

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Rules and Policies Regarding) CC Docket No. 91-281
Calling Number Identification)
Service -- Caller ID)

**THIRD REPORT AND ORDER, MEMORANDUM OPINION and ORDER on
FURTHER RECONSIDERATION, and MEMORANDUM OPINION and ORDER ON
RECONSIDERATION**

Adopted: March 21, 1997

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By the Commission:

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I. INTRODUCTION

1. In this proceeding,¹ we examine the technical and economic feasibility of requiring carriers to provide blocking and unblocking features. In response to new information, we re-examine the Caller Identification ("Caller ID") rules and policies, and modify the rules governing payphones. We also establish new rules to govern local exchange carriers ("LECs") without blocking and unblocking capabilities, and private branch exchange ("PBX") and related systems.² In addition, we affirm that our current Caller ID rules and policies apply to party lines, hotel and motel lines, and call return services, such as automatic call return ("ACR").³

2. After further consideration, we conclude that LECs with SS7, but without CLASSTM software,⁴ will not be required to pass the calling party number ("CPN"). We also conclude that, to the extent that a LEC passes CPN to an interconnecting carrier, it must provide subscribers with blocking and unblocking capabilities. Additionally, we modify our policies on payphone lines;⁵ we now find that carriers are not required to provide blocking and unblocking capabilities on these lines.

¹ This order addresses private branch exchange and payphone issues raised in the Third Notice of Proposed Rulemaking ("Third NPRM"). The Third NPRM was issued as part of the Rules and Policies Regarding Calling Number Identification Service - Caller ID, Memorandum Opinion and Order on Reconsideration, Second Report and Order and Third Notice of Proposed Rulemaking, 10 FCC Rcd 11700 (1995) ("May 5, 1995 Order"). We also address issues related to local exchange carriers without CLASSTM software, raised in the Fourth Notice of Proposed Rulemaking ("Fourth NPRM"). The Fourth NPRM was issued in the Rules and Policies Regarding Calling Number Identification Service - Caller ID, Order and Fourth Notice of Proposed Rulemaking, 10 FCC Rcd 13796 (1995) ("December 1, 1995 Order"). Finally, we address the payphone, hotel and motel, party line, and call return issues raised by BellSouth's petition for reconsideration of the May 5, 1995 Order.

² A PBX is a private switching system, either manual or automatic, usually serving an organization, such as a business or a government agency, and usually located on the organization's premises.

³ Call return services allow a called party to return a call made to it. ACR is implemented commonly by dialing "*69" to automatically call the party that placed the last incoming call.

⁴ See n. 18 and accompanying text, *infra*, for a description of CLASSTM software.

⁵ We also note that our ruling applies equally to all payphone service providers ("PSPs"). As discussed below, we find that treating all PSPs in the same way will promote competition in the payphone industry.

3. We further find that PBX and Centrex⁶ systems must provide some type of blocking and unblocking capabilities if, and only if, they pass CPN to the public switched network ("PSN"). We conclude that Centrex systems that pass CPN to the PSN, and that currently employ *6 or *8 for functions other than blocking and unblocking, may continue to use such codes.⁷ Providers of Centrex service, however, must still offer users blocking and unblocking capabilities in some manner if CPN is passed.

4. Finally, we affirm that hotel and motel lines not served by a PBX, and party lines, require blocking and unblocking capabilities and that carriers are prohibited from processing ACR requests when the original call was made with a privacy request.

II. BACKGROUND

5. On May 5, 1995, the Commission adopted rules that require carriers to pass the calling party number for interstate calls⁸ and to provide Caller ID education.⁹ Section 64.1601(a) of the Commission's rules requires common carriers using Signaling System Seven ("SS7")¹⁰ and offering or subscribing to any service based on SS7 call set up functionality to transmit to interconnecting carriers the CPN associated with an interstate call.¹¹ Section 64.1603 states that common carriers providing CPN must notify subscribers that their telephone numbers may be identified to a called party.¹²

⁶ Centrex is a service for customers with many stations that permits station-to-station dialing, one listed directory number for the customer, direct inward dialing to a particular station, and station identification on outgoing calls. The switching functions are performed by the central office providing the service.

⁷ We note that SWBT currently uses *8 in its Centrex systems for functions other than per call unblocking, and that the use of *8 precludes the use of *82 for any other function. See paragraph 40, *infra*.

⁸ May 5, 1995 Order at 11710-11741.

⁹ *Id.* at 11747-11750.

¹⁰ Signaling System Seven is a CCITT Common Channel Signaling standard. Common Channel Signaling uses an out-of-band signaling channel to convey, by means of labeled messages, information relating to call setup, control, network management, and network maintenance. Out-of-band signaling avoids sharing the voice call's electromagnetic band (in-band), thus maximizing bandwidth and minimizing fraud by isolating call setup and billing. See also May 5, 1995 Order at 11704-11705.

¹¹ 47 C.F.R. § 64.1601(a).

¹² 47 C.F.R. § 64.1603.

6. During the course of adopting Caller ID rules, the Commission found that passage of the CPN over interstate facilities made possible a wide range of services, and that promoting the development of such services was consistent with the Commission's responsibilities under Sections 1 and 7 of the Communications Act.¹³ The Commission found that CPN transmission could bring consumers more rapid and efficient service and encourage the introduction of new technologies and services to the public.¹⁴

7. Despite the commercial benefits of CPN passage and the called party's right to know who is calling, the Commission stated that CPN passage could intrude upon the privacy of the calling party if the latter's number was passed when that party wanted to remain anonymous.¹⁵ As a consequence, the Commission implemented a federal policy governing CPN passage that protected the reasonable privacy expectations of both the calling and called parties.

8. Section 64.1601(b) of the Commission's rules¹⁶ requires carriers to recognize *67 as a request that they not pass the calling party's number. This requirement permits subscribers to block their numbers from passage through the public switched network by dialing *67 before placing a call ("per call blocking"). Section 64.1601(b) also requires that carriers recognize *82 as a request that CPN be transmitted on an otherwise blocked line. Per call unblocking allows subscribers with permanently blocked lines to allow passage of CPN on a per call basis. We chose different blocking and unblocking codes to prevent callers using permanently blocked lines from inadvertently releasing their numbers.¹⁷

III. ISSUES

A. LECs without blocking and unblocking capabilities

Background

9. As noted above, our Caller ID rules require carriers with SS7 capability and SS7 call set up functionality to pass CPN and provide per call blocking (*67) and per call unblocking

¹³ See Rules and Policies Regarding Calling Number Identification Service - Caller ID, Report and Order and Further Notice of Proposed Rulemaking, 9 FCC Rcd 1764 (1994) ("First Report and Order").

¹⁴ *Id.* at 1766.

¹⁵ May 5, 1995 Order at 11706.

¹⁶ 47 U.S.C. § 1601(b).

¹⁷ May 5, 1995 Order at 11729.

(*82) capability. Based on today's technology, in order to offer the blocking and unblocking capabilities, carriers must use CLASSTM¹⁸ software over an existing SS7 platform.

10. In the December 1, 1995 Order, we stayed until January 1, 1997 the effective date of the Caller ID rules for LEC switches that did not have CLASSTM software. We issued the stay in response to waiver petitions from several LECs, including small rural LECs, that claimed that providing blocking and unblocking capability on their switches was technically and/or economically infeasible.¹⁹ Those carriers stated that in some cases the *82 unblocking software for their switches had not been developed, and they argued that the cost of providing the blocking and unblocking functions was excessive in light of the small number of lines served. On December 23, 1996, the Commission stayed until further notice the blocking and unblocking requirements.²⁰

11. The December 1, 1995 Order included the Fourth NPRM in which we proposed that LEC switches not equipped with CLASSTM would not have to transmit CPN to interconnecting carriers on interstate calls.²¹ We further proposed that LECs without CLASSTM software could only pass the CPN if they could provide the blocking and unblocking capabilities specified in Section 64.1601(b) of the Commission's rules.²² The Commission based its proposals on its understanding of the technical and economic difficulties that carriers then confronted in acquiring CLASSTM software.²³ Finally, we requested comment on the economic feasibility of obtaining blocking and unblocking capabilities, and on the desirability of an exemption the applicability of which would depend upon the number of access lines served.²⁴

¹⁸ Custom Local Access Signaling Services ("CLASSTM"), a registered trademark of Bellcore, is a set of CPN-based services, such as caller ID, auto call return, and selective call forwarding. See SS7 Basics, by Toni Beninger, Intertec Publishing Corp., Chicago, IL, 1991.

¹⁹ Waivers were requested by BellSouth, Cameron Telephone Co., Cascade Telephone Co., PTI, Utelco, Inc., and Valley Telephone Cooperative, Inc. December 1, 1995, Order at 13806.

²⁰ Rules and Policies Regarding Calling Number Identification Service -- Caller ID, Memorandum Opinion and Order (1996)(CC Docket No. 91-281), released December 23, 1996 ("December 23, 1996 Order").

²¹ December 1, 1995 Order at 13809.

²² *Id.*

²³ *Id.*

²⁴ *Id.* at 13809.

Comments

12. Most commenters support the proposals set forth in the Fourth NPRM. The LEC Alliance²⁵ submits comments on behalf of carriers that serve rural areas in New Hampshire, Maine, and Texas. These carriers argue that the decision to purchase CLASSTM software should be left to a LEC's business judgment rather than a federal mandate.²⁶ The LEC Alliance also states that LECs could face economic hardship if they were forced to purchase CLASSTM software for a switch serving an area where there was no demand for CLASSTM services.²⁷

13. Northern Telecom ("Nortel"), supporting CPN passage, states that "[T]he Commission should encourage the widescale deployment of Caller ID services. The public interest will be advanced by the availability of the enhanced capabilities made possible by CCS/SS7 technology."²⁸ Nortel also states that it could provide an alternative to the bundled CLASSTM software package on a licensed basis, but observes that this alternative would require a Nortel DMS-series switch with "a sufficiently recent version of the generic operating software."²⁹ The Sprint LECs, however, disagree that an absolute requirement to pass CPN is warranted, and state that "it is not economically feasible for the Sprint LECs to provide blocking and unblocking capabilities where CLASSTM software is not needed."³⁰

14. The Sprint LECs support an exemption from the requirement to obtain blocking and unblocking capabilities for LECs serving fewer than 2,000 access lines, as suggested in the Fourth NPRM.³¹ The LEC Association and the LEC Alliance do not support an access line threshold because they support an exemption for *all* LECs without CLASSTM software.³² Conversely, Nortel does not support the access line suggestion because it favors requiring CLASSTM

²⁵ The LEC Alliance consists of Contookcook Valley Telephone Company on behalf of its affiliate, Merrimack County Telephone Company, Lincolnville Telephone Company, Tidewater Telecom, Inc., and Valley Telephone Cooperative, Inc.

²⁶ See LEC Alliance Fourth NPRM comments at 2.

²⁷ See *id.* at 4-5.

²⁸ Nortel Fourth NPRM comments at 3.

²⁹ *Id.* at 2. See also Nortel Fourth NPRM comments at n. 3.

³⁰ Sprint LECs Fourth NPRM comments at 2.

³¹ See *id.* at 3.

³² See LEC Association Fourth NPRM comments at 3 and LEC Alliance comments at 4-5.

deployment by all SS7-ready LECs.³³

Discussion

15. Our Caller ID policies and rules must protect the reasonable privacy expectations of end users. As a consequence, LECs without any blocking and unblocking capabilities in their switches are prohibited from passing CPN. Further, consistent with the decision not to require LECs to purchase SS7, we do not require LECs that have not implemented CLASSTM software or alternative blocking and unblocking capabilities to obtain such capabilities.

16. The record supports our conclusions that LECs need not be required to purchase blocking and unblocking software, but that, to the extent that a LEC passes CPN, that LEC must provide blocking and unblocking capabilities. For example, the LEC Alliance states that "[s]uch a policy recognizes the prudence of deploying network functionality in response to demonstrable customer need, and is otherwise consistent with Commission recognition that, in certain circumstances, CLASSTM software deployment may be economically infeasible."³⁴

17. The lack of a blocking and unblocking requirement on all SS7-ready LECs will not significantly impede our goal of maximizing CPN passage. According to the LEC Association comments, fewer than one half of one percent of the nation's total access lines are served by SS7-ready switches that lack CLASSTM software.³⁵ Thus, we find that the overwhelming majority of SS7-ready LEC switches have blocking and unblocking capabilities, and therefore must observe CPN passage rules.

18. In contrast, Nortel argues that widespread deployment of CLASSTM software is in the public interest and that the cost of providing blocking and unblocking software is not unduly burdensome on the LECs because carriers "may potentially" recover the cost through charges for Caller ID, auto call return, and other CLASSTM services.³⁶ The exemption we adopt applies to all LECs without blocking and unblocking software, although we had considered limiting the exemption to LECs with fewer than a certain number of access lines. We find, however, that the record provides insufficient evidence for selecting a specific access line threshold. We find, instead, that the financial incentives to deploy CLASSTM software where economically feasible,

³³ See Nortel Fourth NPRM comments at 3.

³⁴ LEC Alliance Fourth NPRM comments at 3.

³⁵ See LEC Association comments at 3, "[T]he total number of access lines affected by the waivers granted in [the December 1, 1995 Order] is approximately 664,817 - which represents less than one half of one percent of the nation's total access lines (approximately 0.42% based on 1994 total access lines as compiled by USTA)."

³⁶ *Id.*

and the small number of access lines now lacking access to CLASS™ services, justify an exemption from the blocking and unblocking requirements for LECs without blocking and unblocking software. For the same reasons, we conclude that this exemption should not depend on the number of lines served by the switch lacking the blocking and unblocking software.³⁷

B. Payphones

Background

1. BellSouth Petition for Further Reconsideration

19. In the MO&O on Reconsideration,³⁸ the Commission affirmed its requirement that payphone service providers ("PSPs") must provide per call blocking and per line unblocking capabilities on payphones, effective January 1, 1997.³⁹ We found that those features were necessary because payphone users have the same, if not higher, privacy expectations as residential telephone users. We also stated that CPN passage from payphones created risks to calling parties in certain circumstances (*e.g.*, a payphone user at a domestic violence shelter who may need to block that number for safety concerns). The Commission acknowledged that the record regarding the scope of such risks was limited, but stated that the arguments raised in the comments did not justify a Commission Caller ID policy that ignored the privacy interest of payphone users.⁴⁰ On December 23, 1996, the Commission stayed until further notice the effective date of the rules.⁴¹

20. BellSouth filed a petition for reconsideration⁴² of the MO&O on Reconsideration, in

³⁷ See, *e.g.*, LEC Association Fourth NPRM comments at 2. See also LEC Association Fourth NPRM comments at 4:

Given the incentives to deploy CLASS™ features where possible, and the small number of companies affected, the Commission need not be concerned that the absence of an access line limitation will delay the implementation of functionalities necessary to provide CPN transport and thus encourage the growth of CPN-based services.

³⁸ The May 5, 1995 Order also contained a Memorandum and Opinion and Order on Reconsideration ("MO&O on Reconsideration").

³⁹ *Id.* at 11739.

⁴⁰ *Id.*

⁴¹ December 23, 1996 Order.

⁴² BellSouth Petition for Partial Further Reconsideration and Partial Initial Reconsideration filed on July 5, 1995 ("BellSouth Petition").

which it stated that payphone users do not need blocking and unblocking capabilities because their CPN is rarely passed on interstate calls made from payphones. BellSouth further states that its network cannot transmit to the PSN the CPN on operator-assisted calls placed from payphones, and that in order to pass the CPN on operator-assisted calls it would have to invest in additional software, (*i.e.*, Operator SS7).

2. Third NPRM

21. With the May 5, 1995 Order, the Commission also adopted a Third NPRM proposing that the Commission's Caller ID rules apply to independent payphone providers ("IPPs"), but expressed concerns that the IPPs might incur excessive costs in implementing payphone blocking and unblocking capabilities.⁴³ We noted that the record that had been developed did not contain much information on this issue. We therefore sought comment on the costs of retrofitting deployed payphones to support blocking and unblocking capabilities and also sought to determine the number of IPPs already with those capabilities.

Comments

1. BellSouth Reconsideration

22. Several commenters, including Southwestern Bell Telephone Company ("SWBT") and U S WEST, support BellSouth's contention that the cost of providing blocking and unblocking capabilities is excessive considering the few instances in which CPN is passed from payphone lines. SWBT asserts that it would have to spend \$6.8 million to provide blocking and unblocking options on its payphone lines.⁴⁴ These parties further argue that the CPN is not currently passed on the vast majority of interstate coin-originated calls due to the use of Multi-Frequency ("MF") Signaling, which does not support CPN passage, by the operator trunk.⁴⁵ These commenters state that they would have to invest in Operator Signaling System Seven ("OSS7"), rather than MF Signaling, in order to enable CPN passage to the PSN from payphone lines.

⁴³ The bulk of IPPs provide service through "smart payphones" that provide service functionalities through intelligence residing within the payphone unit. By contrast, LEC payphones typically have been "dumb payphones" because they rely on operation functionalities that reside in the central office. LECs, however, are deploying smart payphones as well. See GTE Third Notice reply comments at 5-6.

⁴⁴ SWBT Third NPRM comments at 2.

⁴⁵ *Ex parte* letter from BellSouth, SWBT, U S WEST, Ameritech, NYNEX and Cincinnati Bell ("the Joint LECs") to William F. Caton, Acting Secretary, dated August 29, 1996 ("Joint LEC *Ex Parte* Letter").

23. Ameritech⁴⁶ and the FBI contend that the Commission's decision that all PSPs offer blocking and unblocking capabilities is overly broad.⁴⁷ The FBI states that solutions exist that could, on an *ad hoc* basis, address privacy needs, without harming public safety.⁴⁸ It states that per line blocking could be offered when a specific payphone line requires such privacy protection.⁴⁹ U S WEST states that blocking arrangements should be decided by the payphone location owner and PSPs, rather than by this Commission.⁵⁰

24. The FBI states that blocking capabilities at payphones would undermine its investigative efforts.⁵¹ It argues that payphones, by their very nature, offer anonymity, and CPN blocking would provide "little additional" protection to the non-criminal user. The FBI contends that payphone users have reduced privacy expectations when compared to users of residential service.⁵²

25. Several advocacy groups against domestic violence⁵³ oppose BellSouth's request that the blocking and unblocking requirement not apply to payphones. These parties state that blocking options at payphones will provide an important safety device for persons in domestic violence shelters who may need to block their numbers when using a payphone.

⁴⁶ Ameritech Third NPRM Comments at 1.

⁴⁷ Federal Bureau of Investigation ("FBI") Third NPRM comments at 2.

⁴⁸ *Id.*

⁴⁹ *Id.* at 5.

⁵⁰ U S WEST at 8.

⁵¹ FBI Third NPRM comments at 2.

⁵² *Id.* at 2.

⁵³ Several groups filed *ex parte* letters opposing arguments raised in BellSouth's petition for reconsideration. The groups include the Women's Center of Montgomery County (Pennsylvania), the New Mexico Domestic Violence LEGAL HELPLINE, Womensplace, New Hampshire Coalition Against Domestic & Sexual Violence, the New Jersey Coalition for Battered Women, the New York State Coalition Against Domestic Violence, Inc., the Rhode Island Coalition Against Domestic Violence, the Rockland Family Shelter, Support Inc., the Texas Council on Family Violence, the Women's Advocacy Project, Women Against Abuse, Women's Services, Inc., and the YWCA Spouse Abuse Center.

2. Third NPRM

26. Nortel, APCC⁵⁴, Intellicall, and other commenters, state that the cost of providing blocking and unblocking capabilities at payphones would be unreasonably high for IPPs. APCC and Intellicall estimate that the industry would spend \$25 million to \$30 million to replace or reprogram their systems to acquire Caller ID blocking and unblocking capability.⁵⁵ Some commenters argue that all PSPs should be treated identically.⁵⁶ SWBT states that payphone users cannot differentiate between LEC-owned payphones and IPP-owned payphones, and therefore customer confusion would result if certain payphones had blocking and unblocking capabilities while others did not.⁵⁷

27. Intellicall states that it strongly disagrees with those commenters asserting that the Commission's blocking and unblocking requirements should apply uniformly to all PSPs.⁵⁸ It adds that IPPs cannot generally implement blocking and unblocking through changes at the central office, but instead must undertake major, and costly, reprogramming or retrofitting.⁵⁹ It further states that IPPs do not offer Caller ID services and that most LECs already provide blocking on their pay telephones.⁶⁰

28. USTA contends that implementing per call blocking and unblocking capabilities on payphones raises serious concerns that warrant further consideration. It states that the transient nature of payphone users, the substantial costs of implementing blocking, and the interest of law enforcement officials in avoiding blocking make it unclear that the Commission's decision will serve the public interest.⁶¹

29. Finally, APCC states that the IPPs would face significant "indirect" costs due to the

⁵⁴ American Public Communications Council ("APCC").

⁵⁵ Intellicall Third NPRM comments at 9.

⁵⁶ See, e.g., BellSouth Petition at 7, USTA reply comments to the BellSouth Petition at 2, and Nortel reply comments to the BellSouth Petition at 3.

⁵⁷ SWBT Third NPRM comments at 2.

⁵⁸ Intellicall Third NPRM comments at 8-9.

⁵⁹ *Id.* at 10-11.

⁶⁰ *Id.*

⁶¹ USTA BellSouth Petition reply at 1-2.

depletion of available memory space on their payphones.⁶² APCC argues that "a large portion of the memory capacity of existing [payphone] units has already been used to accommodate other . . . requirements, such as changes in the industry numbering plan."⁶³ It further argues that "the addition of *67 and *82 capabilities would require a very substantial amount of remaining memory space." APCC also states that it is especially concerned about older payphone models because they typically have less memory space than newer payphone models.

Discussion

1. BellSouth Petition for Reconsideration

a. Efficiency Concerns

30. BellSouth has submitted new information regarding its technical capabilities, the low CPN passage rate from payphones, and the economic factors associated with installing blocking and unblocking functionalities at payphones that causes us to reverse our earlier decision.⁶⁴ We conclude that we should grant BellSouth's petition for reconsideration of our payphone decision, and hold that payphone lines are not subject to our Caller ID rules.

31. BellSouth, SWBT and other LECs also stated that their payphone lines use MF Signalling on operator-assisted calls, and that MF trunks do not pass CPN. In order to pass the CPN on operator-assisted calls to the PSN, these carriers would have to install SS7-related software and hardware. U S WEST states that it would cost \$19 million to equip its payphone lines with SS7 capability. BellSouth states that it would have to spend \$84 million to convert its operator services trunk system to SS7 technology.⁶⁵ The decision not to require investment in OSS7 is consistent with the policy set forth in the First Report & Order and in the May 5, 1995 Order, in which we did not require carriers to invest in SS7 technology in order to enable delivery of the calling party number.

32. Because many PSPs do not pass the CPN to the PSN on operator-assisted calls, we find that the ability to block and unblock is not essential to providing calling party privacy on

⁶² APCC Third NPRM comments at 7.

⁶³ *Id.*

⁶⁴ SWBT and U S WEST, and other carriers, support BellSouth's arguments.

⁶⁵ In an *ex parte* letter from Ben Almond to William Caton, Acting Secretary, dated November 19, 1996, BellSouth stated that it would have to convert 300,000 operator trunks at a cost of \$280 per trunk. U S WEST predicts that the cost per trunk is \$400 and that it has approximately 50,000 trunks.

these phones, in most circumstances.⁶⁶ BellSouth, U S WEST, SWBT, and others state that interstate payphone-originated toll calls must be charged to a calling card, credit card, prepaid card, or must be "set-up" with operator assistance. They further state that none of these call "set-up" mechanisms pass CPN to the called party. SWBT adds that CPN is only passed to an interconnecting carrier on interstate intraLATA⁶⁷ non-toll calls, which represent an "extremely minute percentage" of the total calls placed from payphones.⁶⁸ Because our Caller ID rules only apply to interstate calls for which CPN is transmitted, we find that it is not cost effective to require PSPs to provide blocking features at all payphones for the small volume of interstate intraLATA calls that originate at those phones. We further conclude that there is no need for the unblocking functionality on payphone lines because payphone lines do not generally have per line blocking.

b. Blocking and Unblocking of CPN Passage

33. The Pennsylvania Office of Consumer Advocate argues that blocking options could provide an important safety mechanism for persons in domestic violence shelters who may need to block their numbers when using a payphone.⁶⁹ SAGE adds that victims of domestic violence require absolute confidentiality, and that any breach of this confidentiality, particularly disclosure of the shelter location, could endanger shelter staff and residents.⁷⁰ We acknowledge the validity of the privacy concerns raised by these parties, but also note that safety can be achieved through means narrower than requiring blocking and unblocking of interstate calls on *all* payphones. For example, payphone location owners could arrange for a carrier to activate per line blocking on their payphone units. Another solution is to make available an administrative line equipped with per line blocking whenever privacy is required. We also note that payphone users can place interstate calls from payphones through an operator. Finally, we conclude that it is more efficient for individuals and groups to rely on these kinds of safeguards than to require all PSPs to perform costly upgrades, particularly since CPN is rarely passed from these lines.

2. Third Notice

34. We further hold that IPPs will not be subject to our blocking and unblocking requirements. We find that requiring different rules for IPPs and LECs would be inconsistent

⁶⁶ Joint LEC *Ex Parte* Letter at 1.

⁶⁷ Local Access and Transport Area ("LATA").

⁶⁸ See *Ex parte* letter from Michael Bennett of SWBT to William F. Caton, dated April 12, 1996.

⁶⁹ Pennsylvania Office of Consumer Advocate ("PAOCA") Third NPRM comments at 3.

⁷⁰ Survivors Against Abuse and Growing in Education ("SAGE") Third NPRM comments at 3.

with our decision in the Pay Telephone Reclassification Order.⁷¹ In that decision we sought to advance the goals of Section 276 of the Communications Act, as amended by the Telecommunications Act of 1996, by adopting rules that will promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public.⁷² As Intellicall notes, if we subject IPPs, but not LECs, to Caller ID privacy requirements, IPPs will be placed at a competitive disadvantage. APCC estimates that the IPP industry would spend \$25 million to \$40 million to retrofit its payphones so they could offer blocking and unblocking capabilities.⁷³ We find that these costs, if imposed solely on the IPPs, could harm competition in the payphone market and may hinder the widespread deployment of payphone services.

35. We are not persuaded by Intellicall's contention that IPPs and LECs warrant disparate treatment. Intellicall states that LECs have more lucrative cost recovery options, and should therefore pay for installation of blocking and unblocking features at IPP payphones.⁷⁴ In light of the Pay Telephone Reclassification Order, we find that Intellicall's proposition now would place the LECs at a competitive disadvantage.

C. Private Branch Exchanges, Centrex and Plexar

Background

36. In the Third NPRM the Commission proposed that PBXs capable of delivering CPN to the PSN be required to offer the ability to block and unblock CPN passage to telephone users served by such systems. The rationale for this proposal was that PBX users have no diminished privacy expectations compared to non-PBX users, and thus the PBX users should have access to blocking and unblocking capabilities.⁷⁵ In the October 30, 1995 Order, the Commission stayed these requirements as applied to Centrex and Plexar⁷⁶ services until further notice.⁷⁷ The

⁷¹ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 CC Docket No. 96-128, FCC 96-388, (rel. Sept. 20, 1996) ("Pay Telephone Reclassification Order"); Recon. Order on Reconsideration, FCC 96-439 (rel. Nov. 8, 1996).

⁷² Pay Telephone Reclassification Order at 3.

⁷³ APCC Third NPRM Comments at 9.

⁷⁴ Intellicall Third NPRM comments at 7.

⁷⁵ May 5, 1995 Order at 11742.

⁷⁶ Plexar is a SWBT Centrex service.

Commission agreed with commenters that there should be symmetry in the application of our rules regarding these services and PBX systems,⁷⁸ which perform many of the same functions, e.g., station-to-station dialing and direct inward dialing.

Comments

37. The majority of commenters strongly oppose our proposal to require installation of blocking and unblocking capabilities in PBX systems.⁷⁹ Ad Hoc⁸⁰ states that most deployed PBX systems are not capable of passing CPN to the PSN, and thus enforcing our rules against PBX owners would not further our goals of nationwide CPN passage.⁸¹ Ad Hoc and MCI further state that deployed PBXs cannot generally support blocking and unblocking functionalities.⁸² BellSouth states that it would have to spend seven million dollars to equip its 5ESS switches to comply with the Commission's proposal.⁸³ NYNEX also states that it lacks "the capability to provide per call blocking and unblocking on PBX service for certain switch types and would incur significant costs to institute such capability."⁸⁴

38. MCI states that PBXs use private dialing plans, not the North American Numbering Plan ("NANP") that is used by the public switched network.⁸⁵ MCI adds that the number transmitted by the PBX to the public switched network would be meaningless unless PBX dialing plans are incorporated into the NANP.⁸⁶ Ad Hoc estimates that retrofitting costs would be

⁷⁷ Rules and Policies Regarding Calling Number Identification Service - Caller ID, Order, 10 FCC Rcd 13819 (1995) ("October 30, 1995 Order").

⁷⁸ *Id.* at 13820.

⁷⁹ See generally, SWBT Third NPRM comments, TIA-UPED Third NPRM comments, Ad Hoc Third NPRM comments, Nortel Third NPRM comments, BellSouth Third NPRM comments, GTE Third NPRM reply comments, MCI Third NPRM comments, AT & T Third NPRM comments, NYNEX Third NPRM reply comments, TCA Third NPRM reply comments, and ACUTA Third NPRM comments.

⁸⁰ The Ad Hoc Telecommunications Users Committee ("Ad Hoc").

⁸¹ Ad Hoc Third NPRM Comments at i.

⁸² *Id.* at 13; MCI comments at 1-2.

⁸³ BellSouth Third Notice comments at 3.

⁸⁴ NYNEX Third NPRM reply comments at 3.

⁸⁵ MCI Comments at p. 1-2.

⁸⁶ *Id.*

approximately \$20,000 per PBX.⁸⁷ Commenters acknowledge the need for privacy at PBX systems, but they argue that the PBX owner should be the one to choose privacy options for its users.⁸⁸

39. SAGE supports blocking options at PBXs and noted that PBXs may be employed in:

places where callers have a strong need for blocking protection, such as a hotel, motel or domestic violence shelter. Likewise, providers of legal and counseling services located in offices with PBX systems may wish to use blocking mechanisms to protect themselves and their clients. The parties state that the important policy considerations which the Commission appropriately highlighted in [the May 5, 1995 Order] apply with equal force in the PBX . . . setting.⁸⁹

40. Finally, SWBT notes that Centrex systems, like PBXs, are private systems in which the customer chooses the dialing codes for various features, and that some SWBT Plexar customers currently use *8 for a group call pick-up or similar function.⁹⁰ Thus, according to SWBT, extending the *82 unblocking requirement to these systems would inconvenience existing users and SWBT requests that the use of "#082" for per call unblocking be permitted.⁹¹

Discussion

41. In the Third NPRM, we tentatively concluded that any PBX systems *capable of CPN passage* must provide blocking and unblocking options. Based upon the new information in the record before us, we now require that PBX systems that *do pass the end user CPN* must provide blocking capability within one year of the release date of this order. We find that this rule will impose no undue burdens on owners or operators of those PBXs that cannot pass the end user CPN. We also set a compliance date of one year from the release date of this order for carriers to institute blocking capability where necessary for its PBX service, *i.e.*, LEC switches must recognize *67 per call blocking requests from PBXs that pass end user CPN. For newly-deployed PBXs that pass end user CPN, carriers shall institute blocking capability on the PBX lines within one year of the date of release of this order, or within six months of the initiation of service to the PBX, whichever is later.

⁸⁷ Ad Hoc Third NPRM comments at 13.

⁸⁸ See, *e.g.*, GTE Third Notice Reply comments at 4.

⁸⁹ SAGE Third NPRM comments at 5.

⁹⁰ SWBT Third NPRM comments at 3.

⁹¹ *Id.*

42. Taking into account MCI's comments,⁹² we emphasize that if a PBX is capable of sending the end user CPN to the PSN, as opposed to an administrative or other number that is not the end user's telephone number, and if the PBX owner or operator chooses to pass the former CPN, then the PBX must have some form of blocking capability available for each user. We recognize that some modern PBXs that have the capability of passing CPN also have the ability to suppress it. Activation of the latter option by the PBX owner would preclude any need for end user blocking capability.

43. Finally, we extend our PBX rule to Centrex systems based on our concern that caller privacy be protected when the caller desires it to be and when the CPN would otherwise be passed from those systems. Such systems that currently use *6 or *8 codes for other functionalities, however, may continue to do so, but then must accomplish per call blocking or per line unblocking in some other manner. This obligation, as well as the obligation to educate purchasers of Centrex services, falls upon the carrier and must be met within one year of the date of release of this order.

D. Hotel and Motel Lines

Background

44. In the May 5, 1995 Order, the Commission reaffirmed its conclusion that effective December 1, 1995, carriers must offer callers placing calls from telephones in hotels and motels the ability to block and unblock passage of their CPN. It reached that conclusion because commenters had failed to demonstrate why hotel and motel telephone users had lower expectations of privacy protection than other telephone users. The Commission further noted that the record contained no evidence that hotel or motel telephones present unique problems with respect to the Caller ID rules.

45. On July 5, 1995, BellSouth filed for reconsideration of our decision that callers using hotel and motel lines must be able to block and unblock passage of their CPN. BellSouth contends that such callers' privacy expectations can be protected without requiring that all hotel and motel lines have blocking and unblocking capability. BellSouth states that, in most cases, the number presented to the called party will be the hotel's or motel's main number rather than that of the line from which the call originated. Thus, to maintain anonymity, a caller need only refrain from disclosing his or her name or room number. Moreover, BellSouth argues that persons with heightened safety needs cannot inadvertently reveal their numbers. It notes that telephone lines equipped with the *67 feature prevent the calling party's number from passing

⁹² See para. 38, *supra*.

to an interconnecting carrier, while lines that do not have the *67 feature return a fast busy signal rather than allow the call to go through. BellSouth states that the fast busy signal would "remind" the caller to use an alternative calling arrangement, such as operator-assisted dialing.

46. Finally, BellSouth argues that the cost of providing blocking and unblocking capabilities on hotel and motel lines outweighs the benefits because many hotels and motels use PBX systems that cannot pass the CPN to the PSN. It further argues that many callers from telephones in hotels and motels use calling cards, or other operator-assisted services, and in such cases the callers' CPN is not passed to the PSN.

47. In the October 30, 1995 Order,⁹³ the Commission stayed the application of the Caller ID rules for hotel and motel lines until January 1, 1997 based on the petitioner's and commenters' argument that carriers would be forced to make costly and inefficient network upgrades if the Commission required carriers to offer blocking and unblocking capabilities from hotel and motel lines before it decides how the Caller ID rules should apply to PBX systems.⁹⁴ Carriers noted that many hotels and motels use PBX systems, and that the Commission's decision with respect to the applicability of the Commission's rules to owners of PBXs will affect hotel and motels as well. On December 23, 1996, the Commission issued a further stay of the blocking and unblocking requirements for PBXs.⁹⁵

Comments

48. NYNEX argues that the privacy expectations of payphone users are reduced when compared with those of residential subscribers. NYNEX and SWBT argue that guests calling from hotels and motels typically use calling cards, the use of which leads to blocking of CPN passage to the PSN.⁹⁶

49. Advocates against domestic abuse, on the other hand, argue that blocking features are needed to protect the safety of domestic abuse victims.⁹⁷ These parties state that victims of domestic abuse sometimes hide in hotels and motels and could experience bodily harm if calls from hotel and motel lines cannot be blocked.

⁹³ October 30, 1995 Order at 13819.

⁹⁴ *Id.* at 13819-13820.

⁹⁵ December 23, 1996 Order.

⁹⁶ NYNEX comments at 3, n. 9.

⁹⁷ SAGE and Sisters Overcoming Abusive Relationships ("SOAR") at 2.

Discussion

50. The comments submitted in response to the BellSouth Petition for Reconsideration and the Third NPRM have persuaded us that the public interest will best be served if hotel and motel lines are subject to our Caller ID rules, with one significant exception. SWBT states the "vast majority of hotel and motel stations are served by PBX systems, which cannot recognize blocking codes." In this order we exempt PBXs from blocking and unblocking requirements if they do not pass the CPN to the PSN. Consistent with that decision, we conclude that it is appropriate that hotels and motels that employ such PBXs should not be required to retrofit or reprogram their PBX systems to offer blocking capabilities, which could cost approximately \$20,000 per PBX, and that the lines or trunks serving such PBXs also not be required to comply with our Caller ID rules.⁹⁸ If hotels or motels do not use PBX systems, then carriers serving these hotel or motel lines must provide blocking and unblocking capabilities on these lines within one year of the date of this order.

E. Party lines

Background

1. BellSouth Petition for Reconsideration

51. In the May 5, 1995 Order, we affirmed our conclusion that Caller ID rules apply to party lines. In affirming that conclusion, we rejected LEC claims that party line users have reduced privacy expectations in making phone calls than do other telephone service users.⁹⁹ We also stated that carriers must provide blocking and unblocking capabilities on party lines by January 1, 1997. BellSouth requests that we reconsider our decision to require that party line customers be able to block and unblock passage of their CPN. The carrier states that in order to provide blocking and unblocking capabilities for party lines, each 5ESS switch serving party line customers would have to be upgraded.¹⁰⁰ BellSouth further notes that only 0.17% of its access lines are served by party lines and the service is being phased out.¹⁰¹ On December 23, 1996, the Commission issued a stay of the blocking and unblocking requirements as they apply

⁹⁸ See paragraph 38, *supra*.

⁹⁹ May 5, 1995 Order at 11739.

¹⁰⁰ BellSouth Petition at 16.

¹⁰¹ *Id.*

to party lines, until further notice.¹⁰²

2. GTE Petition

52. GTE asks that we clarify whether it must provide blocking and unblocking capabilities on four-party lines. The carrier states that it would have to make a significant financial investment in order to offer Caller ID on four-party lines. GTE states that cost estimates are not available, but that it anticipates that the investment will not be "*de minimis*."

Comments

53. U S WEST supports BellSouth's argument that party lines would require expensive upgrades.¹⁰³ U S WEST states that it would have to spend \$4.2 million to prepare its 5ESS switches to provide blocking and unblocking capabilities on party lines. Many carriers note that they are phasing out party lines. U S WEST states that it, like BellSouth, has few subscribers to party line service.¹⁰⁴ SWBT expects to have eliminated party line service by the effective date of the Commission's requirements, but nonetheless concurred that costly service modifications should not be required for a service that is being phased out. Nortel notes that vendors will need to develop and test blocking and unblocking software because currently it may not be possible to upgrade some switches to support blocking and unblocking features.¹⁰⁵

54. Finally, many commenters agree with BellSouth that party line customers' privacy expectations are lower than those users of other telephone service subscribers.¹⁰⁶

Discussion

55. Neither BellSouth nor other commenters have presented new evidence that would warrant a modification of the Caller ID rules regarding party line service. BellSouth raises arguments based upon claims that carriers were phasing out party line service and that party line users had a lower expectation of privacy than other telephone service users. The Commission

¹⁰² December 23, 1996 Order.

¹⁰³ U S WEST at 4.

¹⁰⁴ *Id.* at 8.

¹⁰⁵ Nortel Third NPRM Comments at 4.

¹⁰⁶ See NYNEX Third NPRM reply comments at n. 9, Joint LEC *Ex Parte* Letter at 3.

considered, and rejected, these arguments in its May 5, 1995 Order.¹⁰⁷ Additionally, GTE has submitted no evidence to support its contention that four-party lines should be treated differently from other subscriber lines. We therefore find that carriers with SS7 and CLASS™ capability must provide per call blocking and per call unblocking capabilities on all party lines within one year of the release of this order.

56. We will not modify our rules merely because the carriers may have to complete switch upgrades to offer blocking and unblocking capabilities on party lines. Many carriers must upgrade their switches to comply with other Commission rules and policies, and the commenters have failed to show that the upgrades needed to offer blocking and unblocking capabilities on party lines are significantly different from these other upgrades.

F. Automatic Call Return Services

Background

57. In the Second Report and Order,¹⁰⁸ the Commission concluded that its Caller ID rules should apply to automatic call return ("ACR") services and adopted a rule to implement that conclusion.¹⁰⁹ If the called party invokes the call return service and the original calling party requested that CPN not be passed, ACR must be disabled so that it does not allow the called party to learn the number of the telephone from which the calling party placed his or her call ("ACR blocking").¹¹⁰ The Commission had reasoned that call return service might enable the called party to glean information about the calling party that the calling party apparently did not wish to reveal. Such a disclosure would be inconsistent with our intent to protect the calling party's privacy. Additionally, the Commission stated that requiring ACR blocking enables groups, such as victims of domestic abuse, to prevent their telephone numbers from being revealed without their consent. The Commission recognized that disabling ACR services is technically possible, although carriers may incur some expense in configuring their services to do this.

58. On July 5, 1995, BellSouth filed for reconsideration of our decision in the Second Report and Order that ACR services should be blocked when the original calling party requested

¹⁰⁷ May 5, 1995 Order at 11739.

¹⁰⁸ The Second Report and Order was issued as part of the May 5, 1995 Order.

¹⁰⁹ 47 C.F.R. § 64.1601(b).

¹¹⁰ *Id.*

privacy. In the October 30, 1995 Order we stayed the application of the Caller ID rules to call return services until January 1, 1997. The Commission noted that the petitioner and commenters had provided new information and persuasively argued that carriers could incur unnecessary costs if the Commission required carriers to implement ACR blocking prior to having addressed issues raised in the BellSouth Petition.¹¹¹ On December 23, 1996, the Commission issued a further stay until further notice of the ACR blocking requirement.¹¹²

Comments

59. Several of the Bell Operating Companies ("BOCs") agree with BellSouth that the Commission should not require disabling of call return on interstate calls when the initiating party's CPN is marked private.¹¹³ These parties argue that returning such a call does not violate the calling party's privacy, and that the caller's number is not revealed (unless and until it is displayed on the call return customer's bill).¹¹⁴ They also assert that current technology cannot support different call return blocking methodologies for interstate and intrastate calls within the same LATA absent significant investment.¹¹⁵ Thus these BOCs also requested that any federal requirement apply to all interstate traffic once interstate/interLATA calls are capable of being returned using the call return feature.¹¹⁶ SWBT states that since its introduction ACR has been used almost exclusively for intrastate calls, and no state commission has required this service to be disabled for calls marked private.¹¹⁷ BellSouth estimates that it would cost at least \$16 million to upgrade its network in order to comply with this requirement, independent of requirements relating to payphones, hotel and motel lines, and party line service.¹¹⁸ It argues that the ability of emergency service personnel to contact a caller who became disconnected may be jeopardized by such a blocking requirement.¹¹⁹

¹¹¹ October 30, 1995 Order at 13820.

¹¹² December 23, 1996 Order.

¹¹³ See, e.g., SWBT comments in response to the BellSouth Petition at 6. See generally Joint LEC *Ex Parte* Letter.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ See generally Joint LEC *Ex Parte* Letter.

¹¹⁷ See SWBT comments in response to BellSouth Petition at 6.

¹¹⁸ BellSouth reply comments to BellSouth Petition at 10, n. 19.

¹¹⁹ BellSouth Petition at 20.

Discussion

60. We deny BellSouth's petition for reconsideration on this issue and require that carriers comply with Section 64.1601(b) as it applies to call return services within six months of the date of this order's release. Without new evidence contradicting our earlier conclusion, we continue to find that a caller's privacy can be compromised if the called party invokes ACR. We recognize that, for interstate calls, ACR is available only in the limited instances in which the call does not traverse a LATA boundary (intraLATA).¹²⁰ In the future, however, ACR might become available for interLATA calls, of which the vast majority are interstate. To protect the privacy of the calling party, we also prohibit any billing practice that reveals the original calling party's name or number when that caller requests that CPN be blocked; *i.e.*, we prohibit carriers from revealing this protected information on the telephone bill of the called party. Addressing BellSouth's concern that the ability of emergency service personnel to contact a caller who becomes disconnected may be jeopardized by a requirement to inhibit ACR, we note that emergency services are exempt from our Caller ID requirements.¹²¹

¹²⁰ *See Id.*

¹²¹ *See* 47 C.F.R. § 64.1601(d)(2).

IX. ORDERING CLAUSES

61. ACCORDINGLY, IT IS ORDERED, that pursuant to the authority contained in Sections 1, 4(i)-(j), 201, and 218 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i)-(j), 201, and 218 that BellSouth's petition for partial further reconsideration IS GRANTED to the extent stated herein and, in all other respects, IS DENIED.

62. IT IS FURTHER ORDERED, that compliance dates are set for: six months from the date of release of this order for blocking of call return services, and one year from the date of release of this order for party lines, hotel and motel lines, and PBX and Centrex systems that pass the CPN to the PSN.

63. IT IS FURTHER ORDERED, that the stay of the Caller ID rules issued in Rules and Policies Regarding Calling Number Identification Service - Caller ID, DA 96-2181, CC Docket 91-281, released December 23, 1996, is terminated upon release of this order.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

APPENDIX A

REGULATORY FLEXIBILITY ANALYSIS

As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. § 601 *et seq.*, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Third Notice of Proposed Rulemaking (Third Notice) in this proceeding. The Commission requested written comments on the proposals in the Third Notice. In the Fourth Notice of Proposed Rulemaking (Fourth Notice) the Commission considered regulatory flexibility issues, but certified that there was no significant economic impact on a substantial number of small entities.¹²² Although there were no comments filed in response to the certification, on our own motion we reconsider our certification in the Fourth Notice and decide to undertake a Final Regulatory Flexibility Analysis (FRFA) in conformity with the RFA, as amended by the SBREFA. We do so because the requirements governing agency treatment of regulatory flexibility issues have become more stringent while this docket has been open and because of the possible effects of our actions on small entities. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this Order conforms to the RFA, as amended by the Contract With America Advancement Act of 1996, (CWAAA), Pub. L. No. 104-121, 110 Stat. 847 (1996).¹²³

A. Need for and Purpose of this Third Report and Order

This Third Report and Order addresses comments filed in response to the Third and Fourth Notices concerning the application of Section 64.1601 blocking and unblocking requirements to payphones, private branch exchange systems (PBXs), Centrex systems, and local exchange carriers (LECs) without blocking and unblocking capabilities.¹²⁴ In this Order we exempt payphones, PBXs, LECs without blocking and unblocking capabilities, and carriers serving Centrex systems from the Section 64.1601 blocking and unblocking requirements. We conclude that the carriers and PBX operators affected by this ruling must, however, continue to provide blocking and unblocking capabilities to users served by those lines if they pass the calling party number (CPN) to an interconnecting carrier. Finally, the rules adopted in this proceeding safeguard calling parties' privacy as well as provide some relief for payphone service providers

¹²² See Fourth Notice at 13809. We note that the certification was issued prior to enactment of the amendments to the RFA by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which was enacted as Title II of the Contract With America Advancement Act of 1996 (CWAAA), Pub. L. No. 104-121, 110 Stat. 847 (1996).

¹²³ 5 U.S.C. § 601.

¹²⁴ See 47 C.F.R. § 64.1601.

(PSPs), PBX owners, and LECs without blocking and unblocking capabilities.

B. Analysis of Significant Issues Raised in Response to the Initial Regulatory Flexibility Analysis and the Certification

In the Third Notice, the Commission performed an IRFA where it found that the rule revisions it proposed to adopt in this proceeding could affect offerings of private payphones and PBX systems capable of delivering CPN to the public switched network.¹²⁵ No comments were submitted in direct response to the IRFA in the Third Notice, or the Commission's certification in the Fourth Notice. We have, however, reviewed general comments for issues that may impact small entities.¹²⁶ We have strived to place requirements which impose the least economic impact on small businesses while balancing the privacy interests of end users.¹²⁷

C. Description and Estimates of the Number of Small Entities Affected by this Third Report and Order

The RFA defines "small entity" to include the definition of "small business concern" under the Small Business Act, 15 U.S.C. § 632.¹²⁸ Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration.¹²⁹ The SBA has defined companies listed under Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications)¹³⁰ and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have fewer than 1,500 employees. The SBA has defined companies listed under the SIC category 7379 (Business Services, not otherwise classified) to be small entities when they have annual receipts of less than five million dollars. These standards also apply in determining whether an entity is a small

¹²⁵ Third Notice at Appendix A.

¹²⁶ See, e.g., paras. 10 and 12 in this order.

¹²⁷ See, e.g., our decision in para. 15 of this order not to impose upon LECs without CLASS™ software the burden of obtaining this software.

¹²⁸ See 5 U.S.C. § 601(6) (incorporating by reference the definition of "small business concern" in 5 U.S.C. § 632).

¹²⁹ See 15 U.S.C. § 632(1)(a).

¹³⁰ 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Codes 4812 and 4813 (SIC 4812 and SIC 4813, respectively).

business for purposes of the RFA.

Because the small incumbent LECs that would be subject to these rules are either dominant in their field of operations or are not independently owned and operated, consistent with our prior practice, they are excluded from the definition of "small entity" and "small business concerns."¹³¹ Accordingly, our use of the terms "small entities" and "small businesses" does not encompass small incumbent LECs.¹³² Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will consider small incumbent LECs within this analysis and use the term "small incumbent LECs" to refer to any incumbent LECs that arguably might be defined by SBA as "small business concerns."

The decisions made by the Commission in this Third Report and Order may apply to a variety of entities listed below.

Local Exchange Carriers. Neither the Commission nor SBA has developed a definition of small entity specifically applicable to providers of local exchange services. The closest applicable definition is that under SBA rules for telephone communications, except radiotelephone, SIC 4813, which defines a small entity as one with 1500 or fewer employees. The most reliable source of information regarding the number of LECs nationwide is the data that we collect annually in connection with the Telecommunications Relay Service (TRS). According to our most recent data, 1,347 companies reported doing business as LECs at the end of 1994.¹³³ Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1500 employees, we are unable at this time to estimate with any more certainty the number of LECs that would qualify as small business concerns. Consequently, we estimate that there are fewer than 1,347 small incumbent LECs that may be affected by the decision and rules adopted in this Third Report and Order.

Interexchange Carriers. Neither the Commission nor SBA has developed a definition of small entity specifically applicable to providers of interexchange services (IXCs). The closest applicable definition is that under SBA rules for telephone communications, except

¹³¹ See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15499 (1996) (First Interconnection Order), motion for stay of the FCC's rules pending judicial review denied, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Order, 11 FCC Rcd 11754 (1996), partial stay granted, Iowa Utilities Board v. FCC, No. 96-3321, 1996 WL 589204 (8th Cir. Oct. 15, 1996) (Iowa Utilities Board v. FCC) at paras. 1328-1330 and 1342.

¹³² See *id.* para. 1342.

¹³³ Federal Communications Commission, CCB, Industry Analysis Division, Telecommunications Industry Revenue: TRS Fund Worksheet Data, Tbl. 11 (Average Total Telecommunications Revenue Reported by Class of Carrier) (Dec. 1996) (TRS Worksheet).

radiotelephone, SIC 4813. The most reliable source of information regarding the number of IXC's nationwide is the data that we collect annually in connection with TRS. According to our most recent data, 130 companies reported that they were engaged in the provision of interexchange services and 30 companies reported that they were engaged in "other" toll services.¹³⁴ Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1500 employees, we are unable at this time to estimate with greater precision the number of IXC's that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 130 small entity IXC's and 30 "other" toll carriers that may be affected by the decision and rules adopted in this Third Report and Order.

Wireless Service Providers. Neither the Commission nor SBA has developed a definition of small entity specifically applicable to providers of wireless services. The closest applicable definition is that under SBA rules for radiotelephone communications, SIC 4812, which defines a small entity as one with 1500 or fewer employees. The 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, shows that only 12 radiotelephone firms out of a total of 1,176 such firms that operated during 1992 had 1,000 or more employees.¹³⁵ Therefore, even if all 12 of these large firms were radiotelephone companies, all of the remainder were small businesses under the SBA's definition. We assume that, for purposes of our evaluations and conclusions, in the FRFA all of the current radiotelephone licensees are small entities, as the term is defined by the SBA.

Competitive Access Providers. Neither the Commission nor SBA has developed a definition of small entity specifically applicable to providers of competitive access services (CAPs). The closest applicable definition is that under SBA rules for telephone communications, except radiotelephone, SIC 4813, which defines a small entity as one with 1500 or fewer employees. The most reliable source of information regarding the number of CAPs nationwide is the data that we collect annually in connection with TRS. According to our most recent data 57 companies reported that they were engaged in the provision of competitive access services.¹³⁶ Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1500 employees, we are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 57 small entity CAPs that may be affected

¹³⁴ *Id.* Firms filing TRS Worksheets are asked to select a single category that best describes their operation. As a result, some carriers describe themselves as IXC's, some as resellers, some as OSPs, and some as "other."

¹³⁵ U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92-S-1, subject series, Establishment and Firm Size, Table 5, Employment Size of Firms: 1992, SIC 4812 (issued May 1995).

¹³⁶ See TRS Worksheet.

by the decision and rules adopted in this Third Report and Order.

Operator Service Providers. Neither the Commission nor SBA has developed a definition of small entity specifically applicable to providers of operator services. The closest applicable definition is that under SBA rules for telephone communications, except radiotelephone, SIC 4813. The most reliable source of information regarding the number of operator service providers nationwide is the data that we collect annually in connection with TRS. According to our most recent data 25 companies reported that they were engaged in the provision of operator services.¹³⁷ Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1500 employees, we are unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 25 small entity operator service providers that may be affected by the decision and rules adopted in this Third Report and Order.

Pay Telephone Operators. Neither the Commission nor SBA has developed a definition of small entity specifically applicable to providers of pay telephone operator services. The closest applicable definition is that under SBA rules for telephone communications, except radiotelephone, SIC 4813. The most reliable source of information regarding the number of pay telephone operators nationwide is the data that we collect annually in connection with TRS. According to our most recent data, 271 companies reported that they were engaged in the provision of pay telephone services.¹³⁸ Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1500 employees, we are unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 271 pay telephone operators that may be affected by the decision and rules adopted in this Third Report and Order.

Resellers. Neither the Commission nor the SBA has developed a definition of small entity specifically applicable to resellers. The closest applicable definition is that under SBA rules for all telephone communications companies, SIC 4812 and SIC 4813, combined, both of which define a small entity as one with 1500 or fewer employees. The most reliable source of information regarding the number of resellers nationwide is the data that we collect annually in connection with TRS. According to our most recent data, 260 companies reported that they were engaged in the resale of telephone services.¹³⁹ Although it seems certain that some of these

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

carriers are not independently owned and operated, or have more than 1500 employees, we are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 260 small entity resellers that may be affected by the decision and rules adopted in this Third Report and Order.

Telecommunications Equipment Manufacturers. The SBA classifies manufacturers of telecommunications equipment in two categories, one for wireless and another for wireline.

(1) Wireline Telecommunications Equipment Manufacturers. Neither the Commission nor the SBA has developed a specific definition of small entities applicable to manufacturers of wireline telecommunications equipment. Therefore, we will utilize the SBA definition of manufacturers of Telephone and Telegraph Apparatus. According to the SBA's regulations, a small entity must have 1000 or fewer employees in order to qualify as a small business concern.¹⁴⁰ Census Bureau data indicates that there are 479 U.S. firms that manufacture telephone and telegraph equipment, and that 436 of these firms have fewer than 1000 employees and would be classified as small entities.¹⁴¹ The Census Bureau category is very broad, and specific figures are not available as to how many of these firms are manufacturers of wireline telecommunications equipment that would be subject to these rules or how many are independently owned and operated. Consequently, we estimate that there are fewer than 436 small manufacturers of wireline telecommunications equipment.

(2) Wireless Telecommunications Equipment Manufacturers. Neither the Commission nor the SBA has developed a specific definition of small entities applicable to manufacturers of wireless telecommunications equipment. Therefore, we will utilize the SBA definition of manufacturers of Radio and Television Broadcasting and Communications Equipment.¹⁴² According to the SBA's regulations, a small entity must have 750 or fewer employees in order to qualify as a small business concern.¹⁴³ Census Bureau data indicates that there are 858 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than

¹⁴⁰ 13 C.F.R. § 121.201, SIC 3661.

¹⁴¹ U.S. Dept. of Commerce, 1992 Census of Transportation, Communications and Utilities, Table 1D, (issued May 1995), SIC 3661.

¹⁴² This category excludes establishments primarily engaged in the manufacturing of household audio and visual equipment which is categorized as SIC 3651.

¹⁴³ 13 C.F.R. § 121.201, SIC 3663.

750 employees and would be classified as small entities.¹⁴⁴ The Census Bureau category is very broad, and specific figures are not available as to how many of these firms are manufacturers of wireless telecommunications equipment or how many are independently owned and operated. Consequently, we estimate that there are fewer than 778 small manufacturers of wireless telecommunications equipment.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements of the Rules

The Third Report and Order does not impose reporting or recordkeeping requirements on carriers or other telephone service providers in this proceeding. The order does however impose compliance requirements on carriers that meet certain criteria. In order to comply with the rules adopted in this proceeding, SS7-ready carriers serving Centrex systems, party lines, hotel or motel lines that are not served by a PBX, or PBX systems that pass end user CPN, must provide blocking and unblocking capabilities within one year from the date of release of this order.¹⁴⁵ Carriers must also comply with the ACR blocking requirement within six months of the date of release of this order.¹⁴⁶ LECs with SS7 switches without blocking and unblocking capabilities must provide blocking and unblocking capabilities within one year from the date of release of this order if they pass the CPN to an interconnecting carrier on an interstate call.¹⁴⁷ Additionally, PBX operators that pass the CPN to the public switched network are required to provide blocking and unblocking capabilities to system users.¹⁴⁸ We found that some blocking and unblocking requirements were necessary on these lines in order to protect the privacy interests of calling parties. We recognize, however, the potential costs of providing blocking and unblocking features on these lines, and therefore find that the features are only required when the end user CPN is actually passed to the public switched network.

E. Significant Alternatives Minimizing Impact on Small Entities

In this proceeding we have minimized the impact upon small business entities. Specifically, we exempt from the Caller ID rules payphone lines, LECs without blocking and unblocking

¹⁴⁴ U.S. Dept. of Commerce, 1992 Census of Transportation, Communications and Utilities, Table 1D, (issued May 1995), SIC 3663.

¹⁴⁵ See paras. 41-43, 50, and 55-56 in this order.

¹⁴⁶ See para. 60 in this order.

¹⁴⁷ See paras. 15-18 in this order.

¹⁴⁸ See paras. 41-42 in this order.

capabilities that do not pass CPN, and PBXs that do not pass end user CPN.¹⁴⁹ In reaching this decision we considered that the cost of providing blocking and unblocking features could be prohibitive for small business entities.¹⁵⁰ Thus, LECs without the blocking and unblocking capabilities are not required to purchase software to comply with the Section 64.1601 requirements. As another example, we reversed our decision in the May 5, 1995 Order that PSPs must provide per call blocking and per line unblocking capabilities on payphones. We found that providing these features on payphones could be cost prohibitive for PSPs, particularly independent PSPs that may not have the same cost recovery options as the LECs.¹⁵¹ We also found that these upgrade costs would be unnecessary in many cases due to the low CPN passage rate from payphones, and that requiring such costs would be inconsistent with the policy set forth in the May 5, 1995 Order, in which the Commission chose not to require carriers to invest in SS7 technology.¹⁵²

While we concluded that LECs serving hotel/motel lines, party lines, Centrex services, and PBXs that pass end user CPN must recognize blocking and unblocking requests, we did so only after considering the alternative of allowing CPN passage from these lines without any blocking capability. This alternative would be inconsistent with our interest in protecting privacy of end users. Likewise, we concluded that allowing automatic call return when the original caller requested privacy would violate that caller's privacy.¹⁵³ We grant all carriers, however, six months with which to comply with this requirement. The same consideration was applied to LECs without CLASS™ software who pass CPN. We determined that requiring blocking capabilities in these limited instances is the least intrusive and burdensome arrangement for protecting the privacy of end users. For example, we refrained from requiring LECs to upgrade a switch serving PBXs unless and until the owner/operator of a PBX served by that switch passes end user CPN to the public switched network.

F. Report to Congress

The Commission shall send a copy of this Final Regulatory Flexibility Analysis, along with this Third Report and Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A). A copy of this FRFA will also

¹⁴⁹ See paras. 30-35 in this order for the treatment of payphone issues, paras. 15-18 for LECs without blocking and unblocking capabilities, and paras. 41-43 for PBXs.

¹⁵⁰ See, e.g., paras. 16, 18, and 41 in this Third Report and Order.

¹⁵¹ See paras. 30-35 in this Third Report and Order.

¹⁵² See paras. 30-31 in this Third Report and Order.

¹⁵³ See para. 60 in this order.

be published in the *Federal Register*.

APPENDIX B: List of Parties**I. Parties filing Comments on the BellSouth Petition for Reconsideration of the May 5, 1995 Order:**

Ad Hoc Telecommunications Users Committee (Ad Hoc)
Ameritech (Ameritech)
American Public Communications Council (APCC)
Association of College and University Telecommunications Administrators, Inc. (ACUTA)
AT&T Corp. (AT&T)
Cincinnati Bell Telephone Company (Cincinnati Bell)
GTE Service Corporation (GTE)
Intellicall, Inc. (Intellicall)
MCI Telecommunications (MCI)
Northern Telecom Inc. (Nortel)
NYNEX Telephone Companies (NYNEX)
Pennsylvania Coalition Against Domestic Violence (PCADV)
Pennsylvania Public Utility Commission (PaPUC)
Survivors Against Abuse and Growing in Education (SAGE)
Sisters Overcoming Abusive Relationships (SOAR)
Southwestern Bell Telephone Company
Telecommunications Association (TCA)
Telecommunications Industry Association User Premises Equipment Division (TIA UPED)
U S WEST Communications, Inc. (U S WEST)
United States Telephone Association

II. Parties filing Comments on the Third Notice of Proposed Rulemaking (issued May 5, 1995).

Ad Hoc
APCC
ACUTA
AT&T
Cincinnati Bell
FBI
GTE
Intellicall
MCI

Nortel
NYNEX
PCADV
PaPUC
SAGE
SOAR
Southwestern Bell Telephone Company
TCA
TIA UPED
U S WEST
United States Telephone Association

**III. Parties filing Comments on the Third Notice of Proposed Rulemaking
(issued May 5, 1995).**

The National Telephone Cooperative Association
Nortel
The LEC Alliance
Pacific Telecom, Inc.
Sprint LECs (the United Central Telephone Companies)

APPENDIX C

Part 64 of the Commission's Rules and Regulations (chapter 1 of Title 47 of the Code of Federal Regulations, part 64) is amended as follows:

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

Authority: Section 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 225, 226, 227, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201-4, 218, 225, 226, 227 unless otherwise noted.

2. Subpart P is amended by revising paragraphs (a) and (b), and by adding paragraph (d)(1)-(4) to read as follows:

§ 64.1601 Delivery requirements and privacy restrictions.

(a) *Delivery.* Except as provided in paragraph (d), common carriers using Signaling System 7 and offering or subscribing to any service based on Signaling System 7 functionality are required to transmit the calling party number (CPN) associated with an interstate call to interconnecting carriers.

(b) *Privacy.* Except as provided in paragraph (d), originating carriers using Signaling System 7 and offering or subscribing to any service based on Signaling System 7 functionality will recognize *67 dialed as the first three digits of a call (or 1167 for rotary or pulse dialing phones) as a caller's request that the CPN not be passed on an interstate call. Such carriers providing line blocking services will recognize *82 as a caller's request that the CPN be passed on an interstate call. No common carrier subscribing to or offering any service that delivers CPN may override the privacy indicator associated with an interstate call. Carriers must arrange their CPN-based services, and billing practices, in such a manner that when a caller requests that the CPN not be passed, a carrier may not reveal that caller's number or name, nor may the carrier use the number or name to allow the called party to contact the calling party. The terminating carrier must act in accordance with the privacy indicator unless the call is made to a called party that subscribes to an ANI or charge number based service and the call is paid for by the called party.

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(d) *Exemptions.* § 64.1601(a)-(b) shall not apply when:

- (1) A call originates from a payphone.
- (2) A local exchange carrier with Signaling System 7 capability does not have the software to provide *67 or *82 functionalities. Such carriers are prohibited from passing CPN.
- (3) A Private Branch Exchange or Centrex system does not pass end user CPN. Centrex systems that rely on *6 or *8 for a function other than CPN blocking or unblocking, respectively, are also exempt if they employ alternative means of blocking or unblocking.
- (4) CPN delivery -
 - (i) is used solely in connection with calls within the same limited system, including (but not limited to) a Centrex system, virtual private network, or Private Branch Exchange;
 - (ii) is used on a public agency's emergency telephone line or in conjunction with 911 emergency services, or on any entity's emergency assistance poison control telephone line; or
 - (iii) is provided in connection with legally authorized call tracing or trapping procedures specifically requested by a law enforcement agency.