

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

In the Matter of)
)
Modernizing Common Carrier Rules) WC Docket No. 15-33
)

REPORT AND ORDER

Adopted: September 5, 2017

Released: September 8, 2017

By the Commission: Commissioner Carr issuing a statement.

I. INTRODUCTION

1. In this Order, we update our rules to remove outmoded regulations from the Code of Federal Regulations (CFR) that no longer reflect current requirements or technology. Specifically, we eliminate certain rules from which the Commission has granted unconditional forbearance for all carriers, and we eliminate references to telegraph service from certain sections of the Commission's rules. In so doing, we further our goals of reducing regulatory burdens, eliminating unnecessary rule provisions, and making the agency as efficient and effective as possible.

2. This Order acts on a Notice of Proposed Rulemaking which sought comment on the modifications we adopt here.¹ The *Notice* followed (1) two orders adopted in 2013 that, in response to a petition filed by USTelecom, granted forbearance from 126 legacy wireline regulations;² and (2) the *Process Reform Report*, a Commission staff report that recommended eliminating or streamlining rules that are no longer necessary due to marketplace or technology changes.³ No comments were filed in response to the *Notice*.

II. DISCUSSION

A. Deleting Rules from Which the Commission Granted Forbearance in the 2013 USTelecom Forbearance Orders

3. In many instances in the *2013 USTelecom Forbearance Orders*, the Commission granted unconditional forbearance from a requirement, but did not alter the text of the codified rule or remove the rule from the CFR. Thus, the rules appear in the CFR even though the Commission has stated that it will forbear from applying such rules. Absent additional research, a carrier or consumer might mistakenly

¹ See generally *Modernizing Common Carrier Rules*, WC Docket No. 15-33, Notice of Proposed Rulemaking, 30 FCC Rcd 1574 (2015) (*Notice*).

² *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations*, WC Docket No. 12-61, Order, 28 FCC Rcd 2605 (2013) (*USTelecom Forbearance Short Order*); *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations et al.*, WC Docket No. 12-61 et al., Memorandum Opinion and Order and Report and Order and Further Notice of Proposed Rulemaking and Second Further Notice of Proposed Rulemaking, 28 FCC Rcd 7627 (2013) (*USTelecom Forbearance Long Order*) (together, *2013 USTelecom Forbearance Orders*), *aff'd sub nom. Verizon and AT&T, Inc. v. FCC*, 770 F.3d 961 (D.C. Cir. 2014).

³ In this Order, we address Recommendations 5.37 and 5.38 of the *Process Reform Report*. See *FCC Seeks Public Comment on Report on Process Reform*, GN Docket No. 14-25, Public Notice, 29 FCC Rcd 1338, 1415-17, Attach., *Report on FCC Process Reform (Process Reform Report)* (2014).

believe the regulations are still in effect. Therefore, deleting the rules identified below, for which the Commission has granted unconditional forbearance, clarifies carriers' regulatory obligations and ensures that the CFR accurately reflects the Commission's actions with respect to those rules.

4. Specifically, we delete the following CFR provisions from which the Commission has forborne: (1) sections 42.4, 42.5, and 42.7, which required carriers to preserve certain records;⁴ (2) section 64.1, which governed traffic damage claims for carriers engaged in radio-telegraph, wire-telegraph, or ocean-cable service;⁵ (3) section 64.301, which required carriers to provide communications services to foreign governments for international communications;⁶ (4) section 64.501, which governed telephone companies' obligations when recording telephone conversations;⁷ (5) section 64.804(c)-(g), which governed a carrier's recordkeeping and other obligations when it extended unsecured credit for communications services to candidates for federal office;⁸ and (6) section 64.5001(a)-(c)(2), and (c)(4), which imposed certain reporting and certification requirements on prepaid calling card providers.⁹

B. Other Rules and Requirements Related to Telegraph Service

5. In light of the evolution of technology over many decades away from the use of telegraphs, we find that the references to telegraph service in the rules discussed below are unnecessary and should be deleted. We also grant forbearance from the application of all exit regulation pursuant to section 214(a) of the Communications Act, as amended (the Act), to telegraph service.

6. *Section 36.126 of the Separations Rules.* Jurisdictional separations is the process by which incumbent local exchange carriers (LECs) apportion regulated costs between intrastate and interstate jurisdictions.¹⁰ As part of this process, section 36.126 identifies equipment that is considered "Circuit equipment—Category 4."¹¹ Section 36.126 lists examples of such equipment, including "telegraph system terminals," "telegraph repeaters," certain equipment used for "telegraph . . . testing," and "telegraph carrier terminals."¹² To the extent that this equipment is still used, it remains subject to section 36.126, but we delete these terms from the examples provided throughout section 36.126 and we

⁴ 47 CFR §§ 42.4, 42.5, 42.7; see *USTelecom Forbearance Long Order*, 28 FCC Rcd at 7671-74, paras. 93-100.

⁵ 47 CFR § 64.1; see *USTelecom Forbearance Short Order*, 28 FCC Rcd at 2609-10, paras. 8-9. This Report and Order is also consistent with Recommendation 5.38 of the *Process Reform Report*. *Process Reform Report*, 29 FCC Rcd at 1416-17.

⁶ 47 CFR § 64.301; see *USTelecom Forbearance Short Order*, 28 FCC Rcd at 2611-12, paras. 13-14.

⁷ 47 CFR § 64.501; see *USTelecom Forbearance Long Order*, 28 FCC Rcd at 7703-05, paras. 171-75.

⁸ 47 CFR § 64.804(c)-(g); see *USTelecom Forbearance Short Order*, 28 FCC Rcd at 2610-11, paras. 10-12; *USTelecom Forbearance Long Order*, 28 FCC Rcd at 7702-03, paras. 167-70. This Report and Order is also consistent with Recommendation 5.37 of the *Process Reform Report*. *Process Reform Report*, 29 FCC Rcd at 1415-16.

⁹ 47 CFR § 64.5001(a), (b), (c)(1), (c)(2), and (c)(4); see *USTelecom Forbearance Long Order*, 28 FCC Rcd at 7705-09, paras. 176-87. We also amend what remains of Section 64.5001 to reflect the Commission's grant of conditional forbearance from Section 64.5001(c)(3) for "those prepaid calling card providers that have a two-year track record of complying with their obligations to file annual and quarterly Telecommunications Reporting Worksheets, FCC Forms 499-A and 499-Q." *Id.* at 7707, para. 182.

¹⁰ See, e.g., *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Further Notice of Proposed Rulemaking, 29 FCC Rcd 3340, 3340, para. 3 (2014). Incumbent LECs assign regulated costs to various categories of plant and expenses, and the costs in each category are apportioned between the intrastate and interstate jurisdictions. *Id.* at 3340, para. 4.

¹¹ 47 CFR § 36.126.

¹² *Id.*

delete the reference to “telegraph grade private line services” in section 36.126(e)(3)(iii) to modernize our rules to better reflect today’s marketplace.

7. *Section 54.706(a)(13) of the Universal Service Rules.* Section 54.706(a) requires providers of interstate telecommunications services to contribute to the universal service fund, and subparagraph (a)(13) lists “telegraph” as an illustrative example of interstate telecommunications.¹³ No entities filing FCC Form 499-A in the past five years indicated that they provide telegraph service, and we are not aware of any interstate telegraph service providers today. Nor did any entities file comments or objections in response to this proposal in the *Notice*. As discussed in the *Notice*,¹⁴ telegraph service remains theoretically subject to universal service contributions, but it no longer warrants inclusion in the list of examples in section 54.706(a). We therefore, as proposed, delete the term “telegraph” in section 54.706(a) to update the rule to better reflect today’s marketplace.

8. *Section 214(a) Discontinuance Requirement and Part 63 Discontinuance, Reduction, Outage and Impairment Rules.* Under section 214(a) of the Act, common carriers must obtain Commission approval before they discontinue, reduce, or impair service to a community or part of a community.¹⁵ To the extent that any carriers still provide telegraph service or may do so in the future, we conclude that it is not necessary to subject them to a requirement to obtain Commission approval before discontinuing, reducing, or impairing such service. We thus grant such providers forbearance from the application of this statutory requirement to telegraph service. We also grant forbearance from the application of the Commission’s implementing rules under Part 63 to telegraph service, and we delete the references to “telegraph” from those rules.¹⁶

9. Under section 10 of the Act, the Commission is required to forbear from any statutory provision or regulation if it determines that: (1) enforcement of the regulation is not necessary to ensure that the telecommunications carrier’s charges, practices, classifications, or regulations are just, reasonable, and not unjustly or unreasonably discriminatory; (2) enforcement of the regulation is not necessary to protect consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest.¹⁷ In the *Notice*, we stated our intent to exempt telegraph service from all exit approval requirements by exercising our forbearance authority.¹⁸ No commenters opposed our doing so. In light of market forces and technological advances, we conclude that forbearance from the application of the section 214(a) discontinuance requirement and the Commission’s implementing rules to telegraph service is warranted under the section 10 criteria. Telegraph service is obsolete,¹⁹ and we find that no purpose is served by requiring any remaining (or future) providers of telegraph service to file

¹³ 47 CFR § 54.706(a)(13).

¹⁴ *Notice*, 30 FCC Rcd at 1578, para. 16.

¹⁵ See 47 U.S.C. § 214(a) (providing in part that “[n]o carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby”).

¹⁶ The relevant provisions are 47 CFR §§ 63.60(c), 63.61, 63.62, 63.65(a)(4), 63.500(g), 63.501(g), and 63.504(k).

¹⁷ 47 U.S.C. § 160(a). Congress enacted this section to give the Commission the authority to forbear from enforcing statutes and regulations that are no longer “current and necessary in light of changes in the industry.” 141 Cong. Rec. S7893 (June 7, 1995) (remarks of Sen. Pressler). Under the statute, the Commission has the authority to forbear from applying regulation on its own motion, as well as in response to a petition for forbearance. See *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33 et al., Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, 14901, para. 90 (2005), *aff’d sub nom. Time Warner Telecom, Inc. v. FCC*, 507 F.3d 205 (3d Cir. 2007) (forbearing, on the Commission’s own motion, from applying tariffing requirements to certain providers of wireline broadband Internet access service).

¹⁸ *Notice*, 30 FCC Rcd at 1578, para. 17.

¹⁹ See, e.g., *USTelecom Forbearance Short Order*, 28 FCC Rcd at 2609-10, para. 9.

discontinuance applications with the Commission. Nor is the public interest served by maintaining outdated and unnecessary requirements in our rules or by expending future agency resources on the processing of any such applications. To the extent that common-carrier telegraph service will ever be offered in the future, allowing unregulated discontinuance would promote competitive market conditions.²⁰ Accordingly, we forbear from the application of section 214 exit regulation to telegraph service. Having thus forbore, we also take the opportunity to delete references to telegraph service from our discontinuance rules.

III. PROCEDURAL MATTERS

10. *Paperwork Reduction Act.* This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198.²¹

11. *Final Regulatory Flexibility Certification.* The Regulatory Flexibility Act of 1980, as amended (RFA),²² requires that an initial regulatory flexibility analysis be prepared for notice and comment rulemaking proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”²³ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”²⁴ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.²⁵ A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).²⁶

12. This Report and Order eliminates certain rules from which the Commission granted unconditional forbearance for all carriers three years ago, and also eliminates references to telegraph service from certain sections of the Commission’s rules. As noted in this Report and Order, in the *2013 USTelecom Forbearance Orders*, the Commission granted unconditional forbearance from certain requirements, but did not alter the text of the codified rule or remove the rule from the CFR. Thus, the rules appear in the CFR even though the Commission has stated that it will forbear from applying such rules. In addition, a number of wireline rule provisions continue to reference telegraph service, which appears to have a limited role, at best, in the marketplace.²⁷

13. The Commission is committed to removing unnecessary requirements to reflect new technologies and changing market conditions. Deleting these rules and references clarifies carriers’

²⁰ See 47 U.S.C. § 160(b).

²¹ See 44 U.S.C. § 3506(c)(4).

²² See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

²³ 5 U.S.C. § 605(b).

²⁴ *Id.* § 601(6).

²⁵ *Id.* § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

²⁶ 15 U.S.C. § 632.

²⁷ See *USTelecom Forbearance Short Order*, 28 FCC Rcd at 2609, para. 9 (“telegraph service is obsolete, while advances in technology such as voicemail, texting, smartphones, and digital payment options are ubiquitous”).

(including small entities') regulatory obligations and ensures that the CFR accurately reflects the Commission's intended approach to those rules. Therefore, we certify that the requirements of this Report and Order will not have a significant economic impact on a substantial number of small entities.

14. *Congressional Review Act.* The Commission will send a copy of this Report and Order, including a copy of the Final Regulatory Flexibility Certification, in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act.²⁸ In addition, the Report and Order and this final certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the Federal Register.²⁹

IV. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED, pursuant to sections 10, 201, 214, 218-221, 254, 403, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 160, 201, 214, 218-221, 254, 403, 410, and section 401 of the Federal Election Campaign Act of 1971, as amended, 52 U.S.C. § 30141, that this Report and Order IS ADOPTED.

16. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

17. IT IS FURTHER ORDERED that this Report and Order SHALL BE EFFECTIVE 30 days after publication of the text or a summary thereof in the *Federal Register*.

18. IT IS FURTHER ORDERED that the Commission's rules ARE HEREBY AMENDED as set forth in Appendix A, effective 30 days after publication in the *Federal Register*.

19. IT IS FURTHER ORDERED that, should no petitions for reconsideration or petitions for judicial review be timely filed, WC Docket No. 15-33 shall be TERMINATED and its docket closed.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

²⁸ See 5 U.S.C. § 801(a)(1)(A).

²⁹ See 5 U.S.C. § 605(b).

APPENDIX A

Final Rule Amendments

Part 36 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 36 — JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES

1. Amend Section 36.126 to read as follows:

§ 36.126 Circuit Equipment – Category 4

(a) For the purpose of this section, the term “Circuit Equipment” encompasses the Radio Systems and Circuit Equipment contained in Accounts 2230 through 2232 respectively. It includes central office equipment, other than switching equipment and automatic message recording equipment, which is used to derive communications transmission channels or which is used for the amplification, modulation, regeneration, testing, balancing or control of signals transmitted over communications transmission channels. Examples of circuit equipment in general use include:

(1) Carrier telephone system terminals.

(2) Telephone repeaters, termination sets, impedance compensators, pulse link repeaters, echo suppressors and other intermediate transmission amplification and balancing equipment except that included in switchboards.

* * * * *

(8) Testboards, test desks, repair desks and patch bays, including those provided for test and control, and for transmission testing.

(b) * * *

(4) In addition, for the purpose of identifying and separating property associated with special services, circuit equipment included in Categories 4.12 (other than wideband equipment) 4.13 and 4.23 is identified as either basic circuit equipment, i.e., equipment that performs functions necessary to provide and operate channels suitable for voice transmission (telephone grade channels), or special circuit equipment, i.e., equipment that is peculiar to special service circuits. Carrier telephone terminals and carrier telephone repeaters are examples of basic circuit equipment in general use, while audio program transmission amplifiers, bridges, monitoring devices and volume indicators are examples of special circuit equipment in general use. * * *

* * * * *

(d) * * *

(1) Interexchange Circuit Equipment Furnished to Another Company for Interstate Use – Category 4.21 – This category comprises that circuit equipment provided for the use of another company as an integral part of its interexchange circuit facilities used wholly for interstate services. This category includes such circuit equipment as telephone carrier terminals and microwave systems used wholly for interstate

services. The total cost of the circuit equipment in this category for the study area is assigned to the interstate operation.

* * * * *

(e) * * *

(1) Interexchange Circuit Equipment Furnished to Another Company for Interstate Use Category – 4.21 – This category comprises that circuit equipment provided for the use of another company as an integral part of its interexchange circuit facilities used wholly for interstate services. This category includes such circuit equipment as telephone carrier terminals and microwave systems used wholly for interstate services. The total cost of the circuit equipment in this category for the study area is assigned to the interstate operation.

* * * * *

(3) * * *

(iii) The cost of special circuit equipment is segregated among private line services based on an analysis of the use of the equipment and in accordance with § 36.126(b)(4). The special circuit equipment cost assigned to private line services is directly assigned to the appropriate operations.

* * * * *

PART 42 — PRESERVATION OF RECORDS OF COMMUNICATION COMMON CARRIERS

§ 42.4 [Removed]

2. Remove § 42.4.

§ 42.5 [Removed]

3. Remove § 42.5.

§ 42.7 [Removed]

4. Remove § 42.7.

PART 54 — UNIVERSAL SERVICE

§ 54.706 [Amended]

5. In § 54.706, remove and reserve paragraph (a)(13).

PART 63 — EXTENSION OF LINES, NEW LINES, AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

6. Amend Section 63.60(c) to read as follows:

§ 63.60 Definitions.

For the purposes of this part, the following definitions shall apply:

* * * * *

(c) Emergency discontinuance, reduction, or impairment of service means any discontinuance, reduction, or impairment of the service of a carrier occasioned by conditions beyond the control of such carrier where the original service is not restored or comparable service is not established within a reasonable time. For the purpose of this part, a reasonable time shall be deemed to be a period not in excess of the following: 10 days in the case of public coast stations; and 60 days in all other cases;

* * * * *

7. Amend Section 63.61 to read as follows:

§ 63.61 Applicability.

Any carrier subject to the provisions of section 214 of the Communications Act of 1934, as amended, proposing to discontinue, reduce or impair interstate or foreign telephone service to a community, or a part of a community, shall request authority therefor by formal application or informal request as specified in the pertinent sections of this part:

* * * * *

8. Amend the heading of Section 63.62 to read as follows:

§ 63.62 Type of discontinuance, reduction, or impairment of telephone service requiring formal application.

§ 63.65 [Amended]

9. In § 63.65, remove and reserve paragraph (a)(4).

10. Amend Section 63.500(g) to read as follows:

§ 63.500 Contents of applications to dismantle or remove a trunk line.

The application shall contain:

* * * * *

(g) Name of any other carrier or carriers providing telephone service to the community;

* * * * *

11. Amend Section 63.501(g) to read as follows:

§ 63.501 Contents of applications to sever physical connection or to terminate or suspend interchange of traffic with another carrier.

The application shall contain:

* * * * *

(g) Name of any other carrier or carriers providing telephone service to the community;

* * * * *

12. Amend Section 63.504(k) to read as follows:

§ 63.504 Contents of applications to close a public toll station where no other such toll station of the applicant in the community will continue service and where telephone toll service is not otherwise available to the public through a telephone exchange connected with the toll lines of a carrier.

The application shall contain:

* * * * *

(k) Description of the service involved, including a statement of the number of toll telephone messages sent-paid and received-collect, and the revenues from such traffic, in connection with the service proposed to be discontinued for each of the past 6 months; and, if the volume of such traffic handled in the area has decreased during recent years, the reasons therefor.

* * * * *

PART 64 — MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

13. Remove and reserve subpart A, consisting of section 64.1.

Subpart A — Removed and Reserved.

§ 64.1 [Removed]

14. Remove § 64.1.

Subpart C — [Removed and Reserved]

15. Remove and reserve subpart C, consisting of section 64.301.

§ 64.301 [Removed]

16. Remove § 64.301.

Subpart E — [Removed and Reserved]

17. Remove and reserve subpart E, consisting of section 64.501.

§ 64.501 [Removed]

18. Remove § 64.501.

§ 64.804 [Amended]

19. In § 64.804, remove and reserve paragraphs (c)-(g).

§ 64.5001 [Amended]

20. In § 64.5001, remove paragraphs (a), (b), and (c).

21. Amend Section 64.5001 to read as follows:

§ 64.5001 Reporting and certification requirements.

On a quarterly basis, every prepaid calling card provider must submit to the Commission a certification with respect to the prior quarter, signed by an officer of the company under penalty of perjury, stating that it is making the required Universal Service Fund contribution. This provision shall not apply to any prepaid calling card provider that has timely filed required annual and quarterly Telecommunications Reporting Worksheets, FCC Forms 499-A and 499-Q, during the preceding two-year period.

* * * * *

**STATEMENT OF
COMMISSIONER BRENDAN CARR**

Re: *Modernizing Common Carrier Rules*, WC Docket No. 15-33

The telecommunications section of the Code of Federal Regulations runs to 4,034 pages. Many of the FCC rules codified in that five-volume set have long outlived their usefulness and function only to discourage innovation, entrepreneurship, and competition. The rules we eliminate today are a case in point. The order deletes all or part of 8 different rules that remained on our books even though the FCC determined years ago that they no longer apply. The order also scraps references to the regulation of telegraph service given the evolution in technology in the decades since those rules were adopted.

In my view, we owe it to the American public to ensure that our regulations are up to date and reflect the realities of this dynamic and fast-moving sector of the economy. So I was glad to cast my first vote as a Commissioner in favor of this order. It takes a small but meaningful step towards eliminating unnecessary and outdated regulation. Working with my colleagues, I look forward to finding additional ways that we can reduce burdens and modernize our rules.