

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

CC Docket No. 88-57

In the Matter of

Review of Sections 68.104
and 68.213 of the
Commission's Rules Concerning
Connection of Simple Inside Wiring
to the Telephone Network

and

Petition for Modification
of Section 68.213 of
the Commission's Rules
Filed by the Electronic Industries
Association

RM-5643

ORDER

Adopted: August 10, 1990; Released: August 13, 1990

By the Deputy Chief, Common Carrier Bureau:

I. INTRODUCTION

1. In its *Report and Order and Further Notice of Proposed Rule Making* in CC Docket No. 88-57, RM-5643, FCC 90-220, released June 14, 1990 (*Order*), summarized at 55 Fed. Reg. 28628 (July 12, 1990), the Commission adopted amendments to Sections 68.3, 68.104, 68.108 and 68.213 of the rules concerning the terms and conditions under which customers may connect simple inside wiring to the telephone network. The amended rules are scheduled to take effect on August 13, 1990. This order addresses nine requests that, variously, seek deferral, stay or waiver of that date. For the reasons discussed below, we deny the requests.¹

II. BACKGROUND

2. The *Order* liberalized the terms and conditions set forth in Sections 68.3, 68.104, and 68.213 of the Commission's Rules under which customers may access the telephone network and connect simple inside wiring.² The Commission found that the previous requirement in Section 68.104 that customers connect simple inside wiring only through carrier-installed jacks had been a reasonable precaution to prevent network harm in 1984 when customers were first permitted to connect simple inside wiring to the telephone network. However, the Commission determined that its experience since 1984 had made clear that additional subscriber options for connection to the network could be provided without significant risk of network harm. The Commission amended Section 68.104 to provide that customers could access the network by

direct connection to carrier-installed wiring such as by severing such wiring and attaching a standard network jack.

3. The Commission additionally addressed carrier practices of placing the demarcation point at a location substantially within the customer's premises. Since the customer is not ordinarily permitted to access carrier facilities beyond the demarcation point, this had the effect of precluding customer access to wiring on the customer's premises. In view of the Commission's determination that customers could directly access carrier-installed wiring the Commission found that carrier establishment of the demarcation point at a substantial distance within the customer's premises frustrated the customer's ability and right to connect to the network. The Commission accordingly modified the definition of the demarcation point to provide that in most instances, for both new and existing situations, it would be within 12 inches from where wiring enters the customer's premises. The Commission stated that the revised demarcation point would apply to connection of both simple and complex wiring. The Commission additionally recognized that the revised definition could affect treatment by carriers of activities on the customer side of the demarcation point. The Commission stated that the revised demarcation point "determines the point on the customer side of which any carrier activity is, and will be, subject to the Commission's previous and future determinations in CC Docket 79-105 and other proceedings, under the guidance of *NARUC v. FCC*, concerning the appropriate regulatory treatment by carriers of such activity." *Order*, n. 25.

III. CONTENTIONS

4. Petitioners generally argue that they cannot implement the new rules by August 13, and that there is increased risk of network harm by the new rules. For these reasons, BellSouth, GTE, TIA, and USTA³ seek stay of the Commission's *Order*, and USWC seeks a limited waiver of the rules.⁴

5. Ameritech and USWC argue that time is needed to comprehend the *Order*, assess the degree to which the amendments impact its provisioning of current and contemplated services, and determine how to accommodate that impact to comply with Part 68 as amended. USWC Petition at 3. Ameritech, GTE, Joint Petitioners, TIA, USTA, and USWC claim that it would be impossible for all exchange carriers to implement the changes required by the new rules by August 13. New operating procedures for inside wiring, installation and time reporting by employees, employee training programs, accounting support systems, modified tariffs, consultation with state regulators to resolve possible inconsistencies with existing state regulations require more time, they urge. They also state that time is required to educate consumers.

6. BellSouth, GTE, TIA and USWC also variously argue that certain aspects of the *Order* should be clarified, e.g., the terms "premises" and "minimum point of entry" require guidance to prevent harm in structures with common walls, and the meaning of the term "any" as it relates to additions, modifications and rearrangements of existing wiring; the rules are confusing as to their effect on various different types or classes of wiring; there may be conflicts created between provisions of the National Electric Code and the new rule regarding protection at or about the premises property line; failure to stay the *Order*

will lead to state actions to re-regulate inside wiring; and the *Order* violates the Administrative Procedure Act, 5 U.S.C. § 553, because the Commission did not provide adequate notice that its Notice of Proposed Rule Making, 3 FCC Rcd 1120 (1988), (Notice) contemplated application of the proposed rules to complex wiring.

7. Joint Petitioners' Motion asserts that the current implementation date would subject customers to obligations that they are not prepared for and do not understand. Motion at 4-5. It also claims that time is needed to print schedules, mail them, set up for customer call-ins, receiving and responding to customers' questions, which would result in delays well beyond August 13. It adds that special issues associated with various services include how placement of network channel terminating equipment on customers' premises is affected and how that placement will affect maintenance and service; how service will be maintained if the existing network interface must be distant from the demarcation point; how the carrier can insure that proper signal power levels are being maintained, if the carrier does not control the premises wiring between the data jack and the demarcation point; and how existing contractual obligations are affected. Joint Petitioners' Motion at 6-7.

8. According to USWC, development of new practices and training programs involves considerable dissemination of information to engineering, construction, installation and maintenance personnel, as well as marketing personnel who must review USWC products and services to understand the service termination points and rates that should be charged. USWC Petition at 4-5. GTE claims that the situation regarding inside wiring "will go into turmoil" if the rules go into effect on August 13. GTE Petition at 10. GTE suggests that the states are in some cases engaged in proceedings to develop inside wiring policies. USWC also urges the Commission to deem carriers reaching the point of initiating contacts with state regulators and seeking tariff changes where needed to be in substantial compliance with the amended rules. USWC at 9.

IV. DISCUSSION

9. Although styled in various ways, in practical effect the pleadings seek either a stay or waiver of the August 13, 1990 effective date of the revised rules. Petitioners rely on similar arguments to support their requests. They argue that allowing customer access in accordance with the revised rules would create risks of network harm and service disruption. They also argue that carriers will be unable to complete by August 13, 1990, the process of developing and implementing the internal practices they claim will be necessary to accommodate customer access pursuant to the amended rules and the revised definition of demarcation point. Some petitioners urge a stay pending reconsideration on the ground that the Commission failed to provide adequate notice of the changes insofar as applicable to complex wiring and therefore violated Section 553(b) of the Administrative Procedure Act.

10. Petitioners' fears of network harm and service disruption reflect concerns similar to those the Commission rejected in the *Order*. There, the Commission carefully evaluated the potential effects of customer access and determined that the benefits of allowing customers direct access to carrier-installed wiring fully outweighed any attendant risks. Petitioners have not shown that there are

any substantial risks of network harm or service disruption that might warrant a delay in permitting direct customer access to carrier-installed wiring. To the extent petitioners believe that the Commission's balancing of risks and benefits was incorrect, those contentions may be raised in a petition for reconsideration. We additionally observe that the *Order* does not require any modification of existing service arrangements.

11. We recognize that carriers have not yet completed the process of developing and implementing the practices and procedures they will eventually employ in response to the revised rules by August 13. We believe, however, that this process is well underway and that interim measures will be adequate to permit full compliance with the revised rules. For example, the revised definition of the demarcation point will require field technicians to classify as nonregulated certain functions that they previously classified as regulated. We anticipate that carriers will eventually be able to ensure that their field technicians record their time accurately. To the extent time reporting is unreliable during an interim period, carriers may use reasonable, good faith estimates to apportion field technician time between regulated and unregulated activities.

12. Similarly, the Commission did not require immediate and complete notification to customers of their additional rights to connect inside wiring to the telephone network or of revised telephone company practices. Rather, the *Order* envisions only a continuation of on-going consumer education efforts. The Commission stated that:

[It] expects carriers to continue to develop and submit to their subscribers, residential and business, informational brochures, or to otherwise provide information such as in telephone directories and billing inserts, describing the rights of subscribers to perform inside wiring operations, including those established in this Report and Order. We further expect carriers at the request of customers to provide complete information on customers' rights to install inside wiring and to fully disclose their standard operating practices concerning location of the demarcation point.

Order at para. 76. The Commission did not state that such notification to customers would have to be accomplished by August 13. It is expected, however, that assimilation of the new rules and dissemination throughout the various carriers' organizations will permit sufficiently detailed responses to customer questions regarding the revised order. We are not persuaded that delay of the August 13 effective date is necessary to ensure that state tariff practices continue to be consistent with the Part 68 rules. In addition, we do not believe that the asserted need to conform state tariff language to the revised rules justifies delay in achieving their public interest benefits.

13. The Bureau is additionally unpersuaded that delay in implementation of the rules is warranted because of alleged violations of the Administrative Procedure Act. The *Notice*, 3 FCC Rcd 1120 (1988) in this proceeding specifically invited interested parties to comment on the extent to which the proposal to allow customers to directly access carrier-installed wiring would require amendment of the definition of the demarcation point. *Notice*, para. 15. Petitioners have not shown that the rule amendments are not within the scope of that notice.

14. As indicated, the Petitioners' requests for relief are variously styled as requests for stay, waiver or deferral. To resolve a stay request, we apply the standards of *Virginia Petroleum Jobbers v. FPC*, 259 F.2d 921 (DC Cir. 1958), (*Virginia*); and *Washington Metropolitan Area Transit Commission v. Holiday Tours*, 559 F.2d 841 (DC Cir. 1977), (*WMATA*). In *Virginia*, the court stated that four factors must be satisfied in order to justify a stay: (1) has petitioner made a strong showing that it is likely to prevail on the merits of its appeal; (2) has the petitioner shown that without a stay it will be irreparably injured; (3) would the issuance of the stay substantially harm other parties interested in the proceeding; and (4) would the stay further the public interest. In *WMATA*, the court reasoned that these criteria could be balanced in some circumstances. Under these standards a stay of the *Order* is not warranted because a strong showing of prevailing on reconsideration has not been made because there has been no showing of irreparable harm or harm to third parties absent a stay and because the planned implementation of the revised rules would serve the public interest. The benefits that will follow expeditious implementation of the new inside wiring rules far outweigh any benefit that might flow from delaying them, in whole or part. To the extent petitioners seek waiver of the revised rules, we apply *Northeast Cellular Telephone Company v FCC*, 897 F.2d 1164 (D.C. Cir. 1990), which permits waiver only if special circumstances warrant a deviation from the general rule and such deviation would serve the public interest. No special circumstances warrant deviation from the August implementation date and, as we have found, the public interest will be served by adhering to that date.

V. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED, That the petitions, motions, and requests before the Bureau ARE DENIED. This action is taken pursuant to authority delegated under Sections 0.91 and 0.291 of the Commission's rules.

16. IT IS FURTHER ORDERED, That this action IS EFFECTIVE ON ADOPTION.

FEDERAL COMMUNICATIONS COMMISSION

Gerald P. Vaughan
Deputy Chief - Operations
Common Carrier Bureau

APPENDIX

The nine filings are as follows:

(1) Emergency Petition for Stay, filed by GTE Service Corporation (GTE)

(2) Emergency Petition for Stay, filed by User Premises Equipment Division of the Telecommunications Industry Association (TIA)

(3) Petition for Limited Waiver, filed by Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company and Pacific Northwest Bell Telephone Company, doing business as US West Communications (USWC)

(4) Motion for Extension of Time to Comply, filed by Bell Atlantic Telephone Companies (Bell Telephone Company of Pennsylvania, the four Chesapeake and Potomac Telephone Companies, the Diamond State Telephone Company and New Jersey Bell Telephone Company) (Bell Atlantic)

(5) Joint Emergency Motion for Extensions of Time for Compliance with Amendments to Part 68 of the Commission's Rules and Regulations, filed by BellSouth (Southern Bell Telephone and Telephone Company and South Central Bell Telephone Company), Cincinnati Bell Telephone Company, the NYNEX Telephone Companies (New York Telephone Company and New England Telephone and Telegraph Company), Southwestern Bell Telephone Company, Pacific Bell and Southern New England Telephone Company (Joint Petitioners)

(6) Request for Stay, filed by United States Telephone Association (USTA)

(7) Comments, filed by North American Telecommunications Association (NATA)

(8) Emergency Petition for Stay, filed by BellSouth Corporation (BellSouth)

(9) Motion for Extension of Time for Compliance, filed by Ameritech.

FOOTNOTES

¹ See Appendix hereto. For convenience, we refer to the parties collectively as Petitioners.

² The Commission has defined inside wiring as the customer premises portion of telephone plant which connects station components to each other and to the telephone network. Inside Wiring Reconsideration Order, 1 FCC Rcd 1190, 1197 n.1, *further recon.* 3 FCC Rcd 1719 (1988), *remanded on other grounds* National Association of Regulatory Utility Commissioners v FCC, 880 F.2d 422 (D.C. Cir. 1989) (NARUC v FCC).

³ BellSouth and TIA seeks a stay of until six months after the Commission rules on their forthcoming petitions for reconsideration of the Order. Other parties seek a stay until January 1, 1990.

⁴ See Petition for Limited Waiver filed by USWC.