

rescission under 40 CFR 763.98(j) based on periodic EPA oversight evaluation and conference with the State in accordance with 40 CFR 763.98(h) and 763.98(i).

II. Other Statutory Requirements

The reporting and recordkeeping provisions relating to State waivers from the requirements of the Asbestos-Containing Materials in Schools Rule (40 CFR part 763) have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act and have been assigned OMB control number 2070-0091.

List of Subjects in 40 CFR Part 763

Environmental protection, Asbestos, Asbestos in schools (AHERA), Hazardous substances, Reporting and recordkeeping requirements, State and local governments, Worker protection.

Dated: September 6, 1995.

Robert L. Duprey,

Acting Regional Administrator, Region 8.

[FR Doc. 95-23569 Filed 9-21-95; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 91-35; FCC 95-374]

Operator Service Access and Payphone Compensation

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On April 9, 1992, the Commission adopted a *Second Report and Order* prescribing an interim mechanism by which competitive payphone owners ("PPOs") may collect compensation from certain interexchange carriers ("IXCs") for originating interstate access code calls from their payphones. In the *Memorandum Opinion and Order on Reconsideration*, adopted August 17, 1993, the Commission substantially affirmed the *Second Report and Order*, although the Commission modified it in certain respects. Upon further reconsideration the Commission now affirms the *Reconsideration Order*, making one additional modification and a clarification with the intended effect of facilitating the payment of compensation by IXCs to PPOs. First, the Commission directs each PPO submitting an affidavit as verification of a compensation claim to include evidence that the particular payphone is

owned by the PPO seeking compensation, and that the payphone was in working order during the period in question. Second, the Commission clarifies that IXCs to which the customer-owned coin-operated telephone ("COCOT") lists are provided must pay local exchange carriers ("LECs") reasonable charges for the costs of generating those lists. Third, the Commission rejects RCI's request that we exempt from compensation obligations those IXCs whose operator services consist of 1-800 and 950-10XX access code calls to preexisting accounts. The Commission also rejects RCI's request that we allow OSPs to remove themselves from the payphone compensation list at any time. Fourth, the Commission reverses our previous decision denying Allnet's request to be removed from the list of OSPs with payphone compensation obligations on the grounds that it is not a provider of "operator services," as defined by the Telephone Operator Consumer Services Improvement Act.

EFFECTIVE DATE: October 23, 1995.

FOR FURTHER INFORMATION CONTACT: Michael Carowitz, 202-418-0960, Enforcement Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION:

Synopsis of Order

A. Affidavit Procedure for Payphones Not Appearing on COCOT Lists

Upon reconsideration of the requirement that PPOs must submit sufficient verification information to IXCs when their payphones do not appear on COCOT lists, the Commission affirms its conclusion that the affidavit procedure the Commission established in the *Reconsideration Order*, 58 FR 57748 (1993), provides PPOs a "last resort" procedure when other procedures and informal negotiations fail to resolve LEC COCOT list problems. The Commission further concludes, however, that additional information would assist the IXCs in verifying their compensation obligations for competitive payphones not appearing on LEC COCOT lists. Accordingly, the Commission directs each PPO submitting an affidavit to include evidence that a particular payphone is owned by the PPO seeking compensation, and that the payphone was in working order during the period in question. Such evidence of the payphone's operability should include, at a minimum, the telephone bill for the last month of the billing quarter indicating use of a line screening service. The Commission believes that

the inclusion of such evidence will serve the interest of all parties by allowing IXCs to pay legitimate claims more quickly. The Commission also believes that the potentially significant penalties for the submission of fraudulent affidavits will continue to protect the IXCs against the misuse claims if good-faith negotiations between the relevant parties fail to resolve the dispute.

B. LEC Recovery of the Costs of Producing the COCOT Lists

The Commission articulates with more specificity what it held in the *Reconsideration Order*: that LECs may recover their reasonable costs in generating and producing the COCOT lists through direct charges to the IXCs that use them. The COCOT lists are produced exclusively to assist the IXCs in verifying their compensation obligations to PPOs. Because the COCOT lists are produced to assist the IXCs pursuant to FCC rules and are not included in state-tariffed payphone service, the Commission rejects MCI's argument that the lists are generated "as a by-product of the provision of LEC payphone service to PPOs." Even if the IXCs choose not to receive the COCOT lists, they are still responsible for compensating PPOs for each eligible competitive payphone in the amount of \$6 per month. In sum, the LEC COCOT lists are provided for the convenience of the IXCs, who, if requested, must pay the LECs a reasonable charge.

C. Certification Issues Raised by RCI's Petition for Clarification

Although it styles its pleading as a petition for clarification, RCI in effect requests reconsideration of the Commission's holding in both the *Second Report and Order*, 57 FR 21038 (1992), and the *Reconsideration Order*. As such, the Commission declines to adopt RCI's proposal for either expanding the scope of the exemption from the obligation to pay compensation to PPOs or modifying the terms of the affidavit procedure. The exemption from the compensation obligation is intended to apply to carriers that receive access code calls from their own presubscribed lines because such carriers already pay a commission to the PPO for such calls. The Commission emphasized that "if the carrier receives any user-initiated access code calls from payphones on which it is not the presubscribed carrier, that carrier [will] be required to participate in the compensation mechanism." RCI proposes to expand this exemption significantly to include access code calls from non-presubscribed lines for which

the PPO would not receive compensation. The Commission concludes that this proposal is flatly inconsistent with the purpose of the narrow exemption and, accordingly, decline to adopt it.

RCI argues that its proposed modification would be consistent with TOCSIA, which exempts from the statute's consumer protection requirements interstate telephone calls that are answered by automatic equipment and completed only if the caller inputs a PIN. This argument relies upon a statutory exclusion that removes from the definition of "operator services" any calls that receive "completion through an access code used by the consumer, with billing to an account previously established with the carrier by the consumer."

The Commission has previously rejected an identical argument by RCI that calls placed to 800 and 950 numbers from non-presubscribed lines should be excluded from the payphone compensation provisions. In the *Second Report and Order*, the Commission explained that the exclusions incorporated into TOCSIA's definition of "operator services" applied to the branding requirements imposed on OSPs by Section 226(b), and served to limit those requirements to situations in which they were necessary. The Commission found that the text of the payphone compensation provisions, when read in conjunction with the legislative history, makes clear that Congress intended that the Commission consider the need to prescribe compensation for PPOs for access code calls. In addition, RCI petitions the Commission to exclude "800" and "950" calls from the definition of "access code calls." RCI's request, however, amounts to an untimely petition for reconsideration of the *Second Report and Order*. As RCI acknowledges, the definition of "access codes", as set forth in the *Second Report and Order*, states that "[a]ccess codes include 10XXX in equal access areas and "950" Feature Group B dialing * * * anywhere, where the three-digit XXX denotes a particular IXC. Some OSPs use an 800 number as an access code." The period within which parties were authorized to seek reconsideration of this decision expired many months ago. We, accordingly, decline to consider RCI's late-filed petition.

With regard to RCI's "inconsistency" argument that including "800" and "950" calls to OSPs within the definition of compensable "access code calls" would penalize OSPs for complying with the Commission's unblocking requirements, the

Commission notes that it required OSPs to establish "800" and "950" access numbers as a means of permitting callers to reach the OSP whenever 10XXX calls were blocked from a particular competitive payphone. Thus, OSPs that are required to provide access from non-presubscribed payphones could do so through an access number, through 10XXX access, or through both. No matter how they provided access, these OSPs would be subject to the obligation to pay compensation to PPOs. In sum, because the Commission does not find any inconsistency between the definition of "access code calls" and the requirement that OSPs establish access numbers, the Commission declines to make the "clarification" requested by RCI.

The Commission also declines to modify the requirement that the certification must be made within 30 days after the public notice of the FCC staff report entitled "Long Distance Market Shares." To permit IXCs to seek at any time an exemption from the obligation to pay compensation, as RCI suggests, would undermine the efficient operation of the compensation mechanism and significantly increase the associated administrative costs. More specifically, because a single exemption alters the amount of compensation due from each OSP, the Commission would be required to readjust on a continuous basis the proportionate share of the \$6 per payphone per month due from each OSP subject to the compensation obligation. In addition, each OSP paying compensation, and each PPO seeking compensation, would be required to make corresponding changes to their respective payment and accounting operations. The costs of such ongoing changes for all parties, including the Commission, could be unduly burdensome. Accordingly, the Commission denies RCI's request.

D. Allnet's Request To Be Removed From List of IXCs Required to Pay Compensation to PPOs

Since Allnet filed its petition for reconsideration of the Commission's decision not to remove Allnet from the list of compensation payors, the Court of Appeals for the District of Columbia decided the *Florida Public Telecommunications* case. Although it does not directly address the issue of who is a "provider of operator services," and it instead concerns an earlier Commission decision about the scope of compensable calls, *Florida Public Telecommunications* provides guidance on how the specific terms of TOCSIA are to be read in the context of the

legislative purpose of that statute. As relevant to the statutory interpretation arguments advanced by Allnet, the rule of *Florida Public Telecommunications* is that the plain meaning of the statutory language of TOCSIA must govern unless the Commission can show that Congress intended a different result.

While Allnet has always maintained that it was not a provider of "operator services," as defined by TOCSIA, the Commission has answered in the past that Allnet is, however, a recipient of interstate access code calls originated by competitive payphones. Indeed, Allnet provides long-distance service to transient customers through 1-800 access numbers with billing to a preestablished account. This service clearly fits within the Commission's definition of compensable access code calls. Because TOCSIA is concerned with providing callers with access to the OSP of their choice, the Commission reasoned that a carrier that receives interstate access code calls should share the burden of paying compensation to PPOs for their origination. To this end, the Commission adopted a procedure in the *Reconsideration Order* whereby a carrier could certify that it did not receive any access code calls to be exempted from the obligation to pay compensation.

In applying the *Florida Public Telecommunications* guidelines for interpreting TOCSIA to the instant case, the Commission finds that even if a carrier receives interstate access code calls from competitive payphones, it must also be a provider of "operator services," as defined by TOCSIA in Section 226(a)(7). If a carrier, such as Allnet, provides only the services that fall within the definition's exclusions, e.g., "with billing to an account previously established with the carrier by the consumer," and does not otherwise provide "operator services," the Commission cannot require it to pay compensation under TOCSIA. Thus, under its rules and pursuant to TOCSIA, a carrier is not required to pay compensation under the interim flat-rate compensation mechanism, as established by the Commission's *Second Report and Order*, unless: (1) it receives access code calls; and (2) it is a provider of "operator services."

Based on Allnet's repeated statements that it does not provide "operator services" as defined by TOCSIA, the Commission finds that while it fits within the first part ("receives access code calls") of this two-part test for compensation payors, Allnet does not meet the second part ("provides 'operator services'"). Therefore, upon reconsideration, the Commission

removes Allnet from the list of compensation payors retroactive to the advent of the interim flat-rate compensation mechanism. The Commission does not expect that use of this two-part test will impact the status of any of the other carriers currently required to pay compensation. Because the Commission is removing Allnet from the list of carriers required to pay compensation to PPOs, it need not decide the other related issues raised by Allnet, such as whether it was given appropriate notice by the Commission that it was to be included among the compensation payors.

Ordering Clauses

Accordingly, pursuant to authority contained in Sections 1, 4, 201-205, and 226 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 201-205, and 226, It is Ordered that the policies, rules, and requirements set forth herein are ADOPTED.

It is Further Ordered that MCI's Petition for Further Reconsideration and Clarification of the *Reconsideration Order* is DENIED in part and GRANTED in part, as described herein.

It is Further Ordered that RCI's Petition for Clarification of the *Reconsideration Order* is Denied.

It is Further Ordered that the petition for reconsideration filed by Allnet is GRANTED in part, as described herein.

It is Further Ordered that this Memorandum Opinion and Order on Further Reconsideration will be effective October 23, 1995.

List of Subjects in 47 CFR Part 64

Communications common carriers, Operator service access, Payphone compensation, Telephone.

Federal Communications Commission.
William F. Caton,
Acting Secretary.

Amendment to the Code of Federal Regulations

Title 47 of the CFR, Part 64, is amended as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

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

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. 201-4, 218, 225, 226, 227, unless otherwise noted.

2. Section 64.1301 is amended by revising paragraph (f) to read as follows:

§ 64.1301 Competitive payphone compensation.

* * * * *

(f) A competitive payphone owner (PPO) that seeks compensation for competitive payphones that are not included on a LEC COCOT list satisfies its obligation to provide alternative reasonable verification to an IXC if it provides to that IXC:

(1) A notarized affidavit, signed by the president of the company, attesting that each of the payphones for which the PPO seeks compensation is a competitive payphone that was in working order as of the last day of the compensation period; and

(2) Corroborating evidence that each such payphone is owned by the PPO seeking compensation and was in working order on the last day of the compensation period. Corroborating evidence shall include, at a minimum, the telephone bill for the last month of the billing quarter indicating use of a line screening service.

[FR Doc. 95-23405 Filed 9-21-95; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-25; RM-7219]

Radio Broadcasting Services; Headland, AL, and Chattahoochee, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 287C3 for Channel 287A at Chattahoochee, Florida, reallots Channel 287C3 from Chattahoochee to Headland, Alabama, and modifies the license for Station WUMG(FM) to specify Channel 287C3, Headland, Alabama, as its community of license, at the request of Chattahoochee Broadcast Associates. See 56 FR 07317, February 22, 1991. The allotment of Channel 287C3 to Headland, Alabama, will provide the community with its first local transmission service, in accordance with Section 1.420(i) of the Commission's Rules. Channel 287C3 can be allotted to Headland in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.8 kilometers (6.1 miles) southeast of the community in order to avoid a short-spacing to Station WOAB, Channel 285A, Ozark, Alabama. The coordinates for Channel 287C3 at Headland, Alabama, are North Latitude 31-16-19 and West Longitude 85-17-46. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 3, 1995.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 91-25, adopted September 8, 1995, and released September 19, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by adding Headland, Channel 287C3.

3. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Chattahoochee, Channel 287A.

Federal Communications Commission.
John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95-23527 Filed 9-21-95; 8:45 am]

BILLING CODE 6712-01-F

47 CFR Part 73

[MM Docket No. 93-205; RM-8270]

Radio Broadcasting Services; Donalsonville, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: Pursuant to petitions for reconsideration, the Commission amends the FM Table of Allotments to allot Channel 298A to Donalsonville, GA, and delete Channel 271A. The Commission determined that this would