

§ 64.1201

47 CFR Ch. I (10–1–11 Edition)

person or entity, which relationship has not been previously terminated by either party.

(6) The term *facsimile broadcaster* means a person or entity that transmits messages to telephone facsimile machines on behalf of another person or entity for a fee.

(7) The term *seller* means the person or entity on whose behalf a telephone call or message is initiated for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.

(8) The term *sender* for purposes of paragraph (a)(3) of this section means the person or entity on whose behalf a facsimile unsolicited advertisement is sent or whose goods or services are advertised or promoted in the unsolicited advertisement.

(9) The term *telemarketer* means the person or entity that initiates a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.

(10) The term *telemarketing* means the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.

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

(12) The term *telephone solicitation* means the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person, but such term does not include a call or message:

- (i) To any person with that person's prior express invitation or permission;
- (ii) To any person with whom the caller has an established business relationship; or
- (iii) By or on behalf of a tax-exempt nonprofit organization.

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

(14) The term *personal relationship* means any family member, friend, or acquaintance of the telemarketer making the call.

(g) Beginning January 1, 2004, common carriers shall:

(1) When providing local exchange service, provide an annual notice, via an insert in the subscriber's bill, of the right to give or revoke a notification of an objection to receiving telephone solicitations pursuant to the national do-not-call database maintained by the federal government and the methods by which such rights may be exercised by the subscriber. The notice must be clear and conspicuous and include, at a minimum, the Internet address and toll-free number that residential telephone subscribers may use to register on the national database.

(2) When providing service to any person or entity for the purpose of making telephone solicitations, make a one-time notification to such person or entity of the national do-not-call requirements, including, at a minimum, citation to 47 CFR 64.1200 and 16 CFR 310. Failure to receive such notification will not serve as a defense to any person or entity making telephone solicitations from violations of this section.

(h) The administrator of the national do-not-call registry that is maintained by the federal government shall make the telephone numbers in the database available to the States so that a State may use the telephone numbers that relate to such State as part of any database, list or listing system maintained by such State for the regulation of telephone solicitations.

[68 FR 44177, July 25, 2003, as amended at 68 FR 59131, Oct. 14, 2003; 69 FR 60316, Oct. 8, 2004; 70 FR 19337, Apr. 13, 2005; 71 FR 25977, May 3, 2006; 71 FR 56893, Sept. 28, 2006; 71 FR 75122, Dec. 14, 2006; 73 FR 40185, July 14, 2008]

§ 64.1201 Restrictions on billing name and address disclosure.

(a) As used in this section:

(1) The term *billing name and address* means the name and address provided to a local exchange company by each of its local exchange customers to which the local exchange company directs bills for its services.

(2) The term “telecommunications service provider” means interexchange carriers, operator service providers, enhanced service providers, and any other provider of interstate telecommunications services.

(3) The term *authorized billing agent* means a third party hired by a telecommunications service provider to perform billing and collection services for the telecommunications service provider.

(4) The term *bulk basis* means billing name and address information for all the local exchange service subscribers of a local exchange carrier.

(5) The term *LEC joint use card* means a calling card bearing an account number assigned by a local exchange carrier, used for the services of the local exchange carrier and a designated interexchange carrier, and validated by access to data maintained by the local exchange carrier.

(b) No local exchange carrier providing billing name and address shall disclose billing name and address information to any party other than a telecommunications service provider or an authorized billing and collection agent of a telecommunications service provider.

(c)(1) No telecommunications service provider or authorized billing and collection agent of a telecommunications service provider shall use billing name and address information for any purpose other than the following:

(i) Billing customers for using telecommunications services of that service provider and collecting amounts due;

(ii) Any purpose associated with the “equal access” requirement of *United States v. AT&T* 552 F.Supp. 131 (D.D.C. 1982); and

(iii) Verification of service orders of new customers, identification of customers who have moved to a new address, fraud prevention, and similar nonmarketing purposes.

(2) In no case shall any telecommunications service provider or authorized

billing and collection agent of a telecommunications service provider disclose the billing name and address information of any subscriber to any third party, except that a telecommunications service provider may disclose billing name and address information to its authorized billing and collection agent.

(d) [Reserved]

(e)(1) All local exchange carriers providing billing name and address information shall notify their subscribers that:

(i) The subscriber’s billing name and address will be disclosed, pursuant to Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, CC Docket No. 91-115, FCC 93-254, adopted May 13, 1993, whenever the subscriber uses a LEC joint use card to pay for services obtained from the telecommunications service provider, and

(ii) The subscriber’s billing name and address will be disclosed, pursuant to Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, CC Docket No. 91-115, FCC 93-254, adopted May 13, 1993, whenever the subscriber accepts a third party or collect call to a telephone station provided by the LEC to the subscriber.

(2) In addition to the notification specified in paragraph (e)(1) of this section, all local exchange carriers providing billing name and address information shall notify their subscribers with unlisted or nonpublished telephone numbers that:

(i) Customers have a right to request that their BNA not be disclosed, and that customers may prevent BNA disclosure for third party and collect calls as well as calling card calls;

(ii) LECs will presume that unlisted and nonpublished end users consent to disclosure and use of their BNA if customers do not affirmatively request that their BNA not be disclosed; and

(iii) The presumption in favor of consent for disclosure will begin 30 days after customers receive notice.

(3) No local exchange carrier shall disclose the billing name and address information associated with any calling card call made by any subscriber who has affirmatively withheld consent

## § 64.1300

for disclosure of BNA information, or for any third party or collect call charged to any subscriber who has affirmatively withheld consent for disclosure of BNA information.

[53 FR 36145, July 6, 1993, as amended at 58 FR 65671, Dec. 16, 1993; 61 FR 8880, Mar. 6, 1996]

### Subpart M—Provision of Payphone Service

#### § 64.1300 Payphone compensation obligation.

(a) For purposes of this subpart, a Completing Carrier is a long distance carrier or switch-based long distance reseller that completes a coinless access code or subscriber toll-free payphone call or a local exchange carrier that completes a local, coinless access code or subscriber toll-free payphone call.

(b) Except as provided herein, a Completing Carrier that completes a coinless access code or subscriber toll-free payphone call from a switch that the Completing Carrier either owns or leases shall compensate the payphone service provider for that call at a rate agreed upon by the parties by contract.

(c) The compensation obligation set forth herein shall not apply to calls to emergency numbers, calls by hearing disabled persons to a telecommunications relay service or local calls for which the caller has made the required coin deposit.

(d) In the absence of an agreement as required by paragraph (b) of this section, the carrier is obligated to compensate the payphone service provider at a per-call rate of \$.494.

[71 FR 3014, Jan. 19, 2006]

#### § 64.1301 Per-payphone compensation.

(a) *Interim access code and subscriber 800 calls.* In the absence of a negotiated agreement to pay a different amount, each entity listed in Appendix A of the *Fifth Order on Reconsideration and Order on Remand* in CC Docket No. 96-128, FCC 02-292, must pay default compensation to payphone service providers for payphone access code calls and payphone subscriber 800 calls for the period beginning November 7, 1996, and ending October 6, 1997, in the

## 47 CFR Ch. I (10-1-11 Edition)

amount listed in Appendix A per payphone per month. A complete copy of Appendix A is available at [www.fcc.gov](http://www.fcc.gov).

(b) *Interim payphone compensation for inmate calls.* In the absence of a negotiated agreement to pay a different amount, if a payphone service provider providing inmate service was not compensated for calls originating at an inmate telephone during the period starting on November 7, 1996, and ending on October 6, 1997, an interexchange carrier to which the inmate telephone was presubscribed during this same time period must compensate the payphone service provider providing inmate service at the default rate of \$0.238 per inmate call originating during the same time period, except that a payphone service provider that is affiliated with a local exchange carrier is not eligible to receive payphone compensation prior to April 16, 1997, or, in the alternative, the first day following both the termination of subsidies and payphone reclassification and transfer, whichever date is latest.

(c) *Interim compensation for 0+ payphone calls.* In the absence of a negotiated agreement to pay a different amount, if a payphone service provider was not compensated for 0+ calls originating during the period starting on November 7, 1996, and ending on October 6, 1997, an interexchange carrier to which the payphone was presubscribed during this same time period must compensate the payphone service provider in the default amount of \$4.2747 per payphone per month during the same time period, except that a payphone service provider that is affiliated with a local exchange carrier is not eligible to receive payphone compensation prior to April 16, 1997, or, in the alternative, the first day following both the termination of subsidies and payphone reclassification and transfer, whichever date is latest.

(d) *Intermediate access code and subscriber 800 calls.* In the absence of a negotiated agreement to pay a different amount, each entity listed in Appendix B of the *Fifth Order on Reconsideration and Order on Remand* in CC Docket No. 96-128, FCC 02-292, must pay default compensation to payphone service providers for access code calls and