

Federal Communications Commission

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and records pertaining thereto. Such files shall be preserved in accordance with existing rules of the Commission (part 42 of this chapter) and at points (one or more) to be specifically designated by each carrier.

(b) The aforementioned carriers shall make no payment as a result of any traffic damage claim if the amount of the payment would be in excess of the total amount collected by the carrier on the message or messages from which the claim arose unless such claim be presented to the carrier in writing signed by the claimant and setting forth the reason for the claim.

Subpart B—Restrictions on Indecent Telephone Message Services

§ 64.201 Restrictions on indecent telephone message services.

(a) It is a defense to prosecution for the provision of indecent communications under section 223(b)(2) of the Communications Act of 1934, as amended (the Act), 47 U.S.C. 223(b)(2), that the defendant has taken the action set forth in paragraph (a)(1) of this section and, in addition, has complied with the following: Taken one of the actions set forth in paragraphs (a)(2), (3), or (4) of this section to restrict access to prohibited communications to persons eighteen years of age or older, and has additionally complied with paragraph (a)(5) of this section, where applicable:

(1) Has notified the common carrier identified in section 223(c)(1) of the Act, in writing, that he or she is providing the kind of service described in section 223(b)(2) of the Act.

(2) Requires payment by credit card before transmission of the message; or

(3) Requires an authorized access or identification code before transmission of the message, and where the defendant has:

(i) Issued the code by mailing it to the applicant after reasonably ascertaining through receipt of a written application that the applicant is not under eighteen years of age; and

(ii) Established a procedure to cancel immediately the code of any person upon written, telephonic or other notice to the defendant's business office that such code has been lost, stolen, or

used by a person or persons under the age of eighteen, or that such code is no longer desired; or

(4) Scrambles the message using any technique that renders the audio unintelligible and incomprehensible to the calling party unless that party uses a descrambler; and,

(5) Where the defendant is a message sponsor subscriber to mass announcement services tariffed at this Commission and such defendant prior to the transmission of the message has requested in writing to the carrier providing the public announcement service that calls to this message service be subject to billing notification as an adult telephone message service.

(b) A common carrier within the District of Columbia or within any State, or in interstate or foreign commerce, shall not, to the extent technically feasible, provide access to a communication described in section 223(b) of the Act from the telephone of any subscriber who has not previously requested in writing the carrier to provide access to such communication if the carrier collects from subscribers an identifiable charge for such communication that the carrier remits, in whole or in part, to the provider of such communication.

[52 FR 17761, May 12, 1987, as amended at 55 FR 28916, July 16, 1990]

Subpart C—Furnishing of Facilities to Foreign Governments for International Communications

§ 64.301 Furnishing of facilities to foreign governments for international communications.

Common carriers by wire and radio shall, in accordance with section 201 of the Communications Act, furnish services and facilities for communications to any foreign government upon reasonable demand therefor: *Provided, however,* That, if a foreign government fails or refuses, upon reasonable demand, to furnish particular services and facilities to the United States Government for communications between the territory of that government and the United States or any other point,

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such carriers shall, to the extent specifically ordered by the Commission, deny equivalent services or facilities in the United States to such foreign government for communications between the United States and the territory of that foreign government or any other point.

(Secs. 201, 214, 303, 308, 48 Stat. 1075, 1082, 1085; 47 U.S.C. 201, 214, 303, 308)

[28 FR 13242, Dec. 5, 1963]

Subpart D—Procedures for Handling Priority Services in Emergencies

§ 64.401 Policies and procedures for provisioning and restoring certain telecommunications services in emergencies.

The communications common carrier shall maintain and provision and, if disrupted, restore facilities and services in accordance with policies and procedures set forth in Appendix A to this part.

[65 FR 48396, Aug. 8, 2000]

§ 64.402 Policies and procedures for the provision of priority access service by commercial mobile radio service providers.

Commercial mobile radio service providers that elect to provide priority access service to National Security and Emergency Preparedness personnel shall provide priority access service in accordance with the policies and procedures set forth in Appendix B to this part.

[65 FR 48396, Aug. 8, 2000]

Subpart E—Use of Recording Devices by Telephone Companies

§ 64.501 Recording of telephone conversations with telephone companies.

No telephone common carrier, subject in whole or in part to the Communications Act of 1934, as amended, may use any recording device in connection with any interstate or foreign telephone conversation between any member of the public, on the one hand, and any officer, agent or other person acting for or employed by any such tele-

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phone common carrier, on the other hand, except under the following conditions:

(a) Where such use shall be preceded by verbal or written consent of all parties to the telephone conversation, or

(b) Where such use shall be preceded by verbal notification which is recorded at the beginning, and as part of the call, by the recording party, or

(c) Where such use shall be accompanied by an automatic tone warning device, which will automatically produce a distinct signal that is repeated at regular intervals during the course of the telephone conversation when the recording device is in use. *Provided That:*

(1) The characteristics of the warning tone shall be the same as those specified in the Orders of this Commission adopted by it in “Use of Recording Devices in Connection With Telephone Service,” Docket 6787, 11 FCC 1033 (1947); 12 FCC 1005 (November 26, 1947); 12 FCC 1008 (May 20, 1948).

(d) That the characteristics of the warning tone shall be the same as those specified in the Orders of this Commission adopted by it in “Use of Recording Devices in Connection With Telephone Service,” Docket 6787; 11 F.C.C. 1033 (1947); 12 F.C.C. 1005 (November 26, 1947); 12 F.C.C. 1008 (May 20, 1948);

(e) That no recording device shall be used unless it can be physically connected to and disconnected from the telephone line or switched on and off.

(Secs. 2, 3, 4, 5, 301, 303, 307, 308, 309, 315, 317; 48 Stat., as amended, 1064, 1065, 1066, 1068, 1081, 1082, 1083, 1084, 1085, 1089; 47 U.S.C. 152, 153, 154, 155, 301, 303, 307, 308, 309, 315, 317)

[32 FR 11275, Aug. 3, 1967, as amended at 46 FR 29480, June 2, 1981; 52 FR 3654, Feb. 5, 1987]

Subpart F—Telecommunications Relay Services and Related Customer Premises Equipment for Persons With Disabilities

SOURCE: 56 FR 36731, Aug. 1, 1991, unless otherwise noted.

§ 64.601 Definitions.

As used in this subpart, the following definitions apply: