

thereof) will also be published in the **Federal Register**, see 5 U.S.C. 604(b), and will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

IV. Ordering Clauses

48. *Accordingly, it is ordered* that, pursuant to sections 1–4, 201–205, 214, 251, 252, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–205, 214, 251, 252, and 303(r), the Third Order on Reconsideration is adopted.

49. *It is further ordered* that changes adopted on reconsideration and the rule amendments will be effective September 29, 1997.

50. *It is further ordered*, pursuant to section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and § 1.106 of the Commission's rules, 47 CFR 1.106 (1995), that the petitions for reconsideration filed by WorldCom, Inc. and the Local Exchange Carriers Coalition are denied in part and granted in part to the extent indicated above.

51. *It is further ordered*, that the Commission shall send a copy of this Third Order on Reconsideration and Further Notice of Proposed Rulemaking, including the associated Supplemental Final Regulatory Flexibility Analysis and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 51

Communications common carriers, Network elements, Transport and termination.

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

Rule Changes

Part 51 of title 47 of the Code of Federal Regulations is amended as follows:

PART 51—INTERCONNECTION

1. The authority citation for part 51 continues to read as follows:

Authority: Sections 1–5, 7, 201–05, 207–09, 218, 225–27, 251–54, 271, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 151–55, 157, 201–05, 218, 225–27, 251–54, 271, unless otherwise noted.

2. Section 51.319 is amended by revising paragraph (d)(1) to read as follows:

§ 51.319 Specific unbundling requirements.

* * * * *

(d) * * *

(1) Interoffice transmission facilities include:

(i) Dedicated transport, defined as incumbent LEC transmission facilities dedicated to a particular customer or carrier that provide telecommunications between wire centers owned by incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers;

(ii) Shared transport, defined as transmission facilities shared by more than one carrier, including the incumbent LEC, between end office switches, between end office switches and tandem switches, and between tandem switches, in the incumbent LEC's network;

* * * * *

3. Section 51.515 is amended by adding paragraph (d) to read as follows:

§ 51.515 Application of access charges.

* * * * *

(d) Interstate access charges described in part 69 shall not be assessed by incumbent LECs on each element purchased by requesting carriers providing both telephone exchange and exchange access services to such requesting carriers' end users.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[FCC 97–163]

Implementation of Section 254(k) of the Communications Act of 1934, as Amended

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this Order, the Commission implements section 254(k) by codifying its prohibitions in part 64 of the Commission's rules. The Commission revises § 64.901 to establish a new section (c) to reflect section 254(k) of the Telecommunications Act of 1996 (1996 Act). Section 254(k) states that “a telecommunications company may not use services that are not competitive to subsidize services subject to competition.”

EFFECTIVE DATE: September 29, 1997.

FOR FURTHER INFORMATION CONTACT:

Andrew Mulitz, Accounting and Audits Division, Common Carrier Bureau, (202) 418–0827.

SUPPLEMENTARY INFORMATION: The opening of the local exchange and exchange access markets to competition

as well as the ability of the Bell Operating Companies (BOCs) to enter new markets and engage in previously proscribed activities creates the potential for incumbent local exchange carriers' (ILECs) to misallocate costs in ways that our current rules may not restrict because these rules are focused on the allocation of costs between regulated and nonregulated activities. New section 254(k), however, establishes two dichotomies that are not explicitly addressed by our existing rules. Section 254(k) requires additional scrutiny of the allocation of costs between competitive and noncompetitive activities, both regulated and nonregulated, and between universal services and all other services.

Section 254(k) states that “a telecommunications company may not use services that are not competitive to subsidize services that are subject to competition.” The Commission concludes that this provision of section 254(k) places an obligation on telecommunications carriers that supplements our existing rules. This provision of section 254(k) addresses the concern that ILECs may attempt to gain an unfair market advantage in competitive markets by allocating to their less competitive services, for which subscribers have no available alternative, an excessive portion of the costs incurred by their competitive operations.

Section 254(k) also directs the Commission, with respect to interstate services, to “establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services.

For ILECs, the Commission concludes that codifying section 254(k)'s prohibitions in part 64 of our rules will give the fullest effect to the Act's prohibitions. In this way, our rules will reflect the intent of the Act and reinforce our commitment to enforcing this mandate. Because this rule change merely codifies the requirements of the Act and involves no discretionary action by the Commission, we find good cause to conclude that notice and comment procedures are unnecessary.

Ordering Clause

Accordingly, It is ordered that, pursuant to sections 1, 4, 201–205, 218, 220, 251, 252 and 254(k) of the Communications Act of 1934, as amended, 47 U.S.C. § 151, 154, 201–205, 218, 220, 251, 252 and 254(k), and

section 553(b)(B) of the Administrative Procedure Act, 5 U.S.C. § 553(b)(B), part 64 of the Commission's rules, 47 CFR part 64, is amended, as described above.

It is further ordered that, pursuant to sections 1, 4, 201–205, 218, 220, 224, 251, 252 and 254(k) of the Communications Act of 1934, as amended, 47 U.S.C. § 151, 154, 201–205, 218, 220, 251, 252 and 254(k), and section 553(b)(B) of the Administrative Procedure Act, 5 U.S.C. § 553(b)(B), the amendment to part 64 described above, *shall be effective upon publication* of this Order in the **Federal Register**.

List of Subjects in 47 CFR Part 64

Civil defense, Claims,
Communications common carriers,

Computer technology, Credit, Foreign relations, Individuals with disabilities, Political candidates, Radio, Reporting and recordkeeping requirements, Telegraph, Telephone.

Federal Communications Commission.

William F. Caton,
Acting Secretary.

Rules Changes

**PART 64—MISCELLANEOUS RULES
RELATING TO COMMON CARRIERS**

1. The authority citation for part 64 is revised to read as follows:

Authority: 47 U.S.C. 154, 254(k); secs. 403 (b)(2)(B), (c), Public Law 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. secs. 201,

218, 226, 228, and 254(k) unless otherwise noted.

2. Section 64.901 is amended by adding paragraph (c) to read as follows:

§ 64.901 Allocation of costs.

* * * * *

(c) A telecommunications carrier may not use services that are not competitive to subsidize services subject to competition. Services included in the definition of universal service shall bear no more than a reasonable share of the joint and common costs of facilities used to provide those services.

[FR Doc. 97–22937 Filed 8–27–97; 8:45 am]

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