission's verification requirement for in-bound carrier change request calls.[9] This *Fifth Order on Reconsideration* also granted in part a petition filed by AT&T which sought clarification that the slamming rules would not be triggered when a subscriber requests merely to add additional lines to existing service, or when requesting new service installation. Finally, the *Fifth Order on Reconsideration* denied a petition by MCI asking that credits made to consumers before a slamming complaint had been filed be considered "unpaid" when calculating liability, or be deducted from the amount owed the authorized carrier by a carrier found liable for slamming.

15. Restrictions on Telephone Solicitation. On September 18, 2002, the Commission released a *Notice of Proposed Rulemaking* seeking comment on whether any of its telemarketing rules need to be revised or additional rules need to be adopted to more effectively carry out Congress's directives in the Telephone Consumer Protection Act (TCPA).[10]

16. On June 26, 2003, the FCC adopted an Order updating its TCPA rules and establishing a national do-not-call registry for consumers who wish to avoid telemarketing calls.[11] The registry is nationwide in scope, includes all telemarketers (with the exception of certain non-profit organizations), and covers both interstate and intrastate telemarketing calls.

17. Industry estimates indicate that telemarketers may attempt as many as 104 million calls to consumers and businesses every day. The Commission also cited dramatic increases in telemarketer use of autodialers, which deliver prerecorded messages to thousands of potential customers every day, and predictive dialers, which initiate phone calls while telemarketers are

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[9] *In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket 94-129, Fifth Order on Reconsideration, FCC 04-214 (rel. November 24, 2004).

[10] *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, CC Docket No. 92-90, Notice of Proposed Rulemaking and Memorandum Opinion and Order, FCC 02-250 (rel. Sep. 18, 2002).

[11] *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003).

talking to other consumers and which frequently abandon calls before a telemarketer is free to take the next call. The Commission has implemented the do-not-call registry in conjunction with the Federal Trade Commission (FTC). The national database is administered by the FTC and enforcement is being coordinated between the FCC, the FTC and the states.

18. In the Order, the FCC also adopted restrictions on the use of predictive dialers in an effort to reduce the number of "hang-up" and "dead air" calls consumers experience. In addition, it specified that telemarketers cannot block caller ID information and tightened its existing rules on unsolicited faxes to require that express permission be obtained in writing by companies before sending faxed advertisements to its customers. Finally, the Order establishes an exemption to permit calls by a marketer to friends, family members and acquaintances.

19. In addition, the Commission released on August 18, 2003, an Order on Reconsideration delaying the effective date of the written consent requirement for fax advertising until January 1, 2005.[12] The delay was intended to give parties additional time to obtain the recipients' written permission, and to allow the Commission the opportunity to review the petitions for reconsideration filed on this issue.

20. On March 19, 2004, the Commission released an NPRM and FNPRM seeking comment on two issues relating to the TCPA.[13] Specifically, the Commission sought comment on whether to adopt a limited safe harbor period during which a telemarketer will not be liable for violating the rule prohibiting autodialed and prerecorded message calls to wireless numbers for calls made to numbers that have been recently ported from wireline to wireless service. On August 25, 2004, the Commission adopted an Order which: 1) created a limited safe harbor period from the TCPA's prohibition on calls to wireless numbers.[14] Persons will not be liable for placing autodialed and prerecorded message calls where such calls are made to a wireless number ported from wireline service within the previous 15 days, provided the number is not already on the national do-not-call registry or the caller's company-specific do-not-call list. A limited safe harbor will provide a reasonable opportunity for persons to identify numbers that have been ported from wireline service.

21. The Order also amends the existing national do-not-call registry safe harbor provision to require telemarketers to access the registry and scrub their call lists of those numbers on the registry every 31 days. The rule change will become effective on January 1, 2005. This amendment will benefit consumer privacy interests by reducing from three months to 31 days the maximum period within which telemarketers must update their database of numbers registered on the national do-not-call list in order to qualify for the safe harbor protections. We also believe this action is consistent with the intent of Congress, which directed the FTC in the Consolidated Appropriations Act of 2004 to amend its corresponding safe harbor rule in a similar

[12] *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Order on Reconsideration, 18 FCC Rcd 16972 (2003).

[13] *Rules and Regulations Implementing the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003; Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 04-53, CG Docket No. 02-278, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 19 FCC Rcd 5056 (2004).

[14] *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Order, FCC 04-204 (rel. September 21, 2004).

manner. Absent action to amend our safe harbor rule, many telemarketers would face inconsistent standards since the FTC's jurisdiction extends only to certain entities while our jurisdiction extends to all telemarketers.

22. On October 1, 2004, the Commission released an Order extending for a period of six months the effective date of the written consent requirement for sending unsolicited facsimile advertisements.[15] The Commission believes that the public interest will best be served by delaying the effective date of the written consent requirement to allow either Congress to act on pending legislation or the Commission to address the petitions for reconsideration filed on these issues.

23. Interstate Pay-Per-Call. In July, the Commission released a *Notice of Proposed Rulemaking* on its interstate pay-per-call rules, seeking comment on possible modifications to address circumvention of the rules.[16]

24. Calling Party Telephone Number. In July of 2003, the Commission revised its rules under the Telephone Consumer Protection Act (TCPA) to address changes in the telemarketing marketplace. Among other things, the Commission adopted new rules at 64.1601(e) to require telemarketers to transmit caller identification (caller ID) information and, when available, by the telemarketer's carrier, the name of the telemarketer. In addition, telemarketers are prohibited from blocking the transmission of caller ID information. The Commission determined that caller ID allows consumers to screen out unwanted calls and to identify companies that they wish to ask not to call again.

25. Connection of Terminal Equipment to the Telephone Network. In July of 2003, the Commission revised its rules under the Telephone Consumer Protection Act (TCPA) to address changes in the telemarketing marketplace. Among other things, the Commission amended the rule at 68.318(d) to address certain activities by facsimile broadcasters. The rules require that if a facsimile broadcaster demonstrates a high degree of involvement in the sender's facsimile messages, such as supplying the numbers to which a message is sent, that broadcaster's name, under which it is registered to conduct business with the State Corporation Commission (or comparable regulatory authority) must be identified on the facsimile along with the sender's name.

26. In addition to these efforts, the Commission released on August 14, 2003, a *Report and Order* modifying the exemption for wireless phones under the Hearing Aid Compatibility Act of 1988 (HAC) to require that digital wireless phones be capable of being effectively used with hearing aids. The order found that requiring such phones to be accessible to hearing aids by requiring digital phone manufacturers and service providers to reduce the amount of interference from digital wireless phones would extend the benefits of wireless telecommunications to individuals with hearing disabilities, including emergency, business, and

[15] *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Order, FCC 04-233 (rel. October 1, 2004).

[16] *Policies and Rules Governing Interstate Pay-Per-Call and Other Information Services Pursuant to the Telecommunications Act of 1996; Policies and Rules Governing Interstate Pay-Per-Call and Other Information Services, and Toll-free Number Usage; Truth-in-Billing and Billing Format*; CC Docket Nos. 96-146 and 98-170, CG Docket No. 04-244, Notice of Proposed Rulemaking, FCC 04-162 (rel. July 16, 2004).

APPENDIX: RULE PART ANALYSIS

Part 1, Subpart E – Complaints, Applications, Tariffs, and Reports Involving Common Carriers, Informal Complaints, Sections 1.716-1.719.

Description

1. Part 1, Subpart E implements section 208 of the Communications Act of 1934, as amended.[1] Section 208 permits any person to lodge a complaint with the Commission against a common carrier alleging a violation of the Communications Act. Subpart E establishes the rules for the submission and treatment of two categories of complaints against common carriers. These are "Formal Complaints," which are governed by sections 1.720 – 1.736, and "Informal Complaints," which are governed by sections 1.716-1.719.[2] The Informal Complaint rules emphasize ease of filing by consumers, and voluntary cooperative efforts by consumers and affected companies to resolve their differences informally. The Consumer & Governmental Affairs Bureau's analysis of Part 1, Subpart E will be limited to "Informal Complaints" governed by sections 1.716 - 1.719.

Purpose

2. Part 1, Subpart E, Informal Complaints, sections 1.716 -1.719, sets forth procedures for the receipt and review of informal complaints against common carriers. Such complaints include complaints against a common carrier submitted outside the formal section 208 common carrier complaint process. These rules are designed to facilitate the efficient and expeditious processing of complaints submitted pursuant to section 208 by consumers in order to promote maximum compliance with the requirements of the Communications Act, as amended, and the Commission's rules and implementing orders.

Analysis

Status of Competition

3. Section 208 authorizes complaints against all common carriers involving any of their obligations. These essentially procedural rules facilitate consumer complaints against common carriers and have not been impacted by competition.

[1] 47 U.S.C. § 208.

[2] Section 1.719 of the Commission's rules governs the treatment of informal complaints filed pursuant to section 258 of the Telecommunications Act of 1996 (47 U.S.C. § 258). Section 258 prohibits "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telecommunications service.

Recent Efforts

4. No recent efforts.

Comments

5. No comments received.

Recommendation

6. The staff does not recommend any changes to the informal complaint rules as part of the Biennial Review. The informal complaint rules facilitate the efficient and expeditious processing of complaints submitted pursuant to section 208 by consumers in order to promote maximum compliance with the requirements of the Communications Act, as amended, and the Commission's rules and implementing orders. Moreover, because these informal complaint procedural rules are not competition-related, we cannot find these rules are no longer necessary in the public interest as a result of meaningful economic competition. Accordingly, the staff concludes that the rules remain necessary in the public interest and recommends that repeal or modification is not warranted.

Part 6 – Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities

Description

7. Part 6 implements sections 255 and 251(a)(2) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996.[3] Sections 255 and 251(a)(2) require manufacturers of telecommunications equipment and providers of telecommunications services to ensure that such equipment and services are accessible to persons with disabilities, if readily achievable. The rules also establish complaint procedures to provide aggrieved parties an unqualified option to pursue an accessibility claim against a manufacturer or service provider informally or through more formal adjudicatory procedures.

Purpose

8. The purpose of the rules is to bring the benefits of advances in telecommunications to all Americans, including those who face accessibility barriers to telecommunications products and services.

Analysis

Status of Competition

9. Not relevant. As noted above, Part 6 implements sections 255 and 251(a)(2) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996.[4] These provisions are intended to bring the benefits of advances in telecommunications to all Americans, including those who face accessibility barriers to telecommunications products and services by requiring manufacturers of telecommunications equipment and providers of telecommunications services to ensure that such equipment and services are accessible to persons with disabilities, if readily achievable. Accordingly, the realization of these benefits is not determined by economic competition.

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[3] 47 U.S.C. §§ 255, 251(a)(2). *See Implementation of Section 255 and 251(a)(2) of the Communications Act of 1934, as enacted by the Telecommunications Act of 1996; Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities*, WT Docket No. 96-198, FCC 99-181, Report and Order and Further Notice of Inquiry, 16 FCC Rcd 6417 (rel. Sep. 29, 1999).

[4] 47 U.S.C. §§ 255, 251(a)(2). *See Implementation of Section 255 and 251(a)(2) of the Communications Act of 1934, as enacted by the Telecommunications Act of 1996; Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities*, WT Docket No. 96-198, FCC 99-181, Report and Order and Further Notice of Inquiry, 16 FCC Rcd 6417 (rel. Sep. 29, 1999)

Recent Efforts

10. No recent efforts.

Comments

11. No comments received.

Recommendation

12. The staff does not recommend changes to Part 6 as part of the Biennial Review. The rules serve to bring the benefits of advances in telecommunications to all Americans, including those who face accessibility barriers to telecommunications products and services to ensure their full participation in our society. Moreover, because these rules are not competition-related, we cannot find these rules are no longer necessary in the public interest as a result of meaningful economic competition. We accordingly conclude that Part 6 remains necessary in the public interest and recommend that repeal or modification is not warranted.

Part 7 – Access to Voicemail and Interactive Menu Services and Equipment by People with Disabilities

Description

13. Part 7 implements sections 255 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996.[5] Section 255 requires manufacturers of telecommunications equipment and providers of telecommunications services to ensure that such equipment and services are accessible to persons with disabilities, if readily achievable. Part 7 extends these accessibility requirements to the providers of voicemail and interactive menu services and to the manufacturers of the equipment that perform those functions. The rules also establish complaint procedures to provide aggrieved parties an unqualified option to pursue an accessibility claim against a manufacturer or service provider informally or through more formal adjudicatory procedures.

Purpose

14. The purpose of the rules is to bring the benefits of advances in telecommunications to all Americans, including those who face accessibility barriers to telecommunications products and services. This will ensure their full participation in our society by extending these accessibility requirements of section 255 to the providers of voicemail and interactive menu services and to the manufacturers of the equipment that performs these functions.

Analysis

Status of competition

15. Not relevant. As noted above, Part 7 implements section 255 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996.[6] This provision is intended to bring the benefits of advances in telecommunications to all Americans, including those who face accessibility barriers to telecommunications products and services by requiring manufacturers of telecommunications equipment

[5] 47 U.S.C. § 255. *See Implementation of Section 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996; Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities*, WT Docket No. 96-198, FCC 99-181, Report and Order and Further Notice of Inquiry, 16 FCC Rcd 6417 (rel. Sep. 29, 1999).

[6] 47 U.S.C. §§ 225, 251(a)(2). *See Implementation of Section 255 and 251(a)(2) of the Communications Act of 1934, as enacted by the Telecommunications Act of 1996; Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities*, WT Docket No. 96-198, FCC 99-181, Report and Order and Further Notice of Inquiry, 16 FCC Rcd 6417 (rel. Sep. 29, 1999).

and providers of telecommunications services to ensure that such equipment and services are accessible to persons with disabilities, if readily achievable. Part 7 extends these accessibility requirements to the providers of voicemail and interactive menu services and to the manufacturers of the equipment that perform those functions. Accordingly, the realization of these benefits is not determined by economic competition.

Recent Efforts

16. No recent efforts.

Comments

17. No comments received.

Recommendation

18. The staff does not recommend changes to Part 7 as part of the Biennial Review. The rules serve to bring the benefits of advances in telecommunications to all Americans, including those who face accessibility barriers to telecommunications products and services, ensuring their full participation in our society. Moreover, because these rules are not competition-related, we cannot find these rules are no longer necessary in the public interest as a result of meaningful economic competition. We accordingly conclude that Part 7 remains necessary in the public interest and recommend that repeal or modification is not warranted.

PART 64, Subpart B – Restrictions on Indecent Telephone Message Services

Description

19. Part 64, Subpart B implements the provisions of section 223(b) of the Communications Act of 1934, as amended, relating to defenses to prosecution for indecent commercial communications.[7] Section 223(b) prohibits the use of the telephone for the purpose of obscene commercial communications. It also prohibits use of the telephone for indecent commercial communications without the consent of the other party and prohibits use of the telephone for indecent commercial communications that are available to anyone under 18 years of age. Section 223(b) also provides for certain defenses to prosecution for making indecent commercial communications.

20. Under section 64.201 of the Commission's rules, a provider of indecent commercial telephone communications has a defense to prosecution if the provider has notified the common carrier that the provider is engaged in providing indecent commercial communications, and does one of the following: (1) requires credit card payment before transmitting the message; (2) requires an authorized access or identification code, which has been established by mail, before transmitting the message; or (3) scrambles the message so that the audio is unintelligible and incomprehensible without a descrambler. Subpart B also provides a defense to prosecution for message sponsor subscribers to mass announcement services if they ask the carrier to take certain precautions. In addition, Subpart B bars common carriers, to the extent technically feasible, from providing access to obscene or indecent communications from the telephone to anyone who has not previously requested access to such services in writing if the carrier provides billing and collection for the provider of the obscene or indecent communications.

Purpose

21. Part 64, Subpart B is intended to implement the statutory restrictions on the commercial provision by telephone of indecent communications consistent with the First Amendment. In particular, Subpart B is intended to protect minors and non-consenting adults from indecent communications.

Analysis

Status of Competition

22. Not relevant. As noted, Part 64, Subpart B is intended to protect minors and non-consenting adults from indecent communications by implementing restrictions on

[7] 47 U.S.C. § 223(b).

the commercial provision by telephone of indecent communications. Such protections are not determined by economic competition.

Recent Efforts

23. No recent efforts.

Comments

24. No comments received.

Recommendation

25. The staff does not recommend changes to Part 64, Subpart B as part of the Biennial Review. Part 64, Subpart B is intended to implement the statutory restrictions on the commercial provision by telephone of indecent communications consistent with the First Amendment. In particular, Subpart B is intended to protect minors and non-consenting adults from indecent communications. Moreover, because Part 64, Subpart B is not competition-related, we cannot find these rules are no longer necessary in the public interest as a result of meaningful economic competition. We accordingly conclude that Part 64, Subpart B remains necessary in the public interest and recommend that repeal or modification is not warranted.

Part 64, Subpart F – Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities

Description

26. Part 64, Subpart F implements section 225 of the Communications Act of 1934, as amended.[8] Section 225 codifies Title IV of the Americans with Disabilities Act of 1990 (ADA) which requires that the Commission ensure that telecommunications relay services (TRS) are available, "to the extent possible and in the most efficient manner," to individuals with hearing or speech disabilities in the United States.[9] Section 225 defines TRS as telephone transmission services that make it possible for an individual with a hearing or speech disability to engage in communication by wire or radio with a hearing individual in a manner functionally equivalent to that available to persons who do not have such a disability. The rules provide minimal functional, operational, and technical standards for TRS programs. The rules give states a significant role in ensuring the availability of TRS by treating carriers as compliant with their statutory obligations if they operate in a state that has a relay program certified as compliant by the Commission. The rules also establish a cost recovery and carrier contribution mechanism (TRS Fund) for the provision of interstate TRS and require states to establish cost recovery mechanisms for the provision of intrastate TRS. The Consumer & Governmental Affairs Bureau's analysis of part 64, Subpart F will be limited to an analysis of issues relating to TRS policy. For a discussion of issues related to administration of the TRS Fund refer to the Wireline Competition Bureau's analysis of Part 64, Subpart F.

Purpose

27. Part 64, Subpart F is intended to facilitate communication by persons with a hearing or speech disability by ensuring that interstate and intrastate TRS are available throughout the country, and by ensuring uniform minimum functional, operational, and technical standards for TRS programs. The TRS rules ensure that individuals with hearing or speech disabilities receive the same quality of service when they make TRS calls, regardless of where their calls originate or terminate.

Analysis

Status of Competition

28. Although TRS is intended to be an accommodation required of entities offering telephone service for persons with disabilities, at present, there is competition in the interstate TRS market, particularly with the Internet-based TRS

[8] 47 U.S.C. § 225.

[9] Pub. Law No. 101-336, § 401, 104 Stat. 327, 366-69 (1990).

services (IP Relay and VRS). Consumers can select a provider of their choice by going to that provider's Web page. The majority of intrastate TRS, however, is provided by state TRS programs certified as meeting the Commission's mandatory minimum standards. Therefore, the individual states decide whether to have multiple TRS providers at the intrastate level as part of their state program, or whether to limit competition for intrastate TRS to the request for proposal and vendor selection process.

Recent Efforts

29. On June 17, 2003, the Commission released a *Second Report and Order, Order on Reconsideration, and Notice of Proposed Rulemaking* adopting new TRS services and features, and proposing additional TRS services and features, consistent with the goal of functional equivalency.[10]

30. On June 30, 2003, CGB released the 2003-2004 TRS rate *Order*, which adopted the per-minute compensation rates for traditional TRS and IP Relay, Speech-to-Speech, and Video Relay Service (VRS).[11] In this order, CGB examined the cost and demand data submitted by the providers, and determined that some of the costs submitted for the provision of VRS were not allowable under the statute and cost recovery regulations. Therefore, CGB disallowed some costs for VRS, and a result did not adopt NECA's proposed compensation rate for VRS of approximately $14 per minute, but instead adopted a rate of approximately $7 per minute. As a result, the size of the Interstate TRS Fund was decreased by over $15 million, money ultimately saved by consumers.

31. On August 1, 2003, the Commission released the captioned telephone VCO service *Declaratory Ruling,* which recognized this service as another form of TRS eligible for compensation from the Interstate TRS Fund.[12] Captioned telephone VCO service uses a telephone that looks similar to a traditional telephone but also has a text display that allows the user, on one standard telephone line, to both listen to the other party speak and simultaneously read captions of what the other party is saying. This way, a typical user of this service, who has the ability to speak and some residual hearing, can both listen to what is said over the telephone and read captions for clarification.

[10] *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Second Report and Order, Order on Reconsideration, and Notice of Proposed Rulemaking, 18 FCC Rcd 12379 (2003).

[11] *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, 18 FCC Rcd 12823 (2003).

[12] *In the Matter of Telecommunications Relay Services, and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling, 18 FCC Rcd 16121 (2003).

32. On June 30, 2004, the Commission released a *Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking* that comprehensively addressed the provision, regulation, and compensation of the various forms of TRS.[13] That order generally affirmed the June 30, 2003, Bureau rate order, but revised upward the VRS compensation rate. In addressing cost recovery issues, that order clarified that determining the annual compensation rates is not "rate making," that the "reasonable" costs for which providers may be compensated do not include profits or a markup on expenses, and that engineering and research and development costs that relate to providing services and features beyond the applicable mandatory minimum standards are not compensable. The order emphasized that the purpose of the cost recovery scheme is to permit providers to recovery their reasonable costs of providing TRS, which they are obligated to do as an accommodation for persons with certain disabilities.

33. Finally, also on June 30, 2004, the CGB released the 2004-2005 TRS rate *Order*, which adopted NECA's recommended per-minute compensation rates for traditional TRS and IP Relay, Speech-to-Speech, and Video Relay Service (VRS).[14]

Comments

34. No comments received.

Recommendation

35. The staff does not recommend changes to Part 64, Subpart F as part of the Biennial Review. The TRS rules serve to facilitate communication by persons with a hearing or speech disability by ensuring that interstate and intrastate TRS are available throughout the country, and by ensuring uniform minimum functional, operational, and technical standards for relay programs. The TRS rules also ensure that individuals with hearing or speech disabilities receive the same quality of service when they make relay calls, regardless of where their calls originate or terminate. We accordingly do not find that the TRS rules are "no longer necessary in the public interest as the result of meaningful economic competition between providers of telecommunications services." The staff recommends that repeal or modification is not warranted.

[13] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 12475 (2004).

[14] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, 19 FCC Rcd 12224 (2004).

Part 64, Subpart G – Furnishing of Enhanced Services and Customer Premises Equipment by Bell Operating Companies; Telephone Operator Services

Description

36. Part 64, Subpart G addresses: (1) the provision of enhanced services and customer premises equipment (CPE) by Bell Operating Companies (BOCs); and (2) the provision of operator services. To the extent that Part 64, Subpart G addresses the provision of operator services, the rules implement the provisions and standards of the Telephone Operator Consumer Services Improvement Act of 1990 (TOCSIA) as codified at section 226 of the Communications Act of 1934, as amended.[15] The purpose of TOCSIA is to protect consumers who make interstate operator assisted calls from payphones, hotels, and other public locations from unreasonably high rates and unfair and deceptive practices. There are two categories of requirements set forth in TOCSIA and the Commission's rules: 1) rules applicable to "Aggregators" which are defined as persons or entities that make telephones available to the public or to transient users of their facilities for interstate telephone calls using a provider of operator services and 2) rules applicable to "Operator Service Providers" which are defined as common carriers that provide operator services, or any other persons determined by the Commission to be providing operator services. The rules require that operator service providers identify themselves at the beginning of each call and provide consumers with information concerning their rates upon request. The rules also prohibit call blocking and require that customers be able to obtain access to the operator services provider of their choice. The rules impose restrictions on charges related to the provision of operator services, minimum standards for routing and handling of emergency telephone calls, and rules governing the filing of informational tariffs and the provision of operator services for prison inmates. The Consumer & Governmental Affairs Bureau's analysis of Part 64, Subpart G is limited to that portion of Subpart G that implements TOCSIA.[16]

Purpose

37. The purpose of Part 64, Subpart G is, in part, to protect consumers by ensuring that they have information about the rates charged by operator services providers, and that they can reach the operator services provider of their choice. The rules also promote public safety by prescribing minimum standards for operator service provider and call aggregator handling of emergency telephone calls.

Analysis

[15] 47 U.S.C. § 226.

[16] We note that while the Consumer & Governmental Affairs Bureau has primary responsibility for most of the TOCSIA rules, the Wireline Competition Bureau has primary responsibility for the remaining TOCSIA rules.

Status of Competition

38. The operator services market continues to become increasingly competitive.

Recent Efforts

39. No recent efforts.

Comments

40. No comments received.

Recommendation

41. The staff does not recommend changes to Part 64, Subpart G, to the extent it implements the provisions and standards of TOCSIA, as part of the Biennial Review. The purpose of Part 64, Subpart G is, in part, to protect consumers by ensuring that they have information about the rates charged by operator services providers, and that they can reach the operator services provider of their choice. The rules also promote public safety by prescribing minimum standards for operator service provider and call aggregator handling of emergency telephone calls. We accordingly do not find that Part 64, Subpart G is "no longer necessary in the public interest as the result of meaningful economic competition between providers of [such] services." The staff recommends that to the extent that Part 64, Subpart G implements the provisions and standards of TOCSIA repeal or modification is not warranted.

Part 64, Subpart K – Changing Long Distance Service

Description

42. Part 64, Subpart K implements section 258 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996.[17] Section 258 expanded the Commission's existing authority to deter and punish "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telecommunications service. The rules prescribe verification procedures for telecommunications carriers to use in confirming subscribers' decisions to change telecommunications carriers. A carrier that fails to comply with the Commission's verification procedures is liable to the subscriber's authorized carrier for all amounts paid by the subscriber after the violation. The rules absolve subscribers of liability for charges billed by unauthorized carriers in certain cases, impose liability on unauthorized carriers for all charges collected from subscribers, and establish procedures to govern preferred carrier freezes.

Purpose

43. Part 64, Subpart K attempts to: eliminate the fraudulent practice of "slamming," or changing a subscriber's authorized telecommunications carrier without the subscriber's knowledge or explicit authorization; foster consumer choice; and facilitate competition in the telecommunications services market.

Analysis

Status of Competition

44. Competition in local service markets has continued to increase. Competitive local service providers continue to use all modes of entry contemplated by the 1996 Act, and were earning about 16 percent of local service revenues for the year 2003, up from 10 percent in 2001. Competition for business customers in metropolitan areas, in general, continues to develop more rapidly than competition for residential customers or customers in rural areas. In addition, consumers appear to be using wireless telephones as substitutes for wireline services, and local service over cable has increased to over three million connections. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen. There is greater competition for high volume customers than for low volume customers.

[17] 47 U.S.C. § 258.

Recent Efforts

45. On March 17, 2003, the Commission released a *Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking, Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996/Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance in Docket No.94-129* amending the Part 64, Subpart K rules to clarify and strengthen its telephone slamming rules and ask for comment on whether to expand the minimum content requirements for third party verifications. The Commission clarified that local exchange carriers executing carrier change requests can be held liable for unauthorized carrier changes; modified the "drop-off" requirement to allow sales agents, in certain circumstances, to remain silently on the line during verification; and discontinued the requirement that carriers file FCC Form 478. These changes became effective on July 21, 2003.

46. On July 16, 2004, as part of the 2000 Biennial Review effort, the Commission released a *First Order on Reconsideration in Docket 00-257 and Fourth Order on Reconsideration in Docket 94-129* amending the Part 64, Subpart K rules to address issues raised in petitions for reconsideration of our *Streamlining Order* and certain ancillary slamming issues relating to switchless resellers that were raised in these dockets, but had not yet been resolved. The Commission clarified that acquiring carriers will continue to pay switching fees for acquired customers unless a state regulatory agency has ordered the exiting carrier to pay, denied requests for modification of our notice requirements under our streamlined carrier change procedures, denied a request for a change to our carrier freeze rules, and denied a request that switchless resellers must obtain carrier identification codes.

Comments

47. No comments received.

Recommendation

48. The staff does not recommend changes to Part 64, Subpart K as part of the Biennial Review. Part 64, Subpart K attempts to: eliminate the fraudulent practice of "slamming," or changing a subscriber's authorized telecommunications carrier without the subscriber's knowledge or explicit authorization; foster consumer choice; and facilitate competition in the telecommunications services market. Moreover, meaningful economic competition still does not diminish the need for the anti-slamming rules. To the contrary, increased carrier competition for customers may exacerbate the slamming practice and thus increase the necessity for such anti-slamming, consumer protection regulation. We accordingly do not find that Part 64, Subpart K is "no longer necessary in the public interest as the result of meaningful

competition between providers of telecommunications services." The staff recommends that repeal or modification is not warranted.

Part 64, Subpart L – Restrictions On Telephone Solicitation

Description

49. Part 64, Subpart L implements Section 227 of the Communications Act of 1934 as amended.[18] Section 227 codifies the Telephone Consumer Protection Act of 1991 (TCPA) which was enacted to address certain telemarketing practices thought to be an invasion of consumer privacy and risk to public safety. The TCPA imposes restrictions on the use of automatic telephone dialing systems ("autodialers"), artificial or prerecorded messages, and telephone facsimile machines, and requires the Commission to adopt rules to implement these protections. Pursuant to the Commission's rules implementing the TCPA, a person or entity engaged in telemarketing is required to maintain a record of a called party's request not to receive future solicitations for a period of five years. Telemarketers must develop and maintain written policies for maintaining their lists, and they are required to inform their employees of the list's existence and train them to use the list. The rules prohibit telemarketers from calling residential telephone subscribers before 8 a.m. or after 9 p.m. and require telemarketers to identify themselves to called parties.

50. In 2003, the Commission established, in conjunction with the FTC, a national do-not-call registry for consumers who wish to avoid telemarketing calls. The FTC has responsibility for administering the do-not-call registry, while the FCC and FTC are responsible for enforcement of the registry. Telemarketers are required to access the numbers in the registry and remove them from their call lists on a quarterly basis. As mandated by the TCPA, the Commission's rules establish general prohibitions against autodialed calls being made without prior express consent to certain locations, including emergency lines or health care facilities, the use of prerecorded or artificial voice message calls to residences, and the transmission of unsolicited advertisements by facsimile machines. The TCPA rules provide that facsimile and prerecorded voice transmissions, as well as telephone facsimile machines, must meet specific identification requirements. The TCPA rules also prohibit line seizures by prerecorded messages. Both the identification requirements and prohibition on line seizures are codified in Part 68 of the Commission's rules (see 47 C.F.R. §§ 68.318(c) and 68.318(d)).[19]

Purpose

51. Part 64, Subpart L is intended to protect subscriber privacy and public safety without unnecessarily restricting legitimate telephone marketing and sales.

Analysis

[18] 47 U.S.C. § 227.

[19] *See* discussion of Part 68 herein for an analysis of these rules.

Status of Competition

52. Not relevant. As noted above, Part 64, Subpart L implements the Telephone Consumer Protection Act of 1991 (TCPA). The TCPA is intended to protect subscriber privacy without unnecessarily restricting legitimate telephone marketing and sales. The realization of such protections is not determined by economic competition. The staff notes that since the adoption of the rules, telemarketing practices have changed significantly. New technologies have emerged that allow telemarketers to better target potential customers and make it more cost effective to market using telephones and facsimile machines.

Recent Efforts

53. On September 18, 2002, the Commission released a *Notice of Proposed Rulemaking* seeking comment on whether any of its telemarketing rules need to be revised or additional rules need to be adopted to more effectively carry out Congress's directives in the Telephone Consumer Protection Act (TCPA).[20]

54. On June 26, 2003, the FCC adopted an Order updating its TCPA rules and establishing a national do-not-call registry for consumers who wish to avoid telemarketing calls.[21] The registry is nationwide in scope, includes all telemarketers (with the exception of certain non-profit organizations), and covers both interstate and intrastate telemarketing calls.

55. Industry estimates indicate that telemarketers may attempt as many as 104 million calls to consumers and businesses every day. The Commission also cited dramatic increases in telemarketer use of autodialers, which deliver prerecorded messages to thousands of potential customers every day, and predictive dialers, which initiate phone calls while telemarketers are talking to other consumers and which frequently abandon calls before a telemarketer is free to take the next call. The Commission has implemented the do-not-call registry in conjunction with the Federal Trade Commission (FTC). The national database is administered by the FTC and enforcement is being coordinated between the FCC, the FTC and the states.

56. In the Order, the FCC also adopted restrictions on the use of predictive dialers in an effort to reduce the number of "hang-up" and "dead air" calls consumers experience. In addition, it specified that telemarketers cannot block caller ID information and tightened its existing rules on unsolicited faxes to require that

[20] *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, CC Docket No. 92-90, Notice of Proposed Rulemaking and Memorandum Opinion and Order, FCC 02-250 (rel. Sep. 18, 2002).

[21] *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003).