

40 CFR Part 180

[OPP-300088A; PH-FRL 2592-1]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Isopropylbenzene Sulfonic Acid and Its Ammonium, Calcium, Magnesium, Potassium, Sodium, and Zinc Salts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule exempts isopropylbenzene sulfonic acid and its ammonium, calcium, magnesium, potassium, sodium, and zinc salts from the requirement of a tolerance when used as a surfactant in pesticide formulations. This regulation was requested by Witco Chemical Corporation.

EFFECTIVE DATE: Effective on May 23, 1984.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

By Mail: N. Bhushan Mandava, Registration Support and Emergency Response Branch, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 716, CM #2, 1921-Jefferson Davis Highway, Arlington, VA 22202, 703-557-7700.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the Federal Register of March 14, 1984 (48 FR 9586), which announced that Witco Chemical Corporation, Houston, TX 77405, had requested that 40 CFR 180.1001(c) be amended by establishing an exemption from the requirement of a tolerance for isopropylbenzene sulfonic acid and its ammonium, calcium, magnesium, potassium, sodium, and zinc salts as surfactants and related adjuvants of surfactants in pesticide formulations applied to growing crops only.

Inert ingredients are ingredients that are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as water; baits such as sugar, starches, and meat scraps; dust carriers such as talc and clay; fillers; wetting and spreading agents; propellants in aerosol dispensers; and emulsifiers. The term "inert" is not

intended to imply nontoxicity; the ingredient may or may not be chemically active.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The pesticide is considered useful for the purpose for which the exemption is sought. It is concluded that the exemption from the requirement of a tolerance will protect the public health and is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: May 14, 1984.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.1001(d) is amended by adding and alphabetically inserting the inert ingredient isopropylbenzene sulfonic acid and its various salts, to read as follows:

180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
Isopropylbenzene sulfonic acid and its ammonium, calcium, magnesium, potassium, sodium, and zinc salts.		Surfactants and related adjuvants of surfactants.

[FR Doc. 84-13796 Filed 5-22-84; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6538

[I-15309]

Idaho; Public Land Order No. 6425; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order will correct an error in the land description of Public Land Order No. 6425 of July 11, 1983.

EFFECTIVE DATE: June 21, 1984.

FOR FURTHER INFORMATION CONTACT: Larry Lievsay, Idaho State Office, 208-334-1735.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

The Land description in Public Land Order No. 6425 of July 11, 1983, in FR Doc. 83-19678 published at page 33297 in the issue of Thursday, July 21, 1983, is corrected to read as follows:

On page 33297 in the first column, under T. 12 N., R. 19 E., the line reading "sec. 13, SE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ " should read, "sec. 13, SE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$."

May 16, 1984.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 84-13805 Filed 5-22-84; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 15

Rules and Regulations Governing Federal Emergency Management Agency Special Facility and Grounds

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Correction to final rule.

In FR Doc. 84-12975 at page 20498, column 2 the "EFFECTIVE DATE" should read "May 15, 1984" rather than "June 14, 1984".

FOR FURTHER INFORMATION CONTACT: George W. Watson (202) 287-0376.

Dated: May 16, 1984.

George Jett,
General Counsel.

[FR Doc. 84-13820 Filed 5-22-84; 8:45 am]
BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 536 and 580

[General Order 13, Revised, Docket No. 84-24]

Publishing and Filing Tariffs by Common Carriers in the Foreign Commerce of the United States

AGENCY: Federal Maritime Commission.

ACTION: Interim rules and request for comments.

SUMMARY: The Commission is revising its foreign tariff filing rules to bring them into conformity with the Shipping Act of 1984 and contemporary tariff filing practices. These interim new rules modify and add to definitions contained in the existing tariff filing rules, amend rules governing the filing of intermodal tariffs, delete references to dual rate contracts, make provision for time/volume and related contracts and implement the statutory exemptions. Additionally the tariff rules reflect previously applicable interpretations of the Shipping Act, 1916, as they pertain to tariffs filed pursuant to the Shipping Act of 1984.

DATES: Interim rules effective June 18, 1984. Comments due on or before June 22, 1984.

ADDRESS: Comments (Original and twenty (20) copies) to: Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573

FOR FURTHER INFORMATION CONTACT: Robert G. Drew, Director, Bureau of Tariffs, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573 (202) 523-5796.

SUPPLEMENTARY INFORMATION: The Shipping Act of 1984 (1984 Act) was enacted on March 20, 1984, and becomes effective on June 18, 1984, except for sections 17 and 18 thereof which became effective on enactment. Section 17 authorizes the Federal Maritime Commission to prescribe rules and regulations and interim rules and regulations to carry out the 1984 Act.

The 1984 Act requires both substantive and technical modifications to the Commission's tariff filing regulations, contained in 46 CFR Part 536. These modifications require revision of various other provisions of the Commission's rules and

interpretations, such as the Commission's Interpretations and Statements of Policy (46 CFR Part 530).

The Commission is, therefore, issuing these interim rules to implement the Shipping Act of 1984, Pub. L. 98-237, 98 Stat. 67 (46 U.S.C. app. 1701-1720). These rules are issued pursuant to section 17(b) of the 1984 Act in order that the Commission can perform its essential regulatory functions on and after June 18.

The Commission is requesting comments on these interim rules to assist it in developing final rules to supersede and, where necessary modify these interim rules. Accordingly, the public is provided with thirty days within which to comment on the interim rules, but, if anyone believes that there are serious problems created by these rules which should be addressed immediately, the Commission urges them to bring their concerns to the attention of the Commission, in writing, without prejudice to subsequently filing additional comments within the thirty day comment period.

The 1984 Act has made several substantial changes in the regulation of the oceanborne foreign commerce of the United States. The most substantive changes, insofar as they relate to tariff filing, involve through and exempt transportation, service and time/volume arrangements, loyalty contracts, penalty provisions and the statute of limitations for filing claims or complaints.

The filing of service contracts, time/volume contracts, time/revenue contracts is the subject of a separate rulemaking proceeding. Likewise, although this rule contains a definition of "loyalty contract," a rule pertaining to the use and filing of such "loyalty contracts" is the subject of a separate rulemaking proceeding. This proceeding will focus on the balance of the tariff filing rules.

The 1984 Act contains definitions for: common carrier, forest products, non-vessel-operating common carrier, ocean common carrier, person, shipment, shipper, through rate and through transportation. These definitions, as appropriate, are being added to the Commission's tariff filing rules.

Substantial modifications to the intermodal tariff filing rules have been made to accommodate the statutory scheme. Eliminated are any provisions which required a tariff to "breakout" or disclose the charge, rate or division for the inland transportation portion of a through intermodal or joint through rate or service. These proposals were previously advanced by the Commission in the now discontinued proceeding, Docket No. 84-3, *Publishing and Filing*

Tariffs by Common Carriers in the Foreign Commerce of the United States: Intermodal Tariff Filing Requirements—Exemption From Certain Statutory Requirements and Amendment of Tariff Filing Regulations (49 FR 7609, March 1, 1984), which should be referred to for further information.

The 1984 Act contains an exemption from tariff filing for cargo loaded and carried in bulk without mark or count. These provisions are identical to the exemption from tariff filing formerly contained in section 18(b)(1) of the Shipping Act, 1916 (1916 Act). The Commission has previously interpreted these provisions insofar as they apply to bulk cargo loaded into and carried in intermodal equipment (see 46 CFR 530.15). This interpretation has been incorporated into this rule.

Section 8(a)(1) of the 1984 Act expands the current tariff filing exemption for softwood lumber to include the broader category of forest products as defined in the statute and adds a new exemption for recyclable metal scrap, waste paper and paper waste. These changes have been incorporated into the rules.

The revised tariff filing rules also preserve previous exemptions granted from time to time by the Commission pursuant to section 35 of the 1916 Act. These exemptions were previously contained in § 536.1 and covered: foreign transshipped cargo (§ 536.1(a)); carriage of vehicles, passengers, buses and personal effects on vessels operated by the State of Alaska (§ 536.1(b)(1-2)); transportation of mail (§ 536.1(b)(3)); transportation by Incan Superior, Ltd. of cargo moving in railroad cars (§ 536.1(b)(4)); transportation by water of cargo moving in rail cars between British Columbia and United States ports and points (§ 536.1(b)(5)); transportation by water of cargo moving in bulk with count in rail cars between British Columbia, Canada and United States ports on Puget Sound (§ 536.1(b)(6)); transportation of used military household goods by non-vessel operating common carriers (§ 536.1(b)(7)); and controlled carriers when specific conditions are met (§ 536.1(d)). To these previous exemptions the Commission is proposing to add an exemption to permit points to be added to intermodal tariffs without providing the otherwise required thirty day notice. The new exemption will also be available to controlled carriers on a limited basis.

The Commission notes the similarity between sections 35 of the 1916 Act and section 16 of the 1984 Act. Section 16 contains all of the former criteria of

section 35 and adds the requirement that any exemption will not result in a "substantial reduction in competition." The 1984 Act criteria are met with respect to all of these exemptions. The removal of the requirement that carriers or conferences provide thirty days' notice prior to naming new intermodal points in their tariffs, will enable such carriers and conferences to promptly address changing transportation conditions without delay.

A number of technical modifications have been made in the tariff filing rules to conform them to either the new statutory provisions or to contemporary tariff filing practices. The modifications include: elimination of all references to temporary tariff amendments which have been abolished; elimination of the requirement for tariffs to contain a check sheet (a check sheet serves no regulatory purpose); deletion of the project rate provisions (they are now subsumed in either service or time/volume arrangements); and the elimination of any references to the 1916 Act. In addition, rules pertaining to the filing of per-container rates which were promulgated and subsequently suspended in Docket No. 81-50, *Per-Container Rates—Tariff Filing Requirements Applicable to Carriers and Conferences in the Foreign Commerce of the United States*, have been removed inasmuch as that proceeding has been discontinued.

This rule also reflects certain interpretations and clarifications contained in 46 CFR Part 530. The affected CFR provisions are: § 530.7 (carrier admission to a conference—new/initial rates); § 530.14 (disputes regarding the exercise of the right of independent action in tariff filing); and § 530.15 (bulk cargo in intermodal equipment).

The 1984 Act also increases the time period for filing complaints or overcharge claims with the Commission from two to three years. These changes are also reflected in the rules.

A new § 580.91 has been added to display the Office of Management and Budget's clearance numbers for information collection requirements. These are currently displayed in tabular form in § 503.91 of Title 46, Code of Federal Regulations, but the new separate section should be convenient, especially after the part is redesignated.

The Commission has determined that this interim rule is not a "major rule" as defined in Executive Order 12291 dated February 17, 1981, because it will not result in:

- (1) An annual effect on the economy of \$100 million or more;
- (2) A major increase in costs or prices for consumers, individual industries,

Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with Foreign-based enterprises in domestic or export markets.

The Commission certifies that this interim rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small governmental jurisdictions.

The collection of information requirements contained in paragraph 580.8 (b) and (c) of this rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3504(h)). Comments on the information collection aspects of this rule should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Federal Maritime Commission.

List of Subjects in 46 CFR Parts 536 and 580

Cargo; Cargo vessels; Exports; Harbors; Imports; Maritime carriers; Rates and fares; Reporting and recordkeeping requirements; Water carriers; Water transportation.

For the reasons set out in the *Supplementary Information*, Part 536 of Title 46 of the Code of Federal Regulations is transferred to Subchapter D, redesignated, and amended as follows:

PART 536—PUBLISHING AND FILING TARIFFS BY COMMON CARRIERS IN THE FOREIGN COMMERCE OF THE UNITED STATES

1. Part 536 of 46 CFR, Chapter IV, is redesignated as Part 580 and added to Subchapter D and all internal references are changed.

PART 580—[AMENDED]

2. In Part 580, revise the authority citation to read as follows and remove all other authority sections:

Authority: 5 U.S.C. 533; secs. 4, 5, 6, 8, 9, 10, 15, 16, and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1703-1705, 1707, 1708, 1709, and 1714-1716).

3. Insert the word "common" before the word "carrier" or "carriers" wherever it appears in part 580.

§ 580.0 [Amended]

4. In § 580.0(a) remove "Shipping Act, 1916" and insert: "Shipping Act of 1984".

5. In § 580.0(b):

a. Remove "Section 18(b) of the Shipping Act", and insert "section 8 of the Shipping Act of 1984";

b. Remove, "sections 14(b) and 18(c)" and insert "sections 9, 10 and 16";

c. Remove "reasonable" and insert "unreasonable"; and

d. Remove "Shipping Act sections 15, 16 and 17." and insert "Section 10 of the Shipping Act of 1984."

6. In § 580.0(c) remove "day the violation continues (46 U.S.C. 817 (b)(4), (b)(6))." and insert "violation unless the violation was willfully and knowingly committed, in which case the amount of civil penalty may not exceed \$25,000 for each violation. Each day of a continuing violation constitutes a separate offense. Additionally, the Commission may suspend any or all tariffs of the common carrier, or that common carrier's right to use any or all tariffs of conferences of which it is a member, for a period not to exceed 12 months."

7. In § 580.1 redesignate paragraphs (a)-(d) as paragraphs (b)-(e) and add a new paragraph (a) to read as follows:

§ 580.1 Exemptions and exclusions.

(a) This part does not apply to bulk cargo, forest products, recyclable metal scrap, waste paper and paperwaste.

8. In § 580.1(b)(6) remove "Shipping Act, 1916" and insert "Shipping Act of 1984".

9. In § 580.1(d)(1)(iii) remove "Shipping Act section 18(b)" and insert "the Shipping Act of 1984".

10. In § 580.1(e)(1)(iii) remove "approved under section 15 of the Act."

11. Revise § 580.2 to read as follows:

§ 580.2 Definitions.

The following definitions of terms shall apply unless otherwise indicated by the context of this part.

(a) *Act*. The Shipping Act of 1984.

(b) *Bulk cargo*. Cargo that is loaded and carried in bulk without mark or count. Bulk cargo loaded into intermodal equipment is subject to mark and count and is therefore, subject to the tariff filing requirements of this part.

(c) *Class rates*. Rates applicable to all articles which have been grouped or "classified" together in a classification tariff or a classification section of a rate tariff.

(d) *Commodity rates*. Rates applying on a commodity or commodities specifically named or described in the tariff in which the rate or rates are published.

(e) *Common carrier*. A person holding itself out to the general public to provide transportation by water of passengers or

cargo between the United States and a foreign country for compensation that:

(1) Assumes responsibility for the transportation from the port or point of receipt to the port or point of destination, and

(2) Utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country.

(f) *Conference*. An association of ocean common carriers permitted, pursuant to an approved or effective agreement, to engage in concerted activity and to utilize a common tariff; but the term does not include a joint service, consortium, pooling, sailing, or transshipment arrangement.

(g) *Controlled carrier*. An ocean common carrier that is, or whose operating assets are, directly or indirectly, owned or controlled by the government under whose registry the vessels of the carrier operate; ownership or control by a government shall be deemed to exist with respect to any carrier if:

(1) A majority portion of the interest in the carrier is owned or controlled in any manner by that government, by any agency thereof, or by any public or private person controlled by that government; or

(2) That government has the right to appoint or disapprove the appointment of a majority of the directors, the chief operating officer, or the chief executive officer of the carrier.

(h) *Forest products*. Forest products in an unfinished or semifinished state that require special handling moving in lot sizes too large for a container, including, but not limited to lumber in bundles, rough timber, ties, poles, piling, laminated beams, bundled siding, bundled plywood, bundled core stock or veneers, bundled particle or fiber boards, bundled hardwood, wood pulp in rolls, wood pulp in unitized bales, paper board in rolls, and paper in rolls.

(i) *Joint rates*. Rates or charges established by two or more common carriers for ocean transportation over the combined routes of such carriers.

(j) *Local rates*. Rates or charges for transportation over the route of a single common carrier (or any one common carrier participating in a conference tariff), the application of which is not contingent upon a prior or subsequent movement.

(k) *Loyalty contract*. A contract with an ocean common carrier or conference by which lower rates are obtained in exchange for a commitment of all or a fixed portion of a shipper's cargoes. A loyalty contract does not require a specific quantity of cargo to be shipped

over a stated period of time, nor does it commit a common carrier or conference to a given or specific level of service or performance.

(l) *Non-vessel-operating common carrier*. A common carrier that does not operate the vessels by which the ocean transportation is provided, and is a shipper in its relationship with an ocean common carrier.

(m) *Ocean common carrier*. A vessel-operating common carrier; but the term does not include one engaged in ocean transportation by ferry boat or ocean tramp.

(n) *Ocean freight forwarder*. A person in the United States that:

(1) Dispatches shipments from the United States via common carriers and books or otherwise arranges space for those shipments on behalf of shippers; and

(2) Processes the documentation or performs related activities incident to those shipments.

(o) *Open rate*. A rate on a specified commodity or commodities over which a conference relinquishes or suspends its ratemaking authority, in whole or in part, thereby permitting each individual common carrier member of the conference to fix its own rates on such commodity or commodities.

(p) *Open for public inspection*. The maintenance of a complete and current set of the tariffs used by a common carrier, or to which it is a party, in each of its offices and those of its agent in any city where it transacts business involving such tariffs.

(q) *Person*. Includes individuals, corporations, partnerships, and associations existing under or authorized by the laws of the United States or of a foreign country.

(r) *Proportional rates*. Rates or charges assessed by a common carrier for transportation services, the application of which are conditioned upon a prior or subsequent movement.

(s) *Shipment*. All of the cargo carried under the terms of a single bill of lading.

(t) *Shipper*. An owner or person for whose account the ocean transportation of cargo is provided or the person to whom delivery is to be made.

(u) *Tariff*. A publication containing the actual rates, charges, classifications, rules, regulations, and practices of a common carrier or conference of carriers. For the purposes of this part, the term "practice" refers to those usages, customs or modes of operation which in any way affect, determine or change the transportation rates, charges or services provided by a common carrier, and, in the case of conferences, must be restricted to activities

authorized by the basic conference agreement.

(v) *Tariff filing*. Any tariff, or modification thereto, which is received by the Commission as filed pursuant to these rules.

(w) *Tariff filing, Electronic*. The transmission of tariff filings to the Commission through the use of commercial data processing terminals. The data processing receiving terminal(s) are to be located in the Commission's Washington, D.C. offices. Tariff material filed electronically must conform to all the regulations applicable to permanent tariff filings, except as follows:

(1) Electronically filed tariff pages received from data processing terminals may be used for filing with the Commission; and

(2) Electronically filed tariff matter shall be accompanied by an electronically filed letter of transmittal.

(x) *Through rate*. The single amount charged by a common carrier in connection with through transportation.

(y) *Through transportation*. Continuous transportation between origin and destination for which a through rate is assessed and which is offered or performed by one or more carriers, at least one of which is a common carrier, between a United States point or port and a foreign point or port.

§ 580.3 [Amended]

12. In § 580.3(e) remove "except temporary filings as permitted hereinafter in § 580.10(c)(1)".

13. In § 580.3(f) remove "including temporary filings by mail pursuant to § 580.10(c)(1) of this part," and, "Provided, however, that temporary filings made by telegraph or cable pursuant to § 580.10(c)(1) need not be submitted in duplicate or triplicate" and remove the semicolon at the end of "triplicate" and insert a period.

14. In § 580.3(i) remove "section 18(b)" and insert "section 8(a)(1)".

15. In § 580.3(j) remove "section 18(b)" and insert "section 8(a)," and remove "approved" wherever it appears.

16. In § 580.3(j) remove the last sentence.

17. In § 580.3(l) remove "sections 14(b), 18(b), or 18(c) of".

§ 580.4 [Amended]

18. In § 580.4(e) remove "each vessel operating common carrier's" and insert, "the".

19. In § 580.4(e) remove "United States Shipping Act, 1916," and "Shipping Act Amendments of 1979, Pub. L. 96-25, 93 Stat. 71, and the regulations of the

Commission set forth in 46 CFR Part 552." and insert "Shipping Act of 1984."

20. Amend § 580.4(f) by removing "Check Sheet." and adding at the end of the paragraph, "Appendices of Essential Terms for Service Contracts/Time Volume Contracts."

§ 580.5 [Amended]

21. Amend § 580.5(a)(1) by removing "approved under section 15 of the Act," and in the third sentence removing "section 18(c)" and inserting "section 9".

22. Amend § 580.5(c)(2) by removing "United States Shipping Act, 1916," and "Shipping Act Amendments of 1979, Public Law 96-25, 93 Stat. 71, and the regulations of the Commission set forth in 46 CFR 552." and inserting "Shipping Act of 1984."

23. Remove § 580.5 (d)(13) and (d)(14).

24. In § 580.5, paragraph (d), redesignate (d)(15)-(d)(18) as paragraphs (d)(13)-(d)(16).

25. Redesignate § 580.5(d)(19) as § 580.5(d)(17) and amend as follows:

a. Revise the heading to read: "Shippers requests, consultations and complaints."

b. Remove "with § 527.6 of the Commission's rules," and insert "with the effective agreement's provisions,"

c. Add after "complaints," the phrase "and now they may engage in consultation under section 5(b)(6) of the Act."

26. Redesignate § 580.5(d)(20) as § 580.5(d)(18), and remove in the first sentence of the introductory text "two years" and insert "three years".

27. Amend § 580.5(d)(18)(i) by removing "section 22 of the Shipping Act, 1916 (46 U.S.C. 821)" and inserting "section 11(g) of the Shipping Act of 1984," in the first sentence, and by removing "two" and inserting "three," in the second sentence.

28. Amend § 580.5(d)(18)(ii) by removing "Shipping Act, 1916," and inserting "Shipping Act of 1984."

29. Amend § 580.5(e) by removing "commencing with number 21." and inserting a period.

§ 580.6 [Amended]

30. Amend § 580.6(n) by removing "section 18(c) of the Shipping Act, 1916," and inserting "section 9 of the Shipping Act of 1984," in the last sentence.

31. Amend § 580.6(o) by removing the word "Temporary," and capitalizing "Special" in the introductory text.

32. Remove § 580.6(o)(2).

33. Revise § 580.8 to read as follows:

§ 580.8 Intermodal tariffs.

(a) *Definitions.* The following definitions shall apply for purposes of this section:

(1) *Contracting Carrier.* A carrier which performs part of a through intermodal service in the capacity of a subcontractor on behalf of and in the name of a common carrier which is subject to the Act.

(2) *Joint through intermodal rate.* A single charge jointly established by two or more carriers, one of which is a common carrier subject to the Act, for through transportation over the combined routes of such carriers, between (i) points in the United States and ports in a foreign country; (ii) points in the United States and points in a foreign country; or (iii) ports in the United States and points in a foreign country. Tariffs which name joint rates must also list the participating carriers.

(3) *Participating Carrier.* A carrier that holds itself out to perform a portion of a joint through intermodal service.

(4) *Through intermodal rate.* A single charge established by a common carrier(s) subject to the Act, which covers a through service, part of which is performed by a contracting carrier or carriers, for through transportation over the combined routes of such carriers, between (i) points in the United States and ports in a foreign country; (ii) points in the United States and points in a foreign country; or (iii) ports in the United States and points in a foreign country.

(5) *Through route.* An arrangement for the continuous carriage of goods between points of origin and destination either or both of which lie beyond port terminal areas.

(b) *Intermodal tariff filing requirements.* Every common carrier and conference subject to the Act, which establishes through intermodal rates and/or joint through intermodal rates, shall file tariffs stating all such rates and related charges, rules, regulations, privileges or facilities, granted or allowed. Such tariffs shall be filed and maintained in the manner set out in the Act, and in accordance with the rules of this part. Intermodal tariffs shall be filed in the name of the common carrier or conference subject to the Act. Intermodal tariffs shall be initially filed on thirty days' notice as provided by sections 8 or 9 of the Act, unless a shorter notice is permitted pursuant to special permission. In addition, such tariffs shall contain the following provisions:

(1) A notation on the Title Page that the publication contains through intermodal rates and/or joint through intermodal rates. Also, an identification of the modes of service, i.e., rail-water, water-motor, etc., shall be shown.

(2) A list, either on the Title Page or on an interior page referenced on the

Title Page, of all ports or points to, from and between which the rates apply and the ports through which cargo originating or terminating in such places shall move. Each port or point served shall be described by its commonly used geographic name. When rates are established which apply from, to, or between all points within a named region; for example, a county, township, parish or province, such region must be identified with the state, province, and county in which the region is located.

(3) A contract of affreightment clearly setting forth through liability which is consistent with the holding out provided by the application of the rates and conditions of the tariff.

(4) In the case of joint through intermodal rates, the names of all participating carriers and a clear description of the services performed by such participating carriers which are included in the through rates. Points served by each participating carrier must be so specified.

(c) *Amendments to intermodal tariffs.* Common carriers and conferences of such carriers publishing amendments to intermodal tariffs which provide for new or initial joint through intermodal rates and/or through intermodal rates are exempt from the 30 day filing notice requirements of section 8 or 9 of the Shipping Act of 1984. *Provided, however,* That amendments filed pursuant to this exemption shall not become effective earlier than upon publication and filing or some time interval less than 30 days. *Provided, further* that amendments filed by controlled carriers, subject to section 9, Shipping Act of 1984 may be filed only when such amendments provide for rates which meet but do not go below those previously established by non-controlled carriers. Each amendment filed by a controlled carrier under authority of this exemption shall bear the following notation: "Filed pursuant to 46 CFR 580.8(c)."

§ 580.10 [Amended]

34. Amend § 580.10(a)(2) by removing its second sentence.

35. Amend § 580.10(a)(3) by removing "section 18(c) of the Shipping Act, 1916" in the last sentence and inserting "section 9 of the Shipping Act of 1984".

36. Amend § 580.10(b)(4) by removing "Section 18(b) and 18(c)" and inserting "sections 8 and 9".

37. Remove § 580.10(b)(10).

38. Amend § 580.10 (d)(1) and (d)(2) in the introductory text by removing "sections 18(b)a, 18(c) and 14b of".

39. Remove § 580.12.

§ 580.15 [Amended.]

40. Amend § 580.15(a) by removing in the first sentence, "section 18(b)," and inserting "section 8(d)".

41. Amend § 580.15(a) by removing, in the second sentence "section 18(c)(3)," and inserting "section 9(c)".

42. Add § 580.91 to read as follows:

§ 580.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

This section displays the control numbers assigned to information collection requirements of the Commission in this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96-511. The Commission intends that this section comply with the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget (OMB) for each agency information collection requirement:

Section	Current OMB control no.
580.3	3072-0009
580.8 through 580.15	3072-0009

By the Commission.

Francis C. Hurney,
Secretary.

[FR Doc. 84-13827 Filed 5-18-84; 3:47 pm]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 0**

[Gen. Docket No. 83-975; FCC 84-217]

Amendment of the Commission's Rules Regarding Confidential Treatment of Information Submitted to the Commission

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document modifies the standard by which the Commission grants confidential status to certain documents submitted to the Commission. Our previous standard required a demonstration of "clear and convincing" evidence that the documents were confidential. This action modifies the relevant standard to the less rigorous "preponderance of the evidence" test. The "preponderance of the evidence" test is more in line with other agency requirements, and is the ordinary civil standard of proof.

EFFECTIVE DATE: These rules become effective on June 25, 1984.

FOR FURTHER INFORMATION CONTACT: Randy W. Thomas, Office of General Counsel, Federal Communications Commission, Washington, D.C. 20554, (202) 632-6990.

SUPPLEMENTARY INFORMATION:**List of Subjects in 47 CFR Part 0**

Freedom of Information.

Report and Order

In the matter of amendment of the Commission's rules regarding confidential treatment of information submitted to the Commission (Gen. Docket No. 83-975).

Adopted: May 14, 1984.

Released: May 18, 1984.

By the Commission.

I. Introduction

1. Before the Commission is the *Notice of Proposed Rule Making*, 48 FR 43353-43355, published September 23, 1983, and the comments filed in response thereto. In the *Notice*, the Commission sought comment on whether the standard for according confidential treatment to documents submitted to the agency should be revised. Documents that are not deemed to be confidential are generally subject to the mandatory disclosure provisions of the Freedom of Information Act ("FOIA"). 5 U.S.C. 552(b)(4).¹

2. The standard that has governed the Commission's evaluation of requests for confidentiality of documents from 1975 to the present is articulated in terms of a "clear and convincing" test. 47 CFR 0.459(d). The Commission Bureau or Office Chief that receives such requests has delegated authority to make the initial determination regarding confidentiality requests. *Id.* If the submitter is dissatisfied with the Bureau Chief's initial determination, Commission review may be sought. See 47 CFR 1.115.

3. We have carefully reviewed the comments and reply comments filed in this proceeding. The comments indicate that a change in our confidentiality standard is warranted. Consequently, based upon our analysis of the comments and our own independent review of the issues raised in the *Notice*, we have determined to modify our confidentiality standard as set forth below.

II. Comments

4. Nine comments and four reply comments were received in response to

our *Notice*.² All of the participants favored relaxation of the current "clear and convincing" standard now governing the granting of confidential status for documents submitted to the Commission. In addition, the majority of commenters favored the specific proposal in the *Notice* to change the confidentiality test from "clear and convincing" to "preponderance of the evidence."³

5. A variety of reasons were advanced in the comments for adopting a standard less rigorous than the clear and convincing test. Initially, it was recognized that a relaxation of the confidentiality standard would encourage a free flow of information to the Commission from those it regulates.⁴ Several commenters, including ASC at 3-4; American Telephone and Telegraph Co. ("AT&T") at 2-3; AT&T Reply at 3; CONTEL at 5; GTE at 2; and Pepper at 3 indicated that by easing the confidentiality standard, competitively significant information could be protected from competitors who would seek to exploit such information. A final compelling reason for relaxation of the current standard is that it is more rigorous than the confidentiality standard used by other federal agencies. Comments of AT&T at 4-5; ASC at 4; CONTEL at 1-2; NAB at 3-4; Pepper at 3; and Southwestern at 3.

6. Both AT&T and NAB endorsed the reexamination of our confidentiality standard. Those commenters, however, suggested that the Commission's proposal did not go far enough. NAB proposed the use of a "substantial evidence" test for granting confidentiality to documents. NAB at 4-5. Although NAB did not elaborate on the specific operation of their proposal, the suggestion was made that the "substantial evidence" test would be similar to the Environmental Protection Agency's requirement of a "satisfactory showing" for non-disclosure.⁵

² See Appendix A for a list of participants in this proceeding.

³ Initial comments of American Broadcasting Companies, Inc. ("ABC"); American Satellite Company ("ASC"); Continental Telecom, Inc. ("CONTEL"); GTE Service Corporation ("GTE"); National Radio Broadcasters Association ("NRBA"); Pepper, Hamilton & Scheetz ("Pepper"); and Southwestern Bell Telephone Company ("Southwestern").

⁴ Comments of ABC at 2-3 (citing 9 to 5 *Organization for Women Office Workers v. Board of Governors*, 551 F. Supp. 1006, 1010 (D. Mass. 1982); CONTEL at 5; GTE at 2; NRBA at 3; National Association of Broadcasters ("NAB") at 2.

⁵ NAB at 4. The applicable EPA regulation is codified at 40 CFR 2.208.

¹ Exemption 4 of the FOIA generally allows the withholding of "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. 552(b)(4).

7. AT&T received support in the reply comments for its proposal.⁶ Essentially, AT&T proposed the adoption of a good faith test for granting confidentiality. Specifically, AT&T proposed that the Commission grant confidentiality if a submitter of information makes a good faith request and:

- indicates the materials are confidential;
- reasonably segregates nonconfidential from confidential material;
- places a proprietary mark on the materials; and
- declares that such information is not publicly available.

AT&T at 7.

8. It is asserted by AT&T that the Commission should grant confidentiality upon a good faith request because the confidential nature of documents changes over time, resources of both the agency and submitter would be conserved and a specific analysis of the confidentiality request need not be made until a FOIA request is received.

9. Moreover, AT&T argues that the "preponderance of the evidence" standard is inappropriate because it presupposes an adversarial context between antagonistic parties. AT&T correctly points out that FOIA confidentiality requests are not generally decided in an adversarial context.

10. As an alternative to its good faith proposal, AT&T proposed the use of a *prima facie* standard, which would require a substantiation at the time of submission of information that in the Commission's judgment would likely withstand a court test. AT&T comments at 9.

III. Analysis and Discussion

11. On the basis of the record before us, we are convinced that a change in our standard for granting confidential treatment to documents is warranted. It appears that our current standard is unnecessarily high, inconsistent with other agency standards, stricter than the ordinary civil standard of proof⁷ and may present a disincentive for the free flow of information between industry and government.

12. Based upon the record before us, we believe that the public interest will be served by adopting a "preponderance

of the evidence" test for granting confidentiality to documents submitted to the Commission. Although AT&T's proposal for a good faith test is appealing, we find it impractical because of the administrative burden it would place on the Commission. Under AT&T's proposal, the Commission would have to go back to the submitter of information after a FOIA request has been filed and, within the FOIA ten working day time frame,⁸ obtain the justification for continuing the confidential status of the information. Based upon our experience in responding to FOIA requests, the ten working day period would provide insufficient time to contact the submitter of information and formulate a reply to the FOIA requestor.

13. Similarly, we find AT&T's alternative proposal—the *prima facie* test—and NAB's substantial evidence test to be impractical. In order to respond to FOIA requests within ten working days,⁹ we believe it is necessary to require a preponderance of the evidence showing justifying confidential treatment at the time documents are submitted to the Commission.¹⁰ Consequently, although we recognize that the confidential nature of certain information may change over time, we believe a confidentiality substantiation should be submitted with the information and retained in the files. As we develop experience with the new "preponderance of the evidence" confidentiality standard, we may, of course, revisit the issue to determine if further relaxation of the standard is warranted.

14. Finally, as both ABC and AT&T correctly point out, Rule 0.459(e) is not at issue in this proceeding. That Rule provides that if information is submitted voluntarily (absent a Commission directive) to the Commission, the submitter may request that the information be returned if the request for confidentiality is denied. 47 CFR 0.459(e).

⁶ 5 U.S.C. 552(a)(6)(A)(i).

⁷ An agency may take an additional period of time, not to exceed ten working days, only in unusual circumstances, such as when it is necessary to collect records from field facilities, search for and examine a voluminous amount of material, or consult with another interested agency. 5 U.S.C. 552(a)(6)(B)(i)–(iii).

⁸ The preponderance of evidence test is the relevant burden of proof that the Government must satisfy in 5 U.S.C. 552(b)(4) litigation to show that the withheld information is indeed confidential. *9 to 5 Organization for Women Office Workers v. Board of Governors*, 551 F. Supp. 1006, 1008 (D. Mass. 1982), *vacated and remanded on other grounds*, 721 F.2d 1 (1983); *Doherty v. FTC*, 1981-1 Trade Cases (CCH) ¶64, 117 (D.D.C. June 24, 1981); *Braintree Elec. Light Dept. v. Dept. of Energy*, 494 F. Supp. 287, 289 (D.D.C. 1980).

IV. Conclusion

15. As explained above, we believe that the modification of the confidentiality standard is in the public interest. By adopting the less restrictive "preponderance of the evidence" standard, we hope to encourage the free flow of information to the Commission while providing adequate safeguards to sensitive business data and preventing needless burdens on submitters of information.

16. Regulatory Flexibility Act—Final Analysis. The rule change effected herein is appropriate in view of the record developed in this proceeding. The less restrictive "preponderance of the evidence" standard for granting confidentiality will serve the public interest in a number of beneficial ways. Small business entities should find that this rule change is beneficial because it will make it easier to acquire confidential treatment for information submitted to the Commission.

17. Two comments were received that directly addressed the initial regulatory flexibility analysis. NAB indicated that our initial flexibility analysis may have been flawed for failure to include alternative proposals such as their "substantial evidence" proposal. Another commenter, Southwestern Bell, indicated that our regulatory flexibility analysis was adequate. In any event, three alternatives to our initial proposal have been considered and evaluated. We have declined to implement those proposed alternatives because we consider them unworkable in view of the relatively short response deadlines imposed by the FOIA.

18. Accordingly, in view of the foregoing and pursuant to the authority contained in 47 U.S.C. 154(i), 154(j), and 303(r), and 5 U.S.C. 552, it is ordered that the action taken herein is effective June 25, 1984.

19. Contact Randy W. Thomas, Office of General Counsel, (202) 632-6990 for further information regarding this proceeding.

Federal Communications Commission.
William J. Tricarico,
Secretary.

Appendix A

Gen. Docket No. 83-975; Comments

1. American Broadcasting Companies, Inc.
2. American Satellite Company.
3. American Telephone & Telegraph Co.
4. Continental Telecom, Inc.
5. GTE Service Corporation.

⁶ See Reply Comments of CONTEL, Pacific Telephone and Telegraph Company and Bell Telephone Company of Nevada (filing jointly); and United Telecommunications, Inc.

⁷ The preponderance of the evidence standard is the traditional standard used in civil and administrative proceedings and is the one contemplated by the Administrative Procedure Act. *Steadman v. SEC*, 450 U.S. 91, 102-04 (1981); *Sea Island Broadcasting Corp. v. FCC*, 627 F.2d 240, 243 (D.C. Cir. 1980).

6. National Association of Broadcasters.
7. National Radio Broadcasters Association.
8. Pepper, Hamilton & Scheetz.
9. Southwestern Bell Telephone Company.

Reply Comments

1. American Telephone & Telegraph Co.
2. Continental Telecom, Inc.
3. Pacific Telephone and Telegraph Company and Bell Telephone Company of Nevada (filing jointly).
4. United Telecommunications, Inc.

Appendix B

Rule Revision

PART 0—COMMISSION ORGANIZATION

Subpart C—General Information

1. In § 0.459, paragraph (d) is revised to read as follows:

§ 0.459 Requests that materials or information submitted to the Commission be withheld from public inspection.

(d) Requests which comply with the requirements of paragraphs (a) and (b) of this section will be acted on by the appropriate Bureau or Office Chief, who is directed to grant the request if it presents by a preponderance of the evidence a case for non-disclosure consistent with the provisions of the Freedom of Information Act, 5 U.S.C. 552. * * *

[FR Doc. 84-13815 Filed 5-22-84; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 68

[CC Docket No. 81-216; FCC 84-182; RM-2845, 2930, et al.]

Petitions Seeking Amendment Rules Concerning Connection of Telephone Equipment, Systems and Protective Apparatus to the Network and Notice of Inquiry Into Standards for Inclusion of One and Two-Line Business and Residential Premises Wiring and Party-Line Service

AGENCY: Federal Communications Commission.

ACTION: First report and order.

SUMMARY: This action adopts a program under which one and two-line (non-system) telephone premises wiring may be provided and directly connected to

the nationwide telephone network by entities other than telephone companies. It also adopts a definition of the "demarcation point" where customer-owned wiring interconnects with telephone company wiring and where the respective responsibilities are divided. This action is necessary to provide customers the option of installing their own non-system telephone wiring.

DATE: This order is effective August 21, 1984.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Fern J. Jarmulnek, Common Carrier Bureau, (202) 634-1682.

List of Subjects in 47 CFR Part 68 Telephone.

First Report and Order

In the matters of Petitions Seeking Amendment of Part 68 of the Commission's Rules Concerning Connection of Telephone Equipment, Systems and Protective Apparatus to the Telephone Network and Notice of Inquiry into Standards for Inclusion of One and Two-Line Business and Residential Premises Wiring and Party Line Service in Part 68 of the Commission's Rules CC Docket No. 81-216, RM-2845, RM-2930, RM-3195, RM-3206, RM-3227, RM-3283, RM-3316, RM-3329, RM-3348, RM-3501, RM-3526, RM-3530, RM-4054.

Adopted: April 26, 1984.

Released: May 18, 1984.

I. Introduction

1. This *First Report and Order* adopts final rules pursuant to a *Second Notice of Proposed Rulemaking and Order* in CC Docket No. 81-216 (Second Notice), 92 FCC 2d 1 (1982), which requested final comment on proposed changes in Part 68 of the Commission's rules. The Commission's Part 68 program provides the technical and procedural standards under which telephone equipment, systems and apparatus (in the aggregate "premises equipment" or "CPE") may be directly connected to the nationwide network. Under current Part 68 rules, subscribers may install multi-line wiring¹ under the supervision of a properly authorized person or a professional engineer licensed in the jurisdiction where the wiring is installed.² The Second Notice proposed

¹ Multi-line wiring refers to telephone wiring associated with private branch exchange (PBX) and key telephone systems, i.e., system wiring. It involves three or more central office lines.

² See 47 CFR 68.215(c); Interstate and Foreign Message Toll Telephone Service (Third Report and Order), 67 FCC 2d 1255 (1978); Interstate and Foreign Message Toll Telephone Service (Memorandum Opinion and Order), 70 FCC 2d 1800 (1979).

to expand Part 68 to permit the installation of business and residential one and two-line (non-system) customer-owned premises wiring (COPW).³

2. The Second Notice followed a *Notice of Proposed Rulemaking and Notice of Inquiry* in CC Docket No. 81-216, 85 FCC 2d 868 (1981) (First Notice), which requested, in its NOI portion, public comment on (1) whether Part 68, should be structured to accommodate one and two-line non-system wiring, and, if so, what kinds of institutional controls should be utilized, and (2) alternative vehicles for including party line service under Part 68.⁴ Based on the comments received in response to the First Notice, the Second Notice proposed the inclusion on non-system wiring in Part 68, and suggested various standards to assure that non-system COPW does not cause harm to the network. The Second Notice also proposed a definition of the "demarcation point" at which telephone company facilities end and COPW begins. Finally, the Second Notice included our decision not to expand Part 68 to encompass party line service.⁵

³ For purposes of discussion, we will refer to all premises wiring which is owned by the customer as COPW. COPW will then be classified as either system (multi-line) wiring or non-system (one and two-line) wiring. AT&T suggests in its comments that "CPW" (customer premises wiring) is a better term than "COPW" since the rules adopted in this proceeding are to apply equally to all customer premises wiring regardless of ownership. AT&T Comments at 2 n.4. To the contrary, however, the rules adopted here are to apply only to wiring owned by the customer. That is, customers who choose to augment existing non-system wiring or install entirely new non-system wiring will be able to do so under the rules set forth herein. One and two-line inside wiring is not deregulated, and thus remains subject to tariff if provided by the telephone company. As noted in the *Second Notice*, 92 FCC 2d at 31-32, this order does not preclude telephone companies from providing one and two-line premises wiring on a tariffed basis nor does it provide telephone subscribers with a right to purchase embedded one and two-line wiring. Thus, we believe that COPW is a more accurate description of the wiring at issue in this proceeding than is CPW. The deregulation of one and two-line premises wiring is being considered in Deregulation of Customer Premises Inside Wiring (Further Notice of Inquiry), CC Docket No. 79-105, 86 FCC 2d 885 (1981), and in proceedings at the state level. The Commission has recently detariffed new system wiring installed as part of a detariffed CPE system in Modifications to the Uniform System of Accounts, CC Docket No. 82-691, FCC 83-457 (released November 2, 1983).

⁴ The NPRM portion of that proceeding sought public comment on a number of rulemaking petitions. Because the NOI portion dealt with issues linked to other proceedings and required expeditious resolution, the Second Notice focused on those issues only. 92 FCC 2d at 2. The matters raised in the NPRM portion will be considered in forthcoming orders.

⁵ USITA, however, arguing that the Second Notice made no reference to COPW for party lines, but

Continued

3. Comments were filed by sixteen parties, representing telephone carriers, users and manufacturers.⁶ All parties agree that one and two-line non-system wiring should be included in our Part 68 program and there is substantial agreement as to many of the specific proposals set forth in the Second Notice. In the discussion that follows, we will consider each such proposal as well as other suggestions offered by the commenting parties, in roughly the order discussed in the Second Notice.

II. Demarcation Point

A. Definition

4. As a preliminary matter, we invited parties to comment on our proposed definition of demarcation point—the exact point where telephone company facilities (and, thus telephone company responsibility) ends and COPW begins. We observed in the Second Notice that there likely is no single definition which would encompass the practices of all telephone companies in the country. We recognized that some definition is needed, however, to provide a legal point of demarcation between the network and COPW so that the Commission's initiatives in *Computer*

only to terminal equipment for party lines, urges that the rules for non-system wiring permit party line subscribers to install their own premises wiring. USITA Comments at 7-8. GTE agrees. GTE Reply at 22-23. These proposals will be rejected. The same reasons which led us to conclude that CPE for party lines should not be included in Part 68 apply equally to COPW for party lines. See 92 FCC 2d at 37. Moreover, because COPW is now encompassed by Part 68, and Part 68 does not apply to party line service, the rules we adopt herein cannot be applicable to party line COPW. As indicated in the Second Notice, we will leave matters involving party line service to local telephone companies and state regulatory commissions. 92 FCC 2d at 39-40.

⁶Comments were filed by the Bell Operating Companies and the American Telephone and Telegraph Company (AT&T), Association of American Railroads (AAR), People of the State of California and the Public Utilities Commission of California (California), Colorado Communications Services, Inc. (CCS), Federal Executive Agencies (FEA), GTE Service Corporation (GTE), Independent Data Communications Manufacturers Association (IDCMA), Insulated Cable Engineers Association, Inc. (ICEA), National Burglar and Fire Alarm Association (NBFAA), New York State Department of Public Service (New York), North American Telephone Association (NATA), Pennsylvania Burglar and Fire Alarm Association (PBFAA), Rural Electrification Administration (REA), County of Riverside, California, Department of Communications (Riverside), United States Independent Telephone Association (USITA), United Telephone System, Inc. (UTS), and Utilities Telecommunications Council (UTC). AT&T, California, FEA, GTE, IDCMA, NATA, and Northern Telecom, Inc. filed reply comments. (Subsequent to the filing of their comments, the Bell System Operating Companies were divested from AT&T.) In addition, we received numerous letters from various burglar and fire alarm associations and alarm companies.

II⁷ and CC Docket Nos. 79-105 and 82-861, *supra* note 3, concerning the deregulation of inside wiring, may proceed in an orderly fashion. 92 FCC 2d at 8.

5. Our proposed definition was based on the fact that all telephone companies utilize protectors as a means to safeguard a subscriber's premises and the telephone network from atmospheric or other electrical discharges that may strike or be induced in outside telephone wire. The protector's usual location is at or near the point of entry of the telephone cable into the subscriber's premises, although specific location varies with local telephone company practices, building type and environmental factors. Relying on existing protector location practices, we designed a definition that was flexible enough to encompass all building types, including multi-unit premises, and all types of wiring, including multi-line wiring associated with PBXs and key systems. 92 FCC 2d at 9. In sum, we proposed to revise § 68.3(h) to read as follows:

(h) *Interface or Demarcation Point*: The point of interconnection between telephone company communications facilities and equipment, protective apparatus or wiring at a subscriber's premises. The interface or demarcation point shall be located at the subscriber's side of telephone company's protector, or the equivalent thereof in cases where a protector is not employed, as provided under the local telephone company's (reasonable and nondiscriminatory) standard operating practices.⁸

We noted that the responsibility for proper grounding of the protector itself would remain with the telephone company, unless the subscriber rendered the grounding ineffective by his or her own faulty installation of wiring. *Id.*⁹

6. With the exception of NBFAA and PBFAA,¹⁰ all commenting parties

⁷Second Computer Inquiry, 77 FCC 2d 384 (1980), reconsideration, 84 FCC 2d 50 (1980), further reconsideration, 88 FCC 2d 512 (1981), *aff'd sub nom.* Computer & Communications Industry Ass'n v. FCC, 693 F.2d 198 (D.C. Cir. 1982), cert. denied, 103 S. Ct. 2109 (1983).

⁸To add clarity, UTS and GTE suggest that we include a definition of "premises" in § 68.3 UTS Comments at 3-4; GTE Reply at 23. We believe this unnecessary in view of the definition of demarcation point we adopt herein. We note that in the interstate telephone tariffs, the term "premises" denotes a building or buildings on continuous property [except railroad rights of way, etc.] not separated by a public thoroughfare. See AT&T Communications Tariff FCC No. 263, Section 2.5.

⁹This definition presumes that the telephone company will provide only wire and associated installation devices on its side of the demarcation point within the customer's premises.

¹⁰The positions of NBFAA and PBFAA are discussed and rejected at paras. 15-18 *infra*.

support locating the demarcation point on the subscriber's side of the telephone company's protector. Several parties, however, suggest clarifications and refinements to our proposed definition. New York, for example, notes that because demarcation point location is dependent upon the unique physical characteristics of each building, there may be some difficulty with our definition, which fixes the location at the subscriber's side of the protector. New York adds that this is particularly apparent in multi-unit buildings where the protector may be located in an equipment room but house riser and floor distribution cables¹¹ sometimes extend the telephone company's facilities to the subscriber's premises. To make clear that the demarcation point should be located somewhere "on the subscriber's side of the telephone company's protector or equivalent thereof," New York suggests substituting the word "on" for "at" in the second sentence of the proposed definition. New York Comments at 3-5. AT&T concurs with this suggestion. AT&T Reply at 3 n. * * *.

7. Although we do not believe that the definition, as proposed, requires that the demarcation point be located virtually contiguous to the protector, we believe that changing the word "at" to "on" would serve to make this more clear. The word "at" may carry an implication that the demarcation point must be located in close proximity to the protector or at the protector itself, whereas "on" appears to connote better the flexibility to locate the demarcation point somewhere on the subscriber's side of the protector. To avoid possible confusion that the demarcation point must be located adjacent to the protector, although we suggest that in most cases involving new wiring this indeed would be the case, we will adopt New York's proposal.

8. GTE and UTS recommend that the word "network" be added in front of "interface" so that the caption would read "Network Interface or Demarcation Point." The parties reason that there are many interfaces at a subscriber's premises, such as a CPE to COPW interface and an equipment-to-equipment interface, and the suggested modification would help to distinguish the COPW-telephone network interface from others. GTE Comments at 4; UTS Comments at 3. AT&T states that it does

¹¹House risers are the vertical cables which run from the outside plant terminal up through various floors of the building; floor distribution cables are horizontal cables which run from the distribution box or closet on each floor to the individual units.

not oppose this modification. AT&T Reply at 5.

9. It is not clear that other interfaces could be confused with the one intended by the rule. We believe the term "network" is implicit in our proposed definition of "interface." We are amenable to the commenters' proposal, however, since it may, as the parties claim, more accurately identify the relevant "interface" as the point at which COPW and telephone company communications facilities interconnect. Accordingly, we will adopt this suggestion.

B. Multi-Unit Buildings

10. As recognized in the Second Notice, multi-unit buildings present peculiar definitional difficulties because the protector may be located in an equipment room, or each unit may be separately served, either from a common point or independently, depending on the characteristics of the structure itself. 92 FCC 2d at 9. Based on our belief that the most practical and flexible solution to the problem of defining the demarcation point is to develop a uniform definition broad enough to encompass all building types—including multi-unit buildings—we proposed the definition set forth in the Second Notice. Several parties express concern that this definition may not deal adequately with the unique situations faced in multi-unit buildings.

11. UTS, for example, asserts that by allowing the demarcation point in multi-unit buildings to be located either near the protector or at each unit, the possibility exists that a subscriber in a multi-unit building may be unable to obtain tariffed telephone company service if the building owner fails to provide premises wiring. To ensure subscribers of access to tariffed telephone company-provided service, UTS suggests that the definition of demarcation point include a provision requiring the telephone company to offer network service to those requesting it on a reasonable and non-discriminatory basis in multi-unit buildings. UTS Comments at 2-3. IDCMA, apparently under the assumption that the demarcation point must be located adjacent to the protector, also asserts that our proposed definition may isolate the subscriber from the telephone network. Arguing that it is not appropriate to assign to the subscriber the responsibility for the inside wiring between his or her premises and the protector or to permit the carrier to terminate its service somewhere short of the subscriber's premises, IDCMA urges that we should define the demarcation point for multi-unit buildings *inside* each

unit, at a point specified by the subscriber. IDCMA Comments at 4. NATA asserts that in multi-unit buildings there is plant on the subscriber side of the protector which should be recognized as part of the regulated telephone network. NATA reasons that the demarcation point should therefore be at the point where the telephone line enters each premises, rather than at the protector, unless the building owner chooses otherwise. NATA Comments at 14-15. California, for its part, argues that residents should not have ready access to the interior wiring which serves other residents, and therefore that the demarcation point for multi-unit buildings should be inside the premises of each unit. California Comments at 3.

12. AT&T and GTE asserts, on the other hand, that our proposed definition is appropriate for all building types. AT&T Comments at 6; GTE Comments at 3. GTE suggests that the telephone company should be allowed flexibility in determining the location of the demarcation point anywhere between the protector and a standard jack in a multi-unit building. GTE Reply at 10. GTE also suggests that we expressly affirm our intent not to allow third party ownership of risers and house cable to limit access to the network. GTE Reply at 14. In addition, AAR supports our definition as proposed. AAR Comments at 2.

13. Initially, we note that our definition is flexible enough to allow the demarcation point to be located near the common building protector or inside each individual unit, in accordance with the local telephone company's standard operating procedures. Thus, commenters' fears that subscribers will be isolated from the network, based upon the assumption that telephone company facilities must end at the protector, are unfounded. The concern of UTS and California in urging a demarcation point inside each individual unit also appears unwarranted. UTS reasons that it is inappropriate to assign the responsibility for house risers and cable which are outside the control of the subscribers to those subscribers, while California asserts that residents should not have access to interior wiring which serves other residents. Both these concerns seem to rest on the assumption that if the demarcation point is located near the common building protector, rather than in each unit, the responsibility for and access to house risers and cable will generally be with individual tenants. To the contrary, this responsibility and access will generally rest with the building owner, who will

own the risers and distribution cables. Further, we see no greater likelihood of illicit access to others' lines where the demarcation points are located together in, for example, a building basement. In most buildings today, subscribers telephone lines are located on cross-connect panels in telephone-company controlled cabinets in building basements. Access to these cross-connect panels or common demarcation points will be limited to the telephone company and the building owner, who owns the cable.

14. We recognize, however, that in multi-unit buildings in which riser cable and loop distribution facilities are under the control of the building owner, troublesome issues involving the terms and conditions of telephone network access may develop. For example, a tenant (or condominium owner) might encounter excessive delay when seeking installation or relocation of a jack, or might require circuit conditioning not possible with existing building and riser distribution cables. As an independent entity not subject to regulatory scrutiny, a building owner generally is not under a legal duty to respond to such tenant requests. This matter may be exacerbated upon tenancy or building ownership succession, where successors or assignees could be burdened with unforseen restrictions on their use of cables and distribution facilities. Our overriding concern is to permit multi-unit building tenants direct access to the full range of wireline communications services generally available. We believe that in some situations local or, where appropriate, federal regulatory oversight could be invoked to ensure that tenants are offered direct access to the telephone network at a demarcation point located in their own premises (as opposed to a demarcation point near the common protector). In this regard, we note that the rules and policies we set forth here do not prohibit state regulatory agencies from establishing terms and conditions by which local telephone companies may or must install riser and distribution facilities to serve tenants directly in multi-unit buildings.¹²

¹² The state's broad power to impose appropriate restrictions upon an owner's use of property was recognized by the United States Supreme Court in *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982), where the Court upheld that portion of a New York statute which required a landlord to permit a cable television franchisee to install cable facilities on the landlord's property. The Court held, however, that the physical occupation of the building by the cable facilities constituted a taking for which the landlord was entitled to just compensation under the fifth and fourteenth amendments of the United States Constitution.

15. In conclusion, we see no reason at this time to mandate that the demarcation point be located only inside each unit of multi-unit buildings. We will not preclude the multi-unit building owner and the telephone company from agreeing to locate the demarcation point for all building units at a common location near the protector, nor will we foreclose tenants from receiving service via landlord controlled cable.¹³ And, as indicated, should problems arise in multi-unit buildings in which riser cable and floor distribution facilities are under the landlord's control, local or federal regulatory oversight may be invoked. We reserve the right to revisit these matters, however, upon a showing that telephone service to subscribers in multi-unit buildings is restricted or impaired by our decisions herein.

C. Access to the Protector

16. Our demarcation point proposal provides that wiring and grounding at the protector are the telephone company's responsibility, unless a COPW installer renders the grounding ineffective by faulty wiring installation. 92 FCC 2d at 9-10. This is consistent with our regulatory intent to bifurcate responsibility at a demarcation point located on the subscriber's side of the protector and to prevent damage to the protector and potential network harm. With the exception of NBFAA and PBFAA, no party takes issue with this assignment of responsibility. Indeed, California, which had earlier advocated a demarcation point at the protector, comments that:

[I]f the protector is the demarcation point * * * customer[s] * * * might engage in wiring activity or testing which results in the making or breaking of hardwire connections at the protector. If customers are permitted such access, the utility cannot be responsible for the integrity of the protector and its associated grounding. [California Comments at 2].

GTE, AT&T and UTS also support assigning to telephone companies the exclusive responsibility for protectors and grounding. GTE, in fact, urges us to modify our proposed rules to state expressly this proposition. GTE Comments at 5-6; UTS Comments at 4; AT&T Reply at 7.

17. NBFAA, a nationwide association of alarm companies, takes issue with

this. The transmission of most security alarm systems to central monitoring systems is through the telephone line. These alarm systems are connected to the network by an alarm jack, such as the RJ31X jack presently used, which is installed between the protector and the first telephone terminal. The alarm equipment will preempt use of the telephone line and, depending on the alarm system, will allow a pre-programmed number to be dialed and/or will set off a local alarm. NBFAA asserts that because of "the failure and the inability of the utilities to install [alarm] jacks in a timely manner" and "the consistent inability of telephone company installers to properly install alarm jacks," the subscriber or installer should be permitted to wire alarm jacks directly onto the protector.¹⁴ Thus, NBFAA contends that the protector itself should be the demarcation point. NBFAA Comments at 3. It further argues that the utilities' proposal to allow subscribers to connect their own alarm jacks provided that there is an intervening telephone company-installed demarcation jack will not solve the aforementioned problems. NBFAA observes that alarm companies will still be dependent upon the utility to first visit the premises to install a standard demarcation jack, which, according to NBFAA, is an "overusage of equipment" creating greater potential for mistakes in installation. Moreover, NBFAA notes an alarm system is easier to disconnect and disable when connected through a plug and jack arrangement than when the alarm jack is connected directly to the protector. NBFAA Comments at 6-7. NBFAA submits that there is no hazard if a customer connects an alarm jack directly to the protector, that "at worst, the customer may disable his own telephone." NBFAA Comments at 7. The Pennsylvania Burglar and Fire Alarm Association (PBFAA) supports NBFAA's position and adds that another reason for permitting alarm companies to install RJ31X jacks directly to the protector is that telephone companies charge customers "excessive and unwarranted" rates for such installation. PBFAA Comments at 2, 3. California Reply at 2-3; GTE Reply at 5-9.

18. Both GTE and California respond that hardwiring alarm jacks to the protector is unjustified and could interfere with the operation of the protector. GTE disagrees with NBFAA's

analysis of potential harm, stating that unauthorized access to the protector has, in fact, resulted in damage to the protector block and accidental interruption of service to other customers. GTE Reply at 8. California suggests that NBFAA's physical security concerns are best met by protecting an indoor modular interface device from tampering; GTE notes that it is just as easy to disable an alarm system by cutting a hardwired connection as it is to unplug a plug/jack connection.

19. We believe that much of NBFAA and PBFAA's concerns can be resolved without creating the risk of damage to the premises protector. Although we recognize that some burglar alarm company personnel may be qualified to hardwire alarm jacks directly to the protector, we do not believe that a broad authorization for all alarm company personnel to do so is warranted here. Contrary to NBFAA's allegations, the risks of damage extend beyond a particular subscriber's service to potential harm to others. Our proposal, advanced in the Second Notice and adopted below, would allow alarm companies to install their own alarm jacks to a plug adapter that is interposed between the demarcation point jack provided by the telephone company and the subscriber's plug and associated wiring.¹⁵ This would eliminate the concern that alarm jacks may not be properly installed or installed at unreasonable rates by telephone companies. We are unconvinced that a plug and jack arrangement sufficiently increases the likelihood that the alarm system will be disabled or that it increases the potential for mistakes in installation so as to justify customer access to the protector. Nor do we believe that the undocumented allegations of delay created by requiring the telephone company to install the demarcation jack warrants disturbing the proposed delineation of responsibility. In the interest of preventing potential network harm, we agree with GTE's position, which tracks our proposal, that the demarcation point protector should remain solely the telephone company's responsibility. Accordingly, this concept will be included in § 68.213(b) of the rules:

Responsibility for the protector (and its associated grounding) on the network side of the demarcation point rests with the telephone company, though the subscriber is responsible for consequences resulting from

¹³ As for NATA's proposal that demarcation point location should be left to the building owner in multi-unit situations, we believe that it is sufficient to leave coordination of demarcation point location to the parties involved in accord with the "reasonable and non-discriminatory" operating practices of local telephone companies. See paras. 22-25 *infra*.

¹⁴ This proposal directly relates to the issue of whether telephone-company installed standard jacks should be required at the demarcation point. We will limit our discussion here to the specific question of whether the demarcation point should be the protector itself. The demarcation jack requirement will be discussed below.

¹⁵ RJ31X jacks are included as authorized connectors in Subpart F of Part 68 and thus may serve as the demarcation jack if installed by the telephone company.

erroneous wiring procedures conducted under his or her direction. Responsibility for wiring on the subscriber's side of the demarcation point (including any protector that may be installed as part of the premises wiring) purchased in-place or wholly or partially new, rests with the owner (or subsequent owner) of the wiring.¹⁶

Having established the responsibilities of the parties, we see no reason why telephone companies could not respond quickly to reasonable requests for service. If burglar alarm companies or subscribers experience what they believe are unreasonable delays, they may bring these to our attention by way of a complaint.

D. Protectors Required for Aerial COPW

20. In the Second Notice we stated that although responsibility for the demarcation point protector would remain with the telephone company, responsibility for any additional protectors which might be installed as part of the subscriber's premises wiring would rest with the subscriber. 92 FCC 2d at 9-10. The intent was to define the demarcation point as the end of telephone company responsibility. GTE urges, however, that we extend the telephone company's responsibility to any protectors required for one and two-line aerial COPW between buildings or structures on a single tract of property, whether or not separated by a public way.¹⁷ GTE argues that the safety concerns which warrant assigning responsibility for entrance protectors and grounding to the telephone company apply equally to other protectors which may be required for non-system COPW. GTE Comments at 5. AT&T supports this proposal AT&T Reply at 7.

21. GTE's proposal conflicts with our intent to bifurcate responsibility at the demarcation point. Regardless of whether protectors for aerial wiring have been properly installed, the telephone company's protector on the network side of the demarcation point is

designed to protect the network from certain hazardous voltages emanating from the subscriber's premises, such as high voltage lightning generated pulses on interbuilding wiring. Thus, we will reject GTE's proposal. Nevertheless, we believe it advisable to ensure that subscribers are aware that there are potential dangers attendant upon installation of aerial protectors and wiring. Therefore, we will add the following to the list of guidelines contained in the FCC publication for simple installations of one and two-line COPW:¹⁸

Aerial wiring between buildings or structures on a single tract of property not separated by a public way may, by local regulation, require the installation of protectors and associated grounding. Improper installation of protectors or inadequate protectors may lead to potentially hazardous voltages entering a subscriber's premises. Local electrical code or National Electrical Code (in the absence of an applicable local code) provisions should be referred to before installing such wiring.

E. Coordinating Demarcation Point Location and Relocation

22. We stated in the Second Notice that coordination between subscribers and telephone companies in locating the demarcation point is not an acute or unworkable problem. 92 FCC 2d at 12. Thus, we did not set forth any specific coordination rules in our proposal; instead we left local telephone companies fully responsible for installing protectors and interface jacks in accordance with their reasonable and nondiscriminatory standard operating procedures, subject only to all applicable safety requirements under local tariffs or building codes. GTE, AT&T, and REA support the view that no detailed rules are necessary for coordination purposes. AT&T Comments at 7; GTE Comments at 6-7; REA Comments at 2. New York notes with approval that our demarcation point definition is broad enough to allow for necessary flexibility in the physical and electrical characteristics associated with most installations. New York Comments at 3.

23. However, as previously discussed, several parties urge that we require the demarcation point in multi-unit buildings to be located inside each individual unit. For its part, California seeks a definition that would require an indoor demarcation point in the vicinity of the protector for all building types, including single unit dwellings. California argues that an outdoor demarcation point consisting of a modular plug and jack would be subject

to corrosion since there is no reasonably priced weatherproof protection for a modular connection at this time. California Comments at 2. GTE replies that we should not so limit flexibility in locating the demarcation point because adequate weatherproofing may be developed in the future. GTE Reply at 10. In addition, NATA expresses concern about leaving demarcation point location to the telephone company's "reasonable and nondiscriminatory" practices, asserting that "reasonable and nondiscriminatory" takes "strange twists in the marketplace." In support of this assertion, NATA submits a letter sent from General Telephone Company of the Midwest to an equipment vendor. The letter informed the vendor that when a customer buys equipment from a private individual or interconnect company GTE will provide the interfacing device at the protector or equivalent and will not run additional cable or inside wire to the key cabinet or PBX cabinet. In light of this telephone company policy, NATA urges that we require the demarcation point to be located at or on the subscriber's premises or within reasonable proximity thereto. NATA Reply at 10, 13. Finally, UTC and IDCMA urge that we state explicitly in our rule that relocation of the demarcation point must be mutually acceptable to the parties and that the cost of relocation requested by the telephone company be born solely by the telephone company. UTC Comments at 3-4; IDCMA Reply at 5-6.

24. Although we recognize that conflicts may occasionally occur between the telephone company and the subscriber in locating the demarcation point, as NATA points out, we do not believe that this warrants a change in our view that our demarcation point definition provides both the necessary location flexibility and subscriber protection. First, if a telephone company's practice in locating the demarcation point is unreasonable or discriminatory, the subscriber may avail himself of regulatory procedures. Moreover, as noted at para. 14 *supra*, state regulatory agencies are free to establish terms and conditions requiring local telephone companies to terminate network services at or on the subscriber's premises. We remain open to revisiting this matter, however, upon a showing that the flexibility provided by our definition is creating unworkable or widespread problems.

25. As discussed above, we do not believe that the demarcation point should be limited to locations inside each unit of a multi-unit building. We

¹⁶ We recognize that in situations involving "special environmental conditions," such as are present with power substations, the protector may be owned by a telephone company subscriber, i.e., the energy utility, rather than by the telephone company itself. See UTC Comments at 3. UTC recommends that in such situations the demarcation point be located at a point mutually agreed upon by the energy utility and the telephone company. *Id.* We believe that UTC's concern is already accommodated by our rule, which relies on the parties involved to coordinate demarcation point identification in accordance with local practices. See paras. 22-25 *infra*.

¹⁷ GTE would not impose this requirement when system wiring is involved, reasoning that such wiring is installed by trained installers who are aware of the need for and routinely provide protectors on the subscriber's side of the demarcation point.

¹⁸ See paras. 53-56 *infra*.

see even less reason to require an indoor demarcation jack in single-unit buildings, as California suggests. Such a requirement would prevent the demarcation point from being located outdoors, even when adequate weatherproofing is provided.¹⁹ The UTC and IDCMA suggestion that relocation of the demarcation point be conditioned on being mutually acceptable to the parties is implicit in our proposed rule, which relies upon the parties involved to coordinate demarcation point identification. Although we recognize that a conflict may occasionally occur, our proposed Section 68.213(b) explicitly states that the telephone company may not discriminate in its treatment of demarcation point location or relocation. We believe this language is adequate to satisfy these commenters' concerns. As noted, should a telephone company's practice be discriminatory, the subscriber may seek relief. We believe that the further proposal that costs associated with telephone company-requested changes in demarcation location be borne by the telephone company is reasonable. However, the matter of such charges is properly left to state regulatory authorities. Accordingly, we will adapt Section 68.213(b) of the rules as set forth in the attached appendix.

F. Jack Requirement

26. In the Second Notice, we proposed that a standard jack be installed by the telephone company at the demarcation point for new COPW or when modifications or additions are made to existing premises wiring. We expressed the view that such a jack and plug arrangement would allow defective COPW to be disconnected quickly and easily from the network and would serve as a uniform and convenient testing point. We concluded that it would not be necessary to install such a jack when a subscriber purchases existing (in-place) wiring, however. We further noted that we would not forbid the telephone company from installing a jack for existing wiring without a direct charge to the customer, either upon sale of in-place wiring or as a matter of normal operating practice on service visits, nor would we forbid the

telephone company from providing the subscriber with the option of having a jack installed by the telephone company for a charge. 92 FCC 2d at 14.

27. As noted at paras. 17-19 *supra*, NBFAA and PBFFA argue that subscribers should be permitted to install COPW directly onto the protector, without an interposing telephone company-installed demarcation jack. NBFAA argues that a requirement for a telephone company-installed standard jack at the demarcation point for new or modified wiring is unnecessary since such a jack is not a protective device which will prevent harm to the network. Both NBFAA and PBFFA further argue that if a telephone company-installed jack requirement is, in fact, promulgated, an exception should be made when alarm jacks are installed. GTE, AT&T and IDCMA disapprove of these proposals, while the other commenting parties support in general our proposal to require a demarcation jack for new or modified COPW.²⁰

28. The jack we propose to be installed at the demarcation point would allow for quick troubleshooting by the telephone company, and would serve as a convenient subscriber test point. NBFAA and PBFAA have failed to present any compelling reasons for eliminating this requirement and the resulting benefits to the subscriber. In fact, the arguments advanced by NBFAA and PBFAA here were raised in the context of protector access and rejected.²¹ The alternative suggestions to allow the subscriber to install alarm jacks as the demarcation jack should likewise be rejected since this will allow subscriber access to the protector, which we have found to create an unwarranted potential for harm.

29. Several other commenters suggest modifications and clarifications to our proposal. UTS, for example, recommends allowing use of an interface device that would be hardwired directly to COPW, but which would contain a switch for disconnection and a jack for testing. UTS proposes that Section 68.104(a), which currently limits the authorized means of connection to the telephone network to a standard plug and jack arrangement, be modified to permit any connection which contains a standard jack for testing purposes and provides an easy means of disconnection. UTS Comments at 4-5. GTE replies that this proposal should be rejected for two

reasons: (1) Allowing variations from the standard means of connection will upset a uniform federal program; and (2) the device provides no benefits that cannot be achieved with a standard jack. GTE Reply at 23-24.

30. We believe that UTS's proposal would create unnecessary practical problems. Allowing variations from a standard means of connection would require a case-by-case determination as to whether such a device should be permitted. In short, we find the disruption in the administration of our program and resulting confusion is not justified. UTS has offered no benefits that its proposed interface device would provide that could not be achieved with a standard jack and plug. Indeed, as GTE points out, the device appears to be more costly than a simple jack because it contains a jack and a switch in an enclosure. GTE Reply at 23. If in the future we are presented with an interface device which provides greater benefits to the public, *e.g.*, is cheaper and of greater utility than a standard plug and jack arrangement, we remain open to an appropriate rulemaking petition to incorporate it under Part 68. This, however, does not preclude a network interface device that incorporates a standard jack for testing in conjunction with other weather resistant means of connection, if approved by the state public utility commission.

31. In the Second Notice, we also asked for comments regarding whether a jack should be required to be installed at the demarcation point when additions are made by a subscriber to existing wiring through an existing telephone company-installed jack.²² GTE recommends that a telephone company-provided interface be installed at the demarcation point before modifications to existing premises wiring are undertaken, and suggests language to this effect be included in the rules. GTE Comments at 7-8. California and AT&T, on the other hand, argue that a jack should not be required at the demarcation point when a subscriber extends COPW from an existing utility-installed jack. California Reply at 1-2; AT&T Reply at 5-6.

²² As stated in the Second Notice, a subscriber who plugs a "connectorized" extension cord into an existing room or office jack is not distinguishable from one who merely plugs in a terminal device. Noting that neither situation warrants regulatory restriction, we concluded that a subscriber who uses extension cords in conjunction with existing premises wiring will be considered to have existing premises wiring only and will not be required to install a jack at the demarcation point. 92 FCC 2d at 15. No party has taken issue with this conclusion.

¹⁹ California's proposal seems to be based upon a fear that telephone companies will install "unweatherproofed" jacks outdoors. As noted in the Second Notice, however, any jacks installed outdoors must be housed in a waterproof enclosure. 92 FCC 2d at 14. Moreover, we doubt, and California has provided us with no reason to believe, that any telephone company would engage in the practice of installing unprotected or environmentally susceptible jacks or jack boxes merely to avoid the occasional need to access an indoor demarcation point.

²⁰ GTE Reply at 16; AT&T Reply at 11-14; IDCMA Comments at 5-6; REA Comments at 2; UTS Comments at 4-5; UTC Comments at 4.

²¹ See para. 19 *supra*.

32. We agree that a jack near the protector need not be required as a condition precedent to additions through an existing telephone company-installed jack since the wiring standards we adopt herein and the ease of disconnection of the additional wiring offer adequate network protection. Of course, there would be no prohibition against the telephone company installing a demarcation point jack near the protector upon subscriber augmentation of existing wiring, provided that jack installation is a routine practice of the telephone company and there is no unreasonable delay to the subscriber by the practice.

33. We note that this specific issue is interrelated with CC Docket No. 79-105 concerning the deregulation of one and two-line inside wiring. The assumption underlying the comments of GTE, AT&T and California is that the demarcation point is located at or adjacent to the protector. Thus, their concern arises as to whether a jack is required to be installed at the demarcation point. As discussed at para. 7 *supra*, however, our definition is flexible enough to allow the demarcation point to be located anywhere between the protector and the first jack. Until (and if) one and two-line inside wiring is deregulated, which will in most cases require a demarcation point in the vicinity of the protector, there is no reason why an existing jack cannot serve as the demarcation jack. We recognize that this might have the effect of creating more than one demarcation point in a given premises. For example, if wiring is extended from several existing jacks, several demarcation points may exist. Such an apparent anomaly is not unworkable or necessarily inconsistent with our overall intent to identify the location of a network-COPW interface. Accordingly, our definition in § 68.3(h) of the rules will be understood to include the possibility of more than one demarcation point until CC Docket No. 79-105 is resolved.

III. Standards for One and Two-Line Premises Wiring Installations

34. Aside from the issue of demarcation point definition, the Second Notice requested comment on whether one and two-line wiring should be included in the Part 68 program and, if so, what standards should be adopted to ensure that no harm is caused to the network. Harm, as defined in § 68.3(g) of the rules, 47 U.S.C. 68.3(g), includes electrical hazards to the telephone company personnel, damage to telephone company equipment, malfunction of telephone company billing equipment, and degradation of

services to persons other than the user of the subject terminal equipment, his calling or called party. The remainder of this *Order* will address the issues raised in this context.

A. Section 68.2. Scope

35. While all parties support the inclusion of one and two-line non-system COPW in Part 68, three parties suggest that we revise § 68.2, 47 CFR 68.2, *Scope*, to state explicitly that such COPW is included. New York Comments at 2-3; AT&T Comments, Appendix at 2; GTE Reply at 19.²³ No one opposes the proposal. In the interest of clarity we will add a new subsection (4) to § 68.2(a) that expressly mentions one and two-line non-system wiring.²⁴

B. Merger

36. The Second Notice proposed to add a new Section 68.213 to Part 68 that would provide standards for the installation of unprotected one and two-line COPW.²⁵ Additionally, we sought comment on whether we should, in the alternative, alter the existing Part 68 rules for multi-line system wiring, 47 CFR 68.215, and merge them with regulations for non-system wiring. 92 FCC 2d at 21. Although some parties address this matter directly, most of the comments dealing with this issue do so in the context of whether installers' qualifications should be the same for both system and non-system wiring installations. The consensus is that system and non-system wiring should be treated differently under Part 68.²⁶

²³ In addition, AT&T suggests that the introduction of rules for non-system COPW necessitates a new "grandfather" provision to make clear that existing non-system wiring may remain connected to the network for its useful life without alteration. AT&T Comments, Appendix at 3. Because the rules adopted in this proceeding will not preclude telephone companies from continuing to offer non-system premises wiring on a tariffed basis, we do not believe that a grandfather provision is appropriate at this time.

²⁴ Similarly, we will amend § 68.1, Purpose, to state explicitly that COPW is included in Part 68. See Appendix.

²⁵ Protected one and two-line COPW is wiring which is located electrically behind registered (or grandfathered) terminal equipment or protective circuitry which assures that electrical contact between the wiring and commercial power wiring or earth ground will not result in hazardous voltage at the telephone network interface. Unprotected non-system wiring is all other non-system wiring. Because non-system wire will generally be purchased independent of the terminal equipment, most non-system installations will be encompassed by the Part 68 program.

²⁶ See AT&T Comments at 11-17; GTE Comments at 10; UTS Comments at 10; UTC Comments at 4-5; IDCMA Comments at 8; NATA Comments at 26-27; USITA Comments at 2-3.

37. AT&T, for example, asserts that one and two-line wiring and multi-line wiring installations are significantly different undertakings and should be treated differently under Part 68. More specifically, AT&T urges that we leave unchanged the existing regulatory scheme of Section 68.215, which, in short, permits system premises wiring to be installed under the supervision of either a person properly authorized by the equipment registrant, typically the manufacturer, or by a professional engineer licensed in the jurisdiction in which the installation is performed. AT&T observes that the requirement for a registrant-authorized supervisor harnesses the natural self-interest of registrants to assure that the network remains protected. AT&T Comments at 12. However, because terminal equipment designed for use in one and two-line services is registered and generally has no wiring "behind" it, AT&T reasons that the equipment manufacturer is not properly held accountable for risks of harm associated with non-system COPW. AT&T concludes that Part 68 accountability for non-system COPW "is best achieved through the customer because the customer is the only person that is in a position to remain continuously responsible for the wiring." AT&T Comments at 15. GTE similarly states that the system wiring rules should remain without modification while separate rules are promulgated for non-system wiring. GTE Comments at 10. For its part, IDCMA recommends that we specifically note that the rules promulgated for non-system wiring are not intended to be associated in any way with system wiring. IDCMA Comments at 8. And, as indicated above, the commenters support different qualification requirements for installers of system and non-system wiring.²⁷

38. We agree that system wiring is significantly more complex than non-system and therefore it is appropriate to treat such wiring differently under Part 68. System wiring often involves wiring fields that, if misrouted, may cause billing errors or network disruption. Moreover, cross-connect blocks and other system wiring are frequently located in areas where there is ready access to other communications and power cables that, if connected, might lead to harm to the network, as well as to telephone company personnel and third parties. In addition, system wiring generally involves a relatively complicated array of facility ordering codes, involving pin sequences that

²⁷ See paras. 40-43 *infra*.

must be correctly arranged to assure proper system function. Non-system wiring, on the other hand, usually is connected to the network by a simple plug at a well-insulated, safe location. In view of these factors, we agree that a different set of standards is appropriate. We also agree, as suggested in the Second Notice, that the existing rules for system wiring have proven effective and should not be modified.

39. To clarify this bifurcated framework, we will revise the caption of § 68.215 to read, "Installation of Other than 'Fully-Protected' System Premises Wiring." This revised caption will parallel the language in the caption of § 68.213 which will read, "Installation of Other than 'Full-Protected' Non-System Premises Wiring." It also should prevent any potential confusion as to which rules apply to which type of wiring. We will also adopt the following wiring definition in § 68.3:²⁸

Non-System Premises Wiring: Wiring which is used with one and two-line business and residence services, located at the subscriber's premises.

(1) Fully Protected Non-System Premises Wiring. Non-system premises wiring which is electrically behind registered (or grandfathered) equipment or protective circuitry which assures that electrical contact between the wiring and commercial power wiring or earth ground will not result in hazardous voltages at the telephone network interface.

(2) Unprotected Non-System Premises Wiring: All other non-system premises wiring.²⁹

C. Installers' Qualifications

40. We observed in the Second Notice that comments in response to our First Notices generally supported the proposition that the qualification requirements imposed on persons performing system wiring operations should not apply to installers of non-system wiring.³⁰ 92 FCC 2d at 23-24. We

²⁸ The definition of "premises wiring" presently contained in § 68.3(t) refers to system premises wiring. To avoid any confusion, we will recaption the definition to read "System Premises Wiring" and will change the references to premises wiring in the subheadings to "system premises wiring." See Appendix.

²⁹ AT&T urges that we note in our definition of non-system wiring that passive devices used in wiring operations, such as connectors, blocks and jacks, are considered part of the COPW and are included in § 68.213. AT&T Comments, Appendix at 5. We are currently considering the deregulation of cords and other passive devices in RM-3227 in this docket. See First Notice, 85 FCC 2d at 879-880. Indeed, pending disposition of that rulemaking we have exempted extension cords and electrically transparent adapter boards from the registration program. Public Notice #20851, released Aug. 2, 1982. We therefore do not believe it appropriate to act upon AT&T's proposal at this time.

³⁰ Section 68.215(c) requires that installations of system wiring be supervised by either an individual

further noted that leaving the system wiring rules unchanged while dispensing with qualification requirements for one- and two-line wiring would create the anomalous situation of imposing such requirements where they may not be necessary as a practical matter, since system wiring will normally be performed by competent installers, while not imposing requirements where they might be better justified. 92 FCC 2d at 24.

41. Against this background, we proposed four options to determine who should be authorized to install one and two-line wiring. The first option would "umbrella" the licensing/qualification requirements of local electrical and building codes and state regulatory options for all forms of wiring, system and non-system. The second option would restrict untrained persons to certain types of wiring installations, e.g., non-system surface wiring, in an effort to limit potential harm. The third option simply would continue to require certain qualifications for system wiring installation while not imposing those requirements for one- and two-line wiring. The fourth option would require that installers secure bonding to indemnify subscribers or carriers for improper wiring. 92 FCC 2d at 25-26.

42. Apparently, the anomaly that we noted in the Second Notice does not evoke the commenters' concern. GTE, New York, USITA, California, UTS and AT&T explicitly support Option 3, which would require certain qualifications for installations of system wiring but impose no qualifications for non-system wiring installations. These parties assert that telephone subscribers are capable of adequately installing non-system wiring without special training or qualifications and that we should "keep simple wiring simple" by avoiding unnecessary complications which would arise from licensing or competency requirements.³¹ At the same time, these parties recognize that special qualifications are necessary to install system wiring properly and urge us to leave in place the requirements for installation supervisors. New York notes that Option 3 is very similar to the position adopted by the New York PSC in 1980, while California notes that it has had a good experience in allowing installation of one and two-line wiring by subscribers. New York Comments at

with training and authority from the equipment registrant or by a licensed professional engineer. 47 CFR 68.215(c).

³¹ New York Comments at 6; GTE Comments at 9; USITA Comments at 4; California Comments at 3-4; UTS Comments at 8; AT&T Reply at 16.

6; California Comments at 4. None of the other commenters oppose Option 3.³²

43. In view of our preference to avoid unnecessary regulatory controls, the minimal potential dangers of adequate and properly installed non-system wire, and the consensus that untrained subscribers can properly install non-system wiring, we believe that no new regulatory infrastructure is necessary for non-system installers.³³ Non-system wiring is usually connected to the network by a simple plug and we believe that such installation will present no significant problems for telephone subscribers. System wiring, on the other hand, is significantly more complex and thus has greater potential of being improperly installed and causing network harm. We believe that the qualification requirements currently contained in Section 68.215(c) will continue to insure that system wiring installations are supervised only by those adequately trained to do so and that the network remains uncompromised. We will therefore adopt Option 3. A new § 68.213(c) regarding qualifications for installers of non-system wiring, as proposed in the Second Notice, is therefore unnecessary.³⁴

³² UTS states that either Option 3 or Option 2, which would restrict the untrained to certain types of wiring installations, is acceptable. UTS Comments at 5. REA, however, argues that Option 2 is unnecessarily restrictive. REA Comments at 2. Northern Telecom and CCS oppose Option 1, which would "umbrella" local requirements, with CCS urging that the telephone company become involved with the pre-wire company and provide inspection service on pre-wire installations. Northern Telecom Reply at 2-4; CCS Comments at 4. NATA is the only party that supports the "umbrella" approach of Option 1. NATA Comments at 26-27.

³³ We also reject CCS's proposal that telephone companies be required to provide inspection service on pre-wire installations. As discussed previously, the responsibility for non-system COPW falls on the subscriber—not the telephone company. The extraordinary telephone company procedures under § 68.213(g), which will be adopted for non-system COPW (see para. 84 *infra*), should be adequate for any telephone company inspections that may be required.

³⁴ In lieu of a § 68.213(c) dealing with installers' qualifications, AT&T proposes a § 68.213(c) dealing with subscribers' responsibilities in installing one and two-line wiring. AT&T's proposal also contains a provision by which the subscriber agrees to hold the telephone company harmless from any liability or claims resulting from the subscriber's installation of COPW. AT&T Comments, Appendix at 8. We reject AT&T's proposal. The subscriber responsibilities listed in its proposal—such as advance notice to the telephone company and acceptance testing—are contained elsewhere in Section 68.213. Moreover, the provision exculpating the local telephone company is inappropriate. We believe an expression of subscriber responsibility for COPW is sufficient and that remedial resolution of potential liability should be controlled by normal tort and contract law principles.

D. Specific Proposals for Changes in Qualification Requirements for Installation Supervisors Under § 68.215(c)

44. Aside from the matter of qualification requirements for installers of non-system COPW, two parties urge changes in the qualification requirements for supervisors of system wiring installations under Section 68.215(c). Both FEA and Riverside propose that the authorized categories of supervisors for system wiring installation be expanded.

45. FEA urges that certain U.S. Government trained personnel, notably military personnel prepared by military vocational training, are qualified to install system wiring.³⁵ FEA Comments at 2-5. FEA asserts that despite this, § 68.215(c) requires all FEA supervisors to be "retrained" by equipment manufacturers, an extremely costly step that does not assure more qualified supervisors, or to be licensed in the jurisdiction in which the installation is to be performed, requiring relicensing each time personnel are transferred to new duty stations, likewise without improving qualifications. FEA Comments at 4.7. FEA thus urges us to amend § 68.215(c) to include personnel trained at U.S. Government training facilities as qualified supervisors of system wiring installations.³⁶

46. Both AT&T and GTE object to FEA's proposal. Both assert that the existing chain of responsibility between registrants, installation supervisors and the Commission—which assures that system wiring will not cause harm to the network—would be seriously undermined if FEA's proposal were adopted. They further argue that the Commission should not allow itself to become the arbiter of whether communications training programs are adequate. Moreover, both AT&T and GTE suggests that designating a single, corporate level supervisor for purposes of satisfying § 68.215(c) would accommodate FEA's concerns about having to retrain personnel without compromising the existing regulatory scheme. Both commenters cite

Amendment of Part 68, 92 FCC 2d 670

³⁵ FEA has incorporated by reference into its comments a Petition for Rulemaking that it filed with the Commission in June, 1982. FEA's comments regarding installation supervisor's qualification requirements echo the arguments advanced and proposals made in its Petition for Rulemaking.

³⁶ FEA also proposes that § 68.222(c), AIOD trunk and station number verification, and § 68.216, repair of registered terminal equipment and registered protective circuitry, be similarly amended. FEA Comments at 3. Because these proposals are based upon the same concerns that underlie the requested modification of § 68.215(c), they will be resolved in accordance with our discussion herein.

(1982), where the American Association of Railroads (AAR) was denied reconsideration of a Commission order which declined to create an exception to Part 68 for electric and gas companies historically excepted from tariff provisions prohibiting interconnection of technical equipment. AT&T and GTE note that in denying AAR's petition, the Commission stated that § 68.215(c) permits a company to designate one supervisor who meets the requisite qualifications to be responsible for all wiring installation and maintenance work that the company conducts and that the rule does not require that each supervisor on every job site meet the requirements of § 68.215. AT&T Reply at 20; GTE Reply at 20.

47. FEA acknowledges the AAR decision in its reply comments but apparently argues that its program provides more assurances against network harm than do the Part 68 requirements. FEA notes that its proposal would always require installation by graduates of its training program, and it would always require on-site supervision, while § 68.215(c) allows persons to perform system wiring installation operations without proof of training and without on-site inspection by a qualified installation supervisor. Moreover, even if supervisory responsibility is delegated, FEA indicates that it would require all on-site installers to be properly trained by § 68.215(c)-qualified supervisors. At which point, FEA argues, the on-site installers "would be, for all intents and purposes, installation supervisors" and should be explicitly authorized to install such wiring under § 68.215(c). FEA Reply at 7. In response to the contention that granting its request would undermine the intent of § 68.215(c), FEA states that because it is dependent upon the proper functioning of the network for national defense and security purposes, it has a sufficient vested interest in system wiring to carry the ongoing responsibility for the proper installation of such wiring. FEA Reply at 4.

48. Adoption of FEA's proposal would alter the existing regulatory framework that identifies responsibility for system wiring operations. In order to maintain the integrity of the Part 68 program we have not, in the past, granted exemptions from Part 68's requirements absent a compelling public interest justification for doing so. As the Commission stated in the AAR decision:

[A] showing that a particular entity is technically capable of interconnecting its own equipment with the telephone network (or has done so in the past) does not in and of itself justify an exception under our previously established public interest

standards embodied in Part 68. 92 FCC 2d at 674.

Because AAR had not demonstrated that the burden on it to comply with Part 68 was unreasonable or contrary to the public interest, the Commission denied its petition. Likewise, we will not expand the categories of authorized supervisors under § 68.215(c), as FEA requests, without a showing that compliance with Part 68 is unreasonably burdensome to FEA or contrary to the public interest.

49. As FEA acknowledges in its reply comments, not all its installation supervisors are required by § 68.215(c) to be retrained by equipment manufacturers or to be licensed in the state where the wiring is to be installed. Any supervisor meeting the requisite qualifications may delegate on-site supervisory responsibilities to other personnel. FEA has failed to demonstrate that securing manufacturers' authorizations on behalf of selected, qualified supervisors is unduly burdensome³⁷ or contrary to the public interest.³⁸ We disagree with FEA's further argument that its on-site installation personnel, having been trained by qualified supervisors, will be, in effect, installation supervisors themselves and should be authorized as such in the rules. FEA has overlooked the fact that under § 68.215(c) the responsible individual, i.e., the installation supervisor, must still be trained and authorized by the registrant or licensed in the jurisdiction where the wiring is to be installed. FEA's proposal, however, would allow personnel not meeting § 68.215(c)'s requirements to supervise installation. This will erode the manufacturer-installer agency relationship and licensing scheme underlying § 68.215(c), not merely codify the practical result of the delegation of

³⁷ Indeed, the concerns raised by FEA in its comments are nearly identical to those raised by AAR—and rejected by the Commission. AAR argued that its personnel were technically qualified to connect equipment and that the burden on it to send each supervisor to each registrant for training was unreasonable. The Commission noted that this was a misinterpretation of the rule. In response to AAR's further argument that filing affidavits under § 68.215(e) imposed an additional burden on it, the Commission stated that the installation supervisor designated under § 68.215(c) may file one affidavit for the entire company each year with each local telephone company—the "Blanket Affidavit" procedure. The Commission concluded that § 68.215(c)'s requirements did not impose an unreasonable burden upon AAR.

³⁸ In Connection of Terminal Equipment to the Telephone Network, CC Docket No. 78-331, 44 FR 66825, Nov. 21, 1979, the Commission excepted government agencies from Part 68's requirements in instances where disclosing equipment, locations or project would compromise national security and defense. No such concerns are involved here.

supervisory responsibilities, as FEA asserts.

50. Finally, we note that while we might accept the proposition that FEA personnel, as well as many other categories of trained persons, are qualified to perform system wiring operations, authorizing new categories of supervisors under § 68.215(c) would create the practical dilemma of how to ascertain which training programs offer adequate safeguards against incompetent procedures and network harm. Put simply, it is not the function of this Commission to pass judgment on the myriad of technical training programs available in the nation. The broad institutional guidelines set forth in § 68.215(c)—which have proved adequate to protect the network from harms associated with system wiring installations—provide the most practicable program. In balancing between expending extraordinary federal resources to institutionalize a training program approval process and relying on the industry to comply with the generalized provisions of § 68.215(c), we believe the public interest requires us to choose the latter.

51. In sum, we see no reason to disturb the Part 68 program to accommodate FEA's proposal. FEA has failed to show that compliance with § 68.215(c) is unreasonably burdensome or contrary to the public interest. We are prepared to review this matter, however, upon a showing that FEA is faced with undue difficulty obtaining agency relationships with its suppliers.

52. The other proposal to expand the authorized categories of installation supervisors was made by Riverside. Asserting that holders of General Radio Operators licenses are "at least as qualified" as licensed electricians to install COPW, Riverside proposes that § 68.215(c) be amended to permit these license holders to supervise installations of unprotected system equipment and wiring.³⁹ Riverside Comments at 2-4. Riverside, however, has failed to present any evidence that § 68.215(c) imposes an undue burden upon it or that there is a public interest justification in adopting its proposal. For these reasons, we will reject Riverside's proposal.

³⁹ In its comments in response to the First Notice, Riverside requested that we institute examination and licensing procedures similar in principle to licensing of radio operators to identify qualified installers of COPW. We rejected this proposal in the Second Notice, noting that Riverside had not shown a compelling public interest justification to establish a complex new licensing scheme, nor had it shown that such a program could be relied upon to assure that no harm would be caused to the network by those so licensed. 92 FCC 2d at 24 n. 29.

E. Simple Installations

53. We noted in the Second Notice that if we permit one- and two-line non-system wiring to be installed by untrained subscribers, it might be desirable to give these installers some advice in order to avoid improper installations and any resulting harm to the network. To this end, we proposed a "simple installations" rule providing guidelines concerning the installation practices that should be avoided.⁴⁰ 92 FCC 2d at 28-30. The guidelines were not mandatory, that is, installations which followed such guidelines would be proper although other installations which violated the guidelines might also be proper under certain conditions. Our intent was merely to place untrained installers on notice that they might need to get advice on non-conforming installations. Because these guidelines are thus merely advisory, we believe that they are more appropriately contained in an informational bulletin rather than codified in the FCC rules. In this way, we hope to avoid the guidelines being interpreted as a formal rule and as unnecessarily restricting installations which, under proper circumstances and using other materials, might be entirely appropriate. In addition, we believe that because most subscribers will not have ready access to FCC regulations, disseminating a brochure containing installation guidelines is advisable.⁴¹

⁴⁰ The guidelines proposed were as follows:

(1) The following locations may not be suitable for all forms of telephone wire, because of the insulation of such wire, and should be avoided in simple installations:

(i) Damp locations.
(ii) Wire runs which provide support for other objects.
(iii) Excessively hot locations in proximity to steam pipes, heating ducts, hot water pipes, etc.
(2) COPW should follow structural members such as joists or studs. If it becomes necessary to route wire perpendicular to joists or studs, bored holes through the center of such members are a preferred method of providing support. If it becomes necessary to span the lower edge of joists, run the wire no more than five (5) inches from a wall to avoid possible damage to the wire.

(3) Wherever conduit (or other ducts) is available or is required by applicable codes for telephone wiring, it may be used solely for telephone wiring (or for non-hazardous voltage sources), and may not contain other electrical wires.

⁴¹ Although our specific concern here is to protect the network from harm caused by the direct connection of premises wiring, the simple installation guidelines are also designed to prevent harm which may be caused to subscribers by improperly installed non-system wiring. We believe that it is in the public interest to disseminate such information.

54. None of the commenters opposes our proposed guidelines, although some suggest additions to the list of guidelines. REA, for example, suggests that we add two locations—(1) under water pipes and (2) between two structural studdings where electrical wiring is present—to the list of locations which may not be suitable for COPW. REA Comments at 2-3.⁴² REA also recommends that we add explicit instructions regarding tip and ring pin assignments to guarantee proper operation of push button telephone sets. REA argues that absent a polarity guard, which a large number of sets do not have, improper polarity connection will prevent the subscriber from making outgoing calls. REA Comments at 3. In the interest of network protection and subscriber safety we will include REA's proffered "under water pipes" as a location which may not be suitable for one and two-line COPW. We do not agree, however, with REA's suggested restriction against locating COPW between two structural studdings where electrical wiring is present. As we noted on the Second Notice, this restriction is unnecessary because no conductor separation at all is required between telephone wiring and all current forms of power wiring used in premises where one and two-line wiring is likely to be installed.⁴³ We also do not think it appropriate to include explicit instructions regarding tip and ring pin assignments in push button telephones. Our guidelines should provide only general advice designed to protect the network and the subscriber; providing detailed installation instructions to cover every possible problem in installation, such as improper pin assignments in push button phones, exceeds our purpose in this proceeding.

55. GTE, for its part, requests that we add a paragraph regarding the safety hazard that could be caused if the protector ground wire is disconnected. GTE Comments at 17. We agree that subscribers intending to perform non-system wiring installations should be warned against manipulating the protector case or mounting. Indeed, the potential harm which could be caused if the protector were damaged is the reason we decided to assign responsibility for the protector to the telephone company. Accordingly, we will add the following to our guidelines:

When making the final connection of the premises wire to the demarcation jack, take

⁴² GTE supports the first of these but notes that we already considered and rejected the latter in the Second Notice at 29 n. 34.

⁴³ See 92 FCC 2d at 29 n. 34.

extreme care to ensure that the protector case or mounting is not moved about or manipulated in a manner that would cause loosening or removal of the ground wiring.

56. Finally, AT&T urges us include a warning that COPW should be disconnected from the network when performing any operations and when trouble is experienced. AT&T Comments at 16.⁴⁴ Failure to disconnect COPW during work operations could result in shock or injury by inadvertent commercial power crosses on a telephone line or if an incoming call were to be received while work was being done on bare wire. COPW should, of course, be disconnected when trouble is experienced to prevent possible harm to the network. We will therefore also add the following to our guidelines:

All wiring should be disconnected from the telephone line during work operations, or when trouble is experienced in order to determine the source of the malfunction. If the wiring is the cause of the malfunction, it should remain disconnected until the problem has been corrected.

F. Notice/Documentation Requirements

57. Another issue raised in the Second Notice concerns the nature of a notice requirement to the local telephone company prior to installation of non-system COPW. Recognizing that non-system wiring is not as complex as system wiring, we suggested that a written notice requirement—as currently exists for system wiring under § 68.215(e)—would be unnecessarily burdensome for the average telephone subscriber. We suggested that oral notice to the telephone company should be sufficient but that the notice should include information similar to what is required for system wiring, i.e., brief descriptions of the wiring and other materials to be used, and a general description of the wiring's attachment to the building structure. We also proposed that notice be given at least five days before connection to the telephone network. 92 FCC 2d at 22-23.

58. The parties commenting on these issues unanimously support an oral notice requirement,⁴⁵ although some

suggest that the contents of that notice be simplified. UTS, for example, suggests that the required information be limited to the registration number of the wire or the type of physical connection, if other than a standard jack. UTS Comments at 6.⁴⁶ GTE, for its part, urges that a brief description of the wiring is not necessary if the subscriber states that he or she will comply with all applicable rules and codes. GTE Comments at 14-15. New York believes that a description of the location of the demarcation point to which the COPW is connected and a statement that all rules and codes will be complied with is sufficient. New York Comments at 5-6. AT&T supports the suggested simplifications in our proposed notification rule. AT&T Reply at 17.

59. In light of the commenting parties' support for our position that oral notice is sufficient for non-system wiring installations, we will adopt such a requirement in the rule. With respect to the content of that notice, we agree that some simplification of the rule proposed in the Second Notice is warranted. We believe the likelihood that one and two-line wiring will be improperly installed, causing network harm, is not substantial. Moreover, Part 68 material standards and acceptance testing requirements offer a significant means of preventing the occurrence of potential harms.⁴⁷ Indeed, even if there is a problem with the COPW, the jack through which it connects to the network serves as an easy means of disconnection. Thus, we believe that the proposed requirement for descriptions of materials other than wire and a description of the wiring's attachment to the building structure are not warranted as a means to prevent network harm, and that the administrative burden on the telephone company to record this information exceeds any discernible benefit. We believe, however, that the manufacturer's name or brand name and model number, if any, of the wire should be provided so that the telephone company can ascertain whether substandard wire is planned to be used, and, if so, to prevent it from being installed. See para. 80 *infra*. Thus, we will require that notice to the local telephone company include only the number of the subscriber's line, the location of the jack to which the COPW is to be connected, a statement that all

applicable rules and codes will be complied with, and the name of the wire manufacturer or brand name and model number, if any, of the wire.

60. Several parties also argue that the five-day advance notice requirement set out in the proposed rule is unnecessary, although no party suggests that advance notice be eliminated entirely. California, for example, suggests that the wiring installer merely give advance notice of the work in accordance with the utility's standard operating procedures. California Comments at 4-5. GTE urges that we eliminate the five-day advance notice of the specific dates the wiring will be installed (GTE Comments at 14-15), while FEA asserts that one day's notice is sufficient. FEA Comments at 5-6.

61. In view of the minimal potential dangers of adequate and properly installed one and two-line wiring, as discussed above,⁴⁸ we are amenable to requiring "mere" advance notice. This will allow the telephone company to ascertain whether substandard wire is planned to be used, to install the required demarcation jack if one is not already in place, and to verify that the subscriber is at least aware that FCC and local rules for one and two-line COPW may apply. Such notice is required when terminal equipment or protective circuitry is connected to the telephone network, 47 CFR 68.106, and has proven satisfactory. We will therefore eliminate the five-day notice requirement and simply require the customer to give the telephone company advance notice that one and two-line wiring will be installed, with no maximum or minimum limit.

62. In sum, we will adopt the following as Section 68.213(e):

Notice to the telephone company. The subscriber shall notify the local telephone company in advance of each operation associated with the installation, connection, reconfiguration or removal (other than removal by disconnection at a standard jack) of premises wiring to or from the telephone network. The following information shall be provided: (1) The responsible subscriber's telephone number(s); (2) a description of the location of the jack to which the premises wiring is to be connected; (3) a statement that all applicable rules, building codes and electrical codes will be complied with; and (4) the wire manufacturer, or brand name, and model number, if any, of the wire used.

G. Acceptance Testing

63. In view of our decision that no special qualifications are necessary to install one and two-line COPW, acceptance testing takes on increased

⁴⁴ AT&T also notes that, consistent with telephone company practice, wiring should be run no more than three inches from a wall when spanning joists, not five inches, as proposed in § 68.213(h)(2). AT&T Comments, Appendix at 24. We have no objection to this suggestion and will amend the guideline accordingly.

⁴⁵ GTE Comments at 14-15; AT&T Comments at 27; UTS Comments at 6; NATA Comments at 26; California Comments at 6; New York Comments at 5; FEA Comments at 5-6.

⁴⁶ UTS's proposal assumes that a registration program for one and two-line wiring will be adopted. As we discuss below, we do not believe a standard registration program is necessary. See para. 80 *infra*.

⁴⁷ See discussions regarding acceptance testing and material requirements at paras. 63-68 and 69-75 *infra*.

⁴⁸ See also 92 FCC 2d at 16-17.

importance as a means of differentiating good installations from faulty ones that could cause network harm. In the Second Notice, we proposed that § 68.215(f)'s requirement that system wiring be tested by the installer for hum apply to one and two-line installations as well. We also proposed that a "ringback" testing requirement be adopted for one and two-line COPW installations. 92 FCC 2d at 26-27. "Ringback," *i.e.*, reverting-calling testing, involves the subscriber dialing a reverting-calling number after installation has been completed and, after hearing a unique tone, hanging up. The central office then automatically returns a ringing signal which allows the installer to determine that the non-system operations have been performed properly. (The test is generally used with a standard telephone, which will ring on receipt of the returning ringing signal.)

64. All of the commenters support some form of acceptance testing. REA, NATA, California and UTS explicitly support a mandatory ringback testing number to be provided by the telephone company.⁴⁹ GTE, on the other hand, argues that use (and misuse) of a ringback number could affect network operations and other subscribers' service when party line service is involved. GTE Comments at 15. GTE observes that although many central offices have equipment allowing a reverting call to ring back a subscriber's line, this equipment is installed primarily to allow party line subscribers to signal other parties on the same line. A Commission mandate that subscribers use the reverting call equipment for acceptance testing will, according to GTE, lead to a degradation of service to party line subscribers unless certain protective equipment is added. GTE proposes that in lieu of a ringback number, a third person should be required to place a call to the line being tested. When this method cannot be used easily, the telephone company's ringback test facilities may then be used. GTE Comments at 16. AT&T supports the notion of having a third person dial the line being tested. AT&T Reply at 17.

65. GTE presents no support for its assertion that demand for ringback testing and access to signalling equipment will affect party line service or require that new equipment be added. We note that the ringback testing number will be utilized only when new wiring is installed by subscribers and thus does not appear to create a

significant demand for access to signalling equipment. At worst, the ringback number would also be used on occasion to test terminal equipment, which we believe is unlikely to cause a discernable degree of adverse impact, even to party line subscribers. We hesitate to foreclose to the majority of subscribers the utility and convenience of a ringback number on the basis of GTE's unsupported assertions, particularly in view of the decreasing number of party line subscribers nationally. See 92 FCC 2d at 37. Moreover, even if new equipment were needed in some cases to prevent inconvenience to party line subscribers, as GTE suggests, we believe that the benefits afforded by the availability of a testing number justifies the addition of such equipment. We therefore reject GTE's proposal.⁵⁰

66. We recognize, however, that subscribers may prefer to test by having a friend place a call to them, as GTE suggests. UTS similarly suggests that as an alternative to calling the ringback number a subscriber should be permitted the option of having another person dial the line being tested. UTS Comments at 7. We have no objection to this method because it would accomplish the same purpose as the ringback test and we will permit it as an alternative method of acceptance testing.

67. UTS further suggests that if the CPE to be connected to the non-system COPW does not provide signalling (such as a speakerphone or an auto dialer), a telephone compatible with the line to be tested be used to perform the test. UTS comments at 7. We agree. A ringback testing requirement benefits both the installer and the telephone company by ensuring that the wiring has been installed properly and thus will not cause harm to the network. This assurance should not be eliminated merely because the CPE connected to the COPW at that time may not respond to ringing.

68. Therefore, we will adopt as § 68.213(f) the following provisions for testing installations of one and two-line COPW:

Acceptance testing: Non-system premises wiring installed in accordance with these rules shall be tested under the acceptance tests specified in this sub-section whenever an operation associated with any installation, reconfiguration or removal of wiring (other than final removal) is performed. A telephone which responds to ringing shall be used to perform the test when the CPE connected or

to be connected to the premises wiring does not itself provide ringing.

(2) "Ringback" testing. A telephone connected to the subscriber's line(s) shall be used as follows:

(i) Make a "ringback" call (obtain from the local telephone company information on how to make "ringback" test calls), or have another person dial the number of the line being tested.

(ii) Permit the telephone to ring for one minute (usually twelve rings).

(iii) Lift the handset off the telephone for five seconds or longer, as necessary.

(iv) Hang up. Check return of normal dial tone.

H. Material and Workmanship Requirements

69. The Second Notice also addressed material standards for non-system COPW and workmanship standards for wiring installation. It essentially proposed to apply the existing workmanship and materials standards contained in § 68.215(d) to the non-system wiring environment in § 68.213(d). It proposed only one minor variation, which was to incorporate a conductor separations table into the non-system wiring rules. 92 FCC 2d at 21-22.⁵¹ In light of our decision to disseminate an instructional bulletin containing guidelines for installation of non-system COPW, however, we believe it appropriate to incorporate the workmanship and installation standards contained in proposed § 68.213(d) in that bulletin. This will consolidate all guidelines for installation (directed at subscribers) in our bulletin, while delineating the material standards for that wire (directed at manufacturers) in a separate rule.⁵²

70. Several parties suggest modifications to the workmanship standards set out in our proposal. Four commenters point out an apparent error in the proposed separations table, noting that the minimum distance from COPW to electric supply open wiring not over 300 Volts should be 2 inches (51 mm) and not 2 feet (.6 m).⁵³ This correction will be made in the table. GTE further notes that the entry under the column labeled "Wiring Crossing Alternatives" should read "See Wire Separation—

⁵¹ We noted in the Second Notice that although these separation requirements are incorporated by reference (to electrical codes) into § 68.215(d), they are basic to the proper performance of telephone wiring and should be published specifically in § 68.213(d). 92 FCC 2d at 21-22.

⁵² Because a § 68.213(c) was unnecessary in light of our decision not to impose any special qualifications on installers of non-system wiring, we will adopt the material requirements as § 68.213(c).

⁵³ AT&T Comments, Appendix at 17; UTS Comments at 8; REA Comments at 3; GTE Comments at 13.

⁴⁹ REA Comments at 2; NATA Comments at 27; California Comments at 4; UTS Comments at 7.

⁵⁰ The ringback number requirement adopted herein does not apply to party line subscribers, to whom Part 68 does not apply.

§ 68.213(d)(7)," rather than "See Wiring Separations," as proposed. GTE Comments at 13. Because the entry refers to § 68.213(d)(7) which is captioned, "Wire Separation," we believe it is helpful to identify it as such in the separations table. We will therefore make this change.⁵⁴

71. UTS proposes to include a statement regarding the connections made to vacant COPW conductors.⁵⁵ UTS suggests that installers be cautioned that while COPW may contain signals and voltages other than for network communications service, other relevant sections of Part 68 apply. UTS Comments at 7-8. We agree that it is important to ensure that untrained installers are aware that using COPW conductors for other than network communications purposes may cause network or safety problems. While proposed § 68.213(d)(5) ("Limitations on Electrical Signals") already contains a warning to this effect, we believe that subscribers would benefit from a simpler warning, as the untrained may not understand the technical language and references in the proposed rule. We will therefore include the following in the guidelines for simple installations:

Wiring conductors should not be used for other than network communications purposes. Routing any other voltage sources in wiring may result in improper functioning of the wiring or network harm.⁵⁶

72. UTS argues that the simple installation guidelines should limit wire size to not finer than 26 gauge, and both UTS and USITA urge that the guidelines include a caution on length of wiring runs in relation to gauge. They assert that such rules are necessary to permit proper operation of the telephone circuit, especially if untrained subscribers are permitted to install wiring. UTS Comments at 8-9; USITA Comments at 5-6. GTE suggests that wire used for COPW should be limited to #22, #24 or, for flat wire, #26 awg.

⁵⁴ CCS asserts that the separations table should also warn against running telephone wire through holes containing electrical wires. CCS Comments at 6. This warning is already contained in the simple installations guidelines and therefore need not be repeated in the table.

⁵⁵ Electrical signals which are generated in equipment at the subscribers' premises, rather than from the local telephone company central office, are permitted to be routed in COPW provided that they are "non-hazardous voltage sources" meeting certain Part 68 requirements. For example, low voltage power supplies and security and alarm systems may be found in one and two-line business and residential telephone service.

⁵⁶ California suggests that the table of electrical current limitations in proposed § 68.213(d)(5) has no application to one and two-line installations and should therefore be omitted. California Comments at 5. We note that the guidelines, as adopted, simplifies proposed § 68.213(d)(5) and eliminates this table.

GTE Comments at 12-13. Because the chief benefit of including such a caution is to aid the untrained—especially those purchasing from bulk spools instead of pre-packaged wiring—we believe that any recommendations on wiring length as related to gauge are more appropriately included as guidelines in the simple installations bulletin rather than as material requirements. Although network integrity may be impaired if there is a proliferation of wiring runs exceeding recommended lengths, the primary beneficiaries of such a recommendation are COPW installers because longer-than-recommended runs may not provide satisfactory performance. Similarly, utilizing non-standard ultrathin wire may create performance problems. Accordingly, we will include a provision to discourage the use of such wire generally. We will add the following to the simple installations guidelines:

Wire runs should be limited to 250 feet for #22 awg wire, 200 feet for #24 awg wire, 100 feet for #26 awg wire, and 100 feet for flat wire. Longer runs may not provide satisfactory performance. Wire smaller in gauge than #26 awg should not be used.

73. With respect to material standards, the Second Notice proposed standards for non-system wire which are identical to those set out for system wire in § 68.215(d)(2). Specifically, because inadequately insulated wire has the potential to cause severe harm to the network or to others on the network, insulated conductors are required to have a jacket or sheath with a 1500 Volt minimum breakdown rating. Because a covering jacket or sheath may not be necessary with two or four conductor wire, however, and such conductors, if individually insulated, may meet the specified insulation breakdown rating, we will not require a jacket or sheath to be used with one and two-line COPW. Rather, we will simply require conductors to have insulation that meets the 1500 Volt breakdown requirement. In addition to this requirement, AT&T proposes to include requirements that one and two-line COPW meet specified stress and longitudinal balance tests and consist of solid, annealed copper conductors insulated with polyvinyl chloride or an equivalent compound.⁵⁷ AT&T Comments, Appendix at 12-13. The bulk of one and two-line COPW will be unshielded wire, i.e. two or four conductors in a flat or round cable, requiring a complicated testing scheme

⁵⁷ AT&T also proposes that passive COPW components be required to meet longitudinal imbalance and electrical stress tests. As indicated in note 29 *supra*, we do not believe any such requirements are appropriate at this time.

that would involve bundled cable or ground plane test references. Even in the event of imbalance of such cable, the impact would be noise on the subscriber's telephone line, a customer problem analogous to noisy CPE. This is not a harm to the network under § 68.3(g). Because an imbalance testing scheme is not readily implemented and because no harm is likely to be caused to the network if the COPW is imbalanced, we see no need to adopt these testing requirements. As for AT&T's proposed material requirements, it is not apparent why conductors must be copper or insulated with a polyvinyl chloride compound.⁵⁸ Compliance with the 1500 Volt insulation breakdown rating should be sufficient to ensure that the COPW is not likely to introduce harm to the network. Accordingly, we decline to adopt these additional material standards.

74. GTE also suggests additional material standards, including a requirement that the wire be commercially available and easily identifiable as telephone premises wire, that conductors be 22 or 24 gauge (or in the case of flat cable, at least 26 gauge), and that the conductor insulation use an industry accepted color code format. GTE Comments at 12-13. We believe, however, that packaging requirements, such as color coding and labelling, should not be implemented by this proceeding. See para. 80 *infra*. Further, the proposal to include requirements relating to gauge has been addressed in para. 72 *supra*.

75. Finally, UTS and GTE recommend that the material requirements mandate that one and two-line COPW have a minimum of three, and preferably four, conductors. Both parties reason that if the subscriber at a location served by one line decides to join a party line or add a second line to the premises, three or four conductors are needed. Because the "incremental cost of four-conductor station wire is minimal," they argue that this type of wire should be required to be installed initially. UTS Comments at 8-9; GTE Reply at 24-25. We believe that this proposal relates to subscriber convenience rather than to network integrity. Although we recognize that it might be beneficial to some subscribers to install four conductor cable, we see no reason to foreclose those subscribers who wish to install two conductor

⁵⁸ AT&T also suggests that the conductors should be insulated so as to assure that no greater than 10 milliamperes peak current flow, conductor-to-conductor. This standard is already contained in the rule containing the insulation breakdown rating requirement. We believe this standard relates to network harm. See § 68.213(d)(1).

COPW from doing so. We therefore reject this proposal.

1. Registration of One- and Two-Line COPW

76. The Second Notice also raised the issue of whether a registration program should be adopted for one- and two-line COPW. We stated in the Second Notice that the rules for system wiring do not require registration, but require instead that documentation be provided to the telephone company by the installation supervisor demonstrating that the wiring will conform to the insulation requirements specified in § 68.215(d)(2). This procedure was adopted because substandard system wire probably would not be used by those who were responsible for subsequent failures. We observed, however, that "inappropriate" cables are available in the marketplace (e.g., "zipcord"-type appliance wire, speaker wire, thermostat wire, bell wire, etc.) that might be used by untrained subscribers for one- and two-line COPW installations. There is also a possibility that substandard cables, though denoted "telephone wire," might be manufactured and broadly made available to subscribers through retail outlets. In view of these considerations, we proposed an abbreviated registration procedure directed towards assuring that non-system wiring conforms to a 1500 Volt breakdown rating. We further proposed to limit the wire registration requirement to cables containing fewer than twenty-five pairs, reasoning that twenty-five pair or larger cables should have been designed for use in the system environment, which, as indicated, should be self-regulated for quality. 92 FCC 2d at 31. We invited comment on these proposals.

77. Both AT&T and GTE urge that a full registration program for wire used for non-system installations would be unnecessary and burdensome. AT&T suggests that simply requiring manufacturers to comply with Part 68 material standards and to declare in written form on the packaging that the wire meets these standards is sufficient. AT&T Comments at 27. GTE recommends that in lieu of registration the Commission should adopt industry standards by requiring use of wire that meets the Electronics Industries Association (EIA) performance specifications set out in PN-1558, "Premises Wiring for Voice Telephone Terminals." Additionally, GTE urges that the wire should be UL listed and specifically identified as telephone premises wire for one- and two-line installations. GTE further states that if the Commission does not elect to use industry standards, it would favor an

abbreviated registration program or a "verification" program requiring the wire manufacturer to attest that the wire complies with FCC technical requirements. GTE Comments at 11-12. The Insulated Cable Engineers Association (ICEA) notes in its comments that it is currently developing manufacturing standards for non-system premises wire, and requests that we defer any regulatory action until these standards are completed.⁵⁹ AT&T supports the development of industry standards for wire and suggests that EIA or ICEA standards would be appropriate. AT&T Reply at 18.

78. REA, on the other hand, supports a registration program and, as an additional safeguard, suggests that the wiring installer be required to provide documentation to the telephone company regarding the materials and means of connection. REA Comments at 3. UTS, although not explicitly supporting any particular registration procedure, urges that subscribers be required to provide the telephone company with the registration number of wire used in non-system installations. In addition, UTS submits that *all* unprotected premises wiring—including twenty-five pair cables—should be required to comply with specific industry standards and suggests that EIA standards should be incorporated by reference into our rules. UTS Comments at 6.

79. Although we agree with those commenters who urge that a full registration program is not warranted, we believe that some sort of assurance of telephone wire's quality and suitability is necessary. We are concerned that substandard cables specifically labelled as "telephone wire" might be made broadly available to consumers once our non-system COPW program is adopted. This may create two problems unique to telephone wire. First, such wire is not UL listed and therefore is not offered to the public with any generally accepted guarantee of inherent quality.⁶⁰ Second, with

regard to specific technical matters, faults in wire insulation could unreasonably increase the potential for harmful contact with premises electricity sources, which could cause damage to telephone company equipment or harm to telephone company personnel. In order to avoid these potential problems, we believe that a nonburdensome procedure to assure the distribution of wire safe for telephone network interconnection is warranted.

80. In implementing such a procedure, we seek to avoid imposing any unnecessary burden on wire manufacturers or others. A full, long-form registration program involving detailed testing by a qualified laboratory and submission of support data and samples to the FCC is overly burdensome, both on manufacturers and on the Commission, particularly in a market where only some half dozen manufacturers now exist.⁶¹ See 47 CFR Part 68, Subpart C. Our proposal in the Second Notice for an abbreviated registration program did not specify procedural requirements, although we intimated that a requirement for submission of data supporting conformance with the 1500 Volt breakdown rating currently contained to § 68.215(d)(2) was under consideration. In view of the comments and our policy of minimizing regulatory oversight, we do not believe such a procedure is necessary. Instead, we will require wire manufacturers (or distributors or retailers, whichever name appears on the wire packaging in the marketplace) simply to attest, by letter, to the Commission that their non-system telephone wire meets Part 68 standards.⁶² The Commission will from

harm adopted herein. Of course, nothing in our order precludes wire manufacturers from complying with more stringent industry standards. Once industry standards are established, any party feeling that the standards we adopt here are unnecessarily stringent may utilize the appropriate regulatory procedures to seek a change.

⁵⁹ As suggested above, our concern is that widespread implementation of our non-system COPW program will produce an incentive for the retail distribution of low priced telephone wire by a myriad of suppliers. Thus, despite the current small number of manufacturers, we anticipate that the rules we adopt here will be needed in the expanded wire supply environment.

⁶² Attestation letters should be submitted to the Secretary of the Commission, 1919 M Street, N.W., Washington, D.C. 20554. For the reasons discussed in the Second Notice and in para. 76 *supra*, we will not subject twenty-five pair (or greater) cable to this attestation procedure. See Second Notice at para. 80.

⁵⁹ A draft of these standards, entitled "American National Standard for Telecommunications Wire and Cable for Premises Wiring," was submitted by ICEA.

⁶⁰ As of the date of adoption of this order, neither EIA nor ICEA standards have been finalized. Several commenters suggest that these industry-developed standards, when finalized, should be incorporated by reference into the Part 68 rules. We do not believe that this is necessary. The material standards already contained in the rules should be adequate to assure the quality of wire and prevent potential harm to the network. Further, if industry standards are incorporated by reference, a determination would have to be made as to which specific standards to incorporate, a formidable undertaking which we do not believe is warranted in light of the safeguards against potential network

time to time publish by public notice a list of attestation registrants. Consumers choosing to perform non-system COPW operation will be required to contact their telephone company to report, among other things, the brand name or manufacturer and model number, if any, of the wire they have selected. See para. 59 *supra* and § 68.213 of the rules. If the manufacturer of that wiring is not on the Commission's attestation list or is shown to be marketing wire that causes harm to the network, the telephone company may limit the subscriber's right to connect that wire to the network. See § 68.213(g). Telephone companies, of course will be expected to maintain an up-to-date list of approved wire. To ensure that consumers are readily able to identify suitable wire, we encourage manufacturers to indicate clearly on the packaging that the wire meets FCC standards.

81. In short, this attestation procedure is minimally burdensome on the industry and this Commission, yet it reasonably assures that the wire used for non-system wiring will not, of itself, cause harm to the network. Therefore, we will add the following as § 68.213(d):

Attestation: Manufacturers (or distributors or retailers, whichever name appears on the packaging) of one and two-line non-system premises wire shall attest in a letter to the Commission that the wire conforms with Part 68, FCC rules.

If in the future, however, a showing can be made that the industry has become self-regulated for quality, we are prepared to revisit these matters.

J. Instructions.

82. The Second Notice indicated that if we were to require registration of one and two-line non-system wire, the registrant, like other registrants, would be subject to the requirement of § 68.218(b)(1) to provide installation instructions with the wire. 92 FCC 2d at 31. No party opposes such a requirement, and AT&T and GTE emphasize the advisability of providing instructions to untrained installers of non-system COPW. AT&T Comments at 27; GTE Comments at 9-10. California's position that no special qualifications should be imposed on non-system installers rests partially on its belief installation instructions are readily available from wire manufacturers and local telephone companies. California Comments at 4.

83. We agree that it would be desirable to make installation instructions available to all persons purchasing non-system telephone wire. Our informational bulletin will to a large degree provide this information. In light

of this and in order to minimize regulatory intervention, however, we will not impose a requirement that manufacturers make installation instructions available with their wire. Indeed, because untrained installers will tend to make their wire purchase decisions based, in part, on the availability of this relevant information, it would appear that wire manufacturers have an incentive to include installation information with their products where practicable. For their part, telephone companies, in order to preserve the integrity of their network, would benefit by disseminating such information to their subscribers, perhaps as a billing insert and/or in their "white pages."⁶³ We encourage wire manufacturers, distributors and retailers, as well as telephone companies, to cooperate in this regard.⁶⁴ As an example of this kind of cooperation, we note that GTE telephone companies provide pamphlets containing installation instructions for non-system COPW and provide assistance if their subscribers encounter unexpected problems in installation (where state programs apply). GTE Comments at 9-10. We suggest that the guidelines and warnings in our instructional bulletin, the notification requirement of § 68.213(e), and the testing requirements of § 68.213(f) together serve as a model for any installation instructions.

K. Extraordinary Procedures

84. In the Second Notice, we proposed that the existing extraordinary telephone company procedures of § 68.215(g) should be applied equally to non-system COPW. These procedures provide, in short, that the telephone company may, as an exceptional remedial measure, inspect the wiring during or after placement and may require the use of a protective apparatus. We observed that these procedures take on increased importance if no special qualifications are required for non-system installers. 92 FCC 2d at 23. No comments were received on this issue. We therefore adopt the rule as proposed. Changes in wording, however, are necessary to make the rule consistent with our program for non-system COPW.⁶⁵ We

⁶³ Some telephone companies already provide installation instructions for terminal equipment in their "white pages."

⁶⁴ We note that this does not preclude state regulatory authorities from disseminating additional instructional material or requiring local telephone companies to disseminate this information to their subscribers.

⁶⁵ For example, § 68.215(g) speaks in terms of information provided in the "supervisor's affidavit," language which is not applicable to the non-system COPW program.

have incorporated these changes in the rule. See Appendix.

V. Conclusion and Ordering Clauses

85. The inclusion of one and two-line non-system premises wiring in Part 68 will expand the scope of Part 68 so that new customer premises wiring activities may be performed by subscribers themselves. We believe that the standards adopted for one and two-line non-system COPW will assure that this end is reached without creating the potential for harm to the network. In addition, we believe that the definition of demarcation point adopted herein provides a workable and flexible solution to the problem of determining where the network ends and COPW begins.

86. For purposes of Regulatory Flexibility Act, 5 U.S.C. 604, the Commission certifies that this report and order will not have a substantial economic impact on a significant number of entities. There are presently only some half dozen manufacturers of non-system telephone premises wiring, all of whom are producing quality wire. In addition, the report and order simply requires manufacturers to attest by letter that their wire meets FCC requirements.

87. Accordingly, it is ordered, pursuant to 47 U.S.C. 151, 154(i), 154(j), 201-205, 218, 220, 313, 403, 412, and 5 U.S.C. 553, that Part 68 of the Commission's Rules and Regulations, 47 CFR 68.1 *et seq.*, is amended as set forth in the attached appendix to be effective August 21, 1984.

88. It is further ordered, that the Secretary shall cause a copy of this Report and Order to be served on the state Commissions.

89. It is further ordered, that Docket 81-216 is terminated with regard to the issues addressed herein.

Federal Communications Commission.
William J. Tricarico,
Secretary.

Appendix

PART 68—[AMENDED]

Part 68 of the Commission's Rules and Regulations (Chapter 1 of Title 47 of the Code of Federal Regulations, Part 68) is amended as follows:

1. Section 68.1 is revised to read as follows:

§ 68.1 Purpose.

The purpose of the rules and regulations in this part is to provide for uniform standards for the protection of the telephone network from harms

caused by the connection of terminal equipment and associated wiring thereto, and for the compatibility of hearing aids and telephones so as to ensure that persons with hearing aids have reasonable access to the telephone network.

2. Section 68.2 is amended by adding a new section (a)(4) to read as follows:

§ 68.2. Scope.

(a) * * *

(4) Of all customer premises wiring associated with one and two-line (non-system) residential and business telephone service.

§ 68.3 [Amended]

3. Section 68.3 is amended by adding the term "Network Interface or Demarcation Point," removing "Interface," and adding "Non-System Premises Wiring" to the alphabetical list of terms. The reference letters assigned to various definitions in § 68.3 will be reassigned to reflect changes in alphabetical order.

Network Interface or Demarcation Point: The point of interconnection between telephone company communications facilities and terminal equipment, protective apparatus or wiring at a subscriber's premises. The network interface or demarcation point shall be located on the subscriber's side of the telephone company's protector, or the equivalent thereof in cases where a protector is not employed, as provided under the local telephone company's reasonable and nondiscriminatory standard operating practices.

Non-System Premises Wiring: Wiring which is used with one and two-line business and residence services, located at the subscriber's premises.

(1) Fully Protected Non-System Premises Wiring. Non-system premises wiring which is electrically behind registered (or grandfathered) equipment or protective circuitry which assures that electrical contact between the wiring and commercial power wiring or earth ground will not result in hazardous voltages at the telephone network interface.

(2) Unprotected Non-System Premises Wiring. All other non-system premises wiring.

4. The captions of the present paragraph (1) of § 68.3 are revised to read as follows:

System Premises Wiring:

(1) Fully Protected System Premises Wiring.

(2) Protected System Premises Wiring Requiring Acceptance Testing for Imbalance.

(3) Unprotected System Premises Wiring.

5. A new § 68.213 is added as follows:

§ 68.213. Installation of other than "fully protected" non-system premises wiring.

(a) *Scope of this rule.* Provisions of this rule are limited to "unprotected" premises wiring used with simple installations of wiring for one and two-line residential and business telephone service. More complex installations of wiring for multiple line services, for use with systems such as PBX and telephone systems, are controlled by § 68.215 of these rules.

(b) *Wiring authorized.* "Unprotected" premises wiring (wiring which is not located electrically behind apparatus which protects against hazardous voltages and imbalance) may be used to connect units of terminal equipment or protective circuitry to one another, and to the network interface (or demarcation point), if installed in accordance with these rules. Subsequent relocation of a demarcation point may be arranged, either at the subscriber's request or on the serving telephone company's initiative, but the serving telephone company shall not discriminate in its treatment of demarcation point location, or relocation. Responsibility for the protector (and its associated grounding) on the network side of the demarcation point rests with the telephone company, though the subscriber is responsible for consequences resulting from erroneous wiring procedures conducted under his or her direction. Responsibility for wiring on the subscriber's side of the demarcation point (including any protector that may be installed as part of the premises wiring) purchased in-place or wholly or partially new, rests with the owner (or subsequent owner) of the wiring.

(c) *Material requirements.* Conductors shall have insulation with a 1500 Volt rms breakdown rating. This rating shall be established by covering the jacket or sheath with at least six inches (measured laterally on the cable) of conductive foil, and establishing a potential difference between the foil and all of the individual conductors connected together, such potential difference gradually increased over a 30 second time period to 1500 Volts rms, 60 Hertz, then applied continuously for one minute. At no time during this 90 second time interval shall the current between these points exceed 10 milliamperes peak.

(d) *Attestation.* Manufacturers (or distributors or retailers, whichever name appears on the packaging) of non-system telephone premises wire shall attest in a letter to the Commission that

the wire conforms with Part 68, FCC Rules.

(e) *Notice to the telephone company.* The subscriber shall notify the local telephone company in advance of each operation associated with the installation, connection, reconfiguration and removal (other than removal by disconnection at a standard jack) of premises wiring to or from the telephone network. The following information shall be provided:

(1) The responsible subscriber's telephone number(s).

(2) A description of the location of the jack to which the premises wiring is to be connected.

(3) A statement that all applicable rules, building codes and electrical codes will be complied with.

(4) The wire manufacturer, or brand name, and model number, if any, of the wire used.

(f) *Acceptance testing.* Non-system premises wiring installed in accordance with these rules shall be tested under the acceptance tests specified in this subsection whenever an operation associated with any installation, reconfiguration or removal of wiring (other than final removal) is performed. A telephone which responds to ringing shall be used to perform the tests when the CPE connected or to be connected to the premises wiring does not itself provide ringing.

(1) *Dial Tone Testing.* A telephone connected with the line(s) shall be used to perform this test in the following order:

(i) Lift the handset of the telephone to create the off-hook state on the line under test.

(ii) Listen for noise. Confirm that there is neither audible hum nor excessive noise.

(iii) Listen for dial tone. Confirm that dial tone is present.

(iv) Break the dial tone by dialing a digit. Confirm that dial tone is broken as a result of dialing the digit.

(v) With dial tone broken, listen for audible hum or excessive noise, which could indicate a faulty connection. Confirm that there is neither audible hum nor excessive noise.

(2) *"Ringback" testing.* A telephone connected to the subscriber's line(s) shall be used as follows:

(i) Make a "ringback" call (obtain from the local telephone company information on how to make "ringback" test calls), or have another person dial the number of the line being tested.

(ii) Permit the telephone to ring for one minute (usually twelve rings).

(iii) Lift the handset off the telephone for five seconds or longer, as necessary.

(iv) Hang up. Check return of normal dial tone.

(3) *Failure of acceptance tests.* Absence of dial tone before dialing or inability to break dial tone during either test indicates failure of premises wiring. Failure to receive ringing during the "ringback" testing may indicate failure either of the wiring or of the ringer in the telephone; if necessary, substitute a telephone which is known to be operating to determine which is at fault. Upon any failure, the failing equipment or portion of the premises wiring shall be disconnected from the telephone network, and may not be reconnected until the cause of the failure has been isolated and removed. Any previously tested line(s) shall be retested if it was in any way involved in the isolation and removal of the cause of the failure.

(g) *Extraordinary procedures.* The local telephone company is hereby authorized to limit the subscriber's right of connecting one and two-line non-system premises wiring.

(1) *Conditions which may invoke these procedures.* The extraordinary procedures authorized herein may only be invoked where one or more of the following conditions is present:

(i) Information provided by the subscriber gives reason to believe that a violation of Part 68 of the FCC's Rules is likely.

(ii) A failure has occurred during acceptance testing.

(iii) Harm has occurred, and there is reason to believe that this harm was a result of wiring operations performed under this section.

The extraordinary procedures authorized in the following subsections shall not be used so as to discriminate between installations by local telephone company personnel and installations by others. In general, this would require that any charges for these procedures be levied in accordance with, or analogous to, the "maintenance of service" tariff provisions: if the installation proves satisfactory, no charge should be levied.

(2) *Monitoring or participation in acceptance testing.* Notwithstanding the previous subsection, the local telephone company may monitor or participate in acceptance testing at the time of the initial installation of wiring in the absence of the conditions listed therein; at any other time, one or more of the listed conditions shall be present. Such monitoring or participation in acceptance testing should be performed from the central office test desk where possible to minimize costs.

(3) *Inspection.* Subject to paragraph (g)(1) of this section, the local telephone company may inspect wiring installed

pursuant to this section. To minimize disruption of the premises communications system, we are limiting the right of inspecting wiring as follows:

(i) During initial installation of wiring: The telephone company may require withdrawal of up to 5 percent (measured linearly) of wiring run concealed in ducts, conduit or wall spaces, to determine conformance of the wiring to the information furnished by the subscriber.

(ii) After failure of acceptance testing or after harm has resulted from installed wiring: The telephone company may require withdrawal of all wiring run concealed in ducts, conduit or wall spaces which reasonably could have caused the failure of harm, to determine conformance of the wiring to the information provided by the subscriber.

(4) *Requiring the use of protective apparatus.* In the event that any of the conditions listed in paragraph (g)(1) of this section, arises, and is not permanently remedied within a reasonable period, the telephone company may require the use of protective apparatus which protects against hazardous voltages. Such apparatus may be furnished either by the telephone company or by the subscriber. This right is in addition to the telephone company's rights under § 68.108.

(5) *Notice of the right to bring a complaint.* In any case where the telephone company invokes the extraordinary procedures of § 68.213(g), it shall afford the subscriber the opportunity to correct the situation which gave rise to invoking these procedures, and inform the subscriber of the right to bring a complaint to the Commission pursuant to the procedures set forth in Subpart E of this part. On complaint, the Commission reserves the right to perform any of the inspections authorized under this section, and to require the performance of acceptance tests.

6. The heading of § 68.215 is revised to read as follows:

§ 68.215 Installation of other than "fully protected" system premises wiring.

[FR Doc. 84-13812 Filed 5-22-84; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Parts 81 and 83

[FCC 84-218]

Clarification of Five Marine Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action updates and clarifies five unrelated rules in the maritime radio services. This action is a result of the Commission's ongoing effort to eliminate unnecessary regulations and simplify the rules. These revisions are intended to further this effort.

EFFECTIVE DATE: May 22, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nicholas G. Bagnato, Private Radio Bureau, 202 (632-7175).

List of Subjects

47 CFR Part 81

Coast stations.

47 CFR Part 83

Communications equipment, Ship stations, Telegraph.

Order

Amendment of Parts 81 and 83 to update and clarify certain rules in the Maritime Services; FCC 84-218.

Adopted: May 15, 1984.

Released: May 22, 1984.

By the Commission.

1. In this Order we are deleting an unnecessary rule in Part 81 regarding marine utility stations, and clarifying four rules in Part 83 concerning ship stations on large oceangoing ships.

2. *Section 81.362.* Marine utility stations are portable, low power devices which are operated in the VHF band. They may be used either on land or aboard ships. These stations provide for the flexible short range communications needs of various segments of the maritime community such as harbor pilots. When this class of station was established, we required applicants to submit the antenna information and show they had coordinated with other stations. These requirements are similar to those for coast stations licensed under Part 81. However, because marine utility stations are portable and low power VHF radios with self-contained antennas, interference potential is minimal. The antenna information and coordination required by § 81.362 of the rules is not used or needed for regulatory purposes and poses an unnecessary burden on the maritime public. We are, therefore, deleting § 81.362 from the rules.

3. *Section 83.38.* In the past all documented U.S. ships retained their original radio call sign throughout the life of the ship. This required the Commission to verify a ship's call sign

each time ownership was transferred. A recent change in U.S. Coast Guard regulations¹ has dissociated the call sign from the hull documentation number. Therefore, we are discontinuing the practice of reassigning the same radio call sign to documented ships, with the exception of radiotelegraph ships and ships with survival craft stations. These excepted classes are assigned four letter call signs rather than the alphanumeric call signs assigned all other classes of ship stations. Since only 800 of the approximately 150,000 documented U.S. ships are assigned four letter call signs, this change in procedure will simplify processing of ship station applications. We are also amending § 83.38 with regards to temporary call signs to reflect this change. Only ships previously assigned a four letter call sign will continue to use that call sign under a temporary authorization.

4. **Section 83.442.** This rule requires the main and reserve radiotelegraph stations on board compulsorily equipped ships to be electrically separate and independent. Some ships utilize a common set of instruments and meters to provide a visual indication of system operations. These devices are merely ancillary and are not essential to the operation of either system. We are amending § 83.442 to make clear that such ancillary devices do not violate the requirement for electrical separation of the main and reserve installations.

5. **Section 83.445.** Paragraph (e) of this rule section, consistent with the provisions of the International Convention for the Safety of Life at Sea, requires certain compulsorily equipped ships to be capable of conducting periodic tests of the radiotelephone alarm signal generator on a frequency other than the distress frequency. The purpose is to avoid interference and false alarms on the distress frequency. However, paragraph (a) of the section, which describes transmitter requirements, provides only that the distress frequency must be installed in the subject transmitter. Obviously there must be a second frequency in the transmitter for the purpose of carrying out the required test and we are amending paragraph (a) to make this clear.

6. **Section 83.454.** A general exemption from the radiotelegraph requirements of the Communications Act is in effect for certain ships navigated on domestic voyages.² One of the conditions of the

general exemption is that the subject ship be equipped with an auto alarm receiver and have the capability to relay the distress message to shore. Although the auto alarm must provide an audible warning on the bridge, in the radio officer's stateroom and the radio room, the only location permitted for the "off" switch is the radio room. On ships operating under the general exemption, this arrangement could cause the deck officer to leave the bridge to turn off the auto alarm. This was not intended. We are, therefore, amending § 83.454 to permit an additional "off" switch to be located on the bridge of ships operating pursuant to this general exemption.

7. Authority for this action is contained in Section 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r). Since these amendments make minor changes which are likely to be noncontroversial, we find good cause to dispense with the notice and comment procedures of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B). In addition, some of these rule changes are interpretive in nature and thus exempt from the notice and comment requirements of 5 U.S.C. 553(b)(3)(A). Because these changes relieve restrictions on the public or are interpretive rules, the effective date provisions of 5 U.S.C. 553 also do not apply, 5 U.S.C. 553(d) (1) and (2).

8. In view of the above, it is ordered, That §§ 81.362, 83.38, 83.442, 83.445 and 83.454 of the rules are amended, as set forth in the attached appendix effective May 22, 1984.

9. Regarding questions on matters covered in this document contact Nicholas G. Bagnato, telephone (202) 632-7175.

Federal Communications Commission.
William J. Tricarico,
Secretary.

Appendix

Parts 81 and 83 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 81—STATIONS ON LAND IN THE MARITIME SERVICES AND ALASKA PUBLIC FIXED STATIONS

§ 81.362 [Removed]

Part 81 is amended by removing § 81.362.

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

1. Section 83.38(c) is revised to read as follows:

§ 83.38 Assignment of call signs.

(c) Ship stations operating under temporary authority on ships which are documented by the United States Coast Guard and which were previously assigned call signs consisting of four letters will retain the same call sign.

2. Section 83.442 is revised to read as follows:

§ 83.442 Radio station.

The radio station required by Title III, Part II of the Communications Act or the Safety Convention must consist of:

(a) A radiotelegraph station comprised of a main and reserve radiotelegraph installation, electrically separate and electrically independent of each other. The reserve installation must be connected to a reserve source of energy completely independent of the propelling power of the ship and the ship's electrical system. The main and reserve installations may share ancillary components, such as metering devices, which are not essential to the operation of the transmitter. This sharing of ancillary components satisfies the requirements of §§ 83.552(d) and 83.553(d).

(b) A ship radar station meeting the provisions of § 83.464.

(c) A radiotelephone station capable of transmitting and receiving on the radiotelephone distress frequency.

3. In § 83.445 footnote 1 is removed and paragraphs (a) and (e) are revised to read as follows:

§ 83.445 Requirements of radiotelephone installation.

(a) The radiotelephone transmitter must be capable of transmitting on 2182 kHz clearly perceptible signals from ship to ship during daytime under normal conditions and circumstances over a minimum normal range of 150 nautical miles. Additionally, it must be capable of transmitting on one other frequency in the band 1605-4000 kHz. The transmitter shall:

(e) The automatic device for generating the radiotelephone alarm signal must be tested weekly on frequencies other than the radiotelephone distress frequency using a suitable artificial antenna.

4. In § 83.454 paragraph (c) is amended by adding a sentence to the end of the paragraph to read as follows:

¹ Documentation of Vessels, 47 FR 27490, June 24, 1982.

² See Report and Order, PR Docket No. 79-336, released February 24, 1982, 47 FR 10220.

§ 83.454 Installation of radiotelegraph auto alarm.

(c) * * * However ships operating pursuant to the general exemption contained in § 83.480(c) may install an additional switch on the bridge for stopping the audible warning apparatus.

[FR Doc. 84-13613 Filed 5-22-84; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 87

[FCC 84-220]

Transmitter Frequency Tolerances in the Aviation Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the rules with respect to frequency tolerances in the Aviation Services to conform to the provisions of the Final Acts of the World Administrative Radio Conference, Geneva, 1979.

EFFECTIVE DATE: May 22, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Robert E. Mickley, Private Radio Bureau, (202) 632-7175.

SUPPLEMENTARY INFORMATION:**List of Subjects in 47 CFR Part 87**

Aeronautical stations,
Communications equipment, Radio.

Order

In the matter of transmitter frequency tolerances in the aviation services.

Adopted: May 15, 1984.

Released: May 22, 1984.

By the Commission.

1. This proceeding modifies the Aviation Services transmitter frequency tolerances of Part 87 of the Commission's Rules and Regulations to conform to the Final Acts of the World Administrative Radio Conference, Geneva, 1979 (WARC '79). The Final Acts of WARC '79 became effective internationally on January 1, 1982, for administrations that had ratified the treaty. The United States ratified the WARC '79 on September 6, 1983. Accordingly, we are now amending § 87.65 of the rules.

2. The Commission adopted a Fifth Notice of Inquiry (NOI) in General Docket 80-739 on May 13, 1982 (FCC 82-213, 47 FR 25982) which was released on June 7, 1982. This NOI published the "Table of Transmitter Frequency Tolerances" resulting from WARC '79

and solicited comments concerning, among other things, transmitter frequency tolerances. No comments applicable to frequency tolerances in the Aviation Services were received.

3. The Federal Aviation Administration (FAA) has proposed a three-phase plan for the implementation of 25 kHz channel spacing in the 118-136 MHz band.¹ The primary effect on aviation users will be that aircraft not equipped with 25 kHz channel transmitters may encounter rerouting and delays, particularly in congested en route and terminal areas. This Order is compatible with the FAA's 25 kHz channel spacing plan and will ensure that United States aircraft will be equipped to receive full air traffic control services by January 1, 1990.

4. The amendments contained in § 87.65 of the Appendix contain three noteworthy changes:

a. WARC '79 allocated the band 136.0 to 137.0 MHz to the Aeronautical Mobile Service.² Since this allocation is adjacent to a prior Aeronautical Mobile Service allocation, we have moved the band edge from 136 MHz to 137 MHz.

b. The frequency tolerance for radionavigation stations in the 100 to 136 MHz band is presently incorrectly listed as 50 parts in 10⁶. We are correcting the frequency tolerance to read 20 parts in 10⁶ which is compatible with equipment now authorized for use by the FAA in this band.

c. The table of frequency tolerances indicates a frequency tolerance of 20 parts in 10⁶ for "Land stations" in the band 960 to 1215 MHz. Use of the term "Land stations" in this instance is not appropriate. It should read "Radionavigation stations." Accordingly, we are making this correction.

5. Authority for this action is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended. Since the amendments implement the provisions of an international treaty as found in Appendix 7 of the International Telecommunication Union (ITU) Radio Regulations, Edition of 1982, the public notice, procedure, and effective date provisions of 5 U.S.C. 553 do not apply.

¹ See FAA General Notice, 48 FR 39194, August 29, 1983.

² Until January 1, 1990, the band 136-137 MHz is allocated as an alternative allocation to the space operation (space-to-earth), meteorological-satellite service (space-to-earth) and the space research service (space-to-earth) on a primary basis. After January 1, 1990, no new assignments will be made to the above space services and existing stations will become secondary to the aeronautical mobile (R) service stations as the latter service is introduced in the band.

6. In view of the above, it is ordered. That the rule amendments set forth in the attached Appendix are adopted effective May 22, 1984.

7. Regarding questions on matters covered by this document, contact Robert E. Mickley, telephone (202) 632-7175.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Part 87 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 87—AVIATION SERVICES

1. Section 87.65 is amended by removing the note and its designator in paragraph (c)(2)(ii) and by revising paragraph (a) to read as follows:

§ 87.65 Frequency stability.

(a) Except as provided in paragraphs (c), (d), and (f) of this section, the carrier frequency of each station in the Aviation Services must be maintained within the tolerances given below:

Frequency band (lower limit exclusive, upper limit inclusive), and categories of stations	Tolerance ¹	Tolerance ²
(1) Band—9 to 535 kHz:		
Aeronautical stations	100	100
Aircraft stations	200	100
Survival craft stations on 500 kHz	5,000	10 ²⁰
Radionavigation stations	100	100
(2) Band—1605 to 4000 kHz:		
Aeronautical fixed stations:		
Power 200 W or less	100	* 100
Power above 200 W	50	* 50
Aeronautical stations:		
Power 200 W or less	* 100	* * 100
Power above 200 W	* 50	* * 50
Aircraft stations	* 100	* 100
Survival craft stations on 2182 kHz	200	10 ²⁰
(3) Band—4 to 29.7 MHz:		
Aeronautical fixed stations:		
Power 500 W or less	50	
Power above 500 W	15	
Single-sideband and Independent-sideband emission:		
Power 500 W or less		10 50
Power above 500 W		10 20
Class F1B emissions		10 10
Other classes of emission:		
Power 500 W or less		20
Power above 500 W		10
Aeronautical stations:		
Power 500 W or Less	* 100	* 100
Power above 500 W	* 50	* 50
Aircraft stations	* 100	* 100
Survival craft stations on 836 kHz	200	10 50
(4) Band—29.7 to 100 MHz:		
Aeronautical fixed stations:		
Power 200 W or less	50	
Power above 200 W	30	
Power 50 W or less		30
Power above 50 W		20
Operational fixed stations:		
73-74.6 MHz (Power 50 W or less)	50	30
73-74.6 MHz (Power above 50 W)	20	20
72-73.0 MHz and 75.4-76.0 MHz	5	5
Radionavigation stations	100	50
(5) Band—100 to 137 MHz:		
Aeronautical stations	* 50	20
Emergency locator transmitter test stations	50	50

Frequency band (lower limit exclusive, upper limit inclusive), and categories of stations	Tolerance ¹	Tolerance ²
Survival craft stations on 121.5 MHz	50	50
Emergency locator stations	50	50
Aircraft and other mobile stations in the Aviation Services	* 50	30
Radionavigation stations	20	20
(6) Band—137 to 470 MHz:		
Aeronautical stations	50	20
Survival craft stations on 243 MHz	50	50
Aircraft stations	50	30
Radionavigation stations	* 50	* 50
(7) Band—470 to 2450 MHz:		
Aeronautical stations	100	20
Aircraft stations	100	20
Radionavigation stations:		
470-960 MHz	* 500	* 500
960-1215 MHz	20	20
1215-2450 MHz	* 500	* 500
(8) Band—2450 to 10500 MHz:		
Radionavigation stations	* 1250	* 1250
(9) Band—10.5 GHz to 40 GHz:		
Radionavigation stations	* 5000	* 5000

NOTES

¹ The tolerance shown in this column is the maximum tolerance permitted for transmitters until January 1, 1990, if the transmitters were installed before January 2, 1985, and used at the same installation. Tolerance is indicated in parts in 10⁶ unless shown as Hertz.

² Unless otherwise indicated, the tolerance shown in this column is the maximum tolerance permitted after January 1, 1985 for new and replacement transmitters. Tolerance is indicated in parts in 10⁶ unless shown as Hertz.

³ The tolerance shown is applicable to transmitters first type accepted or type approved after November 30, 1977.

⁴ Transmitters type accepted between January 1, 1966, and January 1, 1974, must comply with a 30 parts in 10⁶ tolerance. Transmitters type accepted after January 1, 1974, and stations using offset carrier techniques must comply with a 20 parts in 10⁶ tolerance.

⁵ Transmitters type accepted after January 1, 1974, must comply with a 30 parts in 10⁶ tolerance.

⁶ Where specific frequencies are not assigned to radar stations, the bandwidth occupied by the emissions of such stations shall be maintained wholly within the band allocated to the service and the indicated tolerance does not apply.

⁷ In the 5000 to 5250 MHz band, the FAA requires a tolerance of ± 10 kHz for Microwave Landing System stations which are to be a part of the National Airspace System (FAR 171).

⁸ For single-sideband transmitters operating in the frequency bands 1605-4000 kHz and 4-29.7 MHz which are allocated exclusively to the Aeronautical Mobile (R) Service, the tolerance on the carrier (reference) frequency is: for aeronautical stations, 10 Hz; for aircraft stations, 20 Hz.

⁹ For single-sideband radiotelephone transmitters the tolerance is: in the bands 1605-4000 kHz and 4-29.7 MHz for peak envelope powers of 200 W or less and 500 W or less, respectively, 50 Hz; in the bands of 1605-4000 kHz and 4-29.7 MHz for peak envelope powers above 200 W and 500 W, respectively, 20 Hz.

¹⁰ In Hz.

[FR Doc. 84-13812 Filed 5-22-84; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 40562-4062]

Pacific Halibut Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of final rule.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission, publishes notice of regulations promulgated by that

Commission and approved by the United States Government to govern the Pacific halibut fishery. These regulations are intended to enhance the conservation of Pacific halibut stocks in order to help rebuild and sustain them at an adequate level in the northern Pacific Ocean and Bering Sea.

EFFECTIVE DATE: May 18, 1984.

FOR FURTHER INFORMATION CONTACT:

J. Craig Hammond, Special Agent in Charge, Law Enforcement Division, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802, telephone (907) 586-7221; or Executive Director, International Pacific Halibut Commission, P.O. Box 5009, University Station, Seattle, Washington 98105, telephone (206) 624-1838.

SUPPLEMENTARY INFORMATION:

The International Pacific Halibut Commission (IPHC), under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, D.C. on March 29, 1979), has promulgated new regulations governing the Pacific halibut fishery. The regulations have been approved by the Secretary of State of the United States of America and by the Governor-General of Canada, by Order-in-Council. On behalf of the IPHC, these regulations are published in the *Federal Register* to provide notice of their effectiveness, and to inform persons subject to the regulations of the restrictions and requirements established therein.

The regulations are similar to those which have previously been in effect under the Convention, but they have been extensively rewritten to make them easier to understand and use. The major substantive changes from previous regulations are as follows: (1) All commercial halibut fishing vessels and charter vessels for sport fishing of halibut must now obtain annual licenses from the IPHC; (2) new halibut fishing seasons and area catch limits are established; (3) Area 4 has been redivided into five, rather than the previous four, smaller areas; (4) new vessel clearance requirements for the various parts of Area 4 are established.

Because approval by the Secretary of State of the IPHC regulations in a foreign affairs function, *Jensen v. National Marine Fisheries Service*, 512 F.2d 1189 (9th Cir. 1975), 5 U.S.C. 553 of the Administrative Procedure Act, Executive Order 12291, and the

Regulatory Flexibility Act do not apply to this notice of the effectiveness and content of the regulations.

List of Subjects in 50 CFR Part 301

Fish, Fisheries.

Dated: May 18, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Chapter III is amended by revising Part 301 to read as follows:

PART 301—PACIFIC HALIBUT FISHERIES

Sec.

- 301.1 Short title.
- 301.2 Interpretation.
- 301.3 Application.
- 301.4 Regulatory areas.
- 301.5 Fishing periods.
- 301.6 Closed periods.
- 301.7 Closed area.
- 301.8 Catch limits.
- 301.9 Size limits.
- 301.10 Licensing of vessels.
- 301.11 Vessel clearance and hold inspection.
- 301.12 Logs.
- 301.13 Receipt and possession of halibut.
- 301.14 Fishing gear.
- 301.15 Retention of tagged halibut.
- 301.16 Supervision of unloading and weighing.
- 301.17 Sport fishing for halibut.
- 301.18 Previous regulations superseded.

Authority: 5 UST 5; TIAS 2900; 16 U.S.C. 773-773k.

§ 301.1 Short title.

These Regulations may be cited as the *International Pacific Halibut Convention Regulations*.

§ 301.2 Interpretation.

(a) In these regulations,

Charter vessel means a vessel used for hire in sport fishing for halibut;

Commercial fishing means fishing the resulting catch of which either is or is intended to be sold or bartered;

Commission means the International Pacific Halibut Commission;

Fishing means the taking, harvesting, or catching of fish; the attempted taking, harvesting, or catching of fish; or any activity that can reasonably be expected to result in the taking, harvesting, or catching of fish, including specifically the deployment of any amount or component part of setline gear anywhere in the maritime area;

Land with respect to halibut means to bring to shore and to offload;