

48 Stat. 1064, known as the Communications Act of 1934, which is classified principally to this chapter. For complete classification of this Act to the Code, see section 609 of this title and Tables.

#### AMENDMENTS

2010—Subsec. (a)(3). Pub. L. 111-260 amended par. (3) generally. Prior to amendment, text read as follows: “The term ‘telecommunications relay services’ means telephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a TDD or other nonvoice terminal device and an individual who does not use such a device.”

1996—Subsec. (a)(1). Pub. L. 104-104 substituted “section 153” for “section 153(h)”.

### § 226. Telephone operator services

#### (a) Definitions

As used in this section—

(1) The term “access code” means a sequence of numbers that, when dialed, connect the caller to the provider of operator services associated with that sequence.

(2) The term “aggregator” means any person that, in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises, for interstate telephone calls using a provider of operator services.

(3) The term “call splashing” means the transfer of a telephone call from one provider of operator services to another such provider in such a manner that the subsequent provider is unable or unwilling to determine the location of the origination of the call and, because of such inability or unwillingness, is prevented from billing the call on the basis of such location.

(4) The term “consumer” means a person initiating any interstate telephone call using operator services.

(5) The term “equal access” has the meaning given that term in Appendix B of the Modification of Final Judgment entered August 24, 1982, in *United States v. Western Electric*, Civil Action No. 82-0192 (United States District Court, District of Columbia), as amended by the Court in its orders issued prior to October 17, 1990.

(6) The term “equal access code” means an access code that allows the public to obtain an equal access connection to the carrier associated with that code.

(7) The term “operator services” means any interstate telecommunications service initiated from an aggregator location that includes, as a component, any automatic or live assistance to a consumer to arrange for billing or completion, or both, of an interstate telephone call through a method other than—

(A) automatic completion with billing to the telephone from which the call originated; or

(B) completion through an access code used by the consumer, with billing to an ac-

count previously established with the carrier by the consumer.

(8) The term “presubscribed provider of operator services” means the interstate provider of operator services to which the consumer is connected when the consumer places a call using a provider of operator services without dialing an access code.

(9) The term “provider of operator services” means any common carrier that provides operator services or any other person determined by the Commission to be providing operator services.

#### (b) Requirements for providers of operator services

##### (1) In general

Beginning not later than 90 days after October 17, 1990, each provider of operator services shall, at a minimum—

(A) identify itself, audibly and distinctly, to the consumer at the beginning of each telephone call and before the consumer incurs any charge for the call;

(B) permit the consumer to terminate the telephone call at no charge before the call is connected;

(C) disclose immediately to the consumer, upon request and at no charge to the consumer—

(i) a quote of its rates or charges for the call;

(ii) the methods by which such rates or charges will be collected; and

(iii) the methods by which complaints concerning such rates, charges, or collection practices will be resolved;

(D) ensure, by contract or tariff, that each aggregator for which such provider is the presubscribed provider of operator services is in compliance with the requirements of subsection (c) and, if applicable, subsection (e)(1);

(E) withhold payment (on a location-by-location basis) of any compensation, including commissions, to aggregators if such provider reasonably believes that the aggregator (i) is blocking access by means of “950” or “800” numbers to interstate common carriers in violation of subsection (c)(1)(B) or (ii) is blocking access to equal access codes in violation of rules the Commission may prescribe under subsection (e)(1);

(F) not bill for unanswered telephone calls in areas where equal access is available;

(G) not knowingly bill for unanswered telephone calls where equal access is not available;

(H) not engage in call splashing, unless the consumer requests to be transferred to another provider of operator services, the consumer is informed prior to incurring any charges that the rates for the call may not reflect the rates from the actual originating location of the call, and the consumer then consents to be transferred; and

(I) except as provided in subparagraph (H), not bill for a call that does not reflect the location of the origination of the call.

##### (2) Additional requirements for first 3 years

In addition to meeting the requirements of paragraph (1), during the 3-year period begin-

ning on the date that is 90 days after October 17, 1990, each presubscribed provider of operator services shall identify itself audibly and distinctly to the consumer, not only as required in paragraph (1)(A), but also for a second time before connecting the call and before the consumer incurs any charge.

**(c) Requirements for aggregators**

**(1) In general**

Each aggregator, beginning not later than 90 days after October 17, 1990, shall—

(A) post on or near the telephone instrument, in plain view of consumers—

(i) the name, address, and toll-free telephone number of the provider of operator services;

(ii) a written disclosure that the rates for all operator-assisted calls are available on request, and that consumers have a right to obtain access to the interstate common carrier of their choice and may contact their preferred interstate common carriers for information on accessing that carrier's service using that telephone; and

(iii) the name and address of the enforcement division of the Common Carrier Bureau of the Commission, to which the consumer may direct complaints regarding operator services;

(B) ensure that each of its telephones presubscribed to a provider of operator services allows the consumer to use "800" and "950" access code numbers to obtain access to the provider of operator services desired by the consumer; and

(C) ensure that no charge by the aggregator to the consumer for using an "800" or "950" access code number, or any other access code number, is greater than the amount the aggregator charges for calls placed using the presubscribed provider of operator services.

**(2) Effect of State law or regulation**

The requirements of paragraph (1)(A) shall not apply to an aggregator in any case in which State law or State regulation requires the aggregator to take actions that are substantially the same as those required in paragraph (1)(A).

**(d) General rulemaking required**

**(1) Rulemaking proceeding**

The Commission shall conduct a rulemaking proceeding pursuant to this subchapter to prescribe regulations to—

(A) protect consumers from unfair and deceptive practices relating to their use of operator services to place interstate telephone calls; and

(B) ensure that consumers have the opportunity to make informed choices in making such calls.

**(2) Contents of regulations**

The regulations prescribed under this section shall—

(A) contain provisions to implement each of the requirements of this section, other than the requirements established by the

rulemaking under subsection (e) on access and compensation; and

(B) contain such other provisions as the Commission determines necessary to carry out this section and the purposes and policies of this section.

**(3) Additional requirements to be implemented by regulations**

The regulations prescribed under this section shall, at a minimum—

(A) establish minimum standards for providers of operator services and aggregators to use in the routing and handling of emergency telephone calls; and

(B) establish a policy for requiring providers of operator services to make public information about recent changes in operator services and choices available to consumers in that market.

**(e) Separate rulemaking on access and compensation**

**(1) Access**

The Commission,<sup>1</sup> shall require—

(A) that each aggregator ensure within a reasonable time that each of its telephones presubscribed to a provider of operator services allows the consumer to obtain access to the provider of operator services desired by the consumer through the use of an equal access code; or

(B) that all providers of operator services, within a reasonable time, make available to their customers a "950" or "800" access code number for use in making operator services calls from anywhere in the United States; or

(C) that the requirements described under both subparagraphs (A) and (B) apply.

**(2) Compensation**

The Commission shall consider the need to prescribe compensation (other than advance payment by consumers) for owners of competitive public pay telephones for calls routed to providers of operator services that are other than the presubscribed provider of operator services for such telephones. Within 9 months after October 17, 1990, the Commission shall reach a final decision on whether to prescribe such compensation.

**(f) Technological capability of equipment**

Any equipment and software manufactured or imported more than 18 months after October 17, 1990, and installed by any aggregator shall be technologically capable of providing consumers with access to interstate providers of operator services through the use of equal access codes.

**(g) Fraud**

In any proceeding to carry out the provisions of this section, the Commission shall require such actions or measures as are necessary to ensure that aggregators are not exposed to undue risk of fraud.

**(h) Determinations of rate compliance**

**(1) Filing of informational tariff**

**(A) In general**

Each provider of operator services shall file, within 90 days after October 17, 1990, and

<sup>1</sup> So in original. The comma probably should not appear.

shall maintain, update regularly, and keep open for public inspection, an informational tariff specifying rates, terms, and conditions, and including commissions, surcharges, any fees which are collected from consumers, and reasonable estimates of the amount of traffic priced at each rate, with respect to calls for which operator services are provided. Any changes in such rates, terms, or conditions shall be filed no later than the first day on which the changed rates, terms, or conditions are in effect.

**(B) Waiver authority**

The Commission may, after 4 years following October 17, 1990, waive the requirements of this paragraph only if—

(i) the findings and conclusions of the Commission in the final report issued under paragraph (3)(B)(iii) state that the regulatory objectives specified in subsection (d)(1)(A) and (B) have been achieved; and

(ii) the Commission determines that such waiver will not adversely affect the continued achievement of such regulatory objectives.

**(2) Review of informational tariffs**

If the rates and charges filed by any provider of operator services under paragraph (1) appear upon review by the Commission to be unjust or unreasonable, the Commission may require such provider of operator services to do either or both of the following:

(A) demonstrate that its rates and charges are just and reasonable, and

(B) announce that its rates are available on request at the beginning of each call.

**(3) Proceeding required**

**(A) In general**

Within 60 days after October 17, 1990, the Commission shall initiate a proceeding to determine whether the regulatory objectives specified in subsection (d)(1)(A) and (B) are being achieved. The proceeding shall—

(i) monitor operator service rates;

(ii) determine the extent to which offerings made by providers of operator services are improvements, in terms of service quality, price, innovation, and other factors, over those available before the entry of new providers of operator services into the market;

(iii) report on (in the aggregate and by individual provider) operator service rates, incidence of service complaints, and service offerings;

(iv) consider the effect that commissions and surcharges, billing and validation costs, and other costs of doing business have on the overall rates charged to consumers; and

(v) monitor compliance with the provisions of this section, including the periodic placement of telephone calls from aggregator locations.

**(B) Reports**

(i) The Commission shall, during the pendency of such proceeding and not later than 5

months after its commencement, provide the Congress with an interim report on the Commission's activities and progress to date.

(ii) Not later than 11 months after the commencement of such proceeding, the Commission shall report to the Congress on its interim findings as a result of the proceeding.

(iii) Not later than 23 months after the commencement of such proceeding, the Commission shall submit a final report to the Congress on its findings and conclusions.

**(4) Implementing regulations**

**(A) In general**

Unless the Commission makes the determination described in subparagraph (B), the Commission shall, within 180 days after submission of the report required under paragraph (3)(B)(iii), complete a rulemaking proceeding pursuant to this subchapter to establish regulations for implementing the requirements of this subchapter (and paragraphs (1) and (2) of this subsection) that rates and charges for operator services be just and reasonable. Such regulations shall include limitations on the amount of commissions or any other compensation given to aggregators by providers of operator service.

**(B) Limitation**

The requirement of subparagraph (A) shall not apply if, on the basis of the proceeding under paragraph (3)(A), the Commission makes (and includes in the report required by paragraph (3)(B)(iii)) a factual determination that market forces are securing rates and charges that are just and reasonable, as evidenced by rate levels, costs, complaints, service quality, and other relevant factors.

**(i) Statutory construction**

Nothing in this section shall be construed to alter the obligations, powers, or duties of common carriers or the Commission under the other sections of this chapter.

(June 19, 1934, ch. 652, title II, §226, as added Pub. L. 101-435, §3, Oct. 17, 1990, 104 Stat. 987; amended Pub. L. 101-555, §4, Nov. 15, 1990, 104 Stat. 2760; Pub. L. 102-538, title II, §207, Oct. 27, 1992, 106 Stat. 3543; Pub. L. 103-414, title III, §§303(a)(10), 304(a)(8), Oct. 25, 1994, 108 Stat. 4294, 4297.)

**Editorial Notes**

REFERENCES IN TEXT

This chapter, referred to in subsec. (i), was in the original "this Act", meaning act June 19, 1934, ch. 652, 48 Stat. 1064, known as the Communications Act of 1934, which is classified principally to this chapter. For complete classification of this Act to the Code, see section 609 of this title and Tables.

AMENDMENTS

1994—Subsec. (d)(2) to (4). Pub. L. 103-414, §303(a)(10), redesignated pars. (3) and (4) as (2) and (3), respectively, and struck out heading and text of former par. (2). Text read as follows: "The Commission shall initiate the proceeding required under paragraph (1) within 60 days after October 17, 1990, and shall prescribe regulations pursuant to the proceeding not later than 210 days after October 17, 1990. Such regulations shall take effect not

later than 45 days after the date the regulations are prescribed.”

Subsec. (e)(1). Pub. L. 103-414, §304(a)(8), struck out “within 9 months after October 17, 1990,” after “The Commission,” in introductory provisions.

1992—Subsec. (d)(4)(A). Pub. L. 102-538 inserted “and aggregators” after “operator services”.

1990—Subsec. (b)(1). Pub. L. 101-555, §4(a), substituted “90 days” for “30 days”.

Subsec. (b)(1)(J). Pub. L. 101-555, §4(b), struck out subpar. (J) which read as follows: “not bill an inter-exchange telephone call to a billing card number which—

“(i) is issued by another provider of operator services, and

“(ii) permits the identification of the other provider,

unless the call is billed at a rate not greater than the other provider’s rate for the call, the consumer requests a special service that is not available under tariff from the other provider, or the consumer expressly consents to a rate greater than the other provider’s rate.”

Subsecs. (b)(2), (c)(1), (h)(1)(A). Pub. L. 101-555, §4(a), substituted “90 days” for “30 days”.

### Statutory Notes and Related Subsidiaries

#### CONGRESSIONAL FINDINGS

Pub. L. 101-435, §2, Oct. 17, 1990, 104 Stat. 986, provided that: “The Congress finds that—

“(1) the divestiture of AT&T and decisions allowing open entry for competitors in the telephone marketplace produced a variety of new services and many new providers of existing telephone services;

“(2) the growth of competition in the telecommunications market makes it essential to ensure that safeguards are in place to assure fairness for consumers and service providers alike;

“(3) a variety of providers of operator services now compete to win contracts to provide operator services to hotels, hospitals, airports, and other aggregators of telephone business from consumers;

“(4) the mere existence of a variety of service providers in the operator services marketplace is significant in making that market competitive only when consumers are able to make informed choices from among those service providers;

“(5) however, often consumers have no choices in selecting a provider of operator services, and often attempts by consumers to reach their preferred long distance carrier by using a telephone billing card, credit card, or prearranged access code number are blocked;

“(6) a number of State regulatory authorities have taken action to protect consumers using intrastate operator services;

“(7) from January 1988 through February 1990, the Federal Communications Commission received over 4,000 complaints from consumers about operator services;

“(8) those consumers have complained that they are denied access to the interexchange carrier of their choice, that they are deceived about the identity of the company providing operator services for their calls and the rates being charged, that they lack information on what they can do to complain about unfair treatment by an operator service provider, and that they are, accordingly, being deprived of the free choice essential to the operation of a competitive market;

“(9) the Commission has testified that its actions have been insufficient to correct the problems in the operator services industry to date; and

“(10) a combination of industry self-regulation and government regulation is required to ensure that competitive operator services are provided in a fair and reasonable manner.”

## § 227. Restrictions on use of telephone equipment

### (a) Definitions

As used in this section—

(1) The term “automatic telephone dialing system” means equipment which has the capacity—

(A) to store or produce telephone numbers to be called, using a random or sequential number generator; and

(B) to dial such numbers.

(2) The term “established business relationship”, for purposes only of subsection (b)(1)(C)(i), shall have the meaning given the term in section 64.1200 of title 47, Code of Federal Regulations, as in effect on January 1, 2003, except that—

(A) such term shall include a relationship between a person or entity and a business subscriber subject to the same terms applicable under such section to a relationship between a person or entity and a residential subscriber; and

(B) an established business relationship shall be subject to any time limitation established pursuant to paragraph (2)(G)).<sup>1</sup>

(3) The term “telephone facsimile machine” means equipment which has the capacity (A) to transcribe text or images, or both, from paper into an electronic signal and to transmit that signal over a regular telephone line, or (B) to transcribe text or images (or both) from an electronic signal received over a regular telephone line onto paper.

(4) The term “telephone solicitation” means the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person, but such term does not include a call or message (A) to any person with that person’s prior express invitation or permission, (B) to any person with whom the caller has an established business relationship, or (C) by a tax exempt nonprofit organization.

(5) The term “unsolicited advertisement” means any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person’s prior express invitation or permission, in writing or otherwise.

### (b) Restrictions on use of automated telephone equipment

#### (1) Prohibitions

It shall be unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States—

(A) to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice—

(i) to any emergency telephone line (including any “911” line and any emergency

<sup>1</sup>So in original. Second closing parenthesis probably should not appear.