

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

In the Matter of)
)
 Implementation of the) CC Docket No. 96-128
 Pay Telephone Reclassification)
 and Compensation Provisions of the)
 Telecommunications Act of 1996)
)
 Policies and Rules Concerning) CC Docket. No. 91-35
 Operator Service Access and)
 Pay Telephone Compensation)
)
 Petition of the Public Telephone)
 Council to Treat Bell Operating Company)
 Payphones as Customer Premises)
 Equipment)
)
 Petition of Oncor Communications)
 Requesting Compensation for)
 Competitive Payphone Premises)
 Owners and Presubscribed Operator)
 Services Providers)
)
 Petition of the California Payphone)
 Association to Amend and Clarify)
 Section 68.2(a) of the)
 Commission's Rules)
)
 Amendment of Section 69.2(m))
 and (ee) of the Commission's Rules)
 to Include Independent Public)
 Payphones Within the "Public)
 Telephone" Exemption from End User)
 Common Line Access Charges)

ORDER ON RECONSIDERATION

Adopted: November 8, 1996

Released: November 8, 1996

By the Commission:

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I. INTRODUCTION

1. On September 20, 1996, the Commission adopted a Report and Order implementing Section 276 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("1996 Act").¹ In the Report and Order, the Commission adopted new rules and policies governing the payphone industry that: (1) establish a plan to ensure fair compensation for "each and every completed intrastate and interstate call using [a] payphone[;]"² (2) discontinue intrastate and interstate carrier access charge payphone service elements and payments and intrastate and interstate payphone subsidies from basic exchange services;³ (3) prescribe nonstructural safeguards for Bell Operating Company ("BOC") payphones;⁴ (4) permit the BOCs to negotiate with payphone location providers on

¹ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Report and Order, FCC 96-388 (rel. Sept. 20, 1996) ("Report and Order"), appeal docketed sub nom. Illinois Public Telecommunications Assn. v. FCC and United States, Case No. 96-1394 (D.C. Cir., filed Oct. 17, 1996); Notice of Proposed Rulemaking, 11 FCC Rcd 6716 (1996) ("Notice").

² 47 U.S.C. § 276(b)(1)(A).

³ 47 U.S.C. § 276(b)(1)(B).

⁴ 47 U.S.C. § 276(b)(1)(C).

the interLATA carrier presubscribed to their payphones;⁵ (5) permit all payphone service providers to negotiate with location providers on the intraLATA carrier presubscribed to their payphones;⁶ and (6) adopt guidelines for use by the states in establishing public interest payphones to be located "where there would otherwise not be a payphone[.]"⁷

2. In the Report and Order, we noted that Telecommunications Act of 1996 fundamentally changes telecommunications regulation. We stated that the 1996 Act erects a "pro-competitive deregulatory national framework designed to accelerate rapid private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."⁸ To this end, we advanced the twin goals of Section 276 of the Act of "promot[ing] competition among payphone service providers and promot[ing] the widespread deployment of payphone services to the benefit of the general public..."⁹ We sought to eliminate those regulatory constraints that inhibit the ability both to enter and exit the payphone marketplace, and to compete for the right to provide services to customers through payphones. At the same time, we recognized that a transition period is necessary to eliminate the effects of some long-standing barriers to full competition in the payphone market. For this reason, we concluded that we would continue, for a limited time, to regulate certain aspects of the payphone market, but only until such time as the market evolves to erase these sources of market distortions.

3. On October 21, 1996, a number of parties filed petitions requesting that the Commission reconsider or clarify the rules we adopted in the Report and Order.¹⁰ These petitions have as their general focus the Commission's conclusions regarding all of the following: the status of competition in the payphone marketplace; the use of market-based compensation for payphone calls; the appropriate per-call compensation amount for various types of calls; the Commission's authority to let the market set local coin rates; state entry and exit regulations; who should pay the per-call compensation; how calls should be tracked; how per-call compensation payments should be administered; the amount and appropriate payors of the interim flat-rate compensation; the valuation of local exchange carriers ("LECs") payphone assets; federal tariffing for payphone-related services; and various other requirements relating to payphones. In this Order on Reconsideration, we address each of these issues and conclude that the petitions for reconsideration should be denied, with two limited exceptions, because we find, as discussed more fully in this Order, that the petitions contain no new evidence or arguments not contemplated by our conclusions in the Report and Order.¹¹ On two issues, we grant requests for reconsideration and modify:

⁵ 47 U.S.C. § 276(b)(1)(D).

⁶ 47 U.S.C. § 276(b)(1)(E).

⁷ 47 U.S.C. § 276(b)(2).

⁸ S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 1 (1996).

⁹ 47 U.S.C. § 276(b)(1).

¹⁰ A list of the parties filing petitions, along with the abbreviated names this Order uses to refer to the parties, is included as Appendix A. Similarly, Appendix B lists those parties that filed oppositions or comments on the petitions.

¹¹ Section 405 of the Act states, in relevant part, that:

Reconsiderations shall be governed by such general rules as the Commission may establish, except that no evidence other than newly discovered evidence, evidence which has become available only since the original taking of evidence, or evidence which the Commission or designated authority within the Commission believes should have been taken in the original proceeding shall be taken on any reconsideration.

(1) the requirements for LEC tariffing of payphone services and unbundled network functionalities; and
(2) the requirements for LECs to remove unregulated payphone costs from the carrier common line charge and to reflect the application of multiline subscriber line charges to payphone lines. We also make a number of clarifications throughout this Order on Reconsideration.

II. ISSUES

A. COMPENSATION FOR EACH AND EVERY COMPLETED INTRASTATE AND INTERSTATE CALL ORIGINATED BY PAYPHONES

1. Payphone Calls Subject to this Rulemaking and Compensation Amount

a. Report and Order

4. Defining Fair Compensation. The Commission concluded that, once competitive market conditions exist, the most appropriate way to ensure that payphone service providers ("PSPs") receive fair compensation for each call is to let the market set the price for individual calls originated on payphones.¹² We concluded that it is only in cases where the market does not or cannot function properly that the Commission needs to take affirmative steps to ensure fair compensation.¹³

5. The Commission concluded that the transition to market-based rates should occur in two phases. Because LECs will terminate, pursuant to Section 276(b)(1)(b), subsidies for their payphones within one year of the effective date of the rules adopted in this proceeding, LECs will not be eligible to receive compensation under Section 276(b)(1)(a) until that termination date.¹⁴ The period before per-call compensation becomes effective will be the first phase of implementing the rules adopted in this proceeding. During this first phase, states may continue to set the local coin rate in the same manner as they currently do. States may, however, move to market-based local coin rates anytime during this period. In addition, the states must conduct their examination of payphone regulations during this period to review and remove, if necessary, those regulations that affect competition, such as entry and exit restrictions.¹⁵ Interexchange carriers ("IXCs") will pay compensation for access code calls and subscriber 800 calls on a flat-rate basis.¹⁶ In addition, under the Report and Order, all payphones must provide free access to dialtone, emergency calls, and telecommunications relay service ("TRS") calls for the hearing disabled.¹⁷

6. The Commission stated in the Report and Order that, in the second phase, which will begin on October 7, 1997, LECs will have already terminated the subsidies prohibited by Section 276(b)(1)(B), and per-call tracking capabilities will be in place.¹⁸ The carriers to whom payphone calls are routed will be responsible for tracking each compensable call and remitting per-call compensation to the PSP. During this second year, which is the first year of per-call compensation (as opposed to flat-rate compensation), the market will be allowed to set the rate for local coin calls, unless the state can show that there are market failures that would not allow market-based rates. In addition, during the second phase, to allow us to ascertain the status of competition in the payphone marketplace, we concluded that IXCs must pay PSPs a default rate of \$.35 for each compensable call, which may be changed by mutual

¹² Report and Order at para. 49.

¹³ Id.

¹⁴ Id. at para. 50.

¹⁵ Id.

¹⁶ Id.

¹⁷ Id.

¹⁸ Id. at para. 51.

agreement.¹⁹ PSPs will be required to post the local coin rate they choose to charge at each payphone.²⁰ During the second phase, the Commission may review, at our option, the deregulation of local coin rates nationwide and determine whether marketplace disfunctions exist, such as locational monopolies caused by the size of the location with an exclusive PSP contract or the caller's lack of time to identify potential substitute payphones, and should be addressed by the Commission.²¹

7. Ensuring Fair Compensation. To ensure fair compensation, we concluded in the Report and Order that we must provide for compensation for access code calls and subscriber 800 and other toll-free number calls, whether they are intrastate or interstate in destination.²² We concluded that we must ensure fair compensation for 0+ calls that use BOC payphones.²³ We concluded further that once the BOCs reclassify their payphones and terminate all subsidies, pursuant to Section 276(b)(1)(B), they may receive the compensation established by the Report and Order, so long as they do not otherwise receive compensation for use of their payphones in originating 0+ calls.²⁴ We also concluded that, in the absence of a contract providing compensation to the PSP for intraLATA 0+ calls, the PSP shall be eligible to collect per-call compensation from the carrier to whom the call is routed.²⁵ In addition, the Commission concluded that PSPs should receive compensation for international calls. We found that we have authority under Sections 4(i) and 201(b) of the Communications Act of 1934, as amended, to ensure that PSPs are fairly compensated for international as well as interstate and intrastate calls using their payphones in the United States.²⁶ Further, we found no evidence of congressional intent to leave international calls uncompensated under Section 276.²⁷

8. Local Coin Calls. The Commission concluded in the Report and Order that the market should be allowed to set the price for all compensable calls, including a local coin call.²⁸ The Commission concluded that competition and a deregulatory, market-based approach to setting local coin rates is appropriate, because existing local coin rates are not "necessarily fairly compensatory."²⁹ We recognized, however, that the competitive conditions, which are a prerequisite to a deregulatory, market-based approach, do not currently exist and cannot be achieved immediately.³⁰ Many states impose regulations on PSPs, including certain requirements that must be fulfilled before a PSP can enter or exit the payphone marketplace. In addition, in some locations, because of the size of the location with an exclusive PSP contract or the caller's lack of time to identify potential substitute payphones, the PSP may be able to charge an inflated rate for local calls based on its monopoly, pursuant to an exclusive contract with the

¹⁹ Id.

²⁰ Id.

²¹ Id.

²² Id. at para. 52.

²³ Id. at para. 53.

²⁴ Id.

²⁵ Id.

²⁶ Id. at para. 54.

²⁷ Id.

²⁸ Id. at para. 56.

²⁹ Id. at para. 58.

³⁰ Id. at para. 59.

location provider, on all payphones at certain types of locations.³¹ We concluded that such monopoly location arrangements, in the absence of regulatory oversight, could impair competition.³²

9. Based on these concerns, the Commission concluded that the overall transition to market-based local coin rates should not occur immediately.³³ During the first phase, the states will be responsible for both ensuring that PSPs are fairly compensated for local coin calls and protecting consumers from excessive rates. Eventually, when fully competitive conditions exist, the marketplace will address both concerns. We concluded that, during this period before per-call, as opposed to flat-rate, compensation becomes effective, states may continue to set the local coin rate in the same manner as they currently do.³⁴ States may, however, move to market-based local coin rates anytime during this period, and are encouraged to do so. In addition, each state should examine and modify its regulations applicable to payphones and PSPs, removing, in particular, those rules that impose market entry or exit requirements.³⁵ We concluded that, for purposes of ensuring fair compensation through a competitive marketplace, the states should remove only those regulations that affect payphone competition; the states remain free at all times to impose regulations, on a competitively neutral basis, to provide consumers with information and price disclosure.³⁶ In addition, the states at all times must ensure that access to dialtone, emergency calls, and telecommunications relay service calls for the hearing disabled are available from all payphones at no charge to the caller.³⁷

10. Pursuant to the Report and Order, at the conclusion of this first period, the market will be allowed to set the price for a local coin call. The Commission concluded that it should make an exception to the market-based approach, however, for states that are able to demonstrate with specificity that market failures exist within the state that would not allow market-based rates. Such a detailed showing could consist of, for example, a detailed summary of the record of a state proceeding that examines the costs of providing payphone service within that state and the reasons why the public interest is served by having the state set rates within that market.³⁸ The Commission concluded that, during the second phase, after the initial period of flat-rate compensation, we have the discretion to review market-based local coin rates nationwide and determine whether marketplace disfunctions, such as locational monopolies where the size of the location or the caller's lack of time to identify any potential substitute payphones, exist and should be addressed by the Commission. If, at that point, we find that the deregulation of local coin rates warrants modification due to market failures, we may choose, for example, to set a cap on the number of calls subject to compensation from particular payphones to limit the exercise of locational market power.³⁹ Absent such a finding, at the conclusion of the second phase, the market-based local coin rate at these payphones will be the default compensation rate for all compensable calls in absence of an agreement

31 Id.

32 Id.

33 Id. at para. 60.

34 Id.

35 Id.

36 Id.

37 Id.

38 Id. at para. 61.

39 Id.

between the PSP and the carrier-payor.⁴⁰

11. We concluded in the Report and Order that we must ensure fair compensation for "411" and other directory assistance calls from payphones by permitting the PSP to charge a market-based rate for this service, although a PSP may decline to charge for this service if it chooses.⁴¹ In addition, to help ensure that a LEC does not discriminate in favor of its own payphones, we concluded that if the incumbent LEC imposes a fee on independent payphone providers for "411" calls, then the LEC must impute the same fee to its own payphones for this service.⁴²

12. Payphone Fraud. The Commission has recognized, since it first addressed the issue of compensation for subscriber 800 calls in 1991, that a PSP "could attach an autodialer to a payphone and have it place repeated 800 calls ... to increase the amount of compensation [it] receives."⁴³ Section 227(b)(1) of the Act states that it is unlawful for any person to use an autodialer to call "any service for which the called party is charged for the call[.]" We concluded in the Report and Order that this provision bars the use of autodialers to generate payphone compensation by calling toll-free 800 numbers, which are billed to the called party.⁴⁴ We noted that the Commission will aggressively take action against those involved in such fraud. The Commission has the authority under the 1996 Act and its rules to take civil enforcement action against a PSP who deliberately violates our compensation rules by placing toll free calls simply to obtain compensation from the carriers. More importantly, we noted that such activity may be fraud by wire and subject to criminal penalties.⁴⁵

13. The Commission has previously adopted a definition of "payphone" in the access code call compensation proceeding, although the definition is used only for purposes of the billing and collection of the compensation in that proceeding.⁴⁶ We concluded in that proceeding that payphones appearing on the LEC-provided customer-owned, coin-operated telephone ("COCOT") lists were payphones that are eligible for compensation.⁴⁷ If a payphone provider does not subscribe to an identifiable payphone service, or if its payphone is omitted from the COCOT list in error, the provider is required to provide alternative verification information to the IXC paying compensation. We concluded in the Report and Order that this definition of "payphone," regardless if the payphone in question is independently- or LEC-provided, will be sufficient for the payment of compensation as mandated by Section 276 and the instant proceeding.⁴⁸ In addition, all payphones will be required to transmit specific payphone coding digits as a part of their automatic number identification ("ANI"), which will assist in identifying them to compensation payors. Beyond the immediate purposes of paying compensation, we concluded that a payphone is any telephone made available to the public on a fee-per-call basis, independent of any other commercial transaction, for the purpose of making telephone calls, whether the telephone is coin-operated

⁴⁰ Id.

⁴¹ Id. at para. 62.

⁴² Id.

⁴³ Id. at para. 65.

⁴⁴ Id.

⁴⁵ Id.

⁴⁶ Reconsideration Order, 8 FCC Rcd at 7156-57.

⁴⁷ Id.

⁴⁸ Report and Order at para. 66.

or is activated either by calling collect or using a calling card.⁴⁹

14. Completed Calls. The Commission concluded that a "completed call" is a call that is answered by the called party.⁵⁰ To comply with the mandate of Section 276, we concluded that multiple sequential calls made through the use of a payphone's "#" button should be counted as separate calls for compensation purposes.⁵¹ We concluded further that Section 276(b)(1)(A) was not intended to apply to both incoming and outgoing calls.⁵² Because PSPs may block incoming calls, they are able to restrict use of their payphones if they are concerned about a lack of compensation. For this reason, we concluded that incoming calls are not within the purview of Section 276, and it is not required, as a result, to address them in the order.⁵³

15. Compensation Amount. Because we established in the Report and Order that the payphone marketplace has low entry and exit barriers and will likely become increasingly competitive, we concluded that the market (or the states, where there are special circumstances) is best able to set the appropriate price for payphone calls in the long term.⁵⁴ We concluded further that the appropriate per-call compensation amount ultimately is the amount the particular payphone charges for a local coin call, because the market will determine the fair compensation rate for those calls.⁵⁵ If a rate is compensatory for local coin calls, then it is an appropriate compensation amount for other calls as well, because the cost of originating the various types of payphone calls are similar. We concluded that the per-call compensation amount equal to the local coin rate is a default rate that will apply only in the absence of a negotiated agreement between the parties. PSPs, IXC's, subscriber 800 carriers, and intraLATA carriers may agree on an amount for some or all compensable calls that is either higher or lower than the local coin rate at a given payphone.⁵⁶

16. To allow us to ascertain the status of competition in the payphone marketplace, we concluded that we should establish the default per-call rate for two years before leaving it to the market to set the rate, absent any changes in our rules.⁵⁷ More specifically, until October 7, 1997, IXC's will pay flat-rate compensation to PSPs.⁵⁸ After the initial period, when per-call tracking capabilities will be in place, we conclude that IXC's will be required to pay a default rate of \$.35 per call, which is currently the local coin rate in four of the five states that have deregulated their local calling rates. The carrier-payor and the PSP may agree to a compensation rate that is different, and, therefore, the default rate would not apply.⁵⁹ For coinless payphones, which by definition do not have a local coin rate, the default rate will

⁴⁹ Id.

⁵⁰ Id. at para. 63.

⁵¹ Id.

⁵² Id. at para. 64.

⁵³ Id.

⁵⁴ Id. at paras. 11-19.

⁵⁵ Id. at para. 70.

⁵⁶ Id. at para. 71.

⁵⁷ Id. at para. 72.

⁵⁸ Id.

⁵⁹ Id.

remain \$.35 per call for as long as this rate is fairly compensable under Section 276(b)(1)(A).⁶⁰ We concluded that mandating a per-call amount for inmate payphones, which do not allow local coin calls, could possibly lead to a double recovery of costs already included in higher-than-average operator service rates and special surcharges on end-user phone bills for calls made on these payphones.⁶¹ We concluded further that semi-public payphones are entitled to receive per-call compensation in the same manner as public payphones.⁶²

b. Petitions

17. Defining Fair Compensation. AT&T argues that the Commission's assumption regarding the ability of the market to set a fair compensation amount is unfounded, because the requisite competition in the market does not exist.⁶³ DC People's Counsel contends that the Report and Order is based on the faulty premise that local coin calling is competitive, and that by encouraging states to identify possible market failures, the Commission inappropriately shifts the burdens to the states to rebut the Commission's premise.⁶⁴ California PUC argues that the Report and Order makes no showing that market forces can develop fair and reasonable rates.⁶⁵

18. California PUC contends that the Report and Order both creates the potential of a system of unregulated single-owner monopolies in the payphone business and fails to address the exercise of monopoly power at payphone locations with respect to individual consumers.⁶⁶ Maine argues that a proper record in this proceeding would likely show that locational monopolies constitute virtually the entire payphone services market.⁶⁷ New York DPS contends that competition among PSPs will continue to be for prime locations, not for lower local coin rates. According to New York DPS, this competition will lead, in turn, to locational monopolies, where PSPs can charge high rates to maximize profits.⁶⁸ MCI contends that market-based rates will allow callers to become captive to higher payphone calling rates.⁶⁹ LDDS contends further that PSPs will have an incentive to mark up the local coin rate as a means of recovering locational monopoly profits.⁷⁰

19. Ensuring Fair Compensation. The RBOCs request that the Commission clarify that the BOCs are able to collect per-call compensation for 0+ calls on inmate payphones when the BOCs do

⁶⁰ Id.

⁶¹ Id. at para. 74.

⁶² Id. at para. 75.

⁶³ AT&T Petition at 11.

⁶⁴ DC People's Counsel Petition at 8-9.

⁶⁵ California PUC Petition at 4.

⁶⁶ Id. at 5.

⁶⁷ Maine Petition at 11.

⁶⁸ New York DPS Petition at 9.

⁶⁹ MCI Petition at 2-4.

⁷⁰ LDDS Petition at 9-10.

not otherwise receive compensation pursuant to a contract.⁷¹ MCI contends that the Commission should reconsider its conclusion to provide compensation to BOCs for any 0+ calls when they do not otherwise receive compensation pursuant to a contract.⁷² MCI contends further that, because IXC have existing contractual relationships with location providers for an established amount of compensation, the Commission's conclusion impermissibly interferes with the pre-existing contract in contravention of Section 276(b)(3).⁷³

20. MCI argues that the Commission should reconsider its conclusion to provide per-call compensation for international calls, because the domestic carrier would not have the information necessary to bill the consumer and the settlements process would preclude carriers from recovering the cost of compensation through their rates.⁷⁴ Similarly, Sprint argues that the Commission should reconsider its conclusion to provide per-call compensation for international calls, because there is no basis for the assumption that Congress intended to include international calls in the class of compensable calls.⁷⁵ In addition, Sprint argues that, with regard to compensation for international calls, the Commission does not sufficiently articulate its reliance on Sections 4(i) and 201(b) of the Act.⁷⁶

21. Cable & Wireless contends that the Commission should allow carriers to treat calls re-originated within the carrier's platform as a single compensable call.⁷⁷ It contends further that the Commission has required carriers to treat such calls as multiple calls because it does not understand the technical difficulties in identifying call sequences. Cable & Wireless maintains that its ISDN-based platform cannot generate records of payphone-originated calls to allow it to track re-originated calls for purposes of compensation.⁷⁸

22. APCC requests that the Commission require any carrier that blocks calls originating from payphones to notify the respective PSP and provide an announcement to the caller that the carrier, not the PSP, is blocking the call.⁷⁹ In support of its request, APCC argues that a carrier's blocking of calls without such a notification could lead to consumer confusion about why the call was not completed and possible injury to the PSP's business.⁸⁰ AirTouch contends that IXCs should not be permitted to block calls originated by payphones.⁸¹ If the Commission continues to allow such blocking, AirTouch and

⁷¹ RBOC Petition at 3-5. Use of the term "RBOCs" in this Order on Reconsideration refers to the RBOC Payphone Coalition, which includes six of the seven Bell Operating Companies, but does not include Ameritech.

⁷² MCI Petition at 5.

⁷³ *Id.* at 5-6.

⁷⁴ *Id.* at 6.

⁷⁵ Sprint Petition at 13.

⁷⁶ *Id.*

⁷⁷ Cable & Wireless Petition at 15-16. As we stated in the Report and Order, "[s]ome IXCs allow a caller to make successive calls, once she dials her calling card information, by pushing the '#' button at the conclusion of each call to regenerate the dialtone." Report and Order at n.220.

⁷⁸ *Id.*

⁷⁹ APCC Petition at 2-3.

⁸⁰ *Id.*

⁸¹ AirTouch Petition at 14-15.

PageNet argue, PSPs should be required to provide a coin deposit mechanism that allows callers to continue placing subscriber 800 calls.⁸²

23. MCI argues that, because PSPs have the option of blocking subscriber 800 calls, the Commission should reconsider its decision to establish a per-call compensation rate for subscriber 800 calls.⁸³ According to MCI, PSPs can block subscriber 800 calls if they are concerned about a lack of compensation.⁸⁴

24. Local Coin Calls. California PUC, New York DPS, Ohio PUC, Oklahoma CC, Texas PUC, DC People's Counsel, and Consumer's Union argue that the Commission's conclusions concerning local coin rates in the Report and Order constitutes unwarranted preemption of state authority over intrastate telecommunications and is inconsistent with Section 2(b) of the Act.⁸⁵ Maine contends further that if Congress had intended the Commission's rulemaking authority under Section 276(b)(1)(A) to extend to local coin rates, it would have referred to "rates" or "charges," not merely "compensation."⁸⁶ In addition, Maine argues that the Commission's action is not justified by the present record, and that its preemption authority is limited to removing only inconsistent state regulations.⁸⁷ Maine also contends that the Commission's decision not to regulate the local coin rate is a decision to forbear under Section 10 of the Act, and that the Commission failed to make the specified findings required in that section.⁸⁸

25. Maine and New York DPS argue that the Commission failed to give adequate notice, in violation of the Administrative Procedures Act, that it was contemplating deregulation.⁸⁹ Maine argues further that commenters were not afforded an opportunity to address the merits of deregulation, because they did not know that it was a possible outcome of the proceeding.⁹⁰

26. Maine and Oklahoma contend that there is no evidence that local coin rates are not fairly compensatory.⁹¹ In addition, Maine argues that deregulated local coin rates could allow PSPs to over-recover their costs and lead to rates that exceed economic costs.⁹² Texas PUC and Consumer's Union argue further that unrestricted local coin rates are not in the public interest because they will lead to "price gouging" of payphone callers.⁹³ New York DPS contends that the deregulation of local coin rates

⁸² Id. at 15; PageNet Petition at 23.

⁸³ MCI Petition at 4.

⁸⁴ Id.

⁸⁵ California PUC Petition at 2; Consumer's Union Petition at 2; DC People's Counsel Petition at 5-7; New York DPS Petition at 2, 4-6; Ohio PUC Petition at 7; Oklahoma CC Petition at 2; Texas PUC Petition at 2-3.

⁸⁶ Maine Petition at 7-8.

⁸⁷ Id. at 10.

⁸⁸ Id. at 9-10.

⁸⁹ Maine Petition at 16-17; New York DPS Petition at 2, 4-6.

⁹⁰ Maine Petition at 16-17.

⁹¹ Maine Petition at 4-6; Oklahoma CC Petition at 2.

⁹² Maine Petition at 14.

⁹³ Consumer's Union Petition at 3; Texas PUC Petition at 4-5.

is contrary to the public interest. New York DPS argues that increases in local coin rates are likely to be met with "extreme customer reaction and antagonism."⁹⁴

27. Ohio PUC argues that market-based rates do not always lead to reasonably priced payphone services to callers, particularly where a single PSP has a monopoly over the provision of payphones in a particular location, such as an airport.⁹⁵ For this reason, Ohio PUC requests that the Commission modify its rules to permit state commissions to place an end-user rate cap on the price of a local call when PSPs "are realizing extraordinarily high profits because customers are still, in effect, in a monopoly situation."⁹⁶ Oklahoma CC requests that the Commission permit the states to identify immediately payphone market failures that justify state regulation instead of recommending the market failures to the Commission for investigation after the failures persist.⁹⁷ Oklahoma CC and Texas PUC also request that the Commission allow states to establish a rate ceiling for local coin rates during the first year in which per-call compensation is in effect.⁹⁸

28. Maine argues that the Commission lacks jurisdiction to impose market-based rates for intrastate directory assistance calls from payphones.⁹⁹ New York DPS contends that directory assistance calls are a uniquely local issue that should not be subject to a market-based rate.¹⁰⁰ MCI requests that the Commission clarify that PSPs are entitled to require consumers to deposit coins into the phone for directory assistance calls, as with any other local call, and that carrier is not required to compensate the PSP.¹⁰¹

29. SW Bell requests that the Commission clarify that OSPs may be compensated for non-revenue producing "0-" general assistance calls where a caller asks for calling rates or dialing instructions.¹⁰² In addition, SW Bell argues that PSPs may choose to obtain compensation for these calls through a coin deposit.¹⁰³

30. Payphone Fraud. MCI argues that the Commission should reconsider its conclusions regarding payphone compensation fraud.¹⁰⁴ According to MCI, the Commission has not taken effective steps to reduce the risk of fraud faced by IXCs.¹⁰⁵ Sprint and PageNet argue that the Commission should take additional steps to prevent unscrupulous callers from calling subscriber 800

⁹⁴ New York DPS Petition at 8.

⁹⁵ Ohio PUC Petition at 5-7.

⁹⁶ Id. at 8.

⁹⁷ Oklahoma CC Petition at 3-4.

⁹⁸ Oklahoma CC Petition at 4; Texas PUC petition at 5-6.

⁹⁹ Maine Petition at 12.

¹⁰⁰ New York DPS Petition at 9-10.

¹⁰¹ MCI Petition at 7.

¹⁰² SW Bell Petition at 5.

¹⁰³ Id.

¹⁰⁴ MCI Petition at 7.

¹⁰⁵ Id.

numbers for the express purpose of increasing compensation.¹⁰⁶

31. MCI argues that the Commission should reconsider the Report and Order's conclusions about the definition of "payphone."¹⁰⁷ According to MCI, the Report and Order provides two definitions of payphone.¹⁰⁸ MCI requests that the Commission adopt one definition of "payphone" that, at a minimum, states that the payphone should be compliance with the information digit requirement to be entitled to compensation.¹⁰⁹ MCI requests further that the Commission clarify that phones in hotels, dormitory rooms, or hospital rooms are not entitled to compensation.¹¹⁰ Sprint argues that the Commission must require LECs to provide, free of charge, a list of emergency numbers, because calls to such numbers from payphones are exempt from compensation.¹¹¹

32. The RBOCs, AT&T, and Sprint request that the Commission clarify that PSPs must transmit payphone information digits within the payphone ANI to be eligible to receive compensation.¹¹² MCI requests, more specifically, that the Commission order all non-LEC payphones to transmit the 70 code as part of the ANI, and all LEC payphones to transmit the "27" code as part of the ANI to assist in detecting potential payphone fraud.¹¹³ According to MCI, the "07" code does not identify a payphone, but merely indicates that a line is restricted.¹¹⁴

33. Compensation Amount. AT&T, MCI, PCIA, and PageNet contend that the Commission should reconsider the per-call compensation amount, as established in the Report and Order, because it is inconsistent with the Commission's approach in the local competition proceeding.¹¹⁵ According to AT&T, the Commission proposed in the Notice a cost-based compensation method for determining per-call compensation, but ultimately rejected all cost-based proposals, including a proposal that would have used the same type of long-run incremental cost analysis the Commission found appropriate in the local competition proceeding.¹¹⁶ Similarly, LDDS, Cable & Wireless, and AirTouch argue that the Commission must base its compensation amount on the costs PSPs incur in originating compensable calls.¹¹⁷ AirTouch argues that the compensation rate adopted by the Commission improperly compensates PSPs for customer premises equipment ("CPE") rather than for services that the payphone

¹⁰⁶ PageNet Petition at 21-23; Sprint Petition at 12.

¹⁰⁷ MCI Petition at 8-10.

¹⁰⁸ Id. at 8.

¹⁰⁹ Id. at 9.

¹¹⁰ Id. at 10.

¹¹¹ Sprint Petition at 18-19.

¹¹² AT&T Petition at 23; RBOC Petition at 6-7; Sprint Petition at 18.

¹¹³ MCI Petition at 8.

¹¹⁴ Id. at 14.

¹¹⁵ AT&T Petition at 5-8; MCI Petition at 2-4; PageNet Petition at 3; PCIA Petition at 8.

¹¹⁶ AT&T Petition at 5-6.

¹¹⁷ AirTouch Petition at 11; Cable & Wireless Petition at 3-6; LDDS Petition at 10-11.

provides.¹¹⁸ MCI and PCIA argue that the Commission should reconsider its adoption of market-based rates for PSPs for subscriber 800 messaging calls, because such compensation does not result in fair compensation, and PSPs will receive a windfall for use of their payphones.¹¹⁹ Sprint requests that the Commission rescind the Report and Order in toto, or, in the alternative, establish a compensation rate of \$0, unless there is evidence that such a rate is not fair.¹²⁰

34. WPTA contends that the Commission must reconsider the compensation mechanism adopted in the Report and Order, because the Commission has not carried out its statutory mandate to provide a uniform per-call compensation rate that fairly compensates PSPs.¹²¹ WPTA argues that the Commission must prescribe a uniform per-call rate of approximately \$.90 to \$1.50 for each compensable call.¹²² WPTA further argues that the compensation provided by the Report and Order covers only the marginal costs of originating compensable calls and is, therefore, inadequate and not "fair."¹²³ In addition, WPTA argues that compensable dial-around calls should be treated "as a 'taking' under the framework of Article V of the Amendments to the Constitution of the United States and 'just compensation' paid accordingly."¹²⁴

35. AT&T and Sprint argue that the Report and Order ignores evidence in the record that local coin rates are both excessive and an inappropriate surrogate upon which to base per-call compensation.¹²⁵ To support its argument, AT&T cites to comments that argue that the local coin rate should be higher than a coinless call because of coin collection and other costs associated with the former.¹²⁶ Similarly, MCI, LDDS, Cable & Wireless, PageNet contend that use of the local coin rate is an improper basis for evaluating the costs of all payphone-originated calls, because costs vary for each type of payphone call.¹²⁷ In addition, AT&T argues that there is little basis to use \$.35 as a default market rate for the first two years of the compensation mechanism.¹²⁸ LDDS contends that the \$.35 default rate is based on an insufficient factual record and relies only on data from rural, Western states.¹²⁹ Sprint argues that the \$.35 per-call default rate exceeds the IXC's revenue on a typical toll-free call.¹³⁰ If it continues to use local coin rates as a surrogate, LDDS argues, the Commission must adjust the rate downward to

¹¹⁸ AirTouch Petition at 13-14.

¹¹⁹ MCI Petition at 2-4; PCIA Petition at 7-8.

¹²⁰ Sprint Petition at 1-2.

¹²¹ WPTA Petition at i.

¹²² Id. at 11.

¹²³ Id. at 6-8.

¹²⁴ Id. at 10. WPTA contends that, under a "takings" analysis, the appropriate per-call compensation rate would be close to \$1.50 per call. Id. at 11.

¹²⁵ AT&T Petition at 8-13; Sprint Petition at 3.

¹²⁶ AT&T Petition at 9-10.

¹²⁷ Cable & Wireless Petition at 4-6; LDDS Petition at 8-9; MCI Petition 9-16.

¹²⁸ AT&T Petition at 10-11.

¹²⁹ LDDS Petition at 10.

¹³⁰ Sprint Petition at 6.

reflect the cost savings the PSP experiences and to account for the potential for strategic pricing by PSPs.¹³¹ AT&T contends that, because of wide differentials in revenues, it is impossible to develop a unitary market price that would be applicable to both access code and 800 subscriber calls.¹³²

36. The Inmate Coalition and Invision request that the Commission reconsider its conclusion that inmate providers not be entitled to receive a special \$.90 per-call compensation amount for their payphones.¹³³ They argue that a special per-call compensation amount is warranted because inmate providers have higher service costs than other PSPs and that the intrastate 0+ calls they carry are frequently capped by the states at AT&T's standard collect rate for interLATA calls.¹³⁴ Invision argues further that the \$.90 per call rate that it requests would be in lieu of, not in addition to, the higher-than-average operator services rates often charged at inmate payphones.¹³⁵ In addition, the Inmate Coalition argues that in most states, an addition of \$.90 per call would not raise the inmate payphone surcharge above that imposed by the three largest IXCs.¹³⁶

37. AT&T and MCI request that the Commission clarify that state compensation requirements for intrastate access code calls are preempted by the compensation mechanism adopted in the Report and Order, as of the effective date of interim compensation.¹³⁷

c. Comments

38. The RBOCs argue that the Commission was required by Section 276 to mandate per-call compensation, because the BOC PSPs would not receive any compensation for 0+ calls absent Commission intervention.¹³⁸ They argue further that MCI's contention that such a mandate impermissibly interferes with existing contracts is not convincing, because MCI argues essentially that the contracts will be less profitable, not nullified or void.¹³⁹ WorldCom and MCI oppose any attempt by the BOCs to obtain compensation for 0+ calls.¹⁴⁰ WorldCom argues that so long as the BOC receives payphone subsidies or usage fees, they already are "fairly compensated" for each and every call made using their payphones. WorldCom also asserts that the Commission has already incorrectly compensated the BOCs by arbitrarily excluding them from paying compensation during the interim period.¹⁴¹ CompTel argues that the Commission should apply an incremental cost compensation rate limited to those calls that the PSP is not allowed to block, while market rates should be used for 0+ and local coin calls for which the PSP has

¹³¹ LDDS Petition at 11.

¹³² AT&T Petition at 13.

¹³³ Inmate Coalition Petition at 2-5; Invision Petition at 2.

¹³⁴ Inmate Coalition Petition at iii; Invision Petition at 3-5.

¹³⁵ Inmate Coalition Petition at 5-6; Invision Petition at 7-8.

¹³⁶ Inmate Coalition Petition at 10.

¹³⁷ AT&T Petition at 23; MCI Petition at 22.

¹³⁸ RBOC Comments at 1.

¹³⁹ Id. at 2.

¹⁴⁰ WorldCom Comments at 7-8; MCI Comments at 4-5.

¹⁴¹ WorldCom Petition at 7-8.

discretion to establish the appropriate rate.¹⁴² APCC and the RBOCs argue that international calls should be compensated because Congress intended to include those calls and principles of equity require such compensation.¹⁴³

39. Peoples argues that if the Commission allows IXCs to block subscriber 800 calls from payphones, then it must require these carriers to inform the caller that the blocked call is not due to a payphone equipment malfunction.¹⁴⁴ AT&T opposes APCC's request that carriers who block 800 subscriber calls be required to play an announcement for the benefit of the PSP, asserting that PSPs have the ability to protect themselves by placing signs at their payphones which inform consumers that some calls may be blocked at the request of the carrier or 800 subscriber.¹⁴⁵ CompTel also opposes APCC's request, asserting that the PSP is in the best position both to prevent blockage by negotiating with carriers, and to explain to their own customers the reason such blockage occurs.¹⁴⁶ CompTel argues that signage at the payphone could fully explain to end-users the reasons for potential blockage, while it would be expensive and technically difficult for carriers to provide such an audible message.¹⁴⁷

40. The RBOCs argue that no special rules -- favoring or disfavoring inmate PSPs -- are required, and that review of state pricing regulation of inmate payphones would be premature, because many state payphone rules will be subject to review at the state level over the next few months.¹⁴⁸ MCI urges the Commission to reject the request of Inmate Coalition for compensation of \$.90 per call to be paid to PSPs providing phones for inmates in prisons.¹⁴⁹ MCI argues that, while inmate phones involve special circumstances, the PSP has the opportunity to contract for fair compensation for all calls from such phones. Therefore, as with 0+ calls, according to MCI, there is no need for the Commission to prescribe any compensation for calls from inmate phones.¹⁵⁰ On the other hand, Peoples agrees with petitioners that the Commission should fairly compensate PSPs for services rendered on inmate payphones.¹⁵¹ The Inmate Coalition argues that the BOC PSPs should not receive per-call compensation on 0+ calls from their inmate payphones as long as they otherwise receive compensation for these calls.¹⁵² It argues further that because the interim compensation amount applies only to access code and subscriber 800 calls, and that all calls from BOC inmate payphones are 0+ calls, the BOCs' inmate payphones are not eligible to receive interim compensation.¹⁵³ The Inmate Coalition contends that the RBOC petition's reference to the higher cost of

¹⁴² CompTel Comments at 6-7.

¹⁴³ APCC Comments at 21; RBOC Comments at 3.

¹⁴⁴ Peoples Comments at 10. Peoples states that frustrated callers may vent their anger in the payphone itself, causing severe damage to the equipment. Id.

¹⁴⁵ AT&T Comments at 14. See also Sprint Comments at 8.

¹⁴⁶ CompTel Opposition at 2-3. See also LCI Comments at 5.

¹⁴⁷ Id.

¹⁴⁸ RBOC Comments at 3.

¹⁴⁹ MCI Comments at 3.

¹⁵⁰ Id. at 3-4.

¹⁵¹ Peoples Comments on 12.

¹⁵² Inmate Coalition Comments at 2-5.

¹⁵³ Id. at 5.

providing inmate services makes clear the need for a special compensation rate for inmate payphones.¹⁵⁴

41. The RBOCs, APCC, and Peoples support the Commission's market-based approach to setting the compensation amount for compensable calls.¹⁵⁵ The RBOCs argue that a cost-based approach should be avoided for the following reasons: (1) cost-based measures are inappropriate for payphones, where the market is structured to function effectively; (2) cost-based compensation will lead to a severe reduction in the number of payphones available for public use; and (3) market-based pricing will not lead to overcompensation, and could possibly lead to artificially low compensation rates.¹⁵⁶ The RBOCs also argue that the cost-based approach relied upon by the Commission in the local competition proceeding is inapplicable to the payphone proceeding because Section 276 calls for "fair compensation," while Section 252 requires interconnection and network elements charges to be "based on cost."¹⁵⁷ In addition, the RBOCs and APCC contend that cost-based pricing methodologies may be appropriate to regulated industries, but not to competitive ones, like the payphone industry.¹⁵⁸ On the other hand, several commenters, including Arch, AT&T, and LCI, restate the position that reliance on actual market rates or fully distributed costs is inconsistent with the compensation methodology adopted by the Commission in the Local Competition proceeding, which adopted TELRIC as an appropriate methodology for carriers to recover their interconnection costs of origination and termination.¹⁵⁹

42. APCC contends that market-based compensation mandated by the Report and Order does not constitute a "windfall" for PSPs.¹⁶⁰ It contends further that the IXCs are beginning to pay compensation fees that they should have been paying all along, if not for government-mandated "unblocking" requirements.¹⁶¹ APCC argues that the \$.35 per-call default compensation rate is within the range of reasonable cost estimates established on the record.¹⁶² On the other hand, TRA and Touch 1 assert that the Commission's market-based approach is inappropriate because the real competition in the payphone market is for access to prime locations, which tends to increase commission payments to location providers, rather than reduce rates charged to payphone users.¹⁶³ They argue that this encourages PSPs to charge higher rates in order to compete for prime locations.¹⁶⁴ AirTouch argues that the compensation rate established by the Commission is excessive, and should instead be based upon the PSPs' costs for making a payphone available.¹⁶⁵ AirTouch and PCIA assert that the Commission has improperly compensated PSPs for their customer premises equipment, and not for the limited network access they

¹⁵⁴ Id. at 6-7.

¹⁵⁵ APCC Comments at 8-10; Peoples Comments at 4-5; RBOC Comments at 4.

¹⁵⁶ RBOC Comments at 4.

¹⁵⁷ Id. at 5.

¹⁵⁸ Id.; APCC Comments at 5.

¹⁵⁹ Arch Comments at 3-4. Also AT&T Comments at 7; LCI Comments at 6-7; WorldCom Comments at 3; TRA Comments at 14; Touch 1 Comments at 4-6.

¹⁶⁰ APCC Comments at 4.

¹⁶¹ Id.

¹⁶² Id. at 13.

¹⁶³ TRA Comments at 14; Touch 1 Comments at 3-4.

¹⁶⁴ Id.

¹⁶⁵ AirTouch Comments at 4-5.

offer.¹⁶⁶ Similarly, Arch asserts that the Commission's market-based approach will result in an inappropriate windfall to PSPs, which will undercut effective compensation in both the payphone and messaging industries.¹⁶⁷

43. Several commenters argue that local coin rates are not an appropriate surrogate for a per-call compensation rate for 800 subscriber and access code calls.¹⁶⁸ AT&T, for example, argues that there is no current "market" for local coin calls and that, in any event, local coin calls are an excessive measure of the costs incurred in making a payphone available for an 800 subscriber or access code call.¹⁶⁹ CompTel adds that local coin rates include costs, such as coin collection and monitoring, not associated with access code calls.¹⁷⁰ AT&T and CompTel assert that the use of the local coin rate as a surrogate will lead to strategic pricing by PSPs, because lost revenues from high local coin rates would be recouped through higher per call compensation on 0+ and access code calls.¹⁷¹ These commenters add that consumers will be harmed by such a system because it will impose hidden surcharges on access code and subscriber 800 calls.¹⁷² LCI comments that it is unaware of any source for determining what local coin rate a PSP is charging for a particular payphone, which would allow unscrupulous PSPs to inflate their claims to compensation.¹⁷³ LCI concludes that the only way for carriers to respond to these problems may be to block all calls from payphones.¹⁷⁴

44. The Commission received a number of letters from a subscriber 800 end-users in which they expressed concerns that the rules adopted in the Report and Order could adversely affect their costs of doing business.¹⁷⁵ Most of these letters recommend that the Commission either adopt a per-call compensation amount lower than the \$.35 interim rate adopted in the Report and Order, or adopt a user-pays system.¹⁷⁶ These commenters argue that a \$.35 rate is significantly above the cost incurred for such calls, and so constitutes a subsidy to PSPs.¹⁷⁷ Many of these letters also recommend that the Commission

¹⁶⁶ Id. at 5-6; PCIA Comments at 7.

¹⁶⁷ Arch Comments at 4-5. Also CompTel Comments at 6-8.

¹⁶⁸ See, e.g., Arch Comments at 3-4; AT&T Comments at 2-7; CompTel Comments at 8-10; LCI Comments at 2, 5-7; Sprint Comments at 3; TRA Comments at 16-18; Touch 1 Comments at 6-8.

¹⁶⁹ AT&T Comments at 3.

¹⁷⁰ CompTel Comments at 8-9. See also LCI Comments at 5-6 .

¹⁷¹ CompTel Comments at 9; AT&T Comments at 6; LCI Comments at 3. See also TRA Comments at 14-15.

¹⁷² Id.

¹⁷³ LCI Comments at 4.

¹⁷⁴ Id. at 4.

¹⁷⁵ See, e.g., Letter from John Lee, Budget Rent a Car Corp. to Regina Keeney, Chief, Common Carrier Bureau, dated October 18, 1996; Letter from Chris McCann, 1-800-FLOWERS, to The Honorable Reed E. Hundt, Chairman, FCC, dated October 21, 1996. See generally Appendix C for a list of those parties filing informal comments.

¹⁷⁶ See, e.g., Letter for Thomas P. Jones, Jr., Access Health, Inc., to Regina Keeney, Chief, Common Carrier Bureau, dated October 18, 1996; Letter from Hideo Hasui, Japan Airlines, to Regina Keeney, Chief, Common Carrier Bureau, dated October 21, 1996.

¹⁷⁷ See, e.g., Letter from Elizabeth O'Hara, United Airlines, to Regina Keeney, Chief, Common Carrier Bureau, dated October 18, 1996.

adopt a simple, non-complex means for ensuring that payphone owners receive compensation.¹⁷⁸ Other commenters argue that the Commission should not adopt a "coin-deposit" system that would interfere with the ability of end-users to obtain toll-free access to subscriber applications and credit card calling.¹⁷⁹

45. APCC disputes arguments by petitioners that all payphones should be treated as locational monopolies, and it argues that the price of a local call is susceptible to numerous market influences, including (1) the ability of callers to use another nearby payphone; (2) the ability of customers to use wireless phones; and (3) the ability of customers to complain to a location provider about excessive local coin rates.¹⁸⁰ In addition, APCC argues that the IXC's have not refuted the Commission's conclusion that the ability of the IXC's to block calls from payphones provides an additional market check on excessive local coin rates.¹⁸¹

46. The RBOCs argue that by requiring in Section 276 that the Commission must provide for compensation for all calls originated by a payphone, Congress intended that the Commission would adopt regulations affecting local coin rates. Therefore, the RBOCs argue, the Commission did not lack jurisdiction to deregulate local coin rates.¹⁸² Similarly, NJPA contends that Section 276 provides a straightforward, unambiguous grant of intrastate jurisdiction, and that the Commission would have contravened the clear purpose of that provision if it had failed to address compensation for local coin calls.¹⁸³ The RBOCs contend that if the local coin rate is not deregulated, then, contrary to the intent of Congress, the entire payphone industry will continue to be subject to pervasive regulation.¹⁸⁴ NJPA and Peoples argue that, by deferring regulation for one year to allow the states to prepare for the change, the Commission's approach to local coin call deregulation has been characterized by caution and restraint.¹⁸⁵ NJPA argues that the Commission expressly concluded that competitively-neutral state regulations were not vulnerable to preemption.¹⁸⁶ Peoples contends that unless the states have the burden of demonstrating market failures before the Commission, the states will enact rate ceilings and other regulations in situations where the market is fully functioning.¹⁸⁷ The RBOCs contend that because the Commission promulgated regulations that will apply to payphones, pursuant to Section 276, the forbearance provision of the Act has no relevance.¹⁸⁸

¹⁷⁸ See, e.g., Letter from David A. Taylor, Delta Air Lines, to Regina Keeney, Chief, Common Carrier Bureau, dated October 18, 1996; Letter from David Kreinberg, Comverse Technology, Inc., to Regina Keeney, Chief, Common Carrier Bureau, dated October 21, 1996.

¹⁷⁹ Letter (with attachment) from Deborah Mauldin, Hertz Corp, to Regina Keeney, Chief, Common Carrier Bureau, dated October 17, 1996; Letter from Terry Martin, Reynolds Metals Co., to Regina Keeney, Chief, Common Carrier Bureau, dated October 21, 1996.

¹⁸⁰ APCC Comments at 9.

¹⁸¹ *Id.* at 10-11.

¹⁸² RBOC Comments at 12-14.

¹⁸³ NJPA Comments at 3-7.

¹⁸⁴ *Id.* at 14.

¹⁸⁵ NJPA Comments at 10; Peoples Comments at 5.

¹⁸⁶ NJPA Comments at 11.

¹⁸⁷ Peoples Comments at 5.

¹⁸⁸ *Id.* at 15-16.

47. The RBOCs and NJPA contend that there is no basis to arguments that the Commission failed to give adequate notice that it was considering deregulating the local coin rate.¹⁸⁹ They argue that Section 553(b)(13) of the APA requires that the notice of proposed rulemaking provide notice of "either the terms or substance of the proposed rule or a description of the subject and issues involved"¹⁹⁰ The RBOCs argue that the Commission requested comment on how it should exercise its jurisdiction under Section 276 with respect to local coin calls, and outlined a range of options that included setting a nationwide local coin rate or providing guidelines for the states. The RBOCs contend further that the Commission was under no obligation to adopt the precise proposals contained in the Notice, and that the deregulation of local coin rates was a logical outgrowth of the Commission's obligation to provide for compensation for local calls and its tentative conclusions in the Notice.¹⁹¹ They note that numerous parties, including some of the states that petitioned for reconsideration of the Report and Order, addressed the issue of local coin deregulation in their comments.¹⁹²

48. The RBOCs contend that, because it is the LEC that must provide special ANI payphone coding digits and that it cannot provide such codes unless PSPs use COCOT lines, the Commission should clarify that if a PSP does not use a COCOT line, then the PSP should not be eligible for compensation.¹⁹³ APCC does not object to the RBOCs request that a PSP's eligibility for compensation be contingent on transmission of coding digits, but it opposes the request that PSPs be forced to subscribe to COCOT lines, because COCOT service (or a reasonable equivalent) is not available in some jurisdictions.¹⁹⁴ Ameritech argues that the Commission should not require PSPs to transmit payphone coding digits within the ANI, because it is the LEC that will have to transmit such digits, and Section 276 envisions a degree of separation between the telephone network and a LEC's payphone operations.¹⁹⁵ Touch 1 supports MCI's request that the Commission direct all non-LEC PSPs to transmit the "70" coding digits and all LEC payphones to transmit the "27" coding digits in order to receive per-call compensation for toll-free and access code calls.¹⁹⁶

49. APCC does not oppose the IXC's request that the Commission clarify that state compensation requirements for intrastate access code calls are preempted by the compensation mechanism adopted in the Report and Order, as of the effective date of interim compensation.¹⁹⁷ It does argue, however, that the Commission should not preempt forms of compensation that are outside the scope of its compensation rules.¹⁹⁸ WorldCom supports the argument made by MCI that the Commission should clarify that its rules supersede any state payphone compensation plans, in order to eliminate the potential

¹⁸⁹ NJPA Comments at 11-12; RBOC Comments at 14-15.

¹⁹⁰ Id. at 14.

¹⁹¹ Id. at 15. See also NJPA Comments at 12.

¹⁹² Id.

¹⁹³ RBOC Comments at 18.

¹⁹⁴ APCC Comments at 19-20.

¹⁹⁵ Ameritech Comments at 5.

¹⁹⁶ Touch 1 Comments at 8-9.

¹⁹⁷ APCC Comments at 22.

¹⁹⁸ Id.

for double recovery.¹⁹⁹

d. Discussion

50. Defining Fair Compensation. We deny requests that we reconsider our conclusions in the Report and Order about the existence of a competitive payphone marketplace.²⁰⁰ In the Report and Order, we noted that while the 1996 Act does not prescribe a particular course of action to ensure fair compensation for all payphone calls, it does specify that such action shall "promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public[.]"²⁰¹ We found in the Report and Order that the "payphone industry has the potential to be very competitive."²⁰² We conclude here that the policies we adopted in the Report and Order will promote competition in a way that will benefit the general public. Because robust competition will take some time to develop, we provided in the Report and Order for a transition period before market-based pricing becomes effective.²⁰³ During this transition period, "states may continue to set the local coin rate in the same manner as they currently do."²⁰⁴ After this transition period, the Commission may, at its option, "ascertain the status of competition in the payphone marketplace,"²⁰⁵ and states may recommend possible market failures to the Commission for investigation.²⁰⁶ We conclude that, while the payphone marketplace may not be currently fully competitive, the rules adopted in the instant proceeding will bring about competition, and this phased-in approach to market-based pricing will allow all parties to make the appropriate adjustments over time. In addition, we conclude that by monitoring the status of competition in the payphone marketplace, and by allowing states to refer potential market failures to us, we have ensured that market failures, particularly those arising from so-called locational monopolies, will be addressed. Because payphone callers in most cases are free to seek out alternative payphones in nearby locations or able to make calls from portable phones, we reject arguments by some petitioners that all payphones will become individual unregulated monopolies with monopoly-level pricing.

51. Ensuring Fair Compensation. We disagree with MCI that our conclusion in the Report and Order concerning the ability of the BOCs to receive per-call compensation for certain 0+ calls interferes with pre-existing contracts, as prohibited by Section 276(b)(3). First, we found in the Report and Order that Section 276 mandates that the Commission provide for fair compensation for all calls originated by payphones, including 0+ calls for which there is no contract that compensates the PSP.²⁰⁷

¹⁹⁹ WorldCom Comments at 4.

²⁰⁰ CompTel has filed a Motion requesting that the Commission accept its late-filed Petition for Reconsideration or, in the alternative, treat its filing as Comments on Petitions for Reconsideration. In that the filing deadline for reconsideration petitions is statutorily mandated, we treat CompTel's filing as comments and have given them full consideration as a part of the record. We note that most of the arguments raised in CompTel's filing also have been addressed in the petitions of other parties.

²⁰¹ Report and Order at para. 48 (quoting 47 U.S.C. § 276(b)(1)).

²⁰² Report and Order at para. 11. See also our discussion of the status of competition in the current payphone marketplace. Id. at paras. 11-19.

²⁰³ Id. at para. 50.

²⁰⁴ Id.

²⁰⁵ Id.

²⁰⁶ Id. at para. 61.

²⁰⁷ Id. at para. 53.

Second, we found that because pre-existing contracts are grandfathered by Section 276(b)(3), the BOCs "would not otherwise receive any compensation for 0+ calls[.]" because the contracts for such calls are between the location provider and the payphone's presubscribed OSP.²⁰⁸ Third, we concluded that, without disturbing existing contracts that cover 0+ calls, the BOCs should be able to receive the per-call compensation established by the Report and Order, "so long as they do not otherwise receive compensation for ... originating 0+ calls."²⁰⁹ Finally, we note that, as the RBOCs point out, MCI does not argue that the pre-existing contracts between the location providers and the OSPs for BOC payphones are nullified or void. In sum, we conclude that our determination in the Report and Order concerning compensation for 0+ calls originated by BOC payphones is required by the plain language of Section 276(b)(1)(A), which directs us provide fair compensation for "each and every completed intrastate and interstate call[.]" and this determination does not interfere with existing contracts in a manner that is prohibited by Section 276(b)(3). Accordingly, we deny MCI's request for reconsideration of this requirement.

52. In response to the RBOCs' request that we clarify that the BOCs are able to collect per-call compensation for 0+ calls originated from BOC inmate payphones, we conclude that such per-call compensation is warranted when the BOCs do not otherwise receive compensation pursuant to a contract. This clarification is consistent with our conclusion, as noted above, that BOCs should receive per-call compensation on 0+ calls from their payphones in the absence of receiving compensation under a contract.²¹⁰ In addition, the clarification is consistent with our conclusion in the Report and Order that inmate payphones are to receive the same compensation amount as other payphones, in the absence of a contract that prescribes a compensation methodology.²¹¹ We also clarify here that inmate payphones, whether or not they are maintained by the BOCs, are not eligible for interim flat-rate compensation, because such payphones are not capable of originating either access code or subscriber 800 calls, and the interim compensation is provided only for those two types of calls. Because the level of 0+ commissions paid pursuant to contract on operator service calls is beyond the scope of both Section 276 and this proceeding, we decline to require, as requested by NJPA, that "LECs are required to make available, on a nondiscriminatory basis, any commission payments provided to their own payphone divisions in return for the presubscription of operator service traffic to the LEC."²¹²

53. We concluded in the Report and Order that we have the requisite authority under Sections 4(i) and 201(b) of the Communications Act of 1934, as amended, to ensure that PSPs are fairly compensated for international calls.²¹³ We relied upon our authority under these two sections of the Act, because we concluded that there was "no evidence of congressional intent to leave these calls uncompensated under Section 276."²¹⁴ In addition, we found that a payphone performs similar functions in originating a call, regardless of the call's destination. Therefore, we conclude here that our determination in the Report and Order, pursuant to Sections 4(i) and 201(b) of the Act, is in the interest of equity and is

²⁰⁸ Id.

²⁰⁹ Id. We note here that these existing contracts will lapse in the years ahead and will be replaced with contracts under which the BOCs will receive whatever compensation arrangement they negotiate with the respective location providers.

²¹⁰ Id. at para. 53.

²¹¹ Id. at para. 74.

²¹² NJPA Petition at 11-12.

²¹³ Report and Order at para. 54.

²¹⁴ Id.

necessary to enact a comprehensive regulatory framework to compensate all payphone calls that are not otherwise compensated pursuant to contract. While MCI argues that it may be difficult for carriers to recover the costs of per-call compensation on international calls, we conclude, as discussed more fully below, that carriers and PSPs may negotiate differing compensation amounts, which take into account varying costs, for different types of calls.²¹⁵

54. Completed Calls. Because it would be an interpretation inconsistent with our responsibility under Section 276, we deny the request by Cable & Wireless that the Commission allow carriers to treat calls re-originated within the carrier's platform as a single compensable call. We concluded in the Report and Order that, to comply with our statutory mandate that "each and every completed intrastate and interstate call" be compensated, "multiple sequential calls made through the use of a payphone's '#' button should be counted as separate calls for compensation purposes."²¹⁶ Although Cable & Wireless states that this approach is technically difficult, we note that the requirement that carriers track individual calls does not become effective for one year. Carriers will be able to use this period to address these types of technical difficulties with respect to their tracking obligations.

55. We decline to require carriers, if they choose to block calls from particular payphones, to provide an announcement to payphone callers indicating that it is not the payphone equipment that is blocking the call. Although APCC and Peoples suggest that callers may become confused and could possibly damage the payphone equipment, we conclude that PSPs are better equipped to take the necessary steps, including posting notices, to educate callers at their payphones and protect their equipment. We also decline to reconsider our conclusion, as urged by AirTouch, that carriers are permitted to block calls originated by payphones. We conclude that 800 subscribers that are concerned that callers will not be able to reach them from payphones should contact their carriers and negotiate contract terms that will ensure that the 800 subscribers are able to receive such calls. In addition, for reasons discussed more fully below,²¹⁷ we decline to require the PSP to provide a coin-deposit mechanism for calls that are blocked by carriers.

56. We disagree with MCI's argument that PSPs should not be compensated for subscriber 800 calls because, according to MCI, they have the option of blocking these calls if they are concerned about a lack of compensation. MCI argues further that this approach would be inconsistent with our conclusion in the Report and Order that incoming calls need not be compensated because they can be blocked.²¹⁸ First, we concluded in the Report and Order that the average payphone originates a substantial number of subscriber 800 calls, in excess of 85 such calls per month.²¹⁹ In contrast, there was no showing that the average payphone necessarily receives any incoming calls in a typical month. Second, while we recognized in the Report and Order that carriers are permitted to block subscriber 800 calls, we did not address blocking of subscriber 800 calls by PSPs.²²⁰ We note here, however, that, if a PSP blocks access code calls (including 1-800 access numbers), it is in violation of our rules under TOCSIA. Third, we concluded in the Report and Order that Section 276's mandate that we provide fair compensation for "each and every completed intrastate and interstate call" requires us to provide such compensation for subscriber

²¹⁵ See para. 71, below.

²¹⁶ Report and Order at para. 63.

²¹⁷ See para. 89, below.

²¹⁸ Report and Order at para. 64.

²¹⁹ Id. at para. 125.

²²⁰ Id. at para. 49.

800 calls.²²¹ For these reasons, we reject MCI's request that we reconsider our decision to compensate subscriber 800 calls.

57. Local Coin Calls. A number of states argue that our conclusions concerning local coin rates constitute unwarranted preemption of state authority over intrastate telecommunications and is inconsistent with Section 2(b) of the Act. We disagree. Section 276 gives the Commission significant authority to "take all actions necessary" to "promote the widespread deployment of payphone services to the benefit of the general public"²²² and, more specifically, to ensure fair compensation for "each and every completed intrastate and interstate call."²²³ In enacting Section 276 after Section 2(b), and squarely addressing the issue of interstate and intrastate jurisdiction, we find that Congress intended for Section 276 to take precedence over any contrary implications based on Section 2(b). While Section 2(b) of the Act reserves to the states jurisdiction over intrastate communications, Congress can make an exception to that statutory rule whenever it chooses:

...[I]n enacting the 1996 Act, there are other instances where Congress indisputably gave the Commission intrastate jurisdiction without amending Section 2(b). For instance, section 251(e)(1) provides that '[t]he Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States.' Section 253 directs the FCC to preempt state regulations that prohibit the ability to provide intrastate services. Section 276(b) directs the Commission to 'establish a per call compensation plan to ensure that payphone service providers are fairly compensated for each and every completed intrastate and interstate call. Section 276(c) provides that '[t]o the extent that any State requirements are inconsistent with the Commission's regulations, the Commission's regulations on such matters shall preempt such State requirements.' None of these provisions is specifically exempted from section 2(b), yet all of them explicitly give the FCC jurisdiction over intrastate matters.²²⁴

The exception in Section 276 is broad. As stated in the Conference Report: "In crafting implementing rules, the Commission is not bound to adhere to existing mechanisms or procedures established for general regulatory purposes in other provisions of the Communications Act."²²⁵ Congress gave us the requisite authority in Section 276 and directed us to adopt a comprehensive compensation plan for payphones, and we did so in the Report and Order. Congress also provided that "[t]o the extent that any State requirements are inconsistent with the Commission's regulations, the Commission's regulations on such matters shall preempt such State requirements."²²⁶ Contrary to an argument by Maine, we conclude that Section 276(c) eliminates any question about our authority to adopt a particular compensation plan, even if it contradicts existing state regulations. We do not believe that Congress's use of the term "compensation"

²²¹ Id. at para. 52.

²²² 47 U.S.C. § 276(b)(1).

²²³ 47 U.S.C. § 276(b)(1)(A).

²²⁴ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order, FCC 96-325, para. 93 (rel. Aug. 8, 1996) (citations omitted; emphasis in the original). In that proceeding, we stated that "[s]ome parties find significance in the fact that earlier drafts of the legislation would have amended section 2(b) to make an exception for Part II of Title II, including section 251, but the enacted version did not include that exception. These parties argue that this change in drafting demonstrates an intention by Congress that the limitations of section 2(b) remain fully in force with regard to sections 251 and 252. We find this argument unpersuasive." Id. at n.150.

²²⁵ Jt. Statement of Managers, S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. (1996) at 43 ("Conference Report").

²²⁶ 47 U.S.C. § 276(c).

instead of "rates", as argued by Maine, limits our authority to address local coin rates. We conclude that because Congress gave us broad authority to enact a comprehensive payphone compensation plan, the term "compensation" in Section 276 encompasses the authority to address local coin "rates," because the local coin rate is the only manner in which a PSP is compensated for local coin calls. Accordingly, we deny all petitions for reconsideration that have as their basis arguments that the Commission lacks jurisdiction to deregulate local coin rates, or that our action constitutes unwarranted preemption.

58. We also reject arguments that because the Commission chose to let the market set local coin rates in lieu of itself prescribing a nationwide rate or rate guidelines, that Section 10 of the Act concerning forbearance applies.²²⁷ We conclude here that Congress required the Commission to adopt regulations ensuring fair compensation for all payphone calls and left it to the Commission to determine the appropriate approach to take. Therefore, because the Commission adopted a comprehensive regulatory framework to ensure fair compensation for PSPs and will continue to have oversight over the payphone industry, we conclude that we did not forebear from imposing regulation and are not required to conduct the forbearance analysis required by Section 10.

59. Because Section 276 gives the Commission jurisdiction to ensure fair compensation for "each and every completed call" originated by payphones, we conclude that we have jurisdiction, contrary to arguments by Maine, to impose a market-based rate for intrastate directory assistance calls from payphones. We also clarify here, pursuant to a request from MCI, that PSPs are entitled to require consumers to deposit coins into the payphone for these calls, as they would any other local call. In response to SW Bell's request that the Commission clarify that PSPs may be compensated for 0- general assistance calls where the caller asks for call rates or dialing instructions,²²⁸ we conclude that such a clarification is not appropriate, because such operator inquiries, which are distinct from directory assistance calls, merely seek information on how or whether to complete a future call and, thus, are not "completed" calls that are compensable under Section 276.

60. We conclude that, contrary to arguments by certain states, we gave adequate notice to interested parties, in accordance with the APA, that we were contemplating action concerning local coin rates. We conclude further that this notice was broad enough to encompass the option we ultimately adopted: the determination that the market should set the per-call rate for local coin calls at each payphone. In the Notice, we stated:

We seek comment ... on how we should exercise our jurisdiction under Section 276. We have a range of options for ensuring fair compensation for these calls, and we seek comment on which option will ensure fair compensation for PSPs with respect to coin sent-paid calls.²²⁹

We then discussed a number of possible options within that range, including setting a nationwide local coin rate.²³⁰ Our use of the term "range" is an indication that our articulation of possible options in the Notice was not an exhaustive list, but merely defined various points within the range. The Commission was under no obligation to adopt the precise proposals contained in the Notice. We conclude here that letting the market set local coin rates was within the range of options on which we sought comment and a logical outgrowth from soliciting comment on "how we should exercise our jurisdiction under Section 276" with

²²⁷ See 47 U.S.C. § 10.

²²⁸ SW Bell Petition at 5.

²²⁹ Notice at para. 20.

²³⁰ Id. at 20. Mandating a nationwide local coin rate arguably restricts the states more than a market-based rate, which allows for some variation, both higher and lower.

regard to local coin rates. We note, as the RBOCs point out,²³¹ that various parties responding to the Notice addressed the issue of Commission jurisdiction over local coin rates in their comments.²³²

61. In the Report and Order, we stated that "[b]ased on the record in this proceeding, we conclude that a deregulatory, market-based approach to setting local coin rates is appropriate, because existing local coin rates are not necessarily fairly compensatory."²³³ We also stated that "the market ... is best able to set the appropriate price for payphone calls in the long term."²³⁴ We conclude here, as we did in the Report and Order, that the record contains significant evidence, particularly in the comments of the RBOCs and the independent payphone providers, that the costs associated with each call from a payphone often exceed the local coin rate in a particular state. Therefore, we deny requests that we reconsider our conclusions about local coin rates because of arguments by petitioners, such as Maine and Oklahoma CC, that there is no evidence that local coin rates are not fairly compensatory. We also reject suggestions by certain petitioners that the deregulation of local coin rates is not in the public interest and will be met with consumer antagonism. While some disruption or confusion among payphone callers is inevitable with any new policy, we conclude that market-based pricing will result in a greater availability of payphones at more economically efficient prices, which will ultimately benefit callers.

62. A number of states argue that market-based rates will not always lead to reasonably priced payphone services, particularly in situations where the PSP is a monopoly provider. Ohio PUC and Oklahoma CC both request approval for local coin call rate ceilings, while Oklahoma CC individually seeks permission to identify market failures to the Commission immediately. We decline both to reconsider our conclusions and to make the modifications suggested by the states. We conclude here that the Report and Order adequately addresses the possibility of market failures that would lead to local coin rates that are not reasonable.²³⁵ As we concluded in the Report and Order, we will make an exception to the market-based approach for local coin rates in those situations in which the state makes a showing that market-based rates are not possible due to a market failure.²³⁶ Because we intended the exception in the Report and Order to be a limited one, however, we concluded that a state's showing would have to be detailed and likely the result of a state proceeding that itself examined the market failure.

63. Payphone Fraud. MCI, Sprint, and Page request that we reconsider our conclusions about payphone fraud and take steps to reduce the risk of fraud. In the Report and Order, we stated that "[w]e will aggressively take action against those involved in such fraud" and detailed how we would proceed to address fraudulent practices.²³⁷ Without any specific factual circumstances before us, we decline to take further steps that could be both costly and burdensome to all parties involved in payphone compensation. We will continue, however, to monitor developments in this area and respond to specific requests for intervention from carriers or PSPs.

64. In response to requests that we reconsider our conclusions about the definition of "payphone," we make a brief clarification. For the first year of the payphone compensation mechanism,

²³¹ RBOC Comments at 15.

²³² See e.g., California PUC Comments at 9; New York DPS Comments at 3.

²³³ Report and Order at para. 58.

²³⁴ Id. at para. 70.

²³⁵ Id. at para. 61.

²³⁶ Id.

²³⁷ Id. at para. 65.

when compensation is paid on a flat-rate basis, the definition of "payphone," for compensation purposes, will be the one that we established in the Second Report and Order in CC Docket No. 91-35, along with the alternative verification procedures.²³⁸ Once per-call compensation becomes effective, we clarify that, to be eligible for such compensation, payphones will be required to transmit specific payphone coding digits as a part of their ANI, which will assist in identifying them to compensation payors.²³⁹ Each payphone must transmit coding digits that specifically identify it as a payphone, and not merely as a restricted line. We also clarify, pursuant to a request by MCI, that LECs must make available to PSPs, on a tariffed basis, such coding digits as a part of the ANI for each payphone. We decline to require PSPs to use COCOT lines, as suggested by the RBOCs, because we have previously found that COCOT service is not available in all jurisdictions.²⁴⁰

65. More generally, as we stated in the Report and Order, "a payphone is any telephone made available to the public on a fee-per-call basis, independent of any commercial transaction, for the purpose of making telephone calls, whether the telephone is coin-operated or is activated either by calling collect or using a calling card."²⁴¹ We clarify that this definition of "payphone" excludes from the compensation mechanism phones in hotel rooms, dormitory rooms, or hospital rooms. We also conclude that, as requested by Sprint, once per-call compensation becomes effective, LECs should provide to carrier-payors a list of emergency numbers, as such calls are statutorily exempt from compensation.²⁴²

66. Compensation Amount. We deny all requests for reconsideration of the per-call compensation amount that we adopted in the Report and Order, in which the parties argue that the amount is inconsistent with the cost-based approach the Commission established in the local competition proceeding. Although it could have directed us to adopt a particular methodology for determining fair compensation, Congress did not mandate a cost-based standard for compensation in Section 276, as it did in Section 251. We concluded in the Report and Order that "use of a purely incremental cost standard for all calls could leave PSPs without fair compensation for certain types of payphone calls, because such a standard would not permit the PSP to recover a reasonable share of the joint and common costs associated with those calls."²⁴³ We conclude here that the cost-based TELRIC standard that the Commission relied upon in the local competition proceeding is inapplicable here, because the payphone industry is not a bottleneck facility that is subject to regulation at virtually all levels. We note that it would be particularly burdensome to impose a TELRIC-like costing standard on independent payphone providers, who have not had previous experience with any costing systems. In addition, as we concluded in the Report and Order, the payphone industry is likely to become increasingly competitive.²⁴⁴ We also reject suggestions that use of a market-based compensation standard, in lieu of one that is cost based, will overcompensate PSPs. The marketplace will ensure, over time, that PSPs are not overcompensated. Carriers have significant leverage within the marketplace to negotiate for lower per-call compensation amounts, regardless of the local coin rate at particular payphones, and to block subscriber 800 calls from payphones when the associated compensation amounts are not agreeable to the carrier. Finally, we believe that a cost-based

²³⁸ Id. at para. 66.

²³⁹ Id. at para. 98.

²⁴⁰ Reconsideration Order, 8 FCC Rcd at 7157, n.66.

²⁴¹ Report and Order at para. 66.

²⁴² Contrary to Sprint's request, however, we permit LECs to recover their reasonable costs of producing these lists. Carrier-payors may determine for themselves whether or not they want to obtain the lists from LECs.

²⁴³ Report and Order at para. 68.

²⁴⁴ Id. at paras. 11-19, 70.

compensation standard could lead to a reduction in payphones by limiting a PSP's recovery of its costs, and this result would be at odds with the legislative purpose of Section 276 that we "promote the widespread deployment of payphone services to the benefit of the general public."²⁴⁵

67. More specifically, in denying all requests for reconsideration of the per-call compensation amount that we adopted in the Report and Order, we reject the arguments that the per-call compensation amount that we adopted in the Report and Order is inconsistent with the cost based approach the Commission established in the local competition proceeding. We conclude that the cost-based TELRIC plus a reasonable share of common cost standard upon which the Commission relied in the local competition proceeding is inapplicable here for three reasons. First, the purpose of the cost-based standard in the interconnection proceeding is to enable competitors to share in the economies of scale, scope and density, and thus rapidly to acquire potentially "bottleneck" elements that they cannot promptly supply themselves, at a cost in conformance with competitive retail pricing. Because of the cost structure of the industry and the ability of firms to rapidly enter, no such urgent need to share the benefits of these economies appears in the present proceeding.

68. Second, we conclude that Congress's use of the phrase "... payphone service providers are fairly compensated for each and every completed interstate and intrastate call..."²⁴⁶ is a different standard than the cost based standard articulated for the compensation for interconnection and unbundled elements. We conclude that the PSP will be providing a competitive service (payphone use) and should therefore receive compensation equal to the market-determined rate for providing this service. As we noted in the Report and Order, the market, as it becomes competitive, should generate the a fair market-determined compensation rate. The cost-based interconnection standard, on the other hand, compensates a carrier for the long run incremental cost of providing interconnection or the long run incremental cost of providing an unbundled element plus a reasonable share of the common costs. Since the local exchange is not yet competitive, we could not rely on the market to set competitive rates for unbundled elements. In the case of payphones, the presence of multiple PSPs already operating in many markets, and the structure of the industry that allows relatively easy entry and exit, leads us to conclude that we can rely on market forces to provide for efficient pricing of these services in the near future.

69. Third, the TELRIC plus common cost standard in the local competition proceeding refers to the long run cost of an element or physical facility. Since there are relatively few common costs between separate facilities, TELRIC compensation will compensate a carrier for virtually all costs associated with providing (the services of) that facility. With the addition of a share of the relatively small common costs, the firm will be able to cover its total costs. In this proceeding commenters argue that we should apply a TSLRIC cost standard to only a subset of services (i.e., subscriber 800 and dial around calls) provided by a facility (payphone). In general when several services are provided by the same facility, the incremental cost of providing any one service is very small and the common cost among these services is very large. Thus, a TSLRIC standard under which a carrier is compensated only for the incremental cost of each service individually without a reasonable allocation of common costs, as suggested by commenters, would not allow the carrier to recover the total costs of providing all of the services. A TSLRIC standard that yields prices that recover a reasonable share of joint and common costs would require the difficult allocation of those (large) costs among the different types of calls made from payphones.

70. We also deny WPTA's request that we reconsider our compensation rules because we did not mandate a uniform per-call compensation amount of \$.90 to \$1.50 for each compensable call. Under the approach we established in the Report and Order, the market is allowed to set the compensation amount for calls originated by each payphone. For market-based pricing to function effectively, there must

²⁴⁵ 47 U.S.C. § 276(b)(1).

²⁴⁶ 47 U.S.C. § 276 b(1)(A).

be some variation in compensation amounts from location to location. We also deny Sprint's request that we either rescind the Report and Order in toto or establish a per-call compensation amount of \$0, because Sprint does not present any arguments that were not already considered or contemplated by the Report and Order, and a compensation rate of \$0 would not be in accord with our responsibility under the statute to ensure fair compensation for all payphone calls.

71. A number of carriers argue that the local coin rate is an inappropriate surrogate upon which to base per-call compensation, because coin calls have additional costs, such as coin collection, that other calls do not incur. Therefore, the carriers argue, use of the local coin rate will tend to overcompensate PSPs for compensable subscriber 800 and other calls. We disagree. In the Report and Order, we found that the costs of originating the various types of payphone calls are similar.²⁴⁷ If there are significant cost differences between local coin calls and other types of calls, however, we believe that, over time, the market will address these differences and dictate appropriate per-call compensation amounts for each type of payphone call. We also believe that the market will address likely cost variations in originating local coin calls from payphone to payphone. In this environment of similar-but-not-identical costs in originating the various types of payphone calls, we concluded in the Report and Order that the local coin rate is a default rate that applies in the absence of a contract between the carrier-payor and the PSP. Thus, it is a starting point for negotiations toward a mutually agreeable per-call compensation amount, not a fixed compensation rate. We conclude here that those carriers that are concerned about overcompensating PSPs for subscriber 800 calls have substantial leverage, by way of the ability to block these calls from all or particular payphones, to negotiate with PSPs about the appropriate per-call compensation amount. Accordingly, we deny those requests for reconsideration that are premised on the local coin rate being an inappropriate default compensation amount. We also decline to provide for downward adjustments in the default compensation amount to offset possible strategic pricing by PSPs; the carriers can make such provisions themselves through the contracting process.

72. We deny the petitions for reconsideration filed by the inmate PSPs. The inmate PSPs argue that they should be entitled to receive a special \$.90 per-call compensation amount because their costs of service are higher than those of other PSPs. The inmate PSPs argue further that intrastate 0+ calls are frequently subject to state rate caps that are equivalent to the large carriers' standard collect rates for interLATA calls. We note that Section 276(d), which contains the only mention of inmate phones in the payphone statute, states that "the term 'payphone service' means the provision of public or semi-public pay telephones, the provision of inmate telephone service in correctional institutions, and any ancillary services."²⁴⁸ In the Report and Order, we elected to treat inmate payphones in the same manner as all other payphones, including semi-public payphones.²⁴⁹ Under this approach, inmate payphones are entitled to receive the default compensation rate for any call that is not otherwise compensated by contract or through some other arrangement.²⁵⁰ Because virtually all calls originated by inmate payphones are 0+ calls, inmate PSPs tend to receive their compensation pursuant to contract, which makes them ineligible to receive a per-call compensation amount. As we found in the Report and Order, however, whenever a PSP is able to negotiate for itself the terms of compensation for the calls its payphones originate, then our statutory obligation to provide fair compensation is satisfied.²⁵¹ We note that, in response to their arguments about state-mandated intrastate toll rate ceilings, the inmate petitioners may remind the states that Section 276's mandate that PSPs be fairly compensated for all payphone calls is an obligation that is

²⁴⁷ Report and Order at para. 70.

²⁴⁸ 47 U.S.C. § 276(d).

²⁴⁹ Report and Order at para. 74.

²⁵⁰ Id.

²⁵¹ Id. at paras 49, 52-53.

borne both by us and the states. If an inmate provider believes, after making its arguments to a particular state in light of Section 276 and the instant proceeding, that it is not receiving fair compensation for intrastate toll calls originated by its inmate payphones, it may petition the Commission to review the specific state regulation of which it complains.

73. AT&T and MCI request that the Commission clarify that state compensation requirements for intrastate access code calls are preempted by the compensation mechanism adopted in the Report and Order, as of the effective date of interim compensation. On the other hand, APCC argues that we should not preempt forms of compensation that are outside the scope of our compensation rules. We conclude here that, in conjunction with reviewing, and removing if necessary, those regulations that affect competition, such as entry and exit restrictions, pursuant to the Report and Order,²⁵² states should review their compensation regulations to ensure that PSPs are not receiving double compensation for certain types of calls. After a reasonable period for such a review, if any party believes that a specific state compensation rule conflicts with our rules, that party may file a petition for a declaratory ruling, and the Commission will evaluate the state compensation regulation at that time. Accordingly, we decline to make the clarification requested by AT&T and MCI.

2. Entities Required to Pay Compensation

a. Report and Order

74. The Commission concluded in the Report and Order that the primary economic beneficiary of payphone calls should compensate the PSPs.²⁵³ We concluded that the "carrier-pays" system for per-call compensation places the payment obligation on the primary economic beneficiary in the least burdensome, most cost effective manner.²⁵⁴ The Commission has previously adopted such an approach in the access code compensation proceeding, and the compensation participants have created a payment system that is an appropriate model for this proceeding.²⁵⁵ In addition, under the carrier-pays system, individual carriers, while obligated to pay a specified per-call rate to PSPs, have the option of recovering a different amount from their customers, including no amount at all.²⁵⁶

75. The Commission concluded that it is the underlying, facilities-based carrier that should be required to pay compensation to the PSP in lieu of a non-facilities-based carrier that resells services, for example, to specific subscribers or to debit card users.²⁵⁷ Although we have concluded that the primary economic beneficiary of payphone calls should bear the burden of paying compensation for these calls, we concluded that, in the interests of administrative efficiency and lower costs, facilities-based carriers should pay the per-call compensation for the calls received by their reseller customers.²⁵⁸ We concluded further that the facilities-based carriers may recover the expense of payphone per-call compensation from their reseller customers as they deem appropriate, including negotiating future contract provisions that would require the reseller to reimburse the facilities-based carrier for the actual payphone

²⁵² Id. at para. 50.

²⁵³ Id. at para. 83.

²⁵⁴ Id.

²⁵⁵ Id.

²⁵⁶ Id.

²⁵⁷ Id. at para. 86.

²⁵⁸ Id.

compensation amounts associated with that particular reseller.²⁵⁹ While we did not place the burden of paying per-call compensation directly on resellers or debit card providers, we concluded that the underlying carrier must begin paying compensation on all compensable calls facilitated by its reseller and debit card customers and it is, in turn, permitted to impose the payphone compensation amounts on these customers.²⁶⁰

b. Petitions

76. AirTouch argues that the carrier-pays compensation system is not the least burdensome compensation mechanism, because it will impose substantial costs and burdens on the paging industry and lead to significant increases in 800 number service costs.²⁶¹ In addition, it argues that the carrier pays system will harm the public interest by limiting the demand for paging services and rendering the industry less competitive.²⁶²

77. PCIA, AirTouch, PageMart, and PageNet request that the Commission reconsider its decision to reject a "caller-pays" coin-deposit compensation mechanism.²⁶³ They argue that the Commission based its denial on two factors that do not withstand close scrutiny: (1) the burden on callers of depositing coins to make a compensable call; and (2) TOCSIA's prohibition on adopting compensation rules for interstate access code calls that require advance payment by consumers.²⁶⁴ They contend both that the Commission never articulated why a coin-deposit approach was burdensome to callers, and that calls to subscriber 800 number messaging services fall outside the definition of calls for which TOCSIA may prohibit a coin-deposit compensation approach.²⁶⁵

78. AT&T contends that if the Commission decides to retain market-based compensation rates, the Commission should adopt a caller-pays, coin-deposit approach to compensation.²⁶⁶ It argues that this approach would ensure that callers understand the costs associated with their decision to use a payphone.²⁶⁷ As another alternative supported by the same rationale, AT&T proposes that the Commission adopt a payphone usage fee that carriers would bill as agents for PSPs.²⁶⁸

79. Sprint contends that the Commission should reconsider its adoption of a carrier-pays compensation approach in favor of a set use-fee.²⁶⁹ Sprint argues that the set use fee, unlike the

²⁵⁹ Id.

²⁶⁰ Id. at para. 87.

²⁶¹ AirTouch Petition at 7.

²⁶² Id. at 8.

²⁶³ AirTouch Petition at 4-5; PCIA Petition at 1; PageMart Petition at 1; PageNet Petition at 4-5.

²⁶⁴ AirTouch Petition at 4-9; PCIA Petition at 5; PageMart Petition at 2-3.

²⁶⁵ AirTouch Petition at 4-9; PCIA Petition at 5-6; PageMart Petition at 2-3.

²⁶⁶ AT&T Petition at 18-21.

²⁶⁷ Id. at 19.

²⁶⁸ Id. at 20-21.

²⁶⁹ Sprint Petition at 14.

carrier-pays compensation approach, would not be regarded as taxable revenue for the IXC.²⁷⁰ It argues that the set use fee has the virtue of giving visibility to the public of the cost of using the payphone.²⁷¹

80. PageNet contends that, if the carrier-pays methodology is adopted, the Commission should limit IXCs to spreading the costs over all 800 subscribers and 800 access code users.²⁷² It argues that this approach would minimize tracking and compensation administration costs.²⁷³ PageNet states that subscriber 800 carriers will not be able to bill their own subscribers on a per-call basis.²⁷⁴

81. PCIA, PageMart, and PageNet argue that the Commission should reconsider its refusal to increase the subscriber line charge ("SLC") as means of spreading the cost of compensation over all callers.²⁷⁵ PCIA argues that the general public is the primary economic beneficiary of payphone calls, and, therefore, the individual telephone subscribers should pay the costs of compensation.²⁷⁶

82. MCI, Sprint, and Cable & Wireless argue that, concurrent with the Commission's conclusion that the primary economic beneficiary of a call should pay the requisite compensation to the PSP, resellers should be required to pay compensation for the calls they receive from payphones, as well as assume responsibility for the call tracking required by the Report and Order.²⁷⁷ Sprint argues further that there is no guarantee that the facilities-based carrier will be able to recover the costs of compensation from its resellers.²⁷⁸ According to Sprint, facilities-based carriers are not able to tell whether a reseller-handled call has been completed.²⁷⁹

c. Comments

83. The RBOCs contend that, under the carrier-pays approach adopted in the Report and Order, carriers can convert "carrier pays" into a set-use fee themselves by passing costs through to customers as separate line items in their bills.²⁸⁰

84. AirTouch, PCIA and Arch, among other commenters, reassert their position that a "carrier-pays" system of compensation is unduly burdensome or violative of TOCSIA.²⁸¹ PCIA argues

²⁷⁰ Id.

²⁷¹ Id.

²⁷² PageNet Petition at 16-17.

²⁷³ Id.

²⁷⁴ Id. at 17.

²⁷⁵ PCIA Petition at 9-10; PageMart Petition at 4; PageNet Petition at 5.

²⁷⁶ PCIA Petition at 9-10; PageMart Petition at 4; PageNet Petition at 5.

²⁷⁷ Cable & Wireless Petition at 13-14; MCI Petition at 16-17; Sprint Petition at 15-17.

²⁷⁸ Sprint Petition at 15.

²⁷⁹ Id. at 16.

²⁸⁰ RBOC Comments at 16.

²⁸¹ See, e.g., AirTouch Comments at 2-3; PCIA Comments at 3-4; Arch Comments at 1-2.

that messaging subscribers have no control over which payphone is used by the caller, while the party placing the call can choose between payphones and should thus be the party responsible to pay compensation.²⁸² AT&T asserts that if the Commission adopts a market-based compensation system, rather than a TELRIC-based approach, it must reject the use of a "carrier-pays" system because there is not currently an end-user focused market for local coin calls.²⁸³ Sprint asserts that a caller-pays system eliminates the administrative costs and potential for fraudulent dialing of toll free calls as a means of generating additional revenues for the PSP, and also states that Section 226(e)(2) of the Act is not a bar to up-front payments by the calling party.²⁸⁴ AirTouch concludes that a caller-pays system, not a carrier-pays one, places the payment obligation on the primary economic beneficiary in the least burdensome and most cost effective manner.²⁸⁵

85. The RBOCs argue that the coin-deposit approach for subscriber 800 calls, as urged by some petitioners, would be extremely inconvenient for callers and would have an adverse effect on consumer welfare.²⁸⁶ They argue that it was precisely to avoid the deposit of coins that many 800 numbers were created.²⁸⁷ The RBOCs argue that technical modifications to LEC networks would make a coin-deposit approach prohibitively expensive for situations in which a carrier has blocked calls originated by a particular payphone.²⁸⁸

86. MCI and Sprint assert that the Commission should reject any request that it require IXC's to spread the cost of compensating PSPs over all 800 users.²⁸⁹ MCI argues that such a requirement would be inconsistent with the policy of requiring that costs should be recovered from the cost causer, which in the case of the payphone compensation is the consumer who makes or accepts a call from a payphone.²⁹⁰ In contrast, Arch supports the arguments of those petitioners asserting that, if the Commission rejects a coin-drop approach, then IXC's should be required to spread the cost of compensating PSPs over all 800 subscriber and 800 access code users.²⁹¹ Alternatively, Arch supports a mechanism whereby PSP compensation costs can be recovered through the SLC.²⁹²

87. TRA asserts that the Commission should deny requests to expand its interim compensation mechanism or to require resale carriers to track payphone originated calls or compensate PSPs directly.²⁹³ TRA argues that the exemption for small resale IXC's from the interim compensation and

²⁸² PCIA Comments at 4.

²⁸³ AT&T Comments at 8.

²⁸⁴ Sprint Comments at 7.

²⁸⁵ AirTouch Comments at 6. See also Arch Comments at 2.

²⁸⁶ RBOC Comments at 17.

²⁸⁷ Id.

²⁸⁸ Id.

²⁸⁹ MCI Comments at 5; Sprint Comments at 10.

²⁹⁰ Id.

²⁹¹ Arch Comments at 5.

²⁹² Id.

²⁹³ TRA Comments at 4-13.

tracking requirements is consistent with prior Commission actions and furthers the congressional intent to increase opportunities for entrepreneurs and other small businesses in the telecommunications industry.²⁹⁴

TRA states that small resale IXCs are least able to bear the burden of administrative costs, in part because they have less flexibility to pass these costs on to their own customers.²⁹⁵

d. Discussion

88. As we stated in the Report and Order, we conclude here that of the two approaches initially proposed in the Notice,²⁹⁶ the carrier-pays approach and the set-use fee, the carrier-pays approach "places the payment obligation on the primary economic beneficiary in the least burdensome, most cost effective manner."²⁹⁷ In the case of compensable access code or subscriber 800 calls where the call utilizes a particular carrier no matter the telephone that originates the call, the primary economic beneficiary is the carrier that carries the call. In addition, with specific regard to subscriber 800 calls, we conclude that it is the called party that receives greater economic benefit from the payphone call than the calling party. We believe that the IXC can best pass on, in the most cost effective manner, any charges for compensable calls to the appropriate customer. Therefore, we rejected the caller-pays, coin-deposit approach to compensation, as proposed by commenters, because it would unduly burden transient payphone callers, and we noted that TOCSIA prohibited us from prescribing that approach for interstate access code calls.²⁹⁸ Contrary to the arguments raised by petitioners, we conclude that our rejection of a caller-pays, coin-deposit approach must stand. The Commission has long held that callers should not be required to deposit coins when making a call that is otherwise billed to an account.²⁹⁹ We note that coinless calling, including use of coinless payphones, has proliferated in recent years. We conclude that when transient callers have an expectation that they may avoid carrying coins to make payphone calls, because they will be making only calls billed to a calling card or to a subscriber 800 end-user, it would be burdensome and increase transaction costs to impose a compensation approach that would require callers to acquire coins to make such calls. We conclude further that the ability to make coinless calls from payphones is a convenience that transient callers value.

89. While the prohibition in TOCSIA against advance payment by callers, as cited in the Report and Order,³⁰⁰ does not apply to subscriber 800 calls and, therefore, is not dispositive, we conclude that the statute's direction that we avoid prescribing such a payment mechanism for a particular

²⁹⁴ Id. at 5-6.

²⁹⁵ Id. at 6-8

²⁹⁶ Notice at para. 28.

²⁹⁷ Report and Order at para. 83.

²⁹⁸ Notice at para. 85.

²⁹⁹ Report and Order at para. 85; Notice at para. 27. See also MTS and WATS Market Structure, CC Docket No. 78-72, Memorandum Opinion and Order, 97 FCC 2d 682, 705 (1983), aff'd in principal part, National Assn. of Regulatory Utility Comm'rs v. FCC, 737 F.2d 1095 (D.C. Cir. 1984), cert. denied, 469 U.S. 1227 (1985), modified on further recon., 99 FCC 2d 708 (1984), aff'd, American Tel. and Tel. Co. v. FCC, 832 F.2d 1285 (D.C. Cir. 1987), modified on further recon., 101 FCC 2d 1222 (1985), recon. denied, 102 FCC 2d 849 (1985). See also In the Matter of Ameritech Operating Companies Petition for Waiver of Part 69 of the Commission's Rules to Restructure Its Rates to Establish a Pay Telephone Use Fee Rate Element; Southwestern Bell Telephone Company Petition for Waiver of Part 69 of the Commission's Rules to Restructure Its Rates to Establish a Pay Telephone Use Fee Rate Element, Order, DA 96-268 (released March 1, 1996) at para. 27 ("Ameritech/SW Bell Waiver").

³⁰⁰ Report and Order at para. 85.

class of payphone calls (*i.e.* interstate access code calls) is consistent with our long-standing policy of not burdening callers with the deposit of coins when making a call that is otherwise billed to an account. In addition, if the Commission were to prescribe a coin-deposit compensation approach, TOCSIA would require the PSP to charge the end-user no more for making an access code call than it would charge for a call to the presubscribed OSP. 47 U.S.C. Section 226(c)(1)(c). Thus, use of a coin-deposit compensation approach would require the PSP to impose a charge for access to the presubscribed OSP. More recently, in the 1996 amendments to the Act, Congress prohibited carriers from assessing the calling party a charge for completing any 800 number call.³⁰¹ While this provision of the Act does not expressly apply to PSPs, we conclude that Section 228(c)(7) provides persuasive evidence that Congress intended to ensure access to 800 number subscribers without the calling party incurring a charge.³⁰² In addition to the foregoing reasons, we conclude that it would be unduly burdensome and costly to mandate, as suggested by some petitioners, a caller-pays, coin-deposit approach for a particular type of subscriber 800 calls, such as calls to a paging service, while relying upon a carrier-pays approach for other compensable calls.

90. With regard to arguments by AT&T and Sprint that we adopt a set-use fee that could be billed by carriers as agents for PSPs, we conclude that our rejection of the set-use fee compensation approach precludes a carrier from billing a particular government-mandate fee for use of payphones on behalf of PSPs. We noted in the Report and Order, however, that, under the carrier-pays approach, carriers have "the most flexibility to recover their own costs, whether through increased rates to all or particular customers, through direct charges to access code call or subscriber 800 customers, or through contractual agreements with individual customers."³⁰³ We conclude that the compensation approach adopted in the Report and Order gives carriers the ability, if they desire, to bill their customers for whatever amount they choose for use of the payphone. Carriers may find that billing such a payphone charge would give visibility to the public of the cost of using the payphone, as argued by Sprint.³⁰⁴

91. In the Report and Order, we stated that "[a]lthough some commenters would have the Commission limit the ways in which carriers could recover the cost of per-call compensation, we conclude that the marketplace will determine, over time, the appropriate options for recovering these costs."³⁰⁵ We conclude that this approach is necessary to give carriers the most flexibility in recovering their costs. For this reason, we decline to adopt PageNet's proposal that we limit IXCs to spreading the costs of compensation over all 800 subscribers and 800 access code users. Although petitioners from the paging industry argue that the carrier-pays approach will impose substantial costs and burdens on that industry, we note that these petitions do not contain specific data showing the volume of calls the paging companies receive from payphones. Therefore, we conclude that these claims are unsubstantiated and the possible costs and burdens unknown. We also reject, as we did in the Report and Order, proposals that we increase the SLC as a means of spreading the cost of compensation over all callers. We concluded in the Report and Order that "raising the SLC for this purpose would be contrary to the goals of the Act, because these payments would not be borne by either the primary economic beneficiary of the payphone calls or

³⁰¹ 47 U.S.C. § 228(c)(7).

³⁰² See Policies and Rules Concerning Interstate Pay-Per-Call and Other Information Services Pursuant to the Telecommunications Act of 1996, Order and Notice of Proposed Rulemaking, FCC 96-289 (rel. July 11, 1996) at para. 45 ("Restoration of public confidence in toll-free calling was a priority ... for Congress in amending Section 228 of the Communications Act.").

³⁰³ Report and Order at para. 83 (emphasis added).

³⁰⁴ Sprint Petition at 14.

³⁰⁵ Report and Order at para. 83 (citation omitted).

the cost causer.³⁰⁶ While the public is indeed a beneficiary of payphone calls generally, the primary economic beneficiary of a particular compensable payphone call, as discussed above,³⁰⁷ is the carrier that carries the call.

92. In the Report and Order, we concluded that the underlying facilities-based carrier should be required to pay compensation to the PSP "in lieu of a non-facilities-based carrier that resells services[.]"³⁰⁸ Some IXC's argue in response that we should, concurrent with our conclusion that the primary economic beneficiary of a call should pay the requisite compensation to the PSP, require resellers to pay compensation for the calls they receive from payphones and to assume responsibility for the tracking of such calls. We continue to believe that it would be significantly burdensome for some parties, namely debit card providers, to track and pay compensation to PSPs on a per-call basis. We conclude, however, that we should clarify our conclusion in the Report and Order concerning which carriers are required to pay compensation and provide for per-call tracking. We clarify that a carrier is required to pay compensation and provide per-call tracking for the calls originated by payphones if the carrier maintains its own switching capability, regardless if the switching equipment is owned or leased by the carrier. If a carrier with a switching capability has technical difficulty in tracking calls from origination to termination, it may fulfill its tracking and payment obligations by contracting out this duty to another entity, consistent with the market-based principles that we established in the Report and Order. If a carrier does not maintain its own switching capability, then, as set forth in the Report and Order and consistent with our clarification here, the underlying carrier remains obligated to pay compensation to the PSP in lieu of its customer that does not maintain a switching capability.

3. Ability of Carriers to Track Calls From Payphones

a. Report and Order

93. Based on the information in the record, the Commission concluded that the requisite technology exists for IXC's to track calls from payphones.³⁰⁹ We recognized, however, that tracking capabilities vary from carrier to carrier, and that it may be appropriate, for an interim period, for some carriers to pay compensation for "each and every completed intrastate and interstate call" on a flat-rate basis until per-call tracking capabilities are put into place.³¹⁰ We concluded further that it is the responsibility of the carrier, whether it provides intraLATA or interLATA services, as the primary economic beneficiary of the payphone calls, to track the calls it receives from payphones, although the carrier has the option of performing the tracking itself or contracting out these functions to another party, such as a LEC or clearinghouse. In other words, while we have assigned the burden of tracking on the carrier receiving the call from a payphone, parties to a contract may find it economically advantageous to place this tracking responsibility on another party.³¹¹ We concluded that no standardized technology for tracking calls is necessary, and that IXC's may use the technology of their choice to meet their tracking

³⁰⁶ Id. at para. 85.

³⁰⁷ See para. 88, above.

³⁰⁸ Report and Order at para. 86.

³⁰⁹ Id. at para. 96.

³¹⁰ Id.

³¹¹ Id. at para. 97.

obligations.³¹²

94. The Commission concluded that each payphone should be required to generate 07 or 27 coding digits within the ANI for the carrier to track calls. Currently under the Commission's rules, LECs are required to tariff federally originating line screening ("OLS") services that provide a discrete code to identify payphones that are maintained by non-LEC providers.³¹³ We concluded that LECs should be required to provide similar coding digits for their own payphones.³¹⁴

95. The Commission recognized in the Report and Order that implementing a per-call tracking capability will require new investments for some carriers, particularly small carriers, but we concluded that the mandate of Section 276 that we ensure a fair "per call compensation plan" for "each and every completed intrastate and interstate call" requires these carriers to provide tracking for calls for which they receive revenue, even though they previously did not have to compensate the PSP for many of these calls.³¹⁵ We concluded further that, by permitting carriers to contract out their per-call tracking responsibility, and by allowing a transition for tracking subscriber 800 calls, we will have taken the appropriate steps to minimize the per-call tracking burden on small carriers.³¹⁶ In addition, we concluded that, to parallel the obligation of the facilities-based carrier to pay compensation, the underlying facilities-based carrier has the burden of tracking calls to its reseller customers, and it may recover that cost from the reseller, if it chooses.³¹⁷

96. The Commission concluded that carriers should be required to initiate an annual verification of their per-call tracking functions to be made available for FCC inspection upon request, to ensure that they are tracking all of the calls for which they are obligated to pay compensation.³¹⁸ We required this verification for a one-year period, the 1998 calendar year, and delegated to the Chief, Common Carrier Bureau, the authority to establish the form and content, if necessary, of the verification documentation of these per-call tracking capabilities. We concluded that requiring carriers to maintain the appropriate records and certify as to the accuracy of both the data and the tracking methodology would facilitate the prompt and accurate payment of per-call compensation.³¹⁹ We also concluded that PSPs should be allowed to inspect this certification, apart from any proprietary network data. In addition, we stated that we expect the PSPs and carriers performing the tracking to work together to reconcile or explain any PSP data that are inconsistent with the annual certification.³²⁰

b. Petitions

97. MCI contends that the Commission should reconsider its per-call tracking

³¹² Id.

³¹³ Id. at para. 98.

³¹⁴ Id.

³¹⁵ Id. at para. 100.

³¹⁶ Id.

³¹⁷ Id.

³¹⁸ Id. at para. 101.

³¹⁹ Id.

³²⁰ Id.

requirements because IXCs cannot track calls either from non-equal access areas or "950" calls.³²¹ MCI contends further that for IXCs to track these calls, the Commission must order the LECs to provide this information.³²²

c. Comments

98. CompTel asserts that the Commission should reconsider its decision to require carriers to bear the burden of tracking calls, and instead place the obligation of billing for payphone calls upon the party seeking that payment -- the PSP.³²³ CompTel argues that it is the PSP which is, in fact, the primary beneficiary of the payphone call compensation, and should pay the cost of identifying the calls for which it is entitled to payment and for the cost of billing its customers for the compensation.³²⁴ LCI states that it does not have the capability to track calls on a per-call basis, and that acquiring such capability presents significant technical and financial obstacles.

d. Discussion

99. In the Report and Order, we recognized that "tracking capabilities vary from carrier to carrier" and concluded, as a result, that "LECs, PSPs, and the carriers receiving payphone calls should be able to take advantage of each others technological capabilities through the contracting process."³²⁵ We also concluded that "no standardized technology for tracking calls is necessary, and that IXCs may use the technology of their choice to meet their tracking obligations."³²⁶ During the period before per-call tracking becomes mandatory, we conclude here that carriers must take all appropriate steps, including using the contracting process, to provide for the per-call tracking of all calls they receive from payphones. Therefore, we decline to modify the per-call tracking requirements set forth in the Report and Order and conclude that carriers should meet their per-call tracking obligations, if they are not otherwise technically able, through contracts with other entities.³²⁷

4. Administration of Per-Call Compensation

a. Report and Order

100. The Commission concluded that we should adopt a direct-billing arrangement between IXCs and PSPs, once tracking capabilities are in place, that would build on the arrangement established in the access code call compensation proceeding, with the addition of the requirement that these carriers must send back to each PSP a statement indicating the number of toll-free and access code calls

³²¹ MCI Petition at 18-19.

³²² Id.

³²³ CompTel Comments at 12-14.

³²⁴ Id. See also LCI Comments at 9-11.

³²⁵ Report and Order at paras. 96-97.

³²⁶ Id. at para. 97.

³²⁷ See also para. 92, above, for our discussion of the per-call tracking obligations of carriers that do not maintain a switching capability.

that each carrier has received from each of that PSP's payphones.³²⁸ This arrangement places the burden of billing and collecting compensation on the parties who benefit the most from calls from payphones -- carriers and PSPs. As with the tracking of calls, carrier-payors are free to use clearinghouses, similar to those used for access code call compensation, or to contract out the direct-billing arrangement associated with the payment of compensation.³²⁹

101. The Commission required that the carrier responsible for paying compensation file each year a brief report with the Common Carrier Bureau listing the total compensation paid to PSPs for intrastate, interstate, and international calls; the number of compensable calls carried by the carrier; and the number of payees.³³⁰ This requirement will apply to calendar year 1998, when tracking capabilities are in place and compensation is being paid on a per-call basis. We concluded further that, once per-call compensation is routinely paid by IXC's, this reporting requirement will be terminated after the carriers have filed their reports for the 1998 calendar year.³³¹

102. The Commission concluded that we must establish minimal regulatory guidelines for the payphone industry regarding resolution of disputed ANIs to give LECs a greater incentive to provide accurate and timely verification of ANIs for independently provided payphones.³³² While any party may file a complaint with the Commission about disputed ANIs, the Commission concluded that the better practice is for LECs who maintain the list of ANIs to work with both carrier-payors and PSPs to resolve disputes more efficiently and quickly before lodging a complaint with the Commission.³³³ We also concluded that we should require that each LEC must submit to each carrier-payor on a quarterly basis a list of ANIs of all payphones in the LEC's service area (called the "COCOT list" in the access code call compensation proceeding).³³⁴

103. The Commission concluded that the following guidelines will facilitate the proper verification of payphone ANIs by LECs. First, LECs must provide a list of payphone ANIs to carrier-payors within 30 days of the close of each compensation period (i.e., each quarter). Second, LECs must provide verification of disputed ANIs on request, in a timely fashion. Such verification data must be maintained and available for at least 18 months after the close of a compensation period. Third, once a LEC makes a positive identification of an installed payphone, the carrier-payor must accept claims for that payphone's ANI until the LEC provides information, on a timely basis, that the payphone has been disconnected. Fourth, a LEC must respond to all requests for ANI verification, even if the verification is a negative response. Carrier-payors are not required to pay compensation once the LEC verifies that the particular ANI is not associated with a COCOT line for which compensation must be paid. Fifth, carrier-payors should be able to refuse payment for compensation claims that are submitted long after they were due. Carriers should not refuse payment on timeliness grounds, however, for ANIs submitted by a PSP up to one year after the end of the period in question. Further, the period for a PSP to bring a complaint to the Commission based on an ANI disputed by the carrier-payor will not begin to accrue until the carrier-payor issues a final denial of the claim. We concluded that the guidelines, as outlined above, will facilitate

³²⁸ Report and Order at para. 110.

³²⁹ Id.

³³⁰ Id. at para. 111.

³³¹ Id.

³³² Id. at para. 112.

³³³ Id.

³³⁴ Id.

the proper verification of payphones without imposing undue burdens on LECs, PSPs, or carrier-payors.³³⁵

104. The Commission concluded that the payment of compensation would be facilitated and some disputes avoided if LECs were required to state affirmatively on their bills to PSPs that the bills are for payphone service. We concluded that LECs, who have knowledge that a particular phone line is used for a payphone, must indicate on that payphone's monthly bill that the amount due is for payphone service.³³⁶

b. Petitions

105. AT&T, Sprint, and Cable & Wireless contend that the per-call compensation rules are unadministrable because they rely on fluctuating per-call rates that will make a verifiable compensation system impossible.³³⁷ They argue that a cost-based approach to per-call compensation would establish a fixed compensation amount for all non-coin calls, which would facilitate and lower the administrative costs of compensation.³³⁸ In addition, Sprint argues that unscrupulous PSPs can be expected to claim higher local coin rates for compensation purposes.³³⁹

106. WPTA contends that compensation should be paid on a monthly instead of on a quarterly basis, with a penalty for late payments.³⁴⁰ It contends that IXCs have and will delay payments for as many as seven months, as long as there is no fear of penalty.³⁴¹

107. MCI contends that the Commission should reconsider its conclusion that PSPs may submit bills for compensation for one year after the end of the compensation period in question.³⁴² MCI contends further that this arrangement will significantly increase the administrative burden and cost associated with paying compensation.³⁴³ In addition, MCI argues that the Commission should reconsider its decision that the time for a PSP to file a complaint with the Commission will not begin to accrue until the carrier-payor issues a final denial of the claim.³⁴⁴ MCI argues further that the period within which complaints must be filed is set forth in the Act and cannot be changed by the Commission.³⁴⁵

c. Comments

108. CompTel argues that the use of local coin rates as a surrogate will mean that the

³³⁵ Id. at para. 113.

³³⁶ Id. at para. 116.

³³⁷ AT&T Petition at 14-15; Cable & Wireless Petition at 10; Sprint Petition at 11.

³³⁸ AT&T Petition at 15; Cable & Wireless Petition at 10.

³³⁹ Sprint Petition at 12.

³⁴⁰ WPTA Petition at 13-14.

³⁴¹ Id.

³⁴² MCI Petition at 20.

³⁴³ Id. at 20-21.

³⁴⁴ Id. at 21.

³⁴⁵ Id. at 22.

compensation rate will fluctuate from payphone to payphone and over time, subjecting carriers to significant unknowable and unrecoverable costs.³⁴⁶ CompTel explains that carriers will be unable to identify in advance with any accuracy which PSP owns a payphone originating a particular call or determine the rate that PSP charges for local coin calls, preventing the carrier from selectively blocking calls from payphones with high local coin -- and thus, per-call -- rates.³⁴⁷ APCC contends that those petitioners who argue that a fluctuating per-call compensation amount is unadministerable overlook the finding in the Report and Order that negotiations about the compensation amount and administrative details are likely to occur "because both parties have an interest in making the compensation system a manageable one."³⁴⁸

109. CompTel states that the Commission must define more precisely which carriers are "facilities-based" and therefore required to track compensable calls, and which carriers are "resellers for whom the tracking will be provided by their underlying carrier."³⁴⁹ WorldCom adds that even the largest IXCs are resellers to the extent that they rely on termination services provided by other carriers.³⁵⁰

110. APCC argues that the Commission should adhere to its conclusion that the statute of limitations does not begin running until a carrier issues a final denial of a compensation claim, or carriers would have an incentive to hold up the processing of compensation claims indefinitely.³⁵¹ APCC also argues that the Commission should not reconsider its conclusion that a PSP can request compensation from a carrier any time within a year after the close of a compensation period, because such a one-year period is reasonable and will not adversely affect any legitimate interest.³⁵² On the other hand, Touch 1 supports MCI's request that the Commission require PSPs to submit ANIs for payment of compensation within three, rather than twelve, months.³⁵³ Touch 1 states that the longer period would significantly increase administrative burdens and costs for IXCs and reduce their opportunities for collection from end users.³⁵⁴ Sprint argues that PSPs should be required to notify IXCs at least 30 days before the beginning of a quarterly compensation period that they are going to seek compensation for particular payphones. Sprint contends that this is the only way by which the IXC will be able to recoup the per-call charge from their customers or choose to block calls from particular payphones.³⁵⁵ Sprint opposes the request of WPTA that the Commission should require payment of compensation on a monthly basis, because such a requirement would lead to increased administrative costs and may not be technically feasible.³⁵⁶

d. Discussion

³⁴⁶ CompTel Comments at 10.

³⁴⁷ Id. at 10-11.

³⁴⁸ APCC Comments at 16-17.

³⁴⁹ CompTel Comments at 14.

³⁵⁰ WorldCom Comments at 5.

³⁵¹ APCC Comments at 20.

³⁵² Id.

³⁵³ Touch 1 Comments at 9.

³⁵⁴ Id.

³⁵⁵ Sprint Comments at 8.

³⁵⁶ Sprint Comments at 9.

111. Some IXC's argue that the differing per-call compensation amounts make the per-call compensation rules adopted in the Report and Order unadministerable for the carrier-payors. We disagree. While there are expenses associated with administering our compensation rules, we conclude that these expenses are unavoidable and must be borne by the entity that receives the primary economic benefit of the payphone calls and is best able to administer a compensation system between it and those that receive the compensation. While varying per-call compensation amounts will eventually result from our decision to let the market set the appropriate per-call compensation amount for compensable calls, we note that for the first two years of the compensation mechanism established by our rules, the carrier-payors will not be required to pay per-call compensation in varying amounts.³⁵⁷ Carrier-payors should use this two-year period to make the requisite adjustments to their internal payphone compensation paying systems to prepare for variable per-call compensation amounts. Therefore, we decline to modify our per-call compensation rules as requested. We conclude further that compensation carrier-payors have an ability, however, to insulate themselves against potential costs that may be associated with differing compensation amounts by negotiating their own compensation arrangements, including compensation amounts, with PSPs.

112. In the Report and Order, we concluded, in response to an argument that we require compensation to be paid on a monthly basis, that we should "leave the details associated with the administration of this compensation mechanism to the parties to determine for themselves through mutual agreement."³⁵⁸ Therefore, we decline to mandate a particular period for paying compensation, including penalties for late payments, and conclude here that if a party believes that compensation should be paid more or less frequently than is currently the industry norm, that party should negotiate that particular issue with the other parties as a part of its total compensation contract.

113. With regard to MCI's argument that we reconsider our conclusion that PSPs may submit bills for compensation for one year after the end of the compensation period in questions, we conclude here, as we did in the Report and Order,³⁵⁹ that the carrier should remain liable for these claims for that period, although the parties (*i.e.*, the carrier-payor and the PSP) can reduce this period of time through a contractual provision. MCI also argues that we should reconsider our conclusion that the time for a PSP to file a complaint with the Commission will not begin to accrue until the carrier-payor issues a final denial of the claim. We conclude here that while the statute of limitations for bringing a complaint before the Commission is set by the Act, it is within our discretion to define the point at which the compensation claim becomes ripe for a complaint. Therefore, as we concluded in the Report and Order, we find that

the time period for the statute of limitations does not begin to run until after the carrier-payor considers a compensation claim and issues a final denial of that claim. To conclude otherwise, as suggested by MCI, would permit a carrier-payor to delay a denial of the claim to preclude a PSP's complaint remedy before the Commission.³⁶⁰

5. Interim Compensation Mechanism

a. Report and Order

114. Because the IXC's required to pay compensation to PSPs are not required to track

³⁵⁷ More specifically, for the first year, carrier-payors will pay flat-rate compensation. For the second year, they will pay per-call compensation at the default rate.

³⁵⁸ Report and Order at para. 115.

³⁵⁹ Id.

³⁶⁰ Id. at para. 114.

individual compensable calls until October 7, 1997, the Commission concluded that PSPs should be paid monthly compensation on a flat rate by IXC's with annual toll revenues in excess of \$100 million, beginning on the effective date of the rules adopted in this proceeding.³⁶¹ Unlike the per-call compensation mechanism adopted in the Report and Order, the interim flat-rate compensation obligation applies to both facilities-based IXC's and resellers that have respective toll revenues of \$100 million per year.³⁶² This flat-rate monthly compensation will apply proportionally to individual IXC's, based on their respective annual toll revenues. For reasons of administrative convenience of the parties, the Commission concluded that it should model the interim mechanism adopted in the Report and Order on that set forth in the access code call compensation proceeding.³⁶³ In the access code compensation proceeding, CC Docket No. 91-35, the Commission excused several carriers from the obligation to pay flat-rate compensation for originating access code calls, because they certified that they were not providers of "operator services," as defined by TOCSIA.³⁶⁴ We noted that Section 276's requirement that we ensure fair compensation for "each and every completed intrastate and interstate call," including access code calls, supersedes the compensation obligations established in CC Docket No. 91-35, including the waivers granted to AT&T and Sprint.³⁶⁵ Because Section 276 is the statutory authority for mandating per-call compensation for all compensable calls, including access code calls, the statutory exclusion in TOCSIA for those carriers that are not providers of "operator services" is no longer a basis for being excused from the obligation to pay either the total flat-rate compensation amount established in the instant proceeding, or a portion thereof.³⁶⁶

115. For the limited purpose of calculating compensation for PSPs on a flat-rate basis until per-call compensation becomes mandatory, the Commission relied on a rate of \$.35 per call, which is the rate in the majority of states that have allowed the market to determine the appropriate local coin rate.³⁶⁷ Based on the call volume data provided by the PSPs, we concluded that, for purposes of calculating flat-rate compensation, the average payphone originates a combined total of 131 access code calls and subscriber 800 calls per month. When 131 calls per month is multiplied by the \$.35 compensation amount, the monthly flat-rate compensation amount is \$45.85.³⁶⁸ We concluded that this \$45.85 flat-rate amount must be paid by carriers, proportionally to their annual toll revenues, to PSPs. This flat-rate obligation applies to access code calls and subscriber 800 calls originated on or after the effective date of the rules adopted in this proceeding.³⁶⁹ PSPs that are affiliated with LECs will not be eligible for this interim compensation until the first day following their reclassification and transfer of payment equipment along with the termination of subsidies.³⁷⁰

b. Petitions

³⁶¹ Report and Order at para. 119.

³⁶² Id.

³⁶³ Id.

³⁶⁴ See, generally, Second Further Notice.

³⁶⁵ Report and Order at para. 119.

³⁶⁶ Report and Order at para. 119.

³⁶⁷ Id. at para. 122.

³⁶⁸ Id. at para. 124.

³⁶⁹ Id.

³⁷⁰ Id. at para. 126.

116. AT&T, MCI, Sprint LDDS, and Cable & Wireless argue that the interim compensation rules are discriminatory because they exclude LECs and small IXCs at the expense of the large IXCs.³⁷¹ AT&T argues that all carriers, large and small, whether a LEC or an IXC, should be required to pay compensation, and no carrier should be required to pay for calls handled by other carriers.³⁷² According to LDDS, the data the Commission relied upon to calculate the interim compensation amount includes calls routed to both LECs and small IXCs.³⁷³ LDDS argues further that nothing in Section 276 permits the Commission to exclude carriers from paying their share of compensation for compensable calls on the grounds of administrative convenience.³⁷⁴

117. AT&T argues that the interim compensation mechanism should not apply to low usage and semi-public payphones.³⁷⁵ AT&T argues further that, because the record in the proceeding shows that there are hundreds of thousands of semi-public and public interest payphones that generate few calls and low revenues, it is unreasonable to include these payphones in the interim compensation mechanism.³⁷⁶

118. In a separately-filed motion for a temporary waiver, Cable & Wireless requests permission to pay its share of the flat-rate interim compensation amount into an interest-bearing escrow account until March 31, 1997.³⁷⁷ Cable & Wireless states that because it is exempt from paying compensation for interstate access code calls from payphones, it currently does not have a system in place for paying such compensation to PSPs.³⁷⁸ Cable & Wireless argues that without such a waiver, it risks overpayment of compensation with no practical recourse to recover any overpayments that may occur.³⁷⁹ Cable & Wireless states that it risks substantial and irreparable harm if it is required to issue compensation payments to PSPs on the effective date of the rules.³⁸⁰

119. WPTA argues that those IXCs that are currently able to pay per-call compensation should begin to do so immediately, rather than paying a portion of the flat-rate compensation for one year.³⁸¹

120. The RBOCs, BellSouth, and Ameritech request that the Commission clarify that the LECs be allowed to eliminate subsidies and reclassify their assets, and, as a result, be eligible to receive

³⁷¹ See, e.g., AT&T Petition at 15-18; Cable & Wireless Petition at 10-13; LDDS Petition at 4-5; MCI Petition at 22; Sprint Petition at 8-9.

³⁷² AT&T Petition at 16.

³⁷³ LDDS Petition at 7.

³⁷⁴ *Id.* at 6.

³⁷⁵ AT&T Petition at 17-18.

³⁷⁶ *Id.* at 17-18.

³⁷⁷ Cable & Wireless Motion at 1.

³⁷⁸ *Id.* at 2.

³⁷⁹ *Id.*

³⁸⁰ *Id.* at 4.

³⁸¹ WPTA Petition at 11-13.

payphone compensation, by April 15, 1997, as opposed to on that date.³⁸² They argue that allowing LECs to take action before that date would be a more flexible approach that would avoid mid-month tariff and cost-accounting manual changes.³⁸³

c. Comments

121. The RBOCs contend that there is no reason for the Commission to alter its calculation or allocation of interim compensation.³⁸⁴ They contend further that the Commission is entitled to make distinctions among carriers where doing so makes sense, such as where the volume of 800 subscriber and access code payphone traffic carried by small IXC and LECs does not justify the administrative expense of requiring them to pay interim compensation.³⁸⁵ Ameritech argues that LECs should not be included as interim compensation payors, because the interim flat rate represents compensation only for access code and subscriber 800 calls, and that a BOC's toll traffic is "primarily intraLATA and primarily within the presubscribed '0+' category."³⁸⁶ It argues further that BOCs and other LECs have not sought to promote their dial-around intraLATA traffic, and that IXCs have captured the vast majority of both interLATA and intraLATA subscriber 800 traffic, because of past restrictions, except to the extent that there were BOC customers that needed only intraLATA 800 service.³⁸⁷ APCC contends that there is no evidence that the market share of small IXCs is significant enough to warrant their inclusion in the interim compensation mechanism.³⁸⁸

122. Several commenters, including LCI, WorldCom and AT&T, assert that LECs and smaller IXCs should not be excluded from paying interim compensation.³⁸⁹ LCI explains that the proposed interim compensation amount is flawed because it is based upon a volume of calls which include the payphone-originated portion of the intraLATA 800 toll calls completed by LECs, as well as inter and intraLATA 800, and inter and intraLATA access code calls completed by small IXCs. LCI argues that it is irrational to include these calls in calculating the amount of compensation, but to exclude the beneficiaries of these calls when allocating the compensation obligation.³⁹⁰

123. TRA argues that the exemption for small resale IXCs from the interim compensation and tracking requirements is consistent with prior Commission actions and furthers congressional intent to increase opportunities for entrepreneurs and other small businesses in the telecommunications industry.³⁹¹ TRA states that small resale IXCs are least able to bear the burden of administrative costs, in part because they have less flexibility to pass these costs on to their own

³⁸² Ameritech Petition at 4-10; BellSouth Petition at 4-6; RBOC Petition at 2.

³⁸³ Id.

³⁸⁴ RBOC Petition at 10-11.

³⁸⁵ Id. at 11.

³⁸⁶ Ameritech Comments at 3.

³⁸⁷ Id.

³⁸⁸ APCC Comments at 21-22.

³⁸⁹ LCI Comments at 8; AT&T Comments at 2; WorldCom Comments at 2.

³⁹⁰ LCI Comments at 8-9.

³⁹¹ Id. at 5-6.

customers.³⁹²

124. The RBOCs argue that AT&T's contention that the interim compensation rate will overcompensate low-usage and semi-public payphones is "both true and irrelevant."³⁹³ The RBOCs argue further that the interim will tend to overcompensate some payphones, while it simultaneously undercompensates other payphones, which is precisely the trade-off that can be expected from an average flat-rate compensation system.³⁹⁴ Ameritech argues that the Commission's obligation to provide compensation for all calls includes those originated by semi-public and low-usage payphones during the interim period, and that such payphones should not be excluded from compensation.³⁹⁵ APCC supports AT&T's contention that no interim compensation be provided for semi-public and low-usage payphones, because of the "negligible call volume from such payphones."³⁹⁶

125. NJPA states that it opposes the request of the RBOCs that LEC payphones be eligible for payphone compensation prior to April 15, 1997 for the following reasons: (1) All intrastate and interstate subsidies must be terminated, not merely the removal of costs from interstate access charges; (2) BOC CEI plans should be approved by the Commission; and (3) because of the potential for contentious accounting and discrimination issues, the Commission should adhere to existing deadlines and not permit early removal of LEC payphones from regulation.³⁹⁷ AT&T also opposes allowing LECs to receive compensation before the date established in the Report and Order, because LECs must remove all intrastate subsidies from both exchange and exchange access services and because 90 days will be required to review the interstate tariffs.³⁹⁸ Sprint opposes allowing the LECs to receive compensation earlier than the dates established in the Report and Order.³⁹⁹

d. Discussion

126. A number of IXC's argue that the interim compensation rules are discriminatory because they exclude LECs and small IXC's at the expense of the large IXC's. We note that once per-call compensation becomes effective, all carriers, including small IXC's and LECs, will be required to pay compensation for all calls deemed compensable by the Report and Order. The interim flat-rate compensation mechanism, however, was adopted for a specific, limited transitional period, and thus applies to those carriers that carry the large majority of compensable calls. To extend interim compensation obligations to all carriers would significantly increase the administrative costs of the compensation mechanism. As we did in the access code compensation proceeding, we exclude small carriers with annual toll revenues under \$100 million, because:

IXC's earning less than \$100 million in toll revenues per year collectively account for less than five percent of long-distance carrier toll revenues. Individually, they account for a

³⁹² Id. at 6-8

³⁹³ RBOC Comments at 11.

³⁹⁴ Id.

³⁹⁵ Ameritech Comments at 4.

³⁹⁶ APCC Comments at 21.

³⁹⁷ NJPA Comments at 12-13.

³⁹⁸ AT&T Opposition at 10-11.

³⁹⁹ Sprint Opposition at 14.

much smaller percentage. Therefore, the payment obligations of these carriers, had they been included, would have been quite low in any case.⁴⁰⁰

We also excluded LECs from the interim flat-rate compensation obligation for similar reasons of administrative practicability and because LECs, on an individual basis, currently do not carry a significant volume of compensable calls.⁴⁰¹ Thus, because the interim flat-rate compensation mechanism was adopted for a finite, transitional period, we decline to modify our rule to include additional carriers, as suggested by the IXC. If a party, in the course of the year during which the interim flat-rate compensation applies, has evidence that the LECs' carrying of compensable calls has increased significantly above current levels, it may petition the Commission to adjust the interim flat-rate to include some LECs as carrier-payors to account for the increase. We delegate authority to the Chief, Common Carrier Bureau, to make any necessary adjustments to the list of compensation-payors for the interim flat-rate compensation period.

127. With regard to AT&T's argument that interim compensation should not apply to low-usage and semi-public payphones, we note that we concluded in the Report and Order that PSPs will be allowed to receive per-call compensation for calls originated by semi-public payphones:

Section 276(d) states, however, that "in this section, the term 'payphone service' means the provision of public or semi-public pay telephones...." Pursuant to this definition, all subsidies for semi-public payphones are terminated under Section 276(b)(1)(B), just as they are for public payphones, "in favor of a compensation plan as specified in subparagraph (A)[.]" Therefore, we conclude that ... semi-public payphones are entitled to receive per-call compensation in the same manner as public payphones.⁴⁰²

For the reasons indicated in the Report and Order, we conclude that PSPs are able to collect flat-rate interim compensation for semi-public payphones. In addition, because Section 276 of the Act neither defines nor directs us to treat so-called "low-usage" payphones differently than other payphones, we conclude that flat-rate interim compensation applies to all payphones, regardless if they are considered to be "low-usage" payphones.⁴⁰³ We note that the call volume data upon which we calculated the flat-rate interim compensation in the Report and Order is based on average call volumes from a variety of payphones maintained by independent providers and the BOCs.⁴⁰⁴ Our estimate of 131 compensable calls originated by each payphone each month is an average for each payphone;⁴⁰⁵ some payphones will originate more than 131 calls, while others will originate less. In sum, we conclude that the level of interim compensation already takes into account the varying call volumes from payphones.

128. We deny the motion filed by Cable & Wireless that requests permission to pay its share of the flat-rate interim compensation amount into an interest-bearing escrow account until March 31,

⁴⁰⁰ Second Report and Order, 7 FCC Rcd at 3259.

⁴⁰¹ See Report and Order at n.293: "Currently, because LECs are not the primary carrier for subscriber 800 calls, the relevant toll calls for which LECs will be obligated to pay compensation are those made with use of a LEC-specific access code. As LECs (both incumbent and non-incumbent) begin to carry additional toll calls originated by payphones, they will be required to pay per-call compensation on those calls." Id.

⁴⁰² Id. at para. 75.

⁴⁰³ LEC payphones are not eligible to receive the flat-rate interim compensation until all subsidies are terminated, pursuant to Section 276(b)(1)(B).

⁴⁰⁴ Report and Order at paras. 124-125.

⁴⁰⁵ Id. at para. 125.

1997.⁴⁰⁶ Although Cable & Wireless argues that it currently does not have a system in place for paying such compensation to PSPs, we note that this is true for a significant number of carriers obligated to pay the flat-rate interim compensation. Carriers that receive calls from payphones, however, have been on notice since February 8, 1996, the date the Telecommunications Act of 1996 was enacted, that they would be obligated to pay for such calls in the near future. In addition, many carriers, including Cable & Wireless for a time, have been required to pay flat-rate compensation for access code calls, pursuant to CC Docket No. 91-35.⁴⁰⁷ Because our rules adopted in the instant proceeding did not become effective until thirty days after publication in the Federal Register, at which time the compensation period commences, carriers had an adequate time to devise a means of paying compensation. The carriers will have additional time beyond this thirty-day period in light of the fact that the actual compensation payments will not be due until after the compensation period has ended. Therefore, because it has not pleaded circumstances of a unique nature, we deny Cable & Wireless's motion.

129. We deny WPTA's request that we require those IXC's that are currently able to pay per-call compensation to begin to do so immediately. We have provided IXC's with a one-year period to implement a per-call tracking and compensation mechanism. In the interim, we mandated a flat-rate compensation amount for PSPs. To ensure a relatively easy administration for all parties and to allow them to prepare for the per-call mechanism, we decline to modify our rules to require some IXC's to pay per-call compensation for all or some calls under the interim compensation mechanism. We conclude that the requested modification would impose greater transaction costs for all parties that outweigh its benefits, particularly because the flat-rate compensation mechanism is a interim mechanism that is scheduled to terminate in one year. Individual carrier-payors and the PSPs have the option, however, of mutually agreeing to pay per-call compensation for all or a portion of a particular carrier's share of the interim flat rate. Such a carrier-payor would have to petition us for waiver and receive an approval before implementing such an arrangement. The Common Carrier Bureau granted similar waivers from the obligation to pay flat-rate compensation for access code calls in two cases.⁴⁰⁸ We delegate the requisite authority to the Chief, Common Carrier Bureau, to determine whether any such waivers from our interim flat-rate compensation mechanism in the instant proceeding should be granted.

130. The RBOCs, BellSouth, and Ameritech request that the Commission clarify that the LECs be allowed to eliminate subsidies and reclassify their assets, and, as a result, be eligible to receive payphone compensation, by April 15, 1997, as opposed to on that date. We clarify that the LECs may complete all of the steps necessary to receive compensation by April 15, 1997.

131. In this regard, we recognize that LECs may be in different positions with regard to the actions required to comply with the requirements established in the Report and Order. We also recognize that there are benefits to moving quickly to the more competitive payphone market structure that we have established. We must be cautious, however, to ensure that LECs comply with the requirements we set forth in the Report and Order. Accordingly, we conclude that LECs will be eligible for compensation like other PSPs when they have completed the requirements for implementing our payphone regulatory scheme to implement Section 276. LECs may file and obtain approval of these requirements earlier than the dates included in the Report and Order, as revised herein, but no later than those required dates. To receive compensation a LEC must be able to certify the following: 1) it has an effective cost accounting manual ("CAM") filing; 2) it has an effective interstate CCL tariff reflecting a reduction for deregulated payphone costs and reflecting additional multiline subscriber line charge ("SLC") revenue; 3)

⁴⁰⁶ Cable & Wireless Motion at 1.

⁴⁰⁷ See, generally, Second Report and Order.

⁴⁰⁸ See Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, Memorandum Opinion and Order, 10 FCC Rcd 1590 (Com. Car. Bur. 1994) ("AT&T Waiver"); Memorandum Opinion and Order, 10 FCC Rcd 5490 (Com. Car. Bur. 1995) ("Sprint Waiver").

it has effective interstate tariffs reflecting the removal of charges that recover the costs of payphones and any intrastate subsidies; 4) it has deregulated and reclassified or transferred the value of payphone customer premises equipment ("CPE") and related costs as required in the Report and Order; 5) it has in effect intrastate tariffs for basic payphone services (for "dumb" and "smart" payphones); and 6) it has in effect intrastate and interstate tariffs for unbundled functionalities associated with those lines. We clarify that the requirements of the Report and Order apply to inmate payphones that were deregulated in an earlier order.⁴⁰⁹ As the requirements of the Report and Order become due, LECs must comply with those requirements for all payphones, including inmate payphones.

132. In addition to the requirements for all other LECs, BOCs must also have approved CEI plans for basic payphone services and unbundled functionalities prior to receiving compensation. Similarly, prior to the approval of its comparably efficient interconnection ("CEI") plan, a BOC may not negotiate with location providers on the location provider's selecting and contracting with the carriers that carry interLATA calls from their payphones. We delegate authority to the Chief, Common Carrier Bureau, to make any necessary determination as to whether a LEC has complied with all requirements as set forth above.

6. Barriers to Entry and Exit

a. Report and Order

133. As part of the transition to market rates, we directed in the Report and Order that the states should take steps to ease entry and exit from the payphone market in order to ensure that competition is promoted.⁴¹⁰ We concluded that ease of entry and exit in this market will foster competition and allow the market, rather than regulation, to dictate the behavior of the various parties in the payphone industry. To this end, we directed the states to examine and modify regulations applicable to payphones and PSPs, and remove regulations that affect payphone competition. We emphasized that the states remain free at all times to impose regulations, on a competitively neutral basis, to provide consumers with information and price disclosure.⁴¹¹

b. Petitions

134. California PUC argues that the directive in the Report and Order to eliminate entry and exit barriers may interfere with the proper exercise of the states' police powers, such as prohibiting them from removing or limiting the placement of payphones in areas where illicit activities are facilitated by the presence of payphones.⁴¹² California PUC explains that if such actions are construed as a barrier to entry, it would prevent state and local governments from taking action necessary to protect public safety. It asserts that local jurisdictions should be able to exercise police powers, such as zoning restrictions, in order to remove payphones used in illegal activities.⁴¹³ California PUC also notes that it has a program for oversight of payphone services, known as the Coin Operated Pay Telephone Enforcement Program, responsible for oversight and compliance with LEC tariffs as well as for education of PSPs and

⁴⁰⁹ Petition for Declaratory Ruling by the Inmate Calling Services Providers Task Force, Declaratory Ruling, 11 FCC Rcd 7362 (1996) (Inmate Service Order); Petitions for Waiver and Partial Reconsideration or Stay of Inmate-Only Payphones Declaratory Ruling, Order, 11 FCC Rcd 8013 (Com. Car. Bur. 1996) (Inmate Services Waiver Order).

⁴¹⁰ Report and Order at para. 60.

⁴¹¹ Id.

⁴¹² California PUC Petition at 2-3.

⁴¹³ Id.

consumers.⁴¹⁴ This program has instituted customer safeguard programs to enforce rules concerning pricing and service issues, and to limit anticompetitive behavior by PSPs and carriers, which California PUC asserts would be invalid barriers to entry under the Report and Order.⁴¹⁵

135. California PUC also asserts that if an area is not served with payphones because the location is not profitable, the state should have the authority to require the placement of a payphone at a reasonable cost where persons would otherwise have no recourse to private, or even public policy payphones.⁴¹⁶ California PUC argues that the Report and Order would limit the states' ability to provide for the welfare of their residents.⁴¹⁷

136. Maine PUC asserts that the Commission does not have jurisdiction to preempt local regulation of payphone entry and exit requirements.⁴¹⁸ It specifically notes that the preemption language of Section 276(c) only applies to state regulations that are inconsistent with the Commission's regulations lawfully enacted pursuant to Section 276(b).⁴¹⁹ Maine PUC expresses the concern that this directive would preempt state efforts to prohibit payphones, for example, in areas known for a high levels of drug trafficking.⁴²⁰

137. Oklahoma CC and Texas PUC request clarification on the scope of the preemption standards in the Report and Order concerning elimination of state barriers to entry and exit.⁴²¹ Oklahoma CC states that it requires certification of PSPs based upon the PSP's managerial, technical, and financial abilities to provide reliable service; signage/postage requirements; minimum service standards; and other safeguards in order for a PSP to operate in the state.⁴²² Oklahoma CC also notes that it has already implemented emergency rules (following release of the Report and Order) designed to open the payphone industry in the state to competition. Texas PUC states that it has adopted rules that require registration (not certification) that must be fulfilled in order for a PSP to operate.⁴²³

c. Comments

138. The RBOC Coalition agrees that states retain the right, pursuant to their police powers, to forbid payphones in certain high crime areas where they may promote drug traffic.⁴²⁴ The

⁴¹⁴ Id. at 3.

⁴¹⁵ Id.

⁴¹⁶ Id. at 5.

⁴¹⁷ Id.

⁴¹⁸ Maine PUC Petition at 15.

⁴¹⁹ Id.

⁴²⁰ Id. at 15-16.

⁴²¹ Oklahoma CC Petition at 3-4; Texas PUC Petition at 6.

⁴²² Id.

⁴²³ Texas PUC Petition at 6.

⁴²⁴ RBOC Comments at 24.

RBOCs, however, oppose California PUC's argument that states should have the right to order the placement of non-public interest payphones.⁴²⁵ The RBOCs argue that such action would be contrary to the Commission's decision to deregulate the industry and let market forces determine entry and exit and the location of payphones, adding that the elimination of such barriers are critical to the development of a competitive payphone industry. The RBOCs assert that a state can order as many payphones as it wants as long as it is willing to pay for them, but it cannot otherwise compel the placement of payphones.⁴²⁶

d. Discussion

139. As we stated in the Report and Order, our ultimate goal in this proceeding is to ensure the wide deployment of payphones through the development of a competitive, deregulatory payphone industry.⁴²⁷ To achieve this goal, we found that it would be necessary to eliminate certain vestiges of a long-standing regulatory approach to payphones. To this end, the Report and Order directs the removal of subsidies to payphones, provides for nondiscriminatory access to bottleneck facilities, ensures compensation for all calls from payphones, and allows all competitors an equal opportunity to compete for essential aspects of the payphone business.⁴²⁸ In particular, we directed each state to examine its regulations applicable to payphones and PSPs, removing or modifying those that erect barriers to entry or exit and thereby affect the ability of companies to compete in the payphone industry on an equal footing.⁴²⁹ We conclude here that these actions are essential to implementing the congressional directive to establish a "pro-competitive deregulatory national framework designed to accelerate rapid private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."⁴³⁰ We also conclude that they are necessary in order to implement the stated goals of Section 276 "of promot[ing] competition among payphone service providers and promot[ing] the widespread deployment of payphone services to the benefit of the general public..."⁴³¹ In short, burdensome state entry and exit requirements would be inconsistent with the rules we have adopted to implement the congressional mandate embedded generally in Section 276 of the Act, and, more specifically, in the requirements of Section 276(b)(1)(A) to ensure fair compensation for each and every call using a payphone. For these reasons, we are satisfied that our directive to the states to eliminate such burdens is within the preemption authority granted to us by Congress in Section 276(c).⁴³² Accordingly, we deny requests by the states that we reconsider our conclusions in this regard.

140. While we recognize the concerns expressed by the states, we find that none of the actions we have taken to ensure a competitive payphone industry is inconsistent with, or infringes upon, their traditional police powers. Rather, the Report and Order takes the initial steps necessary to move payphone services from a regulated industry to an unregulated one. As with any business, however, states retain authority to impose certain requirements without competitive effect that are designed to protect the

⁴²⁵ Id. at 24.

⁴²⁶ Id. at 24-25.

⁴²⁷ Report and Order at para. 1-8.

⁴²⁸ Id. at para. 3.

⁴²⁹ Id. at para. 60.

⁴³⁰ Conference Report at 1.

⁴³¹ 47 U.S.C. § 276(b)(1).

⁴³² 47 U.S.C. § 276(c).

health, safety and welfare of its citizens. For example, reasonable zoning requirements restricting the placement of payphones for public safety purposes are a legitimate exercise of a state's police power, just as a state may designate areas within its jurisdiction where restaurants and other competitive businesses may or may not be located.⁴³³ Similarly, a state may require a PSP to register as a prerequisite to doing business within that state, just as many require such registration of other nonregulated businesses. Indeed, we stated in the Report and Order that states need remove or modify only "those regulations that affect payphone competition[.]"⁴³⁴ We noted, as one example, that "the states remain free at all times to impose regulations, on a competitively neutral basis, to provide consumers with information and price disclosure."⁴³⁵ We emphasize that any state regulations must treat all competitors in a nondiscriminatory and equal manner, and not involve the state in evaluating the subjective qualifications of competitors to provide payphone services. Thus, a state can identify, for public safety reasons, areas where no competitor can place a payphone; but it cannot draw distinctions that allow some class of competitors to enter the payphone market and not others. In this way, the market will determine who is best equipped to provide these services, while at the same time encouraging the development of advanced technology and the wide deployment of payphones.

141. California also expresses the concern that the Commission's direction that states eliminate barriers to entry would prevent a state from requiring the placement of payphones in unprofitable locations, including densely populated urban areas, where persons would otherwise have no recourse to payphones.⁴³⁶ It concludes that these restrictions would limit the states' ability to provide for the welfare of their residents.⁴³⁷ We disagree. There are at least two means by which a state could address the problem described by California. First, a location where a payphone does not exist because it is unprofitable, but which serves the public welfare, satisfies the requirements for placement of a public interest payphone.⁴³⁸ To this extent, a state may rely upon the public interest payphone funding mechanisms to arrange for the placement of a payphone at such location. Where a location does not satisfy the criteria for placement of a public interest payphone, the state may still contract with a PSP for provision of payphone service, in its role as a location provider, in locations over which it has such authority. It simply may not rely upon the funding mechanism for public interest payphones to support such payphones. Of course, a state may not, as suggested in the RBOCs comments, require that a PSP place a payphone at a particular location.⁴³⁹ Such a requirement would neither be competitively neutral, nor ensure fair compensation to the PSP as required by the 1996 Act.⁴⁴⁰ A state may, however, enter into a voluntary agreement with a PSP at mutually agreeable terms for the provision of such service.

⁴³³ See, e.g., 47 U.S.C. § 253(b). While not directly applicable, this section makes clear that the statutory directive to remove state and local barriers to entry into the provision of interstate and intrastate telecommunications services does not affect the ability of a state or local government to impose, on a competitively neutral basis and consistent with section 254 of the Communications Act, requirements necessary to protect the public safety and welfare.

⁴³⁴ Report and Order at para. 60.

⁴³⁵ Id.

⁴³⁶ California PUC Petition at 5.

⁴³⁷ Id.

⁴³⁸ See Report and Order at paras. 264-286.

⁴³⁹ RBOC Comments at 23-24.

⁴⁴⁰ 47 U.S.C. § 276(b)(1)(A).

B. RECLASSIFICATION OF INCUMBENT LEC-OWNED PAYPHONES

142. Currently, incumbent LEC payphones, classified as part of the network, recover their costs from CCL charges assessed on those carriers that connect with the incumbent LEC. In order to comply with Section 276(b)(1)(B)⁴⁴¹ by removing payphone costs from the CCL charge and all intrastate and interstate payphone subsidies from basic exchange and exchange access revenues, the Report and Order established requirements for: 1) the termination of access charge compensation and all other subsidies for incumbent LEC payphones; (2) the prospective classification of incumbent LEC and AT&T payphones as CPE; (3) tariffing of basic payphone services and functionalities; and (4) the reclassification and transfer of incumbent LEC payphone equipment assets from regulated to nonregulated status.

1. Classification of LEC Payphones as CPE**a. Report and Order****i. CPE Deregulation**

143. In the Report and Order, we concluded that to best effectuate the 1996 Act's mandate that access charge payphone service elements and payphone subsidies from basic exchange and exchange access revenues be discontinued, incumbent LEC payphones should be treated as deregulated and detariffed CPE. In Computer II, the Commission concluded that CPE should be unbundled from its underlying transmission service in order to prevent improper cross-subsidization.⁴⁴² Consistent with this prior finding, we concluded that LEC payphones must be treated as unregulated, detariffed CPE in order to ensure that no subsidies are provided from basic exchange and exchange access revenues or access charge payphone service elements as required by the Act. In addition, we concluded that AT&T payphones must be deregulated, detariffed, and treated as CPE. We required that AT&T follow the same procedures as the LECs for valuing payphone assets and transferring them to nonregulated status. After deregulation, AT&T payphones are subject to the same requirements as independent payphone provider payphones.

144. We declined to limit the deregulation of payphones to those owned by larger LECs, because Section 276 is not limited in application to larger LECs, the benefits the Commission observed in CPE deregulation apply to payphones, and those benefits apply regardless of the size of the LEC.⁴⁴³

145. We also declined to require the BOCs or other incumbent LECs to provide their payphone CPE through a structurally separated affiliate.⁴⁴⁴ The Report and Order established nonstructural safeguards for BOCs to provide payphone CPE on an integrated basis and declined to require that other incumbent LECs be required to provide CPE through structurally separate affiliates. We

⁴⁴¹ 47 U.S.C. § 276(b)(1)(B).

⁴⁴² Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), 77 FCC 2d 384, 445 (1980) (Computer II), modified on recon., 84 FCC 2d 50 (1981), modified on further recon., 88 FCC 2d 512 (1981), aff'd sub nom. Computer and Communications Industry Ass'n v. FCC, 693 F.2d 198 (D.C. Cir. 1982), cert denied, 462 U.S. 938 (1983).

⁴⁴³ Report and Order at para. 144.

⁴⁴⁴ See Report and Order at paras. 192-207, for a discussion of the statutory mandate that we "prescribe a set of nonstructural safeguards for [BOC] payphone service ... which safeguards shall, at a minimum, include the nonstructural safeguards equal to those adopted in the Computer Inquiry-III ... proceeding." 47 U.S.C. § 276(b)(1)(C).

preempted states' ability to impose structural separation requirements on the payphone operations of the BOCs or other LECs.⁴⁴⁵ The Commission did not, however, preempt the states from imposing on nonBOC LECs nonstructural safeguards that are no more stringent than those we imposed on the BOCs.

ii. Unbundling of Payphone Services

146. In the Report and Order, we concluded, pursuant to Computer II, Sections 201, 202, and 276 of the Act, and previous CPE decisions, that incumbent LECs must offer individual central office coin transmission services to PSPs under nondiscriminatory, public, tariffed offerings if the LECs provide those services for their own operations.⁴⁴⁶ We concluded that incumbent LECs must provide coin service so competitive payphone providers can offer payphone services using either instrument-implemented "smart payphones" or "dumb" payphones that utilize central office coin services, or some combination of the two in a manner similar to the LECs. We also required that incumbent LEC provision of coin transmission services on an unbundled basis be treated as a new service under the Commission's price cap rules. The Report and Order required that incumbent LECs not currently subject to price cap regulation must submit cost support for their central office coin services, pursuant to Sections 61.38, 61.39, or 61.50(i) of the Commission's rules.⁴⁴⁷ The Report and Order requires that incumbent LECs must file tariffs with the Commission for these services no later than January 15, 1997. To the extent that this requirement precludes the BOCs from complying with the Computer II, Computer III,⁴⁴⁸ and ONA⁴⁴⁹ network information disclosure requirements, the Commission waived the notice period in order to ensure that these services are provided on a timely basis consistent with the other deregulatory requirements of the order.⁴⁵⁰ Pursuant to this waiver, network information disclosure notification on the basic network

⁴⁴⁵ BOC CPE Relief Order, 2 FCC Rcd at 143. See 47 U.S.C. § 276(c).

⁴⁴⁶ Computer II, 77 FCC 2d at 387-9; 47 U.S.C. §§ 201, 202, and 276; BOC CPE Relief Order, 2 FCC Rcd at 143.

⁴⁴⁷ Report and Order at 146. 47 C.F.R. §§ 61.38, 61.39, 61.50(i).

⁴⁴⁸ See Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer III), CC Docket No. 85-229, Phase I, 104 FCC 2d 958 (1986) (Phase I Order), recon., 2 FCC Rcd 3035 (1987) (Phase I Reconsideration Order), further recon., 3 FCC Rcd 1135 (1988) (Phase I Further Reconsideration Order), second further recon., 4 FCC Rcd 5927 (1989) (Phase I Second Further Reconsideration Order); Phase I Order and Phase I Reconsideration Order vacated California v. FCC, 905 F.2d 1217 (9th Cir. 1990) (California I); Phase II, 2 FCC Rcd 3072 (1987) (Computer III Phase II Order), recon., 3 FCC Rcd 1150 (1988) (Phase II Reconsideration Order), further recon., 4 FCC Rcd 5927 (1989) (Phase II Further Reconsideration Order); Phase II Order vacated, California I 905 F.2d 1217 (9th Cir. 1990); Computer III Remand Proceeding, 5 FCC Rcd 7719 (1990) (ONA Remand Order), recon., 7 FCC Rcd 909 (1992), pets. for review denied, California v. FCC, 4 F.3d 1505 (9th Cir. 1993) (California II); Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards, 6 FCC Rcd 7571 (1991) (BOC Safeguards Order), BOC Safeguards Order vacated in part and remanded, California v. FCC, 39 F.3d 919 (9th Cir. 1994) (California III), cert. denied, 115 S.Ct. 1427 (1995). See also Bell Operating Companies' Joint Petition for Waiver of Computer II Rules, Memorandum Opinion and Order, 10 FCC Rcd 1724 (1995); Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services, 10 FCC Rcd 8360 (1995).

⁴⁴⁹ Filing and Review of Open Network Architecture Plans, 4 FCC Rcd 1 (1988) (BOC ONA Order), recon., 5 FCC Rcd 3084 (1990) (BOC ONA Reconsideration Order); 5 FCC Rcd 3103 (1990) (BOC ONA Amendment Order), erratum, 5 FCC Rcd 4045, pets. for review denied, California v. FCC, 4 F.3d 1505 (9th Cir. 1993), recon., 8 FCC Rcd 97 (1993) (BOC ONA Amendment Reconsideration Order); 6 FCC Rcd 7646, 7649-50 (1991) (BOC ONA Further Amendment Order); 8 FCC Rcd 2606 (1993) (BOC ONA Second Further Amendment Order), pet. for review denied, California v. FCC, 4 F.3d 1505 (9th Cir. 1993).

⁴⁵⁰ Network disclosure requirements are discussed in Computer II, 2 FCC Rcd at 150-151; 3 FCC at 23-24; and Computer III at 3 FCC Rcd at 1164-65. The Commission may waive a rule for good cause shown, in whole or in part, on the Commission's own motion or petition. 47 C.F.R. § 1.3. Regarding the waiver standard, see Wait Radio v. Federal Communications Commission, 418 F.2d 1153 (D.C. Cir. 1969); Northeast Cellular Telephone Co. v. Federal Communications Commission, 897 F.2d 1164 (D.C. Cir. 1990). See also Inmate Services Waiver Order 11 FCC Rcd at 8013

payphone services must be made by the BOCs by January 15, 1997 for services to be provided by April 15, 1997.

147. The Report and Order required that tariffs for payphone services must be filed with the Commission as part of the LECs' access services to ensure that the services are reasonably priced and do not include subsidies. Because, Section 276 specifically refers to the application of Computer III and ONA requirements, at a minimum for BOC provision of payphone services, we concluded that Computer III tariff procedures and pricing are appropriate for basic payphone services provided by LECs to other payphone providers. Pursuant to Section 276(c), any inconsistent state requirements with regard to this matter are preempted.

148. The Report and Order declined to require additional unbundling of network elements for payphone service for all LECs. We found that such unbundling is not necessary to provide payphone services and that some features require substantial costs to make switch changes. Moreover, the Report and Order noted that, pursuant to Computer III and ONA requirements, BOCs must unbundle additional network elements when requested by payphone providers based on specific criteria established in the Computer III and ONA proceedings.⁴⁵¹ We noted, however, that any basic transmission services provided by a LEC to its own payphone operations must be available under tariff to other payphone providers pursuant to Computer II.⁴⁵² In addition, the Report and Order provides that states may impose on LECs further nondiscriminatory payphone service unbundling requirements that are not inconsistent with Section 276 requirements and requirements established in the Report and Order.⁴⁵³

iii. Other LEC Payphone Services

149. The Report and Order concluded that incumbent LECs should provide certain other services to payphone providers if they provide those services to their own payphone operations. These services must be made available by the LEC or its affiliate to other payphone providers on a comparable basis in order to ensure that other payphone providers do not receive discriminatory service from the LECs once LEC payphones are deregulated, and to ensure that other payphone providers can compete with LEC payphone operations. Specifically, the Report and Order required LECs to provide other payphone providers the following services on a nondiscriminatory basis to enable them to compete effectively for the provision of payphones: fraud protection, special number assignments, and installation and maintenance of basic services.⁴⁵⁴ Regarding billing and collection services, we concluded that if a LEC provides basic, tariffed payphone services that will only function in conjunction with billing and collection services from the LEC, the LEC must provide the billing and collection services it provides to its own payphone operations for these services to independent payphone providers on a nondiscriminatory basis.

The Report and Order stated that we expect this requirement to apply, for example, in situations where coin services require the LEC to monitor coin deposits and such information is not otherwise available to

(granting a waiver of the network disclosure notice period to enable the provision of payphone services for inmate payphones before the required notice period).

⁴⁵¹ Report and Order at para. 148. See Computer III Phase II Order at 3101. Congress did not require that Computer III safeguards, at a minimum be applied to other LECs. See 47 U.S.C. § 276(b)(1)(C).

⁴⁵² Computer II, 77 FCC 2d at 387-9; 47 C.F.R. 64.702.

⁴⁵³ Report and Order at para. 148.

⁴⁵⁴ The Report and Order noted that validation services were required pursuant to Policies and rules concerning Local Exchange Carrier Validation and Billing Information for "Joint Use Calling Cards," Report and Order and Request for Supplemental Comment, CC Docket 91-115, 7 FCC Rcd 3528 (1992); Second Report and Order, 8 FCC Rcd 4478 (1993). The Report and Order discussed the requirements for per-call tracking at paras. 96-101.

third parties for billing and collection.

iv. Registration and Demarcation Point for Payphones

150. In the Report and Order, we amended our Part 68 rules to provide for the registration of central-office-implemented coin payphones to enable independent payphone providers as well as the LECs to utilize "dumb" payphones.⁴⁵⁵ Accordingly, we adopted amendments to Section 68.2(a)(1) and Section 68.3 of the Commission's rules to facilitate registration of both instrument-implemented and central-office-implemented payphones. We grandfathered existing LEC payphones from our revised Part 68 requirements, unless the basic functionality in the payphones is changed.⁴⁵⁶ We required incumbent LECs to submit proposed interconnection requirements to effectuate such interconnection within 90 days of the effective date of the Report and Order.

151. Consistent with our objective of treating incumbent LEC and independent payphone providers' payphones in a similar manner, we concluded in the Report and Order that the demarcation point for LEC payphones must be the same as incumbent LECs use for independent payphone providers today. Accordingly, we required that the demarcation for all new LEC payphones must be consistent with the minimum point of entry, demarcation point standards for other wireline services.⁴⁵⁷ We also grandfathered the location of all existing LEC payphones in place on the effective date of the order. Similarly, we did not require that network interfaces be placed for existing LEC payphones, unless these payphones are substantially refurbished, for example, upgraded from dumb to smart payphones or replaced.

b. Petitions

i. Unbundling of Payphone Services

152. BellSouth requests reconsideration of the requirement for federal tariffing of LEC payphone services, and argues that payphone service tariffs should only be filed in the state jurisdiction.⁴⁵⁸ BellSouth argues that coin services are local exchange services and the Commission lacks jurisdiction over these services. BellSouth also asserts that federal tariffing is unnecessary to assure protection from discrimination.⁴⁵⁹

153. Ohio PUC requests reconsideration of the federal tariffing of LEC central office coin services arguing that such tariffs have been the jurisdiction of the states. Ohio PUC suggests that instead the Commission should set guidelines for the states or provide cost review of tariffs that the states could use.⁴⁶⁰ Ohio argues that states should retain control over tariffing of payphone services because

⁴⁵⁵ See Registration of Coin Operated Telephones, Memorandum Opinion and Order, 49 Fed. Reg. 27763 (1984) (Coin Registration Order).

⁴⁵⁶ The Commission has previously exempted existing CPE from Part 68 registration requirements. See 47 C.F.R. § 68 (b)-(h).

⁴⁵⁷ 47 C.F.R. § 68.3.

⁴⁵⁸ BellSouth Petition at 6.

⁴⁵⁹ BellSouth Petition at 13 .

⁴⁶⁰ Ohio Petition at 2-5 .

the Report and Order allows them to require additional unbundling.⁴⁶¹

154. NTCA requests that the Commission clarify that the requirement that LECs file coin transmission services in their access service tariffs may be satisfied by small LECs through participation in a national tariff filed by NECA and recover its costs through a NECA administered pool.⁴⁶² If not, NTCA asks for reconsideration of the decision to require federal tariffing. Moreover, NTCA requests that the Commission clarify that the tariff provisions to be filed are limited to services added to enable payphone services, such as counting and control of coins and fraud protection, but not loops and switching functions, and clarify the costing methodology.⁴⁶³

ii. Other Payphone Services

155. The Inmate Coalition requests that BOCs be required to provide nondiscriminatory access to account and fraud control information, billing and collection services, and terms under which independent payphone providers and BOCs purchase basic service offerings.⁴⁶⁴ NJPA seeks reconsideration of the nondiscrimination and nonstructural safeguards for LEC provision of payphone services. NJPA requests that the Commission require access to call rating capabilities, answer supervision, call tracking, joint marketing, installation and maintenance, and billing and collection.⁴⁶⁵ NJPA argues that independent payphone providers require call rating capabilities because otherwise they must use the rates selected by the LEC.⁴⁶⁶ It argues that answer supervision is necessary to allow payphone providers to more precisely tell when a call is answered.⁴⁶⁷ NJPA requests that LECs be required to make network-based call tracking available for calls made from independent payphones if it is available for calls made from their own payphones.⁴⁶⁸ NJPA states that network-based call tracking is necessary in order to check on call volumes on which they are paid by each carrier. Finally, NJPA argues that joint marketing, installation and maintenance, and billing and collection should be available on a cost allocated basis and on a nondiscriminatory basis even for those functions that the Commission has deregulated.⁴⁶⁹ Sprint requests clarification that installation and maintenance services only apply to the "basic" payphone lines and not to the deregulated equipment.⁴⁷⁰

iii. Registration and Demarcation Point for Payphones

⁴⁶¹ Id.

⁴⁶² NTCA Petition at 2-3 .

⁴⁶³ Id. at 4.

⁴⁶⁴ Inmate Coalition Petition at 18.

⁴⁶⁵ NJPA Comments at ii-iii.

⁴⁶⁶ Id. at 3.

⁴⁶⁷ Id. at 7.

⁴⁶⁸ Id. at 9.

⁴⁶⁹ NJPA Petition at 12.

⁴⁷⁰ Sprint Petition at 19.

156. The RBOCs ask for clarification that the minimum point of entry demarcation point standards are flexible enough to allow for placement of payphones at the nearer and most cost-effective drop point in unique circumstances, such as service stations.⁴⁷¹

c. Comments

i. Unbundling of Payphone Services

157. NJPA argues that Computer III provides precedent supporting the federal tariffing of coin line functionalities and if not the Commission could establish additional requirements consistent with the Act such as federal tariffing.⁴⁷² NJPA asserts that coin lines are used for both intrastate and interstate services. NJPA also notes that recent Commission decisions have required federal tariffing of other types of payphone functionalities, including originating line screening and billed number screening, as well as international call blocking.⁴⁷³ NJPA argues that federal tariffing of coin functionalities is in the public interest to ensure that payphone service providers are not overcharged for network functions and to ensure that LECs do not use tariffs for coin line functions. AT&T supports NJPA's request that LECs be required to provide independent payphone providers the ability to obtain coin rating capabilities so that the independent payphone providers can establish their own rates, and unbundled answer supervision if it is provided to the LEC payphone provider.⁴⁷⁴

158. NJPA argues that if the Commission does not retain a federal tariffing requirement for coin line functionalities, it should retain continuing oversight of the methodology states use to price these services, and require LECs to file copies of their coin line tariffs and updates with the Commission.⁴⁷⁵ BellSouth argues that the payphone line tariffs are local exchange service, not access services, and should therefore not be tariffed in the federal jurisdiction.⁴⁷⁶ BellSouth contends that the Commission could impose requirements for nondiscrimination, and the same terms, conditions, rates and charges for the services. BellSouth contends that the Commission does not have the authority to establish specific prices and costs or costing methodologies associated with such services.⁴⁷⁷ BellSouth argues that the Commission does not have authority to require any unbundling of other services except a requirement for nondiscriminatory treatment.⁴⁷⁸ Most of the RBOC Coalition supports BellSouth in requesting that the Commission reconsider LEC tariffing of coin transmission services in the interstate access tariffs.⁴⁷⁹

159. Puerto Rico Telephone requests that the Commission clarify that LECs must only

⁴⁷¹ RBOC Coalition at 7.

⁴⁷² NJPA Comments at 16.

⁴⁷³ NJPA Comments at 17.

⁴⁷⁴ AT&T Comments at 14-15.

⁴⁷⁵ NJPA Comments at 17-18.

⁴⁷⁶ See also SNET contends that coin transmission services and functionalities should not be tariffed with the Commission. SNET Comments at 2.

⁴⁷⁷ BellSouth Comments at 2.

⁴⁷⁸ Id.

⁴⁷⁹ NYNEX, Pacific Telesis, SBC, and US West support BellSouth on this issue. RBOC Coalition Comments at 24.

provide central office functionalities to independent payphone providers that they provide to their own payphone operations.⁴⁸⁰ It does not disagree with NJPA's request that the Commission clarify that network-based call tracking available to the LEC payphone operations is also available to independent payphone providers.⁴⁸¹ AT&T argues that if a LEC offers network-based call tracking services or installation and maintenance service to its payphone operations it should make them available at comparable prices.⁴⁸²

ii. Other Payphone Services

160. Sprint urges the Commission to clarify that the requirement for LECs to provide installation and maintenance services applies only to the payphone transmission lines not the payphone equipment.⁴⁸³ The RBOC Coalition argues that no additional safeguards requested by petitioners should be required. The RBOC Coalition contends that requests for unbundling should be resolved according to Computer III and ONA criteria. It also argues that the Commission should not require nondiscriminatory access to joint marketing, installation and maintenance, and billing and collection because LECs do not have a competitive advantage in these unregulated markets.⁴⁸⁴ The RBOC Coalition asserts that the Commission should not extend the nondiscrimination requirement to the LEC installation and maintenance of payphones.⁴⁸⁵

iii. Registration and Demarcation Point for Payphones

161. NJPA and AT&T do not object to a flexible demarcation point for payphones as long as LECs must treat independent payphone providers in a nondiscriminatory manner with regard to the demarcation point.⁴⁸⁶

d. Discussion

i. Unbundling of Payphone Services

162. Section 276 requires that the Commission take all actions necessary to "discontinue ... all intrastate and interstate payphone subsidies from basic exchange and exchange access revenues."⁴⁸⁷ To implement this requirement we have deregulated payphone equipment and established a requirement that LECs provide tariffed payphone services to independent payphone providers that they provide to their own payphone operations.⁴⁸⁸ Federal tariffing enables the Commission to directly ensure that payphone

⁴⁸⁰ Puerto Rico Telephone Comments at 7-8.

⁴⁸¹ Id.

⁴⁸² AT&T Comments at 15.

⁴⁸³ Sprint Comments at 16.

⁴⁸⁴ RBOC Coalition Comments at 23.

⁴⁸⁵ Id. at 23.

⁴⁸⁶ NJPA Comments at 13; AT&T Comments at 13, n. 31 .

⁴⁸⁷ 47 U.S.C. § 276(b)(1)(B).

⁴⁸⁸ See 47 U.S.C. § 276(c) and §§210-205 regarding authority to require tariffing of basic payphone services.

services comply with Section 276. In Computer III and ONA, the Commission included both state and federal tariffing requirements.⁴⁸⁹ Our requirement in the Report and Order for federal tariffing was consistent with Section 276, Computer III and ONA. We did not in the Report and Order preclude states from requiring the tariffing of payphone services. Consistent with this conclusion, we provided that states could require further unbundling of payphone services than those required in the Report and Order. Although we disagree with BellSouth and Ohio PUC regarding our authority to require federal tariffing of payphone services, on reconsideration we modify the federally tariffing requirement as discussed below.⁴⁹⁰ Accordingly, as required in the Report and Order, LECs must provide tariffed, nondiscriminatory basic payphone services that enable independent providers to offer payphone services using either instrument-implemented "smart payphones" or "dumb" payphones that utilize central office coin services, or some combination of the two in a manner similar to the LECS. LECs must file those tariffs with the state. In addition, as required by the Report and Order, any basic network services or unbundled features used by a LEC's operations to provide payphone services must be similarly available to independent payphone providers on a nondiscriminatory, tariffed basis. Those unbundled features or functions must be tariffed in the state and federal jurisdiction. Federal tariffing of unbundled network features is consistent with Computer III and ONA. The Commission has also required, for example, federal tariffing of originating line screening services.⁴⁹¹

163. We require LECs to file tariffs for the basic payphone services and unbundled functionalities in the intrastate and interstate jurisdictions as discussed below. LECs must file intrastate tariffs for these payphone services and any unbundled features they provide to their own payphone services. The tariffs for these LEC payphone services must be: (1) cost based; (2) consistent with the requirements of Section 276 with regard, for example, to the removal of subsidies from exchange and exchange access services; and (3) nondiscriminatory. States must apply these requirements and the Computer III guidelines for tariffing such intrastate services.⁴⁹² States unable to review these tariffs may require the LECs operating in their state to file these tariffs with the Commission. In addition, LECs must file with the Commission tariffs for unbundled features consistent with the requirements established in the Report and Order.⁴⁹³ LECs are not required to file tariffs for the basic payphone line for smart and dumb payphones with the Commission. We will rely on the states to ensure that the basic payphone line is tariffed by the LECs in accordance with the requirements of Section 276. As required in the Report and Order, and affirmed herein, all required tariffs, both intrastate and interstate, must be filed no later than January 15, 1997 and must be effective no later than April 15, 1997. Where LECs have already filed intrastate tariffs for these services, states may, after considering the requirements of this order, the Report and Order, and Section 276, conclude: 1) that existing tariffs are consistent with the requirements of the Report and Order as revised herein; and 2) that in such case no further filings are required. We delegate authority to the Common Carrier Bureau to determine the least burdensome method for small carriers to comply with the requirements for the filing of tariffs with the Commission, such as those suggested by NTCA.

164. In the Report and Order we provided a waiver of the notification period of Computer II and Computer III network information disclosure requirements with which BOCs may be

⁴⁸⁹ BOC ONA Order, 4FCC Rcd at paras. 224-341.

⁴⁹⁰ Section 276(c) also provides for the preemption of inconsistent state requirements.

⁴⁹¹ Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, CC Docket No. 91-35, Third Report and Order (rel. Apr. 5, 1996) at para. 34.

⁴⁹² The new services test required in the Report and Order is described at 47 C.F.R. Section 61.49(g)(2). See also Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, CC Docket No. 89-79, 6 FCC Rcd 4524, 4531(1991) at paras. 38-44.

⁴⁹³ Report and Order at para. 146-148.

required to comply pursuant to the requirements of the Report and Order. Consistent with our clarification above that LECs may comply with all the requirements of the Report and Order by April 15, 1997, we also clarify that the waiver of the network information disclosure requirements to allow a minimum three month period for notification of payphone service and related unbundled feature tariffs is also granted if BOCs file those tariffs earlier than the January 15, 1997 date. We clarify further that the waiver provided in the Report and Order and in this order is only effective for payphone tariffs to comply with this order and only until April 15, 1997, because network information disclosures must be made, as required by the Report and Order, no later than January 15, 1997.

165. On reconsideration, we decline to require further unbundling of payphone services beyond those established in the Report and Order. We clarify that any unbundled network features provided to a LEC payphone operation must be available on a nondiscriminatory basis to independent payphone providers and must be tariffed in the federal and state jurisdictions. Under Computer III, independent payphone providers may request unbundled features through a 120-day process and BOCs must indicate why they decline to provide the requested features.⁴⁹⁴ We did not create a similar requirement for LECs other than BOCs to provide unbundled network functionalities requested by independent payphone providers. However, as discussed herein and provided in the Report and Order states may require all LECs to provide, pursuant to nondiscriminatory tariffs, unbundled network functionalities associated with payphone services.⁴⁹⁵

ii. Other Payphone Services

166. As requested by Sprint, we clarify that the requirement for LECs to provide installation and maintenance services applies only to the payphone transmission lines and unbundled basic functionalities not the payphone equipment, which pursuant to the Report and Order is unregulated equipment. We decline to require access to unregulated services, such as installation and maintenance of unregulated CPE, and billing and collection (beyond the requirement established in the Report and Order). Services the Commission has deregulated are available on a competitive basis and do not have to be provided by LECs as the only source of services. We also decline to require the LECs to joint market for independent payphone providers. We have not required joint marketing in Computer III, which also required nondiscriminatory access to BOC services.⁴⁹⁶ Moreover, no new arguments are raised on reconsideration regarding joint marketing.

iii. Registration and Demarcation Point for Payphones

167. As requested by the RBOC Coalition, we clarify that our minimum point of entry demarcation point standards are flexible enough to allow for placement of payphones at the nearer and most cost-effective drop point in unique circumstances, such as service stations. We note that this conclusion is consistent with Section 68.3 which defines the demarcation point and allows LECs to select a location "as determined by the telephone company's reasonable and nondiscriminatory standard operating practices."⁴⁹⁷ We require that LECs must treat independent payphone providers in a nondiscriminatory manner with regard to such flexible placement.

⁴⁹⁴ See Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services, 10 FCC Rcd 8360 (1995).

⁴⁹⁵ Report and Order at para. 148.

⁴⁹⁶ See Computer III proceeding, above.

⁴⁹⁷ 47 C.F.R. § 68.3.

168. We delegate to the Chief, Common Carrier Bureau the authority to establish any specific requirements associated with the existing payphone equipment we grandfathered from registration requirements under Section 68.2, in the Report and Order.⁴⁹⁸

2. Reclassification or Transfer of Payphone Equipment to Nonregulated Status

a. Report and Order

169. In the Report and Order, we considered what payphone assets were to be reclassified to a nonregulated payphone account or transferred to an affiliate or operating division. We concluded that the payphone assets to be reclassified or transferred include all facilities related to payphone service, with the exception of the loops connecting the payphones to the network, the central office "coin-service," and operator service facilities supporting incumbent LEC payphones.⁴⁹⁹ We further considered the appropriate means to value those assets when they are reclassified or transferred in light of the goals of Section 276. We concluded that our existing accounting rules provide the best means of achieving those goals, including protecting the interests of ratepayers.⁵⁰⁰

170. Our existing accounting rules provide for two distinct means of valuing such assets that depend upon the underlying nature of the transaction. To be more precise, the method that applies depends upon whether the assets are to be reclassified as nonregulated or are to be transferred to an affiliate or operating division of the regulated carrier.⁵⁰¹ Under our Part 64 cost allocation rules, when assets are reclassified as nonregulated assets, those assets are reclassified at their net book value.⁵⁰² The affiliate transactions rules require that when assets are transferred to a separate affiliate or an operating division that has no joint or common use of assets or resources, the transfer shall be recorded at the higher of their fair market value or net book value.⁵⁰³

171. In reaching the conclusion that the Part 32 affiliate transactions rules are to be applied without modification, we discussed the means by which fair market value is determined.⁵⁰⁴ We defined fair market value as "the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts."⁵⁰⁵ We further explained that, in assessing the fair market value of the payphone assets at the time of transfer, the going concern value, including intangible assets such as location contracts, should be taken into consideration.⁵⁰⁶ That is, a willing buyer and a willing seller in an arms-

⁴⁹⁸ See 47 C.F.R. § 68.2 (b)-(h); In the Matter of Amendment of Section 68.2 of the Commission's Rules to Extend the Grandfather Dates of the Telephone Equipment Registration Program, 67 FCC 2d 235 (1977).

⁴⁹⁹ Report and Order at para. 159.

⁵⁰⁰ Id. at paras. 165, 166, 167, 169, 171.

⁵⁰¹ Id. at para. 162.

⁵⁰² Id. at para. 163; "Net book value is defined as the original cost of an asset less the related depreciation reserve." Second Computer Inquiry, 95 FCC 2d 1276, 1306 n. 40 (1983).

⁵⁰³ 47 C.F.R. § 32.27; Report and Order at para. 164.

⁵⁰⁴ Report and Order at para. 164.

⁵⁰⁵ Id.

⁵⁰⁶ Id.

length transaction would consider the existence of those intangibles that would be relevant when negotiating a fair price for the transferred equipment.⁵⁰⁷

b. Petitions

172. APCC and Inmate Coalition request reconsideration of the method for valuing deregulated LEC payphone assets.⁵⁰⁸ APCC argues that the method applied to value payphone assets should take into consideration their going concern value, including locations contracts, irrespective of whether the assets are going to be reclassified to a nonregulated payphone division or transferred to an affiliate or separate operating division.⁵⁰⁹ APCC asserts that the going concern value of payphone assets exceeds their net book value.⁵¹⁰ APCC argues that the valuation methods applied to a reclassification of assets to a nonregulated payphone division should be identical to those applied to a transfer of assets to an affiliate or separate operating division.⁵¹¹ APCC further argues that the Conference report indicates that Congress intended that LEC assets are to be transferred to separate unregulated books as evidenced by its use of the term "transfer".⁵¹² APCC asserts that it will be difficult for the ratepayers to obtain the "gain" from the transfer of payphone assets until such assets are transferred to an affiliate.⁵¹³ APCC also argues that there will be adverse competitive effects if the assets are undervalued.⁵¹⁴

173. BellSouth and SW Bell request that the Commission reconsider its decision to define the fair market value of payphone assets as encompassing their going concern value, including location contracts and other intangibles, when assets are sold or transferred an affiliate.⁵¹⁵ SW Bell argues that it is inappropriate to consider the going concern value of assets as part of their fair market value because the going concern value includes elements that are separate and distinct from the assets that are accounted for on the regulated books.⁵¹⁶ SW Bell asserts that the assets that are accounted for on the regulated books would not appreciate; as a consequence, any estimate of fair market value that was higher than the net book value would be the result of valuing intangibles outside the ratebase.⁵¹⁷ BellSouth argues that considering the going concern value as part of the fair market value is a change in the accounting rules

⁵⁰⁷ Id.

⁵⁰⁸ APCC Petition at 7; Inmate Coalition incorporated APCC's arguments in its petition for reconsideration on this issue in their entirety. Inmate Coalition Petition at 18.

⁵⁰⁹ APCC Petition at 7, 9-10 .

⁵¹⁰ Id. at 8-9.

⁵¹¹ Id. at 18-21.

⁵¹² Id. at 10-15.

⁵¹³ Id. at 15-21.

⁵¹⁴ Id. at 21-22.

⁵¹⁵ BellSouth Petition at 19; SW Bell Petition at 2.

⁵¹⁶ SW Bell Petition at 3.

⁵¹⁷ Id. at 2.

that was not "noticed" in the NPRM.⁵¹⁸ BellSouth asserts that there is no basis for requiring the valuation of intangibles such as location contracts.⁵¹⁹ SW Bell argues that the risk of loss for these intangibles has been borne by shareholders not ratepayers.⁵²⁰

174. The RBOC Coalition requests a clarification that the Commission did not change the accounting rules and did not intend to include intangible assets such as location contracts in the assets to be valued when the assets are transferred to an affiliate, unless they were on the carrier's books.⁵²¹ The RBOC Coalition argues that to include the value of intangibles such as location contracts in the fair market value of the payphone assets would be inconsistent with the Commission's existing accounting rules.⁵²²

c. Comments

175. NJPA argues that the fair market value of payphone assets should include intangibles such as their going concern value.⁵²³ NJPA asserts that the FCC rules provide for the recording of such assets on regulated books.⁵²⁴ NJPA further argues that the Commission's consideration of the inclusion of going concern value as part of the fair market value of the payphone assets was noticed in the NPRM.⁵²⁵

176. The RBOC Coalition and Ameritech argue that the Commission's application of its existing accounting rules complies with the requirements of Section 276.⁵²⁶ The RBOC Coalition and Ameritech argue that APCC's assertion that Section 276 requires a "transfer" to separate books is unsubstantiated in the Section or its legislative history.⁵²⁷ Ameritech argues that to require a "transfer" to a separate set of books would be to ignore the Joint Cost Rules.⁵²⁸ Ameritech argues that any modification of either the Joint Cost Rules or the Affiliate Transaction Rules should have been addressed in the separate rulemaking proceeding which considered these issues.⁵²⁹ Ameritech argues that the assets that the Report

⁵¹⁸ BellSouth Petition at 20-21.

⁵¹⁹ Id. at 19-20.

⁵²⁰ SW Bell Petition at 3.

⁵²¹ RBOC Coalition Petition at 9.

⁵²² Id. at 9-10.

⁵²³ NJPA Comments at 14.

⁵²⁴ Id. at 14-15.

⁵²⁵ Id. at 15.

⁵²⁶ Ameritech Comments at 14; RBOC Coalition Comments at 18.

⁵²⁷ RBOC Comments at 18-19; Ameritech Comments at 12-13 .

⁵²⁸ Ameritech Comments at 12.

⁵²⁹ Id. at 11.

and Order required to be valued at the time of reclassification or transfer are limited to those assets which are on the LEC's books.⁵³⁰

177. The RBOC Coalition also argues that the ratepayers have never "invested" in intangible assets such as location contracts.⁵³¹ The RBOC Coalition asserts that those assets were created at the expense of the shareholders.⁵³² The RBOC Coalition argues that any change in the existing accounting methods to include "intangibles" will have no effect on rates.⁵³³ The RBOC Coalition further argues that using net book value to value the reclassified assets will not have any anti-competitive effects.⁵³⁴ The RBOC Coalition asserts that differential treatment of assets that are reclassified from those which are transferred is sufficiently justified in the Report and Order on the same grounds that justified such treatment when those rules were originally enacted.⁵³⁵

d. Discussion

178. We reaffirm our conclusions in the Report and Order regarding payphone asset valuation and accounting issues. The Report and Order addressed the issues that APCC has raised again on reconsideration and stated that, in the situation in which a BOC or a LEC chooses to maintain the nonregulated payphone assets on the carrier's regulated books of account, our Part 64 cost allocation rules contain the necessary safeguards required by Section 276 of the 1996 Act to protect regulated ratepayers from improper cross-subsidies.⁵³⁶ Pursuant to these long-standing cost allocation rules, carriers are not required to "write-up" payphone assets when they are reclassified as nonregulated assets. APCC raises no new arguments in either its petition or comments that contradict our conclusions in the Report and Order.

179. We also reaffirm our conclusions with respect to asset valuation when a BOC or a LEC transfers payphone assets to an affiliate. We do believe, however, that the RBOC Coalition, BellSouth, SW Bell, and Ameritech raise an issue that we must clarify on reconsideration. Those petitioners agree with the Commission that, if payphone assets are transferred from the carrier to an affiliate, the affiliate transactions rules must apply. Those carriers also agree that under our rules, the transferred assets must be valued at the higher of fair market value or net book value. These petitioners disagree, however, with our determination that fair market value of assets transferred includes intangible assets that are not recorded on the carrier's regulated books.⁵³⁷ Some of these petitioners cite the Joint Cost Reconsideration Order and a 1988 Ameritech Cost Allocation Manual Review Order as authority for their contention. We disagree with the petitioners for the reasons discussed below.

⁵³⁰ Id.

⁵³¹ RBOC Comments at 20-21.

⁵³² Id.

⁵³³ Id. at 21.

⁵³⁴ Id.

⁵³⁵ Id. at 22.

⁵³⁶ See Report and Order at para. 162.

⁵³⁷ RBOC Petition at 9-10; BellSouth Petition at 19-20; SW Bell Petition at 2-4; Ameritech Comments at 11.

180. In the Report and Order, we stated that, if a carrier transferred its payphone assets to an affiliate, the transaction would be governed by our affiliate transactions rules.⁵³⁸ Accordingly, the payphone asset transfer would be recorded on the carrier's books at the higher of fair market value or net book value. We further stated that fair market value is "the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts."⁵³⁹ We next concluded that the going concern value associated with the payphone business must be taken into consideration in determining fair market value and that going concern value includes the value of intangible assets such as location contracts that add value to the payphone business.⁵⁴⁰ We must clarify this latter point.

181. We reiterate that in this order on reconsideration, we continue to apply the definition of "fair market value" as provided for in the Report and Order. The issue raised by the RBOC Coalition, BellSouth, SW Bell and Ameritech focuses on whether the definition should be applied to the tangible value of the assets, as contrasted to the value of all property rights directly associated with the payphone assets. We clarify that the answer depends on the nature of the transfer itself.

182. We envisioned in the Report and Order that if payphone assets were transferred by a carrier to an affiliate, these assets would be transferred inclusive of intangible assets such as location contracts.⁵⁴¹ In this instance, appraisal techniques would be applied such as discounting the stream of predicted cash flows over the term of the location contract, capitalizing net income from payphone operations, using comparable sales data, or any other reasonable method that would yield an estimated fair market value. This computation could be done for each payphone on an individual basis, for accumulations of payphone assets, for example by geographic area, or for all payphone assets. If appraisal techniques indicated that fair market value exceeded net book value, the transfer of the payphone assets should be recorded at the fair market value. We further stated in the Report and Order, and as discussed further below, that the value of the carrier's brand name should not be included in the fair market value computation.⁵⁴² If a carrier could reasonably estimate the value associated with the brand name, this value should be deducted from the overall fair market value computation.

183. We did not envision in the Report and Order that a carrier would transfer only the physical assets themselves but we now address that situation. On the date of transfer to affiliates, there may be circumstances in which the location contracts supporting payphone assets may have expired or otherwise been terminated. In this case, the affiliate would take those payphone assets and deploy those assets to new locations subject to new contracts. The fair market value established by reasonable appraisal techniques would not include the value of intangible assets such as location contracts; only the physical assets would be transferred. Even so, the same definition of fair market value would be applicable.

184. Our conclusions in the Report and Order and in this Order on Reconsideration are consistent with our affiliate transactions rules and do not reflect any change in those rules. Our conclusions also do not conflict with the Joint Cost Reconsideration Order or the Ameritech CAM Order. In the Joint Cost Reconsideration Order, the Commission addressed in a footnote a commenter's suggestion that a nonregulated affiliate should be charged for the value of previous training when an employee is transferred

⁵³⁸ Report and Order at para. 164.

⁵³⁹ Id.

⁵⁴⁰ Id.

⁵⁴¹ Id.

⁵⁴² Id.

to the affiliate.⁵⁴³ In that instance, the Commission stated that the value of previous employee training is an intangible benefit, the allocation of which is beyond the scope of the proceeding.⁵⁴⁴ In the Ameritech CAM Order, the Commission addressed the employee training issue again and stated that allocation of costs of employee training would not be required unless it became apparent that the regulated entity was providing employee training as a service to its affiliate.⁵⁴⁵ In addition, in the Ameritech CAM Order, the Commission addressed the BOC brand name issue. In that Order, the Commission reaffirmed its position that the BOC brand name was an intangible benefit that has never appeared on Ameritech's books and is not a cost for affiliate transactions purposes.⁵⁴⁶

185. We agree that intangible benefits such as the carrier's brand name should not be considered in the determination of fair market value for affiliate transactions rules purposes. Such benefits accrue to all assets of the carrier and are not directly related to the asset being valued. In addition, as we stated in the Report and Order, intangible assets such as the carrier's brand name would not generally be transferred by a willing seller under the definition of fair market value. We thus conclude that such intangible assets should not be included in the determination of fair market value. This determination is consistent with existing Commission rules and the Ameritech CAM Order.

186. We disagree with those petitioners who assert that intangible assets such as the going concern value stemming from location contracts and other like assets should not be included in the determination of fair market value. Going concern value is the additional element of value that attaches to property by reason of its existence as an integral part of a going concern.⁵⁴⁷ As such, this intangible asset is directly related to the payphone assets being transferred and enhances the value of the assets. The fact that this intangible asset is directly related to the asset distinguishes this intangible asset from the carrier brand name that is not directly related. In addition, the petitioners have asserted that the cost of this intangible asset has never been recorded on the carriers' regulated books and thus should not be considered in determining fair market value. Most, if not all, of the going concern value associated with the payphone assets is generated by the existence of the location contracts. While the cost of these location contracts are not capitalized to the payphone asset accounts, the commissions paid to location providers as required by the location contracts are recorded as period expenses on the carrier's books. This further distinguishes these intangible assets from the carrier's brand name.

187. We also see no conflict with the Joint Cost Reconsideration Order or Ameritech CAM Order as those orders addressed the intangible benefits accruing from previous employee training. Like the carrier brand name, that type of intangible benefit is not directly associated with any particular asset. In addition, it is doubtful whether such an intangible benefit is even subject to valuation under reasonable appraisal techniques. As a result, we conclude that these types of intangible benefits are distinguishable from the going concern value generated by the location contracts of the payphone assets. We thus conclude that we did nothing in the Report and Order that conflicted with existing Commission rules and that we did not deviate from either the Joint Cost Reconsideration Order or the Ameritech CAM Order.

3. Termination of Access Charge Compensation and Other Subsidies

⁵⁴³ Joint Cost Reconsideration Order, 2 FCC Rcd at 6315-6316, n. 204.

⁵⁴⁴ Id. at 6316, n. 204.

⁵⁴⁵ Ameritech CAM Order, 3 FCC Rcd at 435.

⁵⁴⁶ Id. at 437.

⁵⁴⁷ VGS v. Comm. of Internal Revenue, 68 T.C. 563, 591 (1977).

a. Report and Order

188. In the Report and Order we noted that in the telephone network, payphones, as well as all other telephones, are connected to the local switch by means of a subscriber line. The costs of the subscriber line that are allocated to the interstate jurisdiction are recovered through two separate charges: a flat-rate subscriber line charge (SLC) assessed upon the end-user customer who subscribes to local service; and a per-minute CCL charge assessed upon IXCs that recovers the balance of the interstate subscriber line costs not recovered through the SLC. LEC payphone costs are also included in the CCL charge. The CCL charge, however, applies to interstate switched access service that is unrelated to payphone service costs. While independent payphone providers are required to pay the SLC for the loop used by each of their payphones, LECs have not been required to pay this charge because the subscriber lines connected to LEC payphones have been recovered entirely through the CCL charge.

189. In the Report and Order, we concluded that to implement Section 276 (b)(1)(B) of the 1996 Act, incumbent LECs must reduce their interstate CCL charges by an amount equal to the interstate allocation of payphone costs currently recovered through those charges. LECs subject to the price cap rules would treat this as an exogenous cost change to the Common Line basket pursuant to Section 61.45(d) of the Commission's rules. The incumbent LECs' residential SLC is limited to \$3.50 per month and their multi-line business SLC is currently subject to a \$6.00 per month cap.

190. The 1996 Act mandates that the Commission "discontinue the intrastate and interstate carrier access charge payphone service elements and payments ... and all intrastate and interstate subsidies from basic exchange and exchange access revenues[.]" Accordingly, we adopted rules that provide for the removal from regulated intrastate and interstate rate structures of all charges that recover the costs of payphones (*i.e.*, the costs of payphone sets, not including the costs of the lines connecting those sets to the public switched network, which, like the lines connecting competitive payphones to the network, will continue to be treated as regulated). Therefore, we concluded that incumbent LECs must file revised CCL tariffs with the Common Carrier Bureau no later than January 15, 1997 to reduce their interstate CCL charges by an amount equal to the interstate allocation of payphone costs currently recovered through those charges, scheduled to take effect April 15, 1997. The Report and Order required that LECs subject to the price cap rules must treat this as an exogenous cost change to the Common Line basket pursuant to Section 61.45(d)(1)(v) of our rules.⁵⁴⁸ Incumbent LECs must identify and report accounts that contain costs attributable to their payphone operations. Incumbent LECs must identify specific cost pools and allocators that are required to capture the nonregulated investment and expenses associated with their payphone operations. LECs must file this information with the Common Carrier Bureau by January 15, 1997.

191. The Report and Order required LECs that file tariffs pursuant to Section 61.38 or Section 61.39, rate-of-return regulation, or Section 61.50, optional incentive regulation, to file tariffs to revise interstate CCL rates to remove the payphone investment and any other assets used in the provision of payphone service along with the accumulated depreciation and deferred income tax liabilities from the common line costs recovered through those rates. As stated previously, these LECs must reclassify payphone assets from regulated to nonregulated activity pursuant to Part 64 rules. Expenses incurred after payphones are deregulated should be classified as nonregulated expenses. The CCL rate reduction must account for overhead costs assigned to common line costs as a result of payphone investment and expenses. We required these LECs to recalculate their CCL rates, using the same data and methods they used to develop their current CCL rates, except those calculations should exclude payphone costs.

⁵⁴⁸ 47 C.F.R. § 61.45(d)(1)(v).

192. In the Report and Order we required that price cap LECs must also revise their CCL rates, using the following method to remove payphone costs from their CCL rates. First, price cap LECs should develop a common line revenue requirement using ARMIS costs for calendar year 1995. Second, price cap LECs are required to develop a payphone cost allocator equal to the payphone costs in Section 69.501(d) divided by total common line costs, based on 1995 ARMIS data. Each LEC is required to reduce its PCI in the common line basket by this payphone cost allocator minus one.

193. We required in the Report and Order that, pursuant to the mandate of Section 276(b)(1)(B), incumbent LECs must remove from their intrastate rates any charges that recover the costs of payphones. Revised intrastate rates must be effective no later than April 15, 1997. Because parties did not submit state-specific information regarding the intrastate rate elements that recover payphone costs, the Report and Order required that states must determine the intrastate rates elements that must be removed to eliminate any intrastate subsidies within this time frame.

194. Finally, we concluded that, to avoid discrimination among payphone providers, the multiline business SLC must apply to subscriber lines that terminate at both LEC and competitive payphones. We conclude that the removal of payphone costs from the CCL and the payment or imputation of a SLC to the subscriber line that terminates at a LEC nonregulated payphone will result in the recovery of LEC payphone costs on a more cost-causative basis consistent with the requirements of the 1996 Act.⁵⁴⁹

b. Petitions

195. Sprint requests clarification that not just the payphone equipment costs that are transferred from the regulated books are removed from the CCL costs. Sprint argues that costs for the local network used for payphone services and local business office expenses should be removed.⁵⁵⁰ USTA requests clarification of the instructions for the removal of payphone costs from the CCL charges, because the multiline SLC was applied to all payphones.⁵⁵¹ WPTA requests that the Commission reconsider its decision not to discontinue the application of the SLC to payphones but to instead apply them to all payphones including those provided by LECs. WPTA argues that application of the end-user common line is not consistent with the Act because it appears to require discontinuation of the carrier access charges relative to payphone service like the end user common line charge.⁵⁵² AT&T requests that the Commission clarify that LECs must reduce their CCL rates by an amount of the additional SLC that will be received from the LEC operations.⁵⁵³

c. Comments

196. AT&T opposes several suggestions for clarification presented by USTA. AT&T argues that LEC payphone line costs included in 69.501(d) should remain as part of the LECs' regulated operations.⁵⁵⁴ AT&T argues that to avoid double counting we should clarify that the payphone allocator

⁵⁴⁹ See Ameritech/SW Bell Waiver at para. 25.

⁵⁵⁰ Sprint Petition at 19.

⁵⁵¹ USTA Petition at 1-4.

⁵⁵² WTPA Petition at 14-15 .

⁵⁵³ AT&T Petition at 24.

⁵⁵⁴ AT&T Comments at 16.

and PCI established in the Report and Order are the same as those that existed before the inmate payphone order.⁵⁵⁵ With regard to the SLC, AT&T contends that the Commission should require LECs to hold the base period constant and have the change in SLC revenue as a change to the base period revenue.⁵⁵⁶ Finally, AT&T argues that the Report and Order correctly found that Part 61.45(d)(1)(v) applies to reclassification of payphone costs.⁵⁵⁷ Sprint contends that the CCL charge should not reflect any payphone transmission costs, and should reflect the increase in SLC revenues received by the LECs from their own payphone operations.⁵⁵⁸ BellSouth argues that WPTA is incorrect when it says that SLC must be discontinued for payphone service because the act requires removal of regulated charges that subsidize unregulated payphone operations, not regulated charges for regulated services.⁵⁵⁹ BellSouth opposes Sprint's claim that the costs of payphone lines connecting payphone sets to the network should be removed from the CCL charge. The RBOC Coalition agrees with USTA's methodology for removing payphone costs.⁵⁶⁰

d. Discussion

197. The Report and Order requires LECs to remove interstate payphone costs being recovered through CCL charges by doing the following: (1) transferring payphone set costs to nonregulated accounts; and (2) transferring the recovery of payphone line costs from CCL charges to subscriber line charges.⁵⁶¹ The following addresses petitions seeking clarification of the method of revising CCL charges under price cap rules.

198. As a threshold matter, the Report and Order requires price cap LECs to reflect the removal of deregulated costs by making an exogenous cost adjustment to the PCI in the Common Line Basket, pursuant to Section 61.45(d)(1)(v) of the rules.⁵⁶² USTA has petitioned the Commission to clarify that the removal of deregulated payphone cost qualifies instead as an exogenous cost adjustment under Section 61.45(d)(1)(vi).⁵⁶³ According to USTA, Section 61.45(d)(1)(v) is limited to investment reallocations from regulated to nonregulated accounts caused by usage forecast revisions pursuant to Section 64.901(b)(4). AT&T contends that USTA offers no justification for treating payphone-related costs pursuant to Section 61.45(d)(1)(vi), a rule relating to tax and other extraordinary cost changes, and supports the finding in the Report and Order that the reclassification falls under Section 61.45(d)(1)(v).⁵⁶⁴

⁵⁵⁵ Alternatively, AT&T asserts that LECs could obtain the same result by adjusting their current price cap index (PCI) and rate caps by adding a positive exogenous cost to the current PCI that is equal to the negative exogenous cost amount used in the inmate filing. Id. at 16, note 38.

⁵⁵⁶ Id. at 17.

⁵⁵⁷ Id.

⁵⁵⁸ Sprint Comments at 15.

⁵⁵⁹ BellSouth Comments at 3.

⁵⁶⁰ RBOC Coalition Comments at 22.

⁵⁶¹ Report and Order at paras. 182-87.

⁵⁶² Id. at para. 183.

⁵⁶³ USTA Comments at 3.

⁵⁶⁴ AT&T Comments at 17.

199. We deny USTA's request regarding Section 61.45(d)(1)(vi). We state clearly in the Report and Order that LECs are required to transfer payphone set costs from regulated to nonregulated accounts pursuant to Section 64.901 and other applicable rules.⁵⁶⁵ Section 61.45(d)(1)(v) governs exogenous cost changes resulting from "the reallocation of investment from regulated to nonregulated activities pursuant to § 64.901." USTA has not provided any reasonable basis for construing Section 61.45(d)(1)(v) to be inapplicable here.

200. USTA seeks clarification of the procedure for LECs to use in removing from the CCL charges the deregulated payphone costs described in Section 69.501(d) of the rules.⁵⁶⁶ The Report and Order requires LECs to determine the percent ratio of payphone cost to all costs in the common line category in 1995, the payphone cost allocator, and to reduce the Common Line Basket PCI by that percentage.⁵⁶⁷ USTA maintains that cost associated with payphone lines identified by Section 69.501(d) should be subtracted before developing the payphone cost allocator, because payphone lines will remain under regulation. AT&T maintains that the intent of the Report and Order clearly states that payphone line costs allocated pursuant to Section 69.501(d) should remain as part of the LEC's regulated operations, and thus supports USTA's position.⁵⁶⁸

201. USTA also seeks acknowledgment that the exogenous cost adjustment to the PCI should be reduced by the amount of PCI adjustment that has already occurred as a result of prior deregulation of inmate payphones.⁵⁶⁹ According to USTA, this credit can be obtained by multiplying the PCI in effect prior to the inmate payphone filing by the payphone cost allocator. AT&T maintains that USTA's suggested approach will not achieve the correct result, which can be achieved by clarifying that the PCI and payphone cost allocator described in paragraph 185 of the Report and Order refer to the PCI and allocator that existed prior to implementation of the inmate payphone order.⁵⁷⁰

202. We agree that LECs should subtract the payphone costs described in Section 69.501(d) associated with payphone lines, prior to developing the payphone cost allocator. We therefore clarify and revise the exogenous cost adjustment mechanism we adopted in paragraph 185 of the Report and Order, and require LECs to subtract the costs of lines associated with payphones from the costs described in Section 69.501(d), prior to calculating their payphone cost allocator. We further agree that a credit should be applied to the PCI adjustment equal to any prior PCI adjustment associated with inmate payphone deregulation, and that AT&T has proposed a method that achieves the correct result. LECs proposing to subtract payphone line costs or inmate payphone costs from Section 69.501(d) for the purpose of their PCI adjustment should provide complete details, including references to Parts 32, 36, and 69 of the rules and associated ARMIS line items, to demonstrate that their line cost calculations are reasonable.⁵⁷¹

⁵⁶⁵ Report and Order at paras. 161-71.

⁵⁶⁶ USTA Comments at 2.

⁵⁶⁷ Report and Order at para. 185.

⁵⁶⁸ AT&T Comments at 16.

⁵⁶⁹ USTA Comments at 2.

⁵⁷⁰ AT&T Comments at 16.

⁵⁷¹ See AT&T Comments at 16.

203. Sprint seeks clarification by the Commission that CCL charges must be reduced by more than the amount of payphone equipment cost transferred from regulated to nonregulated accounts. Sprint further espouses that payphone cost includes non-equipment cost such as the cost of the local network used for payphone service and local business office expense.⁵⁷² BellSouth maintains that local network and local business associated with the payphone lines should not be reclassified as nonregulated.⁵⁷³ We agree with Sprint that there are non-equipment, local and network costs attributable to payphone set cost and believe that the exogenous cost adjustment, as modified above, removes an adequate amount of such interstate overhead costs from the LEC's common line charges. We also agree with BellSouth that line cost should not be reclassified, and believe this is clearly stated in the Report and Order.⁵⁷⁴

204. USTA and AT&T seek clarification of the treatment of additional revenues that will accrue to LECs as a result of the rule change that results in a multiline SLC charge on payphone lines. According to USTA, the application of a SLC to payphone lines will be a price cap restructure reflecting: (1) the additional SLC revenue as a result of applying a multiline SLC to public payphone lines, and (2) the additional SLC revenue as a result of applying the multiline SLC to semi-private payphones instead of the residential and single line business SLC that currently applies.⁵⁷⁵ The RBOC Coalition supports USTA's methodology.⁵⁷⁶ Similarly, AT&T maintains that LECs should reduce CCL charges by an amount equal to the additional SLC revenue.⁵⁷⁷ AT&T believes, however, that USTA's reference to restructuring the base period revenue is unclear. AT&T advocates no change to the base period revenue for the purpose of comparing revenues under the existing and modified rate structures.

205. We agree that application of multiline SLCs to payphone lines is a restructure pursuant to Section 61.46(c), requiring a comparison of existing revenue to receipts of revenue under the modified rate structure. LECs can achieve this result by recalculating and revising CCL charges pursuant to the CCL formula in Section 61.46(d), using the following steps. First, recalculate the end user common line (minutes of use) factor displayed in 1996 annual filing to include public payphone costs and lines including any necessary adjustments to forecasts to reflect: (1) the increase in SLC revenue from application of multiline SLCs to public payphone lines; and (2) the increase in SLC revenue from applying multiline SLCs to the semi-private payphone lines instead of the residential and single line business SLC. Second, use the same carrier common line (minutes of use) factor displayed in the 1996 annual filing, but recalculate the percent change in the PCI to reflect the exogenous cost change associated with payphone cost deregulated as a result of the Report and Order. Third, recalculate the percent change in the PCI to incorporate any change in Long Term Support (LTS) paid to NECA's common line pool, if revised LTS data are available at the time of filing. Otherwise, the LTS adjustment can be shown as a true-up to prior year LTS and reported in the 1997 annual filing. Fourth, recalculate the carrier common line (minutes of use), the CCL revenue component of the formula, to reflect these changes. Finally, recalculate the maximum allowable CCL charges.

206. The procedure above will result in the removal from the CCL charge of deregulated set cost. Regulated line cost will also be removed and recovered through SLC charges except any portion

⁵⁷² Sprint Comments at 19.

⁵⁷³ BellSouth Comments at 3.

⁵⁷⁴ Report and Order at para. 180.

⁵⁷⁵ USTA Comments at 3.

⁵⁷⁶ RBOC Coalition Comments at 22.

⁵⁷⁷ AT&T Comments at 24.

that might exceed the \$6.00 cap on the multiline SLC charge. Those SLC deficit costs will be recovered through the CCL charge, in the same manner as the deficit costs associated with non-payphone lines.

207. WPTA contends that the Act requires the Commission to discontinue the application of SLCs with regard to all payphone lines, to meet the Act's requirement for removal of subsidies from payphone services.⁵⁷⁸ BellSouth disputes WPTA's interpretation of the Act by contending that regulated charges such as the SLC should not apply only if those charges subsidize nonregulated payphone operations.⁵⁷⁹ BellSouth contends there is no subsidization, because the SLC serves the purpose of recovering regulated costs associated with payphone lines. We agree with BellSouth that the application of a SLC to payphone lines is necessary for LECs to recover regulated costs assigned to the interstate jurisdiction. In addition, SLC charges will apply equally to LEC and non-LEC payphone lines and, therefore, the incremental SLC cost is the same for LEC and non-LEC payphone providers.

208. Finally, we take this opportunity to revise the rules regarding the recovery of common line costs. We revise Part 69 of our rules to reflect what we have just described.

C. NONSTRUCTURAL SAFEGUARDS FOR BOC PROVISION OF PAYPHONE SERVICE

1. Report and Order

209. Section 276(b)(1)(C) directs the Commission to "prescribe a set of nonstructural safeguards for Bell operating company payphone service to implement the provisions of paragraphs (1) and (2) of subsection (a), which safeguards shall, at a minimum, include the nonstructural safeguards equal to those adopted in the Computer Inquiry - III (CC Docket No. 90-623) proceeding[.]"⁵⁸⁰ As referred to in Section 276(b)(1)(C), Section 276(a) provides that a BOC "(1) shall not subsidize its payphone service directly or indirectly from its telephone exchange service operations or its exchange access operations; and (2) shall not prefer or discriminate in favor of its payphone service."⁵⁸¹

a. Nonstructural Safeguards

210. In the Report and Order, we concluded that in addition to the accounting safeguards that we will adopt with respect to payphone services in the accounting safeguards proceeding,⁵⁸² Computer III and ONA nonstructural safeguards will provide an appropriate regulatory framework to ensure that BOCs do not discriminate or cross-subsidize in their provision of payphone service. To ensure that the BOCs comply with the Computer III and ONA nonstructural separation requirements for the provision of payphone services, we required that, within 90 days after publication of a summary of the Report and Order in the Federal Register, BOCs must file CEI plans describing how they will comply with the Computer III unbundling, CEI parameters, accounting requirements, customer proprietary network

⁵⁷⁸ WPTA Comments at 14-15.

⁵⁷⁹ BellSouth Comments at 2-3.

⁵⁸⁰ 47 U.S.C. § 276 (b)(1)(C).

⁵⁸¹ 47 U.S.C. § 276(a).

⁵⁸² We note that nonstructural accounting safeguards applicable to the BOCs' provision of payphone service are being considered in a separate proceeding. See Implementation of the Telecommunications Act of 1996: Accounting Safeguards under the Telecommunications Act of 1996, Notice of Proposed Rulemaking, 11 FCC Rcd 9054 (1996) ("Accounting Safeguards NPRM").

information (CPNI) requirements as modified by Section 222 of the 1996 Act, network disclosure requirements, and installation, maintenance, and quality nondiscrimination requirements.⁵⁸³

211. In the Report and Order we declined to require structural separation requirements. We concluded that all Computer III and ONA nonstructural safeguards must be applied to meet our obligation under Section 276 of the 1996 Act.⁵⁸⁴ Pursuant to these requirements, we noted that any basic services provided by a BOC to its payphone affiliate must be available on a nondiscriminatory basis to other payphone providers and that payphone providers may request additional unbundled payphone services through the 120-day ONA service request process.⁵⁸⁵ Except for the Commission's Part 64 cost allocation rules and Part 32 affiliate transaction rules, we declined to apply the Computer III nonstructural safeguards directly to other LECs.

b. BOC CEI Plans

212. In the Report and Order, we require that each BOC file an initial CEI plan describing how it intends to comply with the CEI equal access parameters and nonstructural safeguards for the provision of payphone services. We concluded that this requirement is consistent with the requirement in Section 276 that we establish safeguards, at a minimum, "equal to those adopted in the Computer III Inquiry."⁵⁸⁶

213. The Report and Order requires that in a CEI plan, a BOC must describe how it intends to comply with the CEI "equal access" parameters for the specific payphone services it intends to offer.⁵⁸⁷ In its CEI plan, a BOC must also explain how it will provide basic payphone services and unbundled functionalities. Thus, a BOC must indicate how it plans to unbundle, and associate with a specific rate element in a tariff, the basic services and basic service functions that underlie its provision of payphone service.⁵⁸⁸ In addition, any options available to the BOC in the provision of such basic services or functions would be included in the unbundled offerings.⁵⁸⁹

214. We also required that a BOC must explain in its CEI plan how it will comply with the CPNI requirements. We have continued to require compliance with the Computer III and ONA CPNI requirements that are not inconsistent with Section 222 of the 1996 Act, which was immediately

⁵⁸³ Report and Order at para. 199.

⁵⁸⁴ 47 U.S.C. § 276(b)(1)(C). We note that our conclusions in this order regarding structural and nonstructural safeguards for BOC provision of basic payphone services and unbundled features are distinct from requirements that may be imposed by the Commission in implementing Sections 271 and 272 of the 1996 Act.

⁵⁸⁵ See BOC ONA Order, 4 FCC Rcd at 205-6; BOC ONA Amendment Order, 5 FCC Rcd at 3117; BOC ONA Further Amendment Order, 6 FCC Rcd at 7654-6.

⁵⁸⁶ 47 U.S.C. § 276(b)(1)(C).

⁵⁸⁷ Phase I Order, 104 FCC 2d at 1039-1043.

⁵⁸⁸ Id. at 1040.

⁵⁸⁹ Id.

effective.⁵⁹⁰ In the CPNI NPRM, we are currently examining a carrier's obligations under the CPNI provisions of the 1996 Act.⁵⁹¹

215. In addition, BOCs must comply with the Computer III and ONA network information disclosure requirements.⁵⁹² We note, however, that in the Report and Order and in this order, we have provided a partial waiver of this requirement under certain circumstances.⁵⁹³ In addition, BOCs must comply with the Computer III and ONA requirements regarding nondiscrimination in the quality of service, installation, and maintenance. BOCs must indicate in their CEI plans how they will comply with these requirements. We do not impose any new continuing reporting requirement because BOCs are already subject to reporting requirements pursuant to Computer III and ONA.⁵⁹⁴ BOCs must report on payphone services as they do for other basic services.

2. Petitions

216. The Inmate Coalition requests that the Commission clarify that the nonstructural safeguards apply also to inmate payphone services.⁵⁹⁵ SW Bell argues that CEI plans should be reviewed expeditiously and requests a clarification to that effect.⁵⁹⁶

3. Comments

217. The RBOC Coalition asks that the Commission clarify that the Report and Order preempts inconsistent nonstructural requirements.⁵⁹⁷ Peoples argues that BOC CEI plans for payphone services are important because BOCs are providing payphones services on an integrated basis. Peoples opposes any action that would eliminate the opportunity for public review of the CEI plans.⁵⁹⁸

4. Discussion

218. In response to the request from the RBOC Coalition that we clarify that the Report and Order preempts inconsistent nonstructural safeguards, we note that Section 276(c) provides for such preemption. We clarify that the Report and Order does preempt nonstructural safeguards that are

⁵⁹⁰ 47 U.S.C. § 222. See Implementation of the Telecommunications Act of 1996, Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Notice of Proposed Rulemaking, CC Docket No. 96-115 (rel. May 17, 1996) (CPNI NPRM).

⁵⁹¹ CPNI NPRM at para. 37-8.

⁵⁹² Amendment to Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), Report and Order, 2 FCC Rcd 3072, 3087-88 (1988); Computer III, 3 FCC Rcd 1150, 1164 (1988). The network information subject to disclosure includes only network changes or new basic services that affect the interconnection of enhanced services with the network. Id. at 3097. These network disclosure rules parallel those for CPE.

⁵⁹³ Report and Order at para. 146.

⁵⁹⁴ See BOC ONA Reconsideration Order, 5 FCC Rcd at 3093, 3096, Appendix B.

⁵⁹⁵ Inmate Coalition Petition at 17.

⁵⁹⁶ SW Bell Petition at 4.

⁵⁹⁷ RBOC Coalition Comments at 23.

⁵⁹⁸ Peoples Comments at 11-12.

inconsistent with those established in the Report and Order.⁵⁹⁹ We specifically preempted any structural separation requirements for the LEC provision of payphone service because we concluded that such requirements are inconsistent with Section 276.⁶⁰⁰ With regard to other nonstructural safeguards, we note that we applied the Computer III and ONA safeguards to the provision of payphone service by the BOCs.⁶⁰¹ Although we declined to apply these same safeguards to the nonBOC LECs, we indicated that we did not preempt the states from imposing nonstructural safeguards that are no more stringent than those we impose on the BOCs.⁶⁰² In the Computer III proceeding we addressed when state nonstructural safeguards would be inconsistent with Computer III. We have addressed such preemption of state requirements with regard to jurisdictionally-mixed enhanced services in Computer III.⁶⁰³ We adopt that analysis for preemption of state payphone service nonstructural safeguards that are inconsistent with the Report and Order. We conclude, however, that it is necessary to go further than the Computer III analysis to determine if a nonstructural safeguard is inconsistent with Section 276 because, for example, it is clear from Section 276 that BOCs and other LECs may provide payphone services on an integrated basis. Thus, state requirements that, for example, require the LECs or BOCs to provide payphone services only through a separate corporate entity with separate books would be inconsistent with Section 276. We have previously addressed state regulations that may conflict with our Computer III network disclosure and CPNI requirements.⁶⁰⁴ We adopt that analysis herein for clarifying when state requirements would be inconsistent with those requirements, although we note that CPNI requirements must also be consistent with Section 222 of the Act. The provision for state requirements for further unbundling of payphone network functionalities are discussed in the Report and Order and above.⁶⁰⁵

219. We clarify that the requirements of the Report and Order apply to all payphones, including inmate payphones. LECs must comply with the requirements of the Report and Order with regard to inmate payphones.⁶⁰⁶

220. With regard to CEI Plans for payphone service, we clarify that they will be placed on public notice in a similar manner to CEI plans that have been filed for enhanced services. Like CEI plans for enhanced services, we delegate the authority to review CEI plans to the Chief, Common Carrier Bureau. We anticipate that payphone service CEI plans will raise fewer issues than CEI plans for enhanced services because payphone services described in the CEI plans required by the Report and Order will address only basic payphone services and unbundled payphone features, not enhanced services. CEI plan review will evaluate the application of the nondiscrimination and cross-subsidy nonstructural safeguards to the provision of payphone services by each BOC as required by the Report and Order and this order.

⁵⁹⁹ Report and Order at paras. 145, 199-202.

⁶⁰⁰ Id. at para. 145.

⁶⁰¹ Id. at paras. 199-202.

⁶⁰² Id. at para. 145.

⁶⁰³ Computer III Remand Proceedings, 6 FCC Rcd 7571 at paras.122-131.

⁶⁰⁴ Id.

⁶⁰⁵ Report and Order at para. 148.

⁶⁰⁶ See para. 131, above.

D. ABILITY OF BOCs TO NEGOTIATE WITH LOCATION PROVIDERS ON THE PRESUBSCRIBED INTERLATA CARRIER

1. Report and Order

221. Section 276(b)(1)(D) of the 1996 Act directs the Commission to "provide for Bell operating company payphone service providers to have the same right that independent payphone service providers have to negotiate with the location provider on the location provider's selecting and contracting with, and, subject to the terms of any agreement with the location provider, to select and contract with, the carriers that carry interLATA calls from their payphones, unless the Commission determines . . . that it is not in the public interest."⁶⁰⁷ The BOCs were prohibited from engaging in these activities pursuant to an order of the MFJ court.⁶⁰⁸ In the Report and Order, we concluded that it would not be contrary to the public interest to allow the BOCs to negotiate with location providers with respect to the selecting and contracting for the interLATA carriers presubscribed to their payphones.⁶⁰⁹

222. In reaching this conclusion, we found that the payphone industry is competitive and characterized by low barriers to entry, thereby preventing the BOCs from exercising market power in the provision of payphone services.⁶¹⁰ Although the BOCs currently have a large share of the payphone services market, we found that there are thousands of competitors already in the market, ranging in size from very small entities with only a handful of payphones, to the major long distance companies.⁶¹¹ We found that the existence of these many small competitors demonstrates that entry is relatively easy and does not require investment or scale levels that would deter many potential competitors.⁶¹² We also noted that any ability that the BOCs might have to raise prices to end users above competitive levels is severely restricted by the ability of end users to dial around the presubscribed interLATA carrier.⁶¹³ In sum, we concluded that the payphone services market is sufficiently competitive as to prevent the BOCs from raising and sustaining prices above competitive levels, irrespective of their current market shares.⁶¹⁴

223. We further determined that the nonstructural and accounting safeguards required with respect to the BOCs' payphone operations are sufficient to deter the BOCs from improperly subsidizing those operations from their local access services or discriminating in the provision of local access services to the detriment of their payphone competitors.⁶¹⁵ As discussed previously, we are requiring that all Computer III and ONA nonstructural and accounting safeguards be applied to the BOCs' provision of payphone services, and requiring that any basic services provided by a BOC to its own

⁶⁰⁷ 47 U.S.C. § 276(b)(1)(D). See Report and Order at para. 208, et seq.

⁶⁰⁸ See United States v. Western Elec. Co., 698 F.Supp. 348, 360 (D.D.C. 1988).

⁶⁰⁹ Report and Order at para. 226.

⁶¹⁰ Id. at para. 232. See also our discussion of the payphone marketplace, Report and Order at paras. 11-19.

⁶¹¹ Id.

⁶¹² Id.

⁶¹³ Id. at para. 234.

⁶¹⁴ Id. at para. 232.

⁶¹⁵ Id. at para. 237.

payphone operations be available on a nondiscriminatory basis to other payphone providers.⁶¹⁶ We found that these safeguards provide an appropriate regulatory framework to ensure that BOCs do not engage in improper subsidization or discriminate in the provision of services required by their payphone competitors.⁶¹⁷ For these reasons, and because we found that the statutory language reflects a Congressional determination that structural separation of the BOCs' payphone operations from their core business is neither necessary nor appropriate, we declined to impose structural separation on the BOCs' payphone businesses.⁶¹⁸ We determined, however, that the nonstructural and accounting safeguards established pursuant to Section 276(b)(1)(C) of the 1996 Act must be in place before the BOCs are allowed to participate in the interLATA presubscription process for their payphones.⁶¹⁹ Specifically, we required each BOC to submit and receive approval of an initial CEI plan filed pursuant to Section 276(b)(1)(C) as a precondition to being authorized to engage in the conduct authorized by Section 276(b)(1)(D).⁶²⁰

224. We rejected the argument made by some commenters that the presubscription rights specified in Section 276(b)(1)(D) constitute the provision of interLATA service subject to the restrictions of Sections 271 and 272 of the 1996 Act.⁶²¹ We found that the statutory language authorizing the BOCs to "select and contract with, the carriers that carry interLATA calls from their payphones," grants the BOCs no more than the right to participate as a contractual intermediary between a location provider and a third-party interLATA carrier. Such limited conduct does not amount to the provision of interLATA telecommunications service addressed under Sections 271 and 272.⁶²² We did find, however, that resale and branding by a BOC of interLATA service for its in-region presubscribed payphones lies outside of the specific rights granted by Section 276(b)(1)(D) of the 1996 Act.⁶²³

225. Finally, we affirmed our tentative conclusion in the NPRM that the 1996 Act grandfathers all contracts in force between location providers and PSPs or interLATA or intraLATA carriers which were in force and effect as of February 8, 1996.⁶²⁴

2. Petitions

226. InterLATA Presubscription. BellSouth petitions for reconsideration of the Commission's rejection of its argument that Section 276(b)(1)(D) authorizes BOCs to engage in "reselling and/or branding" of interLATA service to its presubscribed payphones, or, at a minimum, to reconsider the use of the conjunctive/disjunctive "and/or" and clarify its remarks concerning whether branding (standing

⁶¹⁶ Id.

⁶¹⁷ Id.

⁶¹⁸ Id. at para. 238.

⁶¹⁹ Id. at para. 239.

⁶²⁰ Id.

⁶²¹ Id. at para. 243.

⁶²² Id.

⁶²³ Id. at para. 244.

⁶²⁴ Id. at para. 250.

alone) is permissible.⁶²⁵ BellSouth explains that under TOCSIA, where multiple OSPs are involved in setting rates for particular operator services, these parties may jointly decide which party will be named in the audible brand. BellSouth adds that BOC PSPs are allowed to provide operator services to interexchange carriers, and asserts that to the extent BOC PSPs are involved with other OSPs in setting the rates for particular operator services, including pursuant to Section 276(b)(1)(D) the rates for interstate operator services, they should be entitled to rely on TOCSIA's multiple OSP branding rules.⁶²⁶ BellSouth also notes that it is common practice for aggregators and OSPs to engage in "split branding," in which the audible brand identifies both the payphone aggregator and the OSP. BellSouth requests reconsideration or clarification that the Report and Order does not prohibit such branding arrangements.⁶²⁷

227. SW Bell urges the Commission to clarify its rules to ensure expedited approval of the CEI plans required to be filed by the BOCs, and approved by the Commission, as a prerequisite to BOC participation in interLATA presubscription for their payphones.⁶²⁸ SW Bell states that such plans have not always received timely approval by the Commission, and that the BOCs will remain at a competitive disadvantage until they are allowed to negotiate with location providers for presubscribed interLATA carriers to their payphones pursuant to Section 276(b)(1)(D).⁶²⁹

228. Grandfathering of Contracts. AT&T requests that the Commission clarify that nothing in the statute or the new rules allows location providers to terminate contracts with carriers regarding the interLATA carrier presubscribed to payphones on their premises, regardless of the date such agreements were executed.⁶³⁰ In particular, AT&T argues that even where a LEC or other PSP may remove its payphones from a location provider's premises, such action by the LEC or other PSP does not allow it to interfere with a pre-existing contractual relationship between the location provider and the interLATA carrier concerning the provision of presubscribed interLATA service to the location provider.⁶³¹ AT&T also urges the Commission to clarify that contracts between BOCs and location providers that reference presubscribed interLATA carrier choice, but which are executed prior to the BOC completing the requirements detailed in the Report and Order for engaging in interLATA presubscription, are void and unenforceable against the location provider.⁶³² AT&T states that it has received information that BellSouth, in particular, has entered into such agreements with location providers.⁶³³

3. Comments

⁶²⁵ BellSouth Petition at 22-23.

⁶²⁶ Id. at 23-24.

⁶²⁷ Id. at 24.

⁶²⁸ SW Bell Petition at 4.

⁶²⁹ Id. Ameritech also notes a typographical error at ¶ 240 of the Report and Order, in which "intraLATA" incorrectly appears in the section discussing "interLATA" presubscription issues. Ameritech Petition at 2, n.2.

⁶³⁰ AT&T Petition at 22.

⁶³¹ Id.

⁶³² AT&T Petition at 22-23.

⁶³³ Id.

229. InterLATA Presubscription. CompTel filed comments disagreeing with the Commission's finding that BOC participation in the selection of interLATA carriers presubscribed to their payphones is not contrary to the public interest.⁶³⁴ CompTel argues that the BOCs have market power in payphone presubscription as a result of their control over large volumes of interLATA traffic. It asserts that the BOCs' ability to aggregate large volumes will give the BOCs significant bargaining power they can exercise when negotiating with IXCs for presubscription, which could enable the BOCs to demand from IXCs concessions such as the IXC pay the BOC excessive billing and collection rates.⁶³⁵ CompTel also argues that the BOCs' control over large volumes of traffic will enable them to obtain the profit margins that a reseller typically enjoys, allowing the BOCs to become de facto resellers of interLATA services.⁶³⁶ CompTel explains that a BOC would be able to negotiate the lowest rates with IXCs and keep for itself whatever difference exists between its costs for interLATA service and the rates charged to end users, and argues that this de facto provision of interLATA service is inconsistent with the requirements of Section 271 of the 1996 Act.⁶³⁷

230. AT&T asserts that the Commission should deny BellSouth's request for clarification regarding "branding" because PSPs should not be allowed to "audibly brand" its payphones in a manner that might confuse consumers about the identity of the suppliers that are providing them with the different services offered at payphones.⁶³⁸ AT&T argues that this is particularly problematic where a BOC seeks to brand interLATA calls prior to receiving approval to offer in-region interLATA relief pursuant to Section 271. AT&T also asserts that BOC operators that provide operator services on behalf of other carriers should not be permitted to identify themselves as representatives of the BOC.⁶³⁹ NJPA also argues that to the extent that a BOC is represented, via branding, as a provider of interLATA service, the BOC is in violation of Section 271.⁶⁴⁰ MCI and Sprint also oppose BellSouth's request for authority to engage in "branding" of OSP service.⁶⁴¹ MCI argues that the purpose of the OSP audible identification is to provide notice to the consumer concerning the identity of the OSP so that the consumer has the choice whether or not to use that OSP's services. MCI concludes that since the BOC cannot be the OSP for interstate services before it has obtained such approval, it would be confusing and misleading to the consumer to allow BOCs to brand or co-brand interstate OSP calls.⁶⁴²

⁶³⁴ CompTel Comments at 15. CompTel was the only party to request reconsideration of our decision to grant the BOCs presubscription rights pursuant to Section 276(b)(1)(D). For the reasons discussed previously, see note 200, above, we are not required to formally reconsider this issue. As CompTel itself recognizes, however, each of the arguments made in its filing were also made in its initial comments and those of other parties. Accordingly, we would, in any event, decline to reconsider our conclusions in this regard for the reasons laid out in the Report and Order. See Report and Order at paras. 225-238.

⁶³⁵ Id. at 15-16.

⁶³⁶ Id. at 16.

⁶³⁷ Id.

⁶³⁸ AT&T Comments at 11-12.

⁶³⁹ Id.

⁶⁴⁰ NJPA Comments at 18.

⁶⁴¹ MCI Comments at 6-7; Sprint Comments at 16.

⁶⁴² Id.

231. Grandfathering of Contracts. BellSouth opposes AT&T's request that the Commission clarify that contracts entered into between BOCs and location providers concerning interLATA presubscription, but before approval of the BOC's CEI plan, are void and unenforceable against the owner.⁶⁴³ BellSouth argues that nothing in Section 276 concerns contracts entered into after February 8, 1996, and the Commission should not say anything about such contracts. BellSouth further argues that the Commission correctly determined that any effort to identify unenforceable contracts would be overbroad, would interfere with the jurisdiction of state courts, and would result in location providers being denied their choice of interLATA carriers.⁶⁴⁴ In response to AT&T's assertion that BellSouth has already been negotiating with location providers concerning the provision of interLATA services, BellSouth states that it "in its contacts with location providers, BellSouth has not promised to provide or arrange for such service by any particular date, but has always made clear that any agreements relating in any way to interLATA service can only be effective upon, and are subject to, the approval and implementation by the Commission of regulations pursuant to Section 276 that authorize BellSouth to provide such service."⁶⁴⁵

4. Discussion

232. InterLATA Presubscription. In ex parte filings submitted after the close of the initial comment period in this rulemaking, BellSouth first requested that the Commission find that Section 276(b)(1)(D) of the 1996 Act authorized BOC PSPs to engage in reselling and branding of interLATA service for their payphones.⁶⁴⁶ In the Report and Order, we denied this request, finding that the reselling and branding of interLATA service was not within the specific rights granted to the BOCs by Section 276(b)(1)(D), which provides only that BOCs may have the same rights as independent PSPs "to negotiate with the location provider on the location provider's selecting and contracting with, and . . . to select and contract with, the carriers that carry interLATA calls from their payphones . . ."⁶⁴⁷ BellSouth now requests reconsideration on whether BOCs may engage in branding (apart from reselling) of interLATA service for its payphones.⁶⁴⁸

233. We find that nothing in Section 276(b)(1)(D) of the 1996 Act authorizes BOCs to engage in branding, or as BellSouth sometimes refers to it, "packaging," of interLATA service. BellSouth's underlying argument is fallacious for the same reasons stated in the Report and Order. Section 276(b)(1)(D) does not place BOCs on an equal footing with independent PSP in every conceivable regard. That section is, by its own terms, limited to BOCs "negotiating" with location providers with respect to the

⁶⁴³ BellSouth Comments at 4.

⁶⁴⁴ Id. at 5.

⁶⁴⁵ BellSouth Comments at 5-7.

⁶⁴⁶ Ex Parte Letter from Ben G. Almond, BellSouth, to William F. Caton, Acting Secretary, FCC, August 16, 1996.

⁶⁴⁷ Report and Order at para. 244. See 47 U.S.C § 276(b)(1)(D).

⁶⁴⁸ BellSouth Comments at 22-23. While expressing disagreement with the Commission's conclusion concerning reselling, BellSouth's Petition appears to request reconsideration or clarification only of the status of branding. Id. at 4 ("BellSouth requests the Commission reconsider its use of the conjunctive/disjunctive "and/or" and clarify the scope of branding opportunities available to BOCs in light of the 1996 Act"). To the extent that BellSouth intended to request reconsideration of the reselling issue as well, we would decline to do so. BellSouth raises no new arguments to support its position on this issue, and we accordingly deny such request for the reasons stated in the Report and Order. See Report and Order at para. 244.

location providers' "selecting and contracting" for interLATA service to their payphones.⁶⁴⁹ We previously rejected BellSouth's argument that this necessarily allowed a BOC to engage in all conduct allowed of non-BOC PSPs, including the provision of interLATA service to payphones outside of the requirements of Section 271 of the 1996 Act.⁶⁵⁰ It similarly does not follow that the language of Section 276 authorizes a BOC to "brand" interLATA OSP service -- in effect, holding itself out as providing such service -- simply because non-BOC PSPs may be able to do so.⁶⁵¹ We are confident that if Congress had intended such a broad grant of authority, it would not have included such specific limiting language in the statute. We also believe that to the extent a BOC is holding itself out to the public as providing interLATA service through use of an audible brand identifying itself as the carrier, such conduct would seem to be inconsistent with the goals of TOCSIA,⁶⁵² as well as inconsistent with the requirements of Section 271 of the 1996 Act.⁶⁵³ For the above reasons, and those detailed in the Report and Order, we conclude that Section 276 of the 1996 Act does not grant BOCs the right to "brand" or "package" interLATA service.

234. In conjunction with our previous discussion of BOC CEI plans, we have already addressed SW Bell's request that the Commission clarify its rules to ensure expedited approval of those plans.⁶⁵⁴

235. Contracts. AT&T first requests that we clarify that nothing in the statute or the new rules allows location providers to terminate contracts with carriers regarding the interLATA carrier presubscribed to payphones on their premises, regardless of the date of such agreements.⁶⁵⁵ We believe the Report and Order is quite clear on this issue, and so decline AT&T's request.⁶⁵⁶

236. AT&T's other request, however, raises serious questions. AT&T asserts that at least one BOC has already negotiated and entered into agreements with location providers for the

⁶⁴⁹ 47 U.S.C. § 276(b)(1)(D).

⁶⁵⁰ Indeed, BellSouth's argument, followed to its logical end, would completely eviscerate the requirements of Sections 271 and 272.

⁶⁵¹ Of course, non-BOC PSPs may brand because they are allowed to be the OSP for interLATA service. Indeed, to this extent, TOCSIA requires that they do so. See 47 U.S.C. § 226(b).

⁶⁵² 47 U.S.C. § 226. See Report and Order, Policies and Rules Concerning Operator Service Providers, 6 FCC Rcd 2744, 2747 (1991) ("The objectives of the Act are to ensure that consumers are protected from unfair and deceptive practices relating to their use of operator services to place interstate long distance calls and, second, to ensure that consumers have the opportunity to make an informed choice in making such calls"). Under our rules implementing TOCSIA, the OSP identified in the brand is to be the entity that is setting the rates and whose name will ultimately appear on the consumer's bill. See Id. at 2757, para 29. BellSouth's proposal would at least create the possibility of significant consumer confusion: if the BOC is not yet allowed to offer interLATA service, and therefore can not bill under its own name for the service being provided, it would be confusing for the caller to hear the BOC's name during the brand.

⁶⁵³ See 47 U.S.C. § 271. BellSouth cites to the Commission's Order approving the petition of Bell Atlantic, et al., for waiver of Section 69 of the Commission's rules, to support its assertion that "BOC PSPs have long been allowed to provide operator services to interexchange carriers." See Bell Atlantic Telephone Companies, 9 FCC Rcd 7868 (1994). This is not the same as the provision of "operator service" as defined by the rules implementing TOCSIA. 47 U.S.C. § 226. We also note that the Commission in that order declined to consider whether the proposed waiver would violate the MFJ prohibition against BOC provision of interLATA services, in that any such claim was, at that time, appropriately raised with the District Court, not the Commission. Id. at 7870, ¶ 17.

⁶⁵⁴ See para. 220, above.

⁶⁵⁵ AT&T Petition at 22.

⁶⁵⁶ Report and Order at paras. 250-252.

presubscription of interLATA service to payphones on the location providers' premises.⁶⁵⁷ In reply, BellSouth does not deny that it has entered into such contracts, but asserts that all such contracts it has entered into include provisions specifying that they are contingent upon BellSouth obtaining Commission approval to provide such services.⁶⁵⁸ We find BellSouth's explanation unpersuasive. Section 276(b)(1)(D) grants BOCs the authority to negotiate and contract with location providers with respect to the interLATA carrier presubscribed to their payphones.⁶⁵⁹ Congress conditioned this grant of authority upon the completion of this Commission rulemaking, specifically required by Section 276, for purposes of evaluating whether granting such rights would be consistent with the public interest.⁶⁶⁰ In carrying out this responsibility, we have determined that each BOC should first be required to establish certain nonstructural and accounting safeguards as a prerequisite to being allowed to exercise these presubscription rights.⁶⁶¹ We concluded that such precautions were necessary to prevent the BOCs from acting in an anticompetitive manner in the provision of these services and, ultimately, to protect the interests of the public.

237. We now conclude that contracts entered into pursuant to the grant of authority in Section 276(b)(1)(D) and prior to a BOC receiving approval of a CEI plan required by the Report and Order are in violation of the Commission's rules adopted in this proceeding. Our decision to require the filing and approval of CEI plans was, in part, to prevent the BOCs from using their control over bottleneck facilities and other resources in order to obtain a competitive advantage over the non-LEC PSPs.⁶⁶² The Commission has no way of ascertaining whether agreements entered into prior to the completion of these requirements were negotiated in a manner consistent with these policies. While we are not in a position to declare null and void specific contracts that we have not determined to be unlawful, we will review any complaints concerning such contracts in light of this policy.

⁶⁵⁷ AT&T Petition at 22-23.

⁶⁵⁸ BellSouth Comments at 5-7.

⁶⁵⁹ 47 U.S.C. § 276(b)(1)(D).

⁶⁶⁰ Id.

⁶⁶¹ Report and Order at para.239.

⁶⁶² Id. at paras. 236-238.

E. ABILITY OF PAYPHONE SERVICE PROVIDERS TO NEGOTIATE WITH LOCATION PROVIDERS ON THE PRESUBSCRIBED INTRALATA CARRIER

1. Report and Order

238. The Report and Order implements Section 276(b)(1)(E) of the 1996 Act which directs the Commission to provide all payphone service providers with the right to participate in the selection of the intraLATA carriers presubscribed to their payphones.⁶⁶³ In furtherance of this statutory directive, we also concluded that state regulations which require the routing of intraLATA calls to the incumbent LEC are preempted.⁶⁶⁴ We also ordered that intraLATA carriers presubscribed to payphones should be required to meet the Commission's minimum standards for routing and handling emergency calls.⁶⁶⁵

2. Petitions

239. APCC requests that the Commission clarify that, for purposes of Section 276(b)(1)(E), "intraLATA" calls include local calls.⁶⁶⁶ APCC argues that there is no evidence that Congress meant to exclude local calls from the scope of Section 276(b)(1)(E), and the policies of market competition and freedom of choice that support PSPs' right to select the intraLATA carrier presubscribed to their payphones are equally applicable to intraLATA local calls as to intraLATA toll calls.⁶⁶⁷

240. APCC also requests reconsideration of the determination that the 1996 Act's provision of intraLATA presubscription rights to PSPs does not preempt all state rules that require the routing of 0- traffic to the incumbent LEC, provided that "the state does not mandate that the LEC ultimately carry non-emergency intraLATA calls initiated by dialing '0' only."⁶⁶⁸ APCC argues that routing of 0- calls to the LEC inevitably results in the LEC gaining an unwarranted advantage in terms of the ability to turn 0- calls into revenue producing calls. It asserts that any procedure selected for nondiscriminatory handling of non-emergency calls by the LEC will still result in caller confusion and decreased service on calls directed to non-LEC carriers.⁶⁶⁹ APCC states that 16 states currently have such requirements, while the remaining states allow 0- calls to be routed to other OSPs that meet applicable standards for handling emergency calls.⁶⁷⁰ APCC concludes that the Commission should reconsider and rule that 0- calls can be routed to any OSP, subject to the requirements of Section 64.706 of the Commission's rules and to the ability of the states to establish nondiscriminatory standards for OSPs to qualify to handle emergency calls.⁶⁷¹

⁶⁶³ Id. at para. 259. See 47 U.S.C. § 276(b)(1)(E).

⁶⁶⁴ Report and Order at para. 261. See 47 U.S.C § 276(c).

⁶⁶⁵ Id. at para. 260.

⁶⁶⁶ APCC Petition at 3, n. 2.

⁶⁶⁷ Id.

⁶⁶⁸ APCC Petition at 4.

⁶⁶⁹ Id. at 4-6.

⁶⁷⁰ Id. at 4.

⁶⁷¹ Id. at 6.

3. Comments

241. AT&T and Peoples support APCC's request for reconsideration of the determination in the Report and Order that states may be allowed to require 0- calls to be routed to the incumbent LEC, so long as non-emergency calls are then forwarded to the OSP selected by the payphone provider.⁶⁷² AT&T asserts that a state's interest in assuring proper handling of emergency calls from payphones can be addressed by requiring that 0- calls be sent only to OSPs that meet appropriate standards.⁶⁷³ AT&T argues that not permitting non-LEC OSPs to handle emergency 0- calls places such OSPs at a competitive disadvantage, by allowing such calls to be screened by LEC operators.⁶⁷⁴ Peoples argues that public safety will actually be enhanced by allowing PSPs to choose their intraLATA OSP because such OSPs will have vital information not available to the ILEC, such as the location of the PSP payphone. Therefore, the OSP will be better able to direct emergency services to the proper location.⁶⁷⁵ Peoples also states that it does not believe that the technology exists to effectuate switching from the LEC OSP to the PSP OSP if the call is initially required to be routed to the LEC. Peoples also asserts that LECs competing for OSP services are likely to be uncooperative in directing such calls back to the presubscribed OSP.⁶⁷⁶

4. Discussion

242. As to APCC's first issue, we confirm that it is our intent and understanding that, for purposes of the rules implementing Section 276(b)(1)(E) of the 1996 Act, intraLATA calls include local calls.⁶⁷⁷ We agree with APCC's reasoning that the policies supporting free competition in intraLATA presubscription are equally applicable to local calls.

243. We decline, however, to reconsider our decision to allow states to require 0- calls to be initially routed to the incumbent LEC or other local service provider, provided that the state does not mandate that the LEC or local service provider ultimately carry non-emergency intraLATA calls initiated by dialing '0' only.⁶⁷⁸ As we stated in the Report and Order, and based upon the record before us, we do not find that such requirements are necessarily inconsistent with the statutory language that PSPs should be allowed to negotiate for the intraLATA carriers presubscribed to their payphones.⁶⁷⁹ States may impose reasonable requirements on the exercise of these rights, especially for purposes of ensuring public health and safety. The policy arguments set forth by the parties are, accordingly, more appropriately directed to

⁶⁷² AT&T Comments at 13; Peoples Comments at 7-8.

⁶⁷³ Id.

⁶⁷⁴ Id.

⁶⁷⁵ Peoples Comments at 7.

⁶⁷⁶ Id.

⁶⁷⁷ 47 U.S.C. § 276(b)(1)(E).

⁶⁷⁸ Report and Order at para. 262.

⁶⁷⁹ Id. See 47 U.S.C. § 276 (c) which authorizes the Commission to preempt state requirements that are "inconsistent" with the Commission's regulations.

the individual states. For this reason, we are unwilling at this time to find that a state requirement concerning the initial routing of 0- calls, in order to ensure that 0- emergency calls are handled in an appropriate and timely manner, unduly burdens non-LEC PSPs.

F. ESTABLISHMENT OF PUBLIC INTEREST PAYPHONES

1. Report and Order

244. Section 276(b)(2) of the 1996 Act directs the Commission to "determine whether public interest payphones, which are provided in the interest of public health, safety, and welfare, in locations where there would otherwise not be a payphone, should be maintained, and if so, ensure that such public interest payphones are supported fairly and equitably."⁶⁸⁰ In the Report and Order, we concluded that there is a need to ensure the maintenance of public interest payphones that serve public policy interests in health, safety, and welfare, in locations where there might not otherwise be a payphone as a result of the operation of the market.⁶⁸¹ We explained that all payphones serve the public interest by providing access to basic communications services, and expressed particular concern about the role served by payphones in providing access to emergency services, especially in isolated locations and areas with low levels of residential phone penetration.⁶⁸² We recognized that a freely competitive marketplace may not provide for payphones in locations where they serve important public policy objectives, but which, for various reasons, may not be economically self-supporting.⁶⁸³

245. We further concluded that primary responsibility for administering and funding public interest payphone programs should be left to the states, subject to guidelines adopted by the Commission.⁶⁸⁴ We found that the states are better equipped than the Commission to respond to geographic and socio-economic factors affecting the need for such payphones that are too diverse to be effectively addressed on a national basis.⁶⁸⁵

246. In fulfilling our statutory obligation under Section 276, however, we adopted as a definition of "public interest payphone," a payphone which (1) fulfills a public policy objective in health, safety, or public welfare, (2) is not provided for a location provider with an existing contract for the provision of a payphone, and (3) would not otherwise exist as a result of the operation of the competitive marketplace.⁶⁸⁶ We also concluded that the statutory language mandating that the Commission ensure that PIPs be "supported fairly and equitably" requires a national guideline that companies providing PIPs be fairly compensated for the cost of such services.⁶⁸⁷

⁶⁸⁰ 47 U.S.C. § 276(b)(2).

⁶⁸¹ Report and Order at para. 277.

⁶⁸² Id.

⁶⁸³ Id. See 47 U.S.C. § 276(b)(1)(B).

⁶⁸⁴ Report and Order at para. 278-280.

⁶⁸⁵ Id.

⁶⁸⁶ Id. at para. 282.

⁶⁸⁷ Id. at para. 283.

247. With respect to the funding of state PIP programs, we stated that states should have discretion with respect to funding their respective public interest payphone programs, so long as the funding mechanism, (1) fairly and equitably distributes the cost of such a program, and (2) does not involve the use of subsidies prohibited by Section 276(b)(1)(B) of the 1996 Act.⁶⁸⁸ State programs supporting public interest payphones are also subject to the provision of Section 253(b) of the 1996 Act which requires that such a program be implemented on a "competitively neutral basis."⁶⁸⁹ We specifically recognized that states may address the need for public interest payphones by adopting appropriate rules in conjunction with their state universal service plans pursuant to Section 254(f) of the 1996 Act.⁶⁹⁰ We found that the implementation of a public interest payphone program is consistent with the goals of universal service.⁶⁹¹

248. Also in furtherance of our statutory responsibility under Section 276(b)(2), we directed each state to review whether it has adequately provided for public interest payphones in a manner consistent with the Report and Order.⁶⁹² Each state is required, within two years of the date of issuance of the Report and Order, to evaluate whether it needs to take any measures to ensure that payphones serving important public interests will continue to exist in light of the elimination of subsidies and other competitive provisions established pursuant to Section 276 of the 1996 Act, and that any existing programs are administered and funded consistent with the Commission's rules.⁶⁹³

2. Petitions

249. APCC urges a modification of the definition of PIPs that would prohibit a state from designating a payphone as a PIP if it is located within 200 yards of another payphone, unless there is some physical barrier to access.⁶⁹⁴ APCC asserts that the proximity of another payphone is ample proof that the location in question is not one where payphones cannot be profitably maintained, and therefore placing a PIP in such a location would be inconsistent with the 1996 Act and the policies adopted in the Report and Order.⁶⁹⁵

250. Ohio PUC requests reconsideration of the Commission's determination that PIPs may not be placed in locations where payphones already exist as a result of the market, but where the market is not operating properly in other respects.⁶⁹⁶ It expresses the concern that the rules would prohibit placement of PIPs in a location where a PSP was realizing extraordinarily high profits from end users who had no other viable alternatives for payphone services. Ohio PUC argues that the payphone marketplace is inherently dysfunctional in that agreements for the provision of services are between the PSP and the

⁶⁸⁸ Id.

⁶⁸⁹ Id. at para. 283, n. 915.

⁶⁹⁰ Id. at para. 284.

⁶⁹¹ Id.

⁶⁹² Id. at para. 285.

⁶⁹³ Id.

⁶⁹⁴ APCC Petition at 6.

⁶⁹⁵ Id. at 6-7.

⁶⁹⁶ Ohio PUC Petition at 5.

location providers, excluding the participation of the end users.⁶⁹⁷ Particularly where locational monopolies exist, competition will be concerned with maximizing commissions to location providers, rather than operating to keep rates to end users at reasonable levels.⁶⁹⁸ Ohio PUC also argues that the Act does not preempt state commissions' authority to determine appropriate locations for PIPs.⁶⁹⁹

3. Comments

251. Puerto Rico Telephone opposes APCC's request that the Commission modify the definition of public interest payphones to prohibit the placement of a PIP within 200 yards of another payphone.⁷⁰⁰ Puerto Rico Telephone argues that the Commission correctly deferred such determinations to the states, which are in the best position to evaluate local needs.⁷⁰¹ The RBOC Coalition also urges the Commission to deny APCC's request, arguing that such a rule would unduly hamper the flexibility of states in providing for the public health, safety and welfare.⁷⁰²

252. The RBOCs oppose the assertion of the Ohio PUC that states should be able to place PIPs in areas where payphones already exist but where other market dysfunctions are present. The RBOCs state that Section 276 specifically permits PIPs only "in location[s] where there would otherwise not be a payphone."⁷⁰³

4. Discussion

253. We deny APCC's request that the definition of public interest payphones be modified to exclude payphones located within 200 yards of another payphone.⁷⁰⁴ Besides lacking any basis in the record for specifying a particular distance restriction, we believe that such a requirement would unnecessarily restrict the states' ability to address local geographic, social and economic conditions impacting the need for payphones. It may be that there are locations where these factors make a payphone located 200 yards away effectively unaccessible to some consumers. As we stated in the Report and Order, we find that the states are better positioned to respond to the diverse and unique payphones need of their communities.⁷⁰⁵

254. At the same time, however, we recognize that the policy underlying APCC's request is a valid one. The 1996 Act states that public interest payphones are limited to "locations where

⁶⁹⁷ Id. at 5-6.

⁶⁹⁸ Id.

⁶⁹⁹ Id. at 7.

⁷⁰⁰ Puerto Rico Telephone Comments at 2-5.

⁷⁰¹ Id.

⁷⁰² RBOC Comments at 24.

⁷⁰³ Id.

⁷⁰⁴ APCC Petition at 6.

⁷⁰⁵ Report and Order at para.278.

there would otherwise not be a payphone . . ."⁷⁰⁶ And the Conference Report further clarifies that "the term does not apply to a payphone located near other payphones . . ."⁷⁰⁷ We think that this language makes it clear that Congress intended that public interest payphones not be placed in locations where they would compete with unsubsidized payphones, and the definition we adopted is intended to effectuate this congressional intent.

255. For these reasons, we also deny Ohio PUC's request that we reconsider our determination that PIPs may not be placed in locations where payphones already exist as a result of the market.⁷⁰⁸ As explained above, and contrary to Ohio PUC's argument, Congress did restrict the locations for which states could use the public interest payphone support mechanisms to subsidize the placement of a payphone. As we stated in the Report and Order, the statutory language reflects a congressional intent that reliance on the public interest payphone provision is to be limited to instances where a payphone serves a strong public interest that would not be fulfilled by the normal operation of the marketplace.⁷⁰⁹

256. Ohio PUC does not elaborate on the circumstances under which it would want and be able to place a payphone in a location where the incumbent PSP is realizing extraordinarily high profits from end users who had no other viable alternatives for payphone services. We believe, however, that if it were possible to place a second payphone near to an extraordinarily profitable one, PSPs would be competing to place payphones at this location that would undercut the price of the incumbent. In any event, in its capacity as a location provider, a state may certainly contract with a PSP to place a non-PIP payphone at any location over which it has such authority. As discussed in connection with entry and exit barriers,⁷¹⁰ a state may contract with a PSP to place a payphone on a street corner, or in a school building, or at an airport, that competes with other payphones at or near such locations. It simply may not subsidize such payphones through a public interest payphone support mechanism. Moreover, the state may contract with the PSP on any basis which a PSP is voluntarily willing to offer its services. Thus, if the state prefers to require low end-user rates for such payphones, perhaps as a trade-off to receiving lower commissions from the PSP, it may contract with the PSP on those terms.

IV. PROCEDURAL MATTERS

A. Final Paperwork Reduction Act Analysis

257. The conclusions herein have been analyzed with respect to the Paperwork Reduction Act of 1995, Pub. L. 104-13, and contains collections of information subject to Office of Management and Budget review. The information collection requirements in this item are contingent upon approval by the Office of Management and Budget.

B. Final Regulatory Flexibility Analysis on Reconsideration

258. The following Final Regulatory Flexibility Analysis on Reconsideration (FRFA on Reconsideration) addresses only those issues that we have modified in this Order on Reconsideration in

⁷⁰⁶ 47 U.S.C. § 276(b)(2).

⁷⁰⁷ S. Conf. Rep. 104-230 at 43.

⁷⁰⁸ Ohio PUC Petition at 5.

⁷⁰⁹ Report and Order at para. 282.

⁷¹⁰ See para. 141, above.

the Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 (1996 Act). Specifically, this FRFA on Reconsideration addresses modification of tariffing requirements for payphone services, calculating carrier common line (CCL) charges, and amendments to Part 69 of the Commission's rules.⁷¹¹ We also incorporate by reference the original Report and Order (the Report and Order) released on September 20, 1996 (CC Docket No. 96-128), and the Final Regulatory Flexibility Analysis (FRFA).⁷¹²

1. Need for and Objectives of the Order on Reconsideration and the Rules Adopted Herein.

259. This Order on Reconsideration requires no changes to the FRFA in the original Report and Order.⁷¹³

260. The objective of the rules adopted in this Order on Reconsideration is "to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public."⁷¹⁴ In doing so, the Commission is mindful of the balance that Congress struck between this goal of bringing the benefits of competition to consumers and its concern for the impact of the 1996 Act on small businesses.

2. Summary of Petitions for Reconsideration and/or Comments Relating to Small Entities.

261. No party sought reconsideration of our FRFA in this proceeding. The National Telephone Cooperative Association (NTCA), however, requests a clarification of the requirement that LECs file coin transmission services in their access service tariffs may be satisfied by small LECs through participation in a national tariff filed by National Exchange Carrier Association (NECA) and recover its costs through a NECA administered pool. If not, NTCA asks for reconsideration of the decision to require federal tariffing. Moreover, NTCA also requests the Commission to clarify that the tariff provisions to be filed be limited to services added to enable payphone services, such as counting and control of coins and fraud protection, but do not include loops and switching functions, and to clarify the costing methodology to be used.⁷¹⁵

3. Description and Estimate of the Number of Small Entities Affected by this Order on Reconsideration.

262. The modifications in this Order on Reconsideration apply only to incumbent LECs. The estimates of the number of small entities affected by this Order on Reconsideration remain the same as the estimates detailed in the FRFA in the original Report and Order.⁷¹⁶

⁷¹¹ 47 C.F.R. § 69 --- Access Charges.

⁷¹² Report and Order at paras. 311-362.

⁷¹³ Id. at paras. 312-313.

⁷¹⁴ 47 U.S.C. § 276(b)(1).

⁷¹⁵ NTCA Petition at 2-4.

⁷¹⁶ Report and Order at paras 315-333.

4. Tariffing Requirements for Unbundling of Payphone Services.

i. Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements on Reconsideration.

263. The Order on Reconsideration modifies the federal tariffing provisions to require that LECs must file tariffs with the states regarding the provision of nondiscriminatory basic payphone services that enable LECs and independent providers to provide payphone service using either "dumb" or "smart" payphones. Any basic network services or unbundled features used by a LECs operations to provide payphone services must be similarly available to independent payphone providers on a nondiscriminatory, tariffed basis and must be tariffed in the state and federal jurisdiction. The tariffs for basic payphone services and any unbundled features that LECs provide to their own payphone services must be: 1) cost based; 2) consistent with the requirements of Section 276 with regard, for example, to the removal of subsidies from exchange and exchange access services; and 3) nondiscriminatory. States unable to review these tariffs for compliance with Section 276 and other requirements set forth in the Order may require the LECs operating in their state to file these tariffs with the Commission.⁷¹⁷ Compliance with these requirements may necessitate the use of engineering, technical, operational, accounting, billing, and legal skills.

ii. Steps Taken to Minimize Significant Economic Impact on Small Entities and Small Incumbent and Independent LECs, and Alternatives Considered.

264. This tariff filing requirement is not unduly burdensome on small entities in that LECs are now required to file their payphone service tariffs with the states in the same manner as they have been filing tariffs for other telephone services with the states. Additionally, to provide maximum flexibility and the least burdensome approach, the Order on Reconsideration delegates to the Common Carrier Bureau the authority to determine the least burdensome method for small carriers to comply with the requirements for filing of tariffs with the Commission, such as those suggested by the NTCA.⁷¹⁸

5. Amendments to Part 69

i. Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements on Reconsideration.

265. The Order on Reconsideration clarifies and modifies the method for calculating the carrier common line charge to remove payphone costs and to adjust for additional subscriber line revenues. This Order clarifies and revises the exogenous cost adjustment mechanism adopted in the Report and Order and requires LECs to subtract the payphone costs described in Section 69.501(d) of the Commission Rules associated with payphone lines, prior to developing the payphone cost allocator. LECs proposing to subtract payphone line costs or inmate payphone costs for the purpose of their PCI adjustment are required to provide complete details to demonstrate that their line cost calculations are reasonable. LECs can achieve application of multiline subscriber line charges (SLCs) to payphone lines through recalculating and revising carrier CCL charges pursuant to the CCL formula in Section 61.46(d).⁷¹⁹

⁷¹⁷ See paras. 162-165, above.

⁷¹⁸ See para. 163, above; NTCA Petition at 2-4.

⁷¹⁹ See para. 205, above.

Compliance with these requirements may necessitate the use of engineering, technical, operational, accounting, billing, and legal skills.

ii. Steps Taken to Minimize Significant Economic Impact on Small Entities and Small Incumbent and Independent LECs, and Alternatives Considered.

266. The requirement that LECs proposing to subtract payphone line costs or inmate payphone costs for the purpose of their PCI adjustment must provide complete details to demonstrate that their line cost calculations are reasonable, averts discrimination, facilitates the growth of competition, and ensures that there is no unnecessary burden for all parties, including small entities and small incumbent LECs.⁷²⁰

6. Report to Congress.

267. The Commission shall send a copy of this FRFA on Reconsideration, along with the Order on Reconsideration, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A). A copy of this FRFA on Reconsideration will also be published in the Federal Register.

V. CONCLUSION

268. In this Order on Reconsideration, we affirm the essential features of the policies established in the Report and Order. On reconsideration, however, we modify: (1) the requirements for LEC tariffing of payphone services and unbundled network functionalities; and (2) the requirements for LECs to remove unregulated payphone costs from the carrier common line charge and to reflect the application of multiline subscriber line charges to payphone lines. We also clarify various issues addressed in the Report and Order.

VI. ORDERING CLAUSES

269. Accordingly, pursuant to the authority contained in Sections 1, 4, 201-205, 226, 276 and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 201, 205, 226, 276, and 405, IT IS ORDERED that the policies, rules, and requirements set forth herein are ADOPTED.

270. IT IS FURTHER ORDERED, that 47 C.F.R. Part 69 IS AMENDED as set forth in Appendix C, effective (30) days after publication of the text thereof in the Federal Register.

271. IT IS FURTHER ORDERED, that the Petitions for Reconsideration filed by Ohio PUC, NTCA, BellSouth and Sprint, ARE GRANTED in part and DENIED in part, as described herein. All other Petitions for Reconsideration filed in this proceeding ARE DENIED

272. IT IS FURTHER ORDERED, that the Petitions for Clarification filed in this proceeding ARE DENIED in part, and GRANTED in part, as described herein.

273. IT IS FURTHER ORDERED, that MCI's Motion to Serve One Day Late IS GRANTED.

⁷²⁰ See paras. 203-205, above.

274. IT IS FURTHER ORDERED, that CompTel's Motion to Accept Petition for Reconsideration, or in the Alternative to Treat As Comments on Petitions for Reconsideration, IS DENIED in part and GRANTED in part, as described herein.

275. IT IS FURTHER ORDERED, that Cable & Wireless' Motion for Temporary Waiver or, in the Alternative, for a Limited Stay, is DENIED.

276. IT IS FURTHER ORDERED, that this Memorandum Opinion and Order on Reconsideration will be effective (30) days after publication of a summary thereof in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

APPENDIX A

PARTIES FILING PETITIONS

- 1 AirTouch Paging ("AirTouch")
- 2 American Public Communications Council ("APCC")
- 3 Ameritech
- 4 AT&T Corp. ("AT&T")
- 5 BellSouth Corp. ("BellSouth")
- 6 Cable and Wireless, Inc. ("Cable & Wireless")
- 7 People of the State of California and the Public Utilities Commission of California (California
PUC")
- 8 Consumers Union Southwest Regional Office, Center for Economic Justice, Public Citizen
Texas, Texas Citizen Action ("Consumers Union")
- 9 Office of the People's Counsel for the District of Columbia ("OPC-DC")
- 10 Inmate Calling Services Providers Coalition ("Inmate Coalition")
- 11 InVision Telecom, Inc. ("InVision")
- 12 WorldCom, Inc. d/b/a LDDS WorldCom ("WorldCom")
- 13 Maine Public Utilities Commission, Alabama Public Service Commission, District of Columbia
Public Service Commission, Maryland Public Service Commission, Montana Public Service
Commission, Vermont Public Service Commission, Virginia State Corporation Commission
("Maine PUC")
- 14 MCI Telecommunications Corp. ("MCI")
- 15 National Telephone Cooperative Association ("NTCA")
- 16 New Jersey Payphone Association ("NJPA")
- 17 State of New York Department of Public Service ("New York DPS")
- 18 Public Utilities Commission of Ohio ("Ohio PUC")
- 19 Oklahoma Corporation Commission ("Oklahoma CC")
- 20 PageMart II, Inc. ("PageMart")
- 21 Paging Network, Inc. ("PageNet")
- 22 Personal Communications Industry Association ("PCIA")
- 23 RBOC Payphone Coalition ("RBOC")
- 24 Sprint Corporation ("Sprint")
- 25 Southwestern Bell Telephone Company ("SW Bell")
- 26 Public Utilities Commission of Texas ("Texas PUC")
- 27 United States Telephone Association ("USTA")
- 28 Wisconsin Pay Telephone Association, Inc. ("WPTA")

APPENDIX B**PARTIES FILING COMMENTS⁷²¹**

- 1 AirTouch Paging ("AirTouch")
- 2 American Public Communications Council ("APCC")
- 3 Ameritech
- 4 Arch Communications ("Arch")
- 5 AT&T Corp. ("AT&T")
- 6 BellSouth Corp ("BellSouth")
- 7 Competitive Telecommunications Association ("CompTel")
- 8 Inmate Calling Services Providers Coalition ("Inmate Coalition")
- 9 LCI International Telecommunications, Inc. ("LCI")
- 10 Worldcom d/b/a LDDS WorldCom ("WorldCom")
- 11 MCI Telecommunications Corp. ("MCI")
- 12 New Jersey Payphone Association ("NJPA")
- 13 Personal Communications Industry Association ("PCIA")
- 14 Peoples Telephone Company, Inc. ("Peoples")
- 15 Puerto Rico Telephone Company ("Puerto Rico Telephone")
- 16 RBOC Payphone Coalition ("RBOC Coalition")
- 17 Southern New England Telephone ("SNET")
- 18 Sprint Corporation ("Sprint")
- 19 Telecommunications Resellers Association ("TRA")
- 20 Touch 1 Communications ("Touch 1")

⁷²¹ The following parties submitted letters to the Commission, which are treated as informal comments and considered part of the record in this proceeding: Access Health, Inc.; Budget Rent a Car Corp.; Converse Technology, Inc.; Craddock-Terry, Inc.; Crestar Bank; Delta Air Lines, Inc.; The Hertz Corp.; Japan Airlines; Lincoln National Corp.; Magnetek, Inc.; Marley Mouldings Inc.; Promus Hotel Corp.; Reynolds Metals Co.; SDN Users Association, Inc.; United Airlines; 1-800-FLOWERS.

APPENDIX C

RULES AMENDED

Part 69 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 69 -- ACCESS CHARGES

1. The authority citation for Part 69 continues to read as follows:

Authority: Sec. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1070, 1077, 1094, as amended; 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

2. Section 69.5 is amended by revising paragraph (a) to read as follows:

§ 69.5 Persons to be assessed.

(a) End user charges shall be computed and assessed upon end users, and upon providers of public telephones, as defined in this subpart, and as provided in subpart B of this part.

* * * * *

3. Section 69.104 is amended by revising paragraph (a), redesignating paragraph (d) as paragraph (d)(1), and adding a new paragraph (d)(2) to read as follows:

§ 69.104 End user common line.

(a) A charge that is expressed in dollars and cents per line per month shall be assessed upon end users that subscribe to local exchange telephone service or Centrex service to the extent they do not pay carrier common line charges. A charge that is expressed in dollars and cents per line per month shall also be assessed upon providers of public telephones. Such charge shall be assessed for each line between the premises of an end user, or public telephone location, and a Class 5 office that is or may be used for local exchange service transmissions.

* * * * *

(d) (1) * * *

(2) The charge for each subscriber line associated with a public telephone shall be equal to the monthly charge computed in accordance with § 69.104(d)(1).

* * * * *

4. Section 69.501 is amended by removing and reserving paragraph (d); and by revising paragraph (e) to read as follows:

§ 69.501 General.

* * * * *

(e) Any portion of the Common Line element revenue requirement that is not assigned to Carrier Common Line elements pursuant to paragraphs (a), (b), and (c) of this section shall be apportioned between End User Common Line and Carrier Common Line pursuant to § 69.502. Such portion of the Common Line element annual revenue requirement shall be described as the base factor portion for purposes of this Subpart.