47 CFR Parts 64, 68 and 69

[CC Docket 96–128; FCC No. 96–439]

Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Final rule: order on reconsideration.

SUMMARY: On September 20, 1996, Federal Communications Commission (''Commission'') adopted a Report and Order in CC Docket No. 96–128, FCC 96–388 (61 FR 52307, October 7, 1996) implementing section 276 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (''1996 Act''). In its Order on Reconsideration in this proceeding, the Commission affirms the essential features of the policies established in the Report and Order. Additionally, the Commission modifies: The requirements for LEC tariffing of payphone services and unbundled network functionalities; and 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. The Commission also clarifies various issues addressed in the Report and Order. The Order on Reconsideration is issued to implement the provisions of section 276 of the 1996 Act.

EFFECTIVE DATES: January 13, 1997.

FOR FURTHER INFORMATION CONTACT: Michael Carowitz, 202–418–0960, Enforcement Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION: On June 4, 1996, the Commission adopted a Notice of Proposed Rulemaking (''NPRM'') [61 FR 33074, June 4, 1996] to implement section 276 of the Telecommunications Act of 1996. On September 20, 1996, the Commission adopted and released a Report and Order in CC Docket No. 96–128, FCC 96–388 [61 FR 52307, October 7, 1996]. The Commission subsequently released an Errata, making certain technical corrections to the Report and Order [61 FR 54344; October 18, 1996]. The Commission received 28 Motions requesting reconsideration and/or clarification of the Report and Order. This is a summary of the Commission's Order on Reconsideration in CC Docket No. 96–128, adopted and released on November 8, 1996. The full text of the Order on Reconsideration is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. The complete text of the Order on Reconsideration may also be purchased from the Commission's duplicating contractor, international Transcription Services, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, (202) 857–3800.

Paperwork Reduction Act

The Order on Reconsideration contains new or modified information collections. It has been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995 (PRA). The Commission has updated its September 1996 paperwork submission made for the collections contained in the Report and Order in this proceeding to OMB to reflect the new and/or modified collections in the Order on Reconsideration. OMB is asked to approve the following changes in addition to any requirements in the original submission under the rules promulgated in the Report and Order, LECs had to file tariffs with both the Commission and the state. Under the Order on Reconsideration, LECs only have to file these tariffs with the state, except for tariffs for unbundled features, which must be filed with both the Commission and the state. The Report and Order specified a certain method for calculating CCL charges. The Order on Reconsideration modifies that method. The Order on Reconsideration also requires that LECs supply to carrier-payors, on demand, a list of emergency numbers.

The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the following information collections contained in the Order on Reconsideration as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13. Written comments by the public on the proposed and/or modified information collections are due 20 days after date of publication in the Federal Register. OMB notification of action is due on December 19, 1996. Comments should address: (a) Whether the proposed or modified information collection is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: None.

Title: Implementation of the Payphone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96–128.

Form No.: N/A.

Type of Review: Revised collections.

Respondents: State, local or tribal government; business or other for-profit, including small businesses.

Section/title	No. of respondents	Est. time per response (hours)	Total annual burden (hours)
a. LEC Tariff Filings	400	100	40,000
b. Reclassification of LEC-Owned Payphones	400	100	40,000
c. LEC Provision of List of Emergency Numbers	400	1	400

Total Annual Burden: 80,400 hours. No change is anticipated for the burden estimates reported in our September 1996 filing for the LEC Tariff Flings and Reclassification of LEC-Owned Payphone collections.

Estimated Costs per Respondent: $0.

Needs and Uses: The rules adopted in CC Docket 96–128: (1) Establish a plan to ensure fair competition for each and every completed intrastate and interstate call using a payphone; (2) discontinue intrastate and interstate carrier access charge payphone service elements and payments and intrastate and interstate payphone subsidies from basic exchange services; (3) prescribe nonstructural safeguards for Bell Operating Company payphones; (4) permit the BOCs to negotiate with the payphone location provider about a payphone's presubscribed interLATA carrier; (5) permit all payphone providers to negotiate with the location provider abut a payphone's presubscribed intraLATA carrier; 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. The new and modified collections in this Order on Reconsideration are necessary to implement the provisions of section 276 of the Telecommunications Act of 1996.

Final Regulatory Flexibility Analysis

As required by section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, an Initial Regulatory

Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (NPRM) in the Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 (CC Docket No. 96–128) [61 FR 33074]. The Commission sought written public comment on the proposals in the NPRM including on the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in the Report and Order conforms to the RFA, as amended by the Contract With America Advancement Act of 1996 (CWAAA), Public Law 104–121, 110 Stat. 847 (1996).[1] The discussion below constitutes the FRFA for both the Report and Order and the Order on Reconsideration in this proceeding.

Report and Order

A. Need for and Objectives of the Report and Order and the Rules Adopted

The Commission, in compliance with section 276 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the 1996 Act), promulgates the rules in the Report and Order to promptly implement section 276 of the 1996 Act, which directs the Commission, among other things, to adopt rules that: (1) Establish a plan to ensure fair compensation for ''each and every completed intrastate and interstate call using [a] payphone[;]'' (2) discontinue intrastate and interstate carrier access charge payphone service elements and payments and intrastate and interstate payphone subsidies from basic exchange services; (3) prescribe nonstructural safeguards for Bell Operating Company (BOC) payphones; (4) permit the BOCs to negotiate with the payphone location providers to negotiate with the location provider about a payphone's presubscribed intraLATA carrier; (5) permit all payphone providers to negotiate with the location provider about a payphone's presubscribed intraLATA carrier; 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[.]''

The objective of the rules adopted in the Report and Order is ''to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public.''

[1] Subtitle II of the CWAAA is ''The Small Business Regulatory Enforcement Fairness Act of 1996'' (''SBREFA''), codified at 5 U.S.C. 601 *et seq.*

B. Analysis of Significant Issues Raised in Response to the IRFA

Summary of the Initial Regulatory Flexibility Analysis (IRFA). In the IRFA, the Commission found that the rules it proposed to adopt in this proceeding may have a significant impact on a substantial number of small business as defined by section 601(3) of the RFA. The IRFA solicited comment on alternatives to the proposed rules that would minimize the impact on small entities consistent with the objectives of this proceeding. The Commission received one comment on the potential impact on small business entities, which the Commission considered in promulgating the rules in the Report and Order. Frontier commented generally that the compensation scheme advanced in the NPRM was ''unnecessarily onerous and inefficient'' and ''in conflict with the goals of the * * * Regulatory Flexibility Act.'' Frontier did not comment specifically on what aspect of the compensation scheme would have economic impact on small business entities. The Commission disagrees with Frontier's general assertion that the compensation scheme is in conflict with the Regulatory Flexibility Act. The Commission's rules are designed to facilitate the development of competition, which benefits many small business entities. The rules will ensure that payphone services providers (PSPs), many of whom may be small business entities, receive fair compensation. The Commission's rules provide significant flexibility to permit the affected parties, including small business entities, to structure procedures that would minimize their burdens. For example, the rules require IXCs and intraLATA carriers, as primary economic beneficiary of payphone calls, to track the calls it receives from payphones. The carrier has the option of performing the function itself or contracting out these functions to another party, such as a LEC or clearinghouse. The Commission also provides a transition period. The Commission believes that its rules are designed to effectively optimize the efficiency and minimize the burdens of the compensation scheme on all parties, including small entities.

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

For the purposes of the Report and Order, the RFA defines a ''small business'' to be the same as a ''small business concern'' under the Small Business Act, 15 U.S.C. 632, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). SBA has defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, Except Radiotelephone) to be a small entity when it has fewer than 1,500 employees.

The Commission has found incumbent LECs to be ''dominant in their field of operation'' since the early 1980's, and consistently has certified under the RFA that incumbent LECs are not subject to regulatory flexibility analyses because they are not small businesses. The Commission has made similar determinations in other areas. However, in the Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Report and Order, several parties, including the SBA, commented that the Commission should have included small incumbent LECs in the IRFA pertaining to that order. The Commission recognizes SBA's special role and expertise with regard to the RFA, and intends to continue to consult with SBA outside the context of this proceeding to ensure that the Commission is fully implementing the RFA. Although it is not fully persuaded that its prior practice has been incorrect, the Commission will, nevertheless, include small incumbent LECs in this FRFA to remove any possible issue of RFA compliance. Consistent with the Commission's prior practice, it shall continue to exclude small incumbent LECs from the definition of a small entity for the purpose of this FRFA. Nevertheless, as mentioned above, it includes small incumbent LECs in the FRFA. Accordingly, use of the terms ''small entities'' and ''small businesses'' does not encompass ''small incumbent LECs.'' The term ''small incumbent LECs'' refers to any incumbent LECs that arguably might be defined by SBA as ''small business concerns.''

Telephone Companies (SIC 4813)

Total Number of Telephone Companies Affected. Many of the decisions and rules adopted in the Report and Order may have a significant effect on a substantial number of the small telephone companies identified by the SBA. The United States Bureau of the Census (the Census Bureau) reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number encompasses a broad category which contains a variety of different subsets of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not ''independently owned and operated.'' For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the Report and Order. The Commission estimates below the potential small entity telephone service firms or small incumbent LECs that may be affected by the Report and Order by service category.

Wireline Carriers and Service Providers. The SBA's definition of small entities for telephone communications companies, other than radiotelephone (wireless) companies, is one employing fewer than 1,500 persons. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, the Commission is unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, it estimates that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and rules adopted in the Report and Order.

Local Exchange Carriers. Neither the Commission nor SBA has developed a definition of small providers of local exchange services (LECs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4813). The most reliable source of information regarding the number of LECs nationwide appears to be the data the Commission collects annually in connection with the Telecommunications Relay Service (TRS). According to the most recent data, 1,347 companies reported that they were engaged in the provision of local exchange services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, the Commission is unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under SBA's definition. Consequently, it estimates that there are fewer than 1,347 small incumbent LECs that may be affected by the decisions and rules adopted in the Report and Order.

Interexchange Carriers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4813). The most reliable source of information regarding the number of IXCs nationwide appears to be the data collected annually in connection with TRS. According to the most recent data, 97 companies reported that they were engaged in the provision of interexchange services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, the Commission is unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under SBA's definition. Consequently, it estimates that there are fewer than 97 small entity IXCs that may be affected by the decisions and rules adopted in the Report and Order.

Competitive Access Providers. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of competitive access services (CAPs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4813). The most reliable source of information regarding the number of CAPs nationwide appears to be the data collected annually in connection with the TRS. According to the most recent data, 30 companies reported that they were engaged in the provision of competitive access services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, the Commission is unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under SBA's definition. Consequently, it estimates that there are fewer than 30 small entity CAPs that may be affected by the decisions and rules adopted in the Report and Order.

Operator Service Providers. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of operator services (OSPs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4813). The most reliable source of information regarding the number of operator service providers nationwide appears to be the data collected annually in connection with the TRS. According to the most recent data, 29 companies reported that they were engaged in the provision of operator services. Although it seems certain that some of these companies are not independently owned and operated, or have more than 1,500 employees, the Commission is unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under SBA's definition. Consequently, it estimates that there are fewer than 29 small entity operator service providers that may be affected by the decisions and rules adopted in the Report and Order.

Pay Telephone Operators. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of pay telephone operators nationwide appears to be the data collected annually in connection with the TRS. According to the most recent data, 197 companies reported that they were engaged in the provision of pay telephone services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, the Commission is unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under SBA's definition. Consequently, it estimates that there are fewer than 197 small entity pay telephone operators that may be affected by the decisions and rules adopted in the Report and Order.

Resellers (including debit card providers). Neither the Commission nor SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable definition under SBA rules is for all telephone communications companies (SIC 4812 and 4813). The most reliable source of information regarding the number of resellers nationwide appears to be the data collected annually in connection with the TRS. According to the most recent data, 206 companies reported that they were engaged in the resale of telephone services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, the Commission is unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under SBA's definition. Consequently, it estimates that there are fewer than 206 small entity resellers that may be affected by the decisions and rules adopted in the Report and Order.

800–Subscribers. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to 800-subscribers. The most reliable source of information regarding the number of 800-subscribers appears to be the data collected on the number of 800-numbers in use. According to the most recent data, at the end of 1995, the number of 800-numbers in use was 6,987,063. Although it seems certain that some of these subscribers are not independently owned and operated businesses, or have more than 1,500 employees, the Commission is unable at this time to estimate with greater precision the number of 800-subscribers that would qualify as small business concerns under SBA's definition. Consequently, it estimates that there are fewer than 6,987,063 small entity 800-subscribers that may be affected by the decisions and rules adopted in the Report and Order.

Location Providers. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to location providers. A location provider is the entity that is responsible for maintaining the premises upon which the payphone is physically located. Due to the fact that location providers do not fall into any specific category of business entity, it is impossible to estimate with any accuracy the number of location providers. Using several sources, however, the Commission derived a figure of 1,850,000 payphones in existence. Although it seems certain that some of these payphones are not located on property owned by location providers that are small business entities, nor does the figure take into account the possibility of multiple payphones at a single location, the Commission is unable at this time to estimate with greater precision the number of location providers that would qualify as small business concerns under SBA's definition. Consequently, it estimates that there are fewer than 1,850,000 small entity location providers that may be affected by the decisions and rules adopted in the Report and Order.

Wireless (Radiotelephone) Carriers (including paging services). The SBA's definition of a small business radiotelephone company is one employing fewer than 1,500 persons. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992. The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated. Although it seems certain that some of these carriers are not independently owned and operated, the Commission is unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, it estimates that there are fewer than 1,164 small entity radiotelephone companies that may be affected by the decisions and rules adopted in the Report and Order.

Cellular Service Carriers (including paging services). Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of cellular services. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4813). The most reliable source of information regarding the number of cellular service carriers nationwide appears to be the data collected annually in connection with the TRS. According to the most recent data, 789 companies reported that they were engaged in the provision of cellular services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, the Commission is unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under SBA's definition. Consequently, it estimates that there are fewer than 789 small entity cellular service carriers that may be affected by the decisions and rules adopted in the Report and Order.

Mobile Service Carriers (including paging services). Neither the Commission nor SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of mobile service carriers nationwide appears to be the data collected annually in connection with the TRS. According to the most recent data, 117 companies reported that they were engaged in the provision of mobile services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, the Commission is unable at this time to estimate with greater precision the number of mobile service carriers that would qualify under SBA's definition. Consequently, it estimates that there are fewer than 117 small entity mobile service carriers that may be affected by the decisions and rules adopted in the Report and Order.

Broadband PCS Licensees (including paging services). The broadband PCS spectrum is divided into six frequency blocks designated A through F. As set forth in 47 CFR 24.720(b), the Commission has defined ''small entity'' in the auctions for Blocks C and F as a firm that had average gross revenues of less than $40 million in the three previous calendar years. Its definition of a ''small entity'' in the context of broadband PCS auctions has been approved by SBA. The Commission has auctioned broadband PCS licenses in Blocks A, B, and C. It does not have sufficient data to determine how many small businesses bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. Based on this information, the Commission concludes that the number of broadband PCS licensees affected by the decisions in the Report and Order includes, at a minimum, the 90 winning bidders that qualified as small entities in the Block C broadband PCS auction.

At present, no licenses have been awarded for Blocks D, E, and F of broadband PCS spectrum. Therefore, there are no small businesses currently providing these services. However, a total of 1,479 licenses were to be awarded in the D, E, and F Block broadband PCS auctions, which was scheduled to begin on August 26, 1996. Of the 153 qualified bidders for the D, E, and F Block PCS auctions, 105 were small businesses. Eligibility for the 493 F Block licenses is limited to entrepreneurs with average gross revenues of less than $125 million. There were 114 eligible bidders for the F Block. The Commission cannot estimate, however, the number of these licenses that will be won by small entities under its definition, nor how many small entities will win D or E Block licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective D, E, and F Block licensees can be made, it assumes for purposes of this FRFA, that all of the licenses in the D, E, and F Block Broadband PCS auctions may be awarded to small entities under its rules, which may be affected by the decisions and rules adopted in the Report and Order.

SMR Licensees (including paging services). Pursuant to 47 CFR 90.814(b)(1), the Commission has defined ''small entity'' in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than $15 million in the three previous calendar years. This definition of a ''small entity'' in the context of 800 MHz and 900 MHz SMR has been approved by the SBA. The rules adopted in the Report and Order may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than $15 million. It assumes, for purposes of this IRFA, that all of the extended implementation authorizations may be held by small entities, which may be affected by the decisions and rules adopted in the Report and Order.

The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, the Commission concludes that the number of geographic area SMR licensees affected by the rule adopted in the Report and Order includes these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. However, the Commission has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis, moreover, on which to estimate how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, the Commission assumes, for purposes of this FRFA, that all of the licenses may be awarded to small entities who, thus, may be affected by the decisions in the Report and Order.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements, and Steps Taken by Agency To Minimize Significant Economic Impact on Small Entities and Small Incumbent LECs, Consistent With Stated Objectives

Structure of the Analysis. In this section of the FRFA, the Commission analyzes the projected reporting, recordkeeping, and other compliance requirements that may apply to small entities and small incumbent LECs as a result of the Report and Order. As a part of this discussion, it mentions some of the types of skills that will be needed to meet the new requirements. It also describes the steps taken to minimize the economic impact of decisions on small entities and small incumbent LECs, including the significant alternatives considered and rejected.

Fair Compensation for Each and Every Completed Intrastate and Interstate Call Originated by Payphones

Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements

Section 276(b)(1)(A) directs the Commission to ''establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone * * *.'' To implement section 276(b)(1)(A), the Report and Order requires: (i) That the market set the price for local coin calls originated by payphones; (ii) the appropriate per-call compensation amount for the service provided by independent payphone providers (PSPs) when they originate an interstate call should be the same amount the particular payphone provider charges for a local coin call; (iii) the adoption of the ''carrier pays'' compensation system, which essentially places the payment obligation of per-call compensation on the primary economic beneficiary of payphone calls; (iv) that the carrier, as the primary economic beneficiary of payphone calls, perform the tracking of calls it receives from payphones; (v) that carriers initiate an annual independent verification of their per-call tracking functions for a period of two years, to ensure that they are tracking all of the calls for which they are obligated to pay compensation; (vi) a direct billing arrangement between IXCs and intraLATA carriers and PSPs; (vii) that LECs, who maintain the list of ANIs, have the burden of resolving disputed ANIs; and (viii) that an interim compensation mechanism be set up under which PSPs are paid compensation at a flat monthly rate. Compliance with these requirements may require the use of engineering, technical, operational, accounting, billing, and legal skills.

The payphone industry appears to have the potential of being a very competitive industry once the significant subsidies and entry/exit restrictions which are presently distorting the competition are removed. However, the Commission perceives five potential areas that could have significant economic impact on small businesses and small incumbent LECs: (1) the amount of compensation paid to PSPs; (2) the ''carrier pays'' compensation system; (3) the administration of per-call compensation; (4) the direct billing arrangement between carriers and PSPs; and (5) the interim compensation mechanism.

Steps Taken To Minimize Significant Economic Impact on Small Entities and Small Incumbent LECs, and Alternatives Considered

Amount of compensation: By requiring that the market set the price for individual coin calls originated by payphones the Report and Order ensures that PSPs, many of whom may be small business entities, receive fair compensation. The Commission considered different options in deciding upon this alternative. It rejected proposals for adopting a national uniform rate of compensation for all calls using a payphone because a single, nationwide rate could jeopardize the financial viability of a majority of payphones. Rejection of this option allows for accounting for the significant variation in payphones in order to ensure the incentives to place and maintain phones in a variety of geographic areas. It also rejected proposals that certain types of calls should receive a different per-call compensation amount than others. It declined to interfere in marketplace transactions by providing for different compensation amounts for different types of calls, in instances where marketplace failures are limited or would have minimal impact on consumer welfare. It does not perceive the need to intervene in an apparently structurally competitive industry.

Many commentators, notably the IXCs, contend that marginal cost of originating a payphone call should be used as the basis for compensating PSPs. The Commission concluded that use of a marginal cost standard or any closely related TSLRIC standard would leave PSPs under compensated, because such cost standards do not permit the recovery of any of a PSPs' fixed costs, which make up the bulk of a PSP's costs. It also rejected, for similar reasons, suggestions that current local coin rates be used as a surrogate for per-call compensation. Local coin rates are not necessarily fairly compensatory. Local coin rates in some jurisdictions may not cover the marginal cost of service and therefore, would not fairly compensate the PSPs.

This ''market sets the price'' approach provides flexibility. Some PSPs may find it advantageous to set coin rates as low as $.10 per call in select locations, perhaps as promotions to enhance their brand names. PSPs in other locations may choose to set the coin rate higher, e.g. $.35 or $.40 per call. The Commission expects its action to minimize regulatory burdens, expedite and simplify negotiations, and minimize economic impacts through lower transaction costs.

The Commission rejected the proposal of RBOCs and some independent payphone providers to use AT&T O+ commissions as a measure of fair value of the service provided by independent payphone providers when they originate an interstate call. These commissions may include compensation for factors other than the use of the payphone, such as a PSP's promotion of the OSP through placards on the payphone. In the absence of reliable data, the appropriate per-call compensation amount is whatever amount the particular payphone charges for a local coin call. PSPs, IXCs, subscriber 800 carriers, and intraLATA carriers, many of whom may be small business entities, may find it advantageous to 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 because it will grant parties in the payphone industry some flexibility and allow them to take advantage of technological advances.

Payment of compensation. Various commenters, including small IXCs and paging services proposed that the Commission should adopt the ''carrier pays'' system. The Commission rejected proposals to adopt ''caller pays'' and ''set use fee'' systems, because it believe that they would involve greater transaction costs which can pose particular burdens for small businesses. It considered various alternatives to adopt the ''carrier pays'' system for per-call compensation because it places the payment obligation on the primary economic beneficiary in the least burdensome, most cost-effective manner. All carriers that receive calls from payphones are required to pay per-call compensation, whether they are IXCs or intraLATA carriers. The ''carrier pays'' system gives the carriers the broadest latitude on how to recover the costs of payphone compensation, 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, thereby involving fewer transaction costs. In addition, under the carrier pays system, individual carriers have the option of recovering either a different amount from their customers or no amount at all.

However, in the interests of administrative efficiency and lower costs, the Commission requires that facilities based carriers should pay the per-call compensation for calls received by their reseller customers. This would permit competitive facilities based carriers to negotiate contract provisions that would require the reseller to reimburse the carrier. The Commission believes its actions will expedite and simplify negotiations, minimize regulatory burdens and the impact of its decisions for all parties, including small entities.

Administration of per-call compensation. The Commission considered various proposals to determine who should provide call tracking. The Report and Order requires IXCs and intraLATA carriers, as primary economic beneficiary of payphone calls, to track the calls it receives from payphones. The carrier has the option of performing the function itself or contracting out these functions to another party, such a LEC or clearinghouse. The Commission recognizes that tracking capabilities vary from carrier to carrier and it may be appropriate for some carriers to pay compensation at a flat rate basis until per-call tracking capabilities are put into place. Neither LECs nor PSPs are primary economic beneficiaries of payphone calls and PSPs do not universally have call-tracking capabilities. However, LECs, PSPs, and carriers receiving payphone calls should be able to take advantage of each others' technological capabilities through the contracting process.

In view of current difficulties in tracking such calls, the Commission concluded that a transition period is warranted. By permitting carriers to contract out their per-call tracking responsibility, and by allowing a transition period for tracking subscriber 800 calls, it has taken appropriate steps to minimize the per-call tracking burden on small carriers. In addition, to parallel the obligation 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.

The Commission concluded that carriers should be required to initiate an annual independent verification of their per-call tracking functions for a period of two years, to ensure that they are tracking all of the calls for which they are obligated to pay compensation. This would facilitate the prompt and accurate payment of all per-call compensation. It believes these actions will foster opportunities for small entities to gain access to such information without requiring investigation or discovery proceedings, and reduce delay and transaction costs.

To establish minimal regulatory guidelines for the payphone industry regarding resolution of disputed ANIs, the Commission concluded that LECs who maintain the list of ANIs must work with both carrier-payors and PSPs to resolve disputes more efficiently and quickly for all parties concerned. This provides LECs with the incentive, which they do not currently have, to provide accurate and timely verification of ANIs for independently provided payphones. Additionally, no other party has the information more readily available. The Commission expects this action to assist all parties, including small entities, expedite and simplify negotiations, and help equalize bargaining power.

Each time a caller dials a subscriber 800 number, the PSP will also levy a charge which may be paid directly by the IXC, but will eventually be passed through to the 800 subscriber, either on a per-call basis or in the form of higher per minute rates. Establishment of the requirement that PSPs inform these subscribers of the price of the call they are deciding to accept, provide subscribers with the opportunity to accept or decline to accept the call based on the cost. Without the requirement, the PSP would have the ability to charge a high amount in the face of the subscriber's lack of information. The Commission expects its action to facilitate good faith negotiations, and minimize regulatory burdens and the impact of its decisions for all parties, including small entities.

While incumbent LECs in many jurisdictions currently do not charge payphone callers for ''411'' calls made from their own payphones, the LECs charge independent PSPs for directory assistance calls made from their phones. The PSPs are not always allowed by the state to pass those charges on to callers, which can pose particular burdens for them. In the Report and Order, the Commission concluded that, to ensure fair compensation for ''411'' and other directory assistance calls from payphones, a PSP should be permitted to charge its local coin rate for the service, although the PSP may decline to charge for this service if it chooses. In addition, it 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. The Commission believes its action will facilitate the development of competition.

The direct billing arrangement between IXCs and intraLATA carriers and PSPs adopted in the Report and Order places the burden of billing and collecting information on the parties who benefit the most from calls from payphones: carriers and PSPs. Carriers must send to each PSP a statement indicating the number of toll-free and access code calls received from that PSP's payphones. The carrier-payor has the option of using clearinghouses, similar to those that exist for access code call compensation, or to contract out the direct-billing arrangement associated with the payment of compensation. The Commission expects its action will foster opportunities for small entities to gain access to such information without requiring investigation or discovery proceedings.

Interim compensation mechanism. The Commission considered various proposals regarding the feasibility of implementing an interim compensation mechanism before final rules go into effect. Because IXCs and intraLATA carriers are not required to track individual calls until October 1, 1997, it concluded that PSPs should be paid monthly compensation on a flat monthly rate. It expects that the flat rate obligation will be of administrative convenience for all parties involved, including small businesses.

Reclassification of LEC-Owned Payphones

Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements

Section 276(b)(1)(B) directs the Commission to ''discontinue the intrastate and interstate carrier access charge payphone service elements and payments * * * and all intrastate and interstate payphone subsidies from basic exchange and exchange access revenues, in favor of a (per-call) compensation plan.'' Currently, incumbent LEC payphones, classified as part of the network, recover their costs from Carrier Common Line (CCL) charges assessed on those carriers that connect with the incumbent LEC. The Report and Order requires incumbent LECs to (1) classify their payphones as detariffed and deregulated CPE; (2) provide to PSPs nondiscriminatory access to unbundled central office coin transmission services and certain other services the LECs provide to their own payphones, and must file tariffs for central office coin services and those incumbent LECs that are not subject to price cap regulation must submit cost support for their central office coin service; (3) transfer their payphone assets to unregulated accounts or affiliates at the market value of the ''payphone going concern,'' by April 15, 1997, and obtain independent appraisal of the fair market value to submit to the Common Carrier Bureau within 180 days of the effective date of the Report and Order; and (4) reduce their interstate CCL charges by an amount equal to the interstate allocation of payphone costs currently recovered through those charges, and file revised CCL tariffs reflecting the changed rate structures. Compliance with these requirements may necessitate the use of engineering, technical, operational, accounting, billing, and legal skills.

Some of the smaller incumbent LECs may find difficult the administrative burdens of reclassifying payphones as CPE, transferring payphone assets to unregulated accounts, and filing new tariffs. Therefore, if a requesting carrier, which may be a small entity, seeks access to an incumbent LEC's unbundled elements, the requesting carrier is required to compensate the incumbent LEC for any costs incurred to provide such access.

Steps Taken To Minimize Significant Economic Impact on Small Entities and Small Incumbent LECs, and Alternatives Considered

The deregulation of LEC payphones is essential to promoting competition in the payphone industry. The Commission rejected several alternatives in making this determination, including proposals suggesting that the Commission (1) should allow smaller LECs to choose whether or not to deregulate their payphones; and (2) should impose a structural separation requirement for incumbent LEC payphones. The establishment of minimum national requirements for discontinuation of payphone subsidies from basic exchange and exchange access revenues should facilitate negotiations and reduce regulatory burdens and uncertainty for all parties, including small entities and small incumbent LECs. National requirements may also allow new entrants, including small entities, to take advantage of economies of scale.

By requiring the incumbent LECs to offer individual central office coin transmission services to PSPs on a nondiscriminatory, public, tariffed offering, new entrants, which may include small entities, should have access to the same technologies and economies of scale and scope that are available to incumbent LECs. This will permit competitive payphone providers, some of whom are small business entities, to offer payphone services using either instrument implemented ''smart payphones'' or ''dumb'' payphones that utilize central office coin services. The Commission rejected the proposal suggesting that the Commission require incumbent LECs to provide on a nondiscriminatory basis all the services that they provide to their own payphone operations or require incumbent LECs to perform joint marketing of the payphone operations of other providers. Instead, it requires only that the incumbent LEC offer the following services on a nondiscriminatory basis if it provides such services to its own payphone operations: fraud protection, special numbering assignments, and installation and maintenance of basic payphone services. Rejection of this alternative will allow small incumbent LECs to distinguish certain services from services offered by other payphone providers. The Commission's actions in this area could decrease entry barriers for small business entities and provide reasonable opportunities for all payphone service providers to provide service.

Ability of Payphone Service Providers To Negotiate With Location Providers on the Presubscribed Intralata Carrier

Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements

Section 276(b)(1)(E) directs the Commission to ''provide for all payphone service providers to have the right 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 intraLATA calls from their payphones.'' The Report and Order grants to all payphone service providers, including incumbent LECs, the right to negotiate with location providers concerning the intraLATA carriers presubscribed to their payphones. It also preempts any state regulations mandating the routing of intraLATA calls to the incumbent LEC. Compliance with these requirements should not necessitate the use of additional skills, since such skills are already used in negotiations concerning the interLATA carriers presubscribed to payphones.

Allowing all payphone service providers to negotiate with location providers concerning the intraLATA carriers presubscribed to their payphones could have a positive economic impact on payphone providers who are small business entities by allowing them flexibility to create favorable contract terms. Small incumbent LECs may suffer some negative economic impact because intraLATA calls will no longer be routinely routed to them.

Steps Taken To Minimize Significant Economic Impact on Small Entities and Small Incumbent LECs, and Alternatives Considered

State regulations that require routing of intraLATA calls to the incumbent LEC are preempted by the Report and Order, thereby creating a national rule allowing all payphone service providers to negotiate with location providers concerning the intraLATA carriers presubscribed to their payphones. A national rule should facilitate negotiations and reduce regulatory burdens and uncertainty for all parties, including small entities and small incumbent LECs. The Commission's actions in granting to all payphone providers the same ability to negotiate with location providers on the selection of the intraLATA carrier presubscribed to the payphone will facilitate the development of competition.

Requiring LECS To Provide Dialing Parity for Payphones

Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements

The Report and Order concludes that the dialing parity requirements of section 251(b)(3) should extend to all payphone location providers and that the interLATA carrier unblocking requirements established in TOCSIA should be extended to all local and long-distance calls. The Report and Order requires that the technical and timing requirements established pursuant to section 251(b)(3) and section 271(c)(2)(B) should apply equally to payphones. Compliance with these requirements may require the use of engineering, technical, and operational skills.

Requiring the LECs to extend dialing parity to payphone location providers may burden some small LECs.

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

While this requirement may burden some small LECs, such burdens are far outweighed by the benefits gained from competition among local exchange and long distance carriers, many of whom are small business entities. The Commission rejected several alternatives in making this determination, including: (1) A proposal suggesting that the states be given discretion to determine when and how dialing parity for intraLATA calls should be applied to payphones; (2) a proposal requiring LECs to provide dialing parity for payphones prior to all other phones; and (3) not altering the existing anti-blocking rules under TOCSIA. Rejection of these alternatives helps to ensure that small LECs will not be unnecessarily burdened. Furthermore, establishing a national rule should facilitate negotiations and reduce regulatory burdens and uncertainty for all parties, including small entities and small incumbent LECs.

E. Commission's Outreach Efforts to Learn of and Respond to the Views of Small Entities Pursuant to 5 U.S.C. 609

The Commission staff conducted several *ex parte* meetings with numerous outside parties and their counsel, several of whom may qualify as small business entities, during the pendency of the rulemaking to identify and discuss various aspects of the implementation of section 276. For example, the Commission received *ex parte* suggestions and comments from the American Public Communications Council, a trade association that represents independent payphone providers, many of whom qualify as small business entities. It has attempted, to the furthest possible extent, to take into account as many of these concerns as possible in promulgating the rules contained in the Report and Order.

F. Report to Congress

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

Order on Reconsideration

The following Final Regulatory Flexibility Analysis on Reconsideration (FRFA on Reconsideration) addresses only those issues that the Commission modified in the Order on Reconsideration in 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. The Commission also incorporates by reference the Report and Order released on September 20, 1996, CC Docket No. 96–128, 91–35, FCC 96–388 (61 FR 52307, October 7, 1996), and the Final Regulatory Flexibility Analysis (FRFA).

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

The Order on Reconsideration requires no changes to the FRFA in the original Report and Order.

The objective of the rules adopted in the 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.'' 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

No party sought reconsideration of the FRFA in this proceeding. The National

Telephone Cooperative Association (NTCA), however, requested 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 asked for reconsideration of the decision to require federal tariffing. Moreover, NTCA also requested 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.

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

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

4. Tariffing Requirements for Unbundling of Payphone Services

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

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. 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

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.

5. Amendments to Part 69

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

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. The 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 § 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 § 61.46(d). 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

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.

6. Report to Congress

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).

Summary of Order on Reconsideration

I. Background

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’’). 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) discontinue intrastate and interstate carrier access charge payphone service elements and payments and intrastate and interstate payphone subsidies from basic exchange services; (3) prescribe nonstructural safeguards for Bell Operating Company (‘‘BOC’’) payphones; (4) permit the BOCs to negotiate with payphone location providers on the interLATA carrier presubscribed to their payphones; (5) permit all payphone service providers to negotiate with location providers on the intraLATA carrier presubscribed to their payphones; 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[.]’’

2. In the Report and Order, the Commission noted that the 1996 Act fundamentally changes telecommunications regulation. The Commission 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.’’ To this end, the Commission advanced the twin goals of section 276 of the 1996 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 * * *''. The Commission 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, the Commission 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, the Commission concluded that it 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 adopted in the Report and Order. These petitions focused on the Commission's conclusions regarding 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 the Order on Reconsideration, the Commission addresses each of these issues and concludes that the petitions for reconsideration should be denied, with two limited exceptions, because it finds that the petitions contain no new evidence or arguments not contemplated by the conclusions in the Report and Order. On two issues, the Commission grants requests for reconsideration and modifies: (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. The Commission also clarifies several issues addressed in the Report and Order.

II. Issues

A. Compensation for Each and Every Completed Intrastate and Interstate Call Originated by Payphones

i. Payphone Calls Subject to This Rulemaking and Compensation Amount

4. *Defining Fair Compensation.* The Commission denies requests that it reconsider its conclusions in the Report and Order about the existence of a competitive payphone marketplace. The Commission concludes that the policies it 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, it provided in the Report and Order for a transition period before market-based pricing becomes effective. During this transition period, ''states may continue to set the local coin rate in the same manner as they currently do.'' After this transition period, the Commission may, at its option, ''ascertain the status of competition in the payphone marketplace,'' and states may recommend possible market failures to the Commission for investigation. The Commission concludes that, while the payphone marketplace may not be currently fully competitive, the rules adopted in the Report and Order will bring about competition, and the phased-in approach to market-based pricing will allow all parties to make the appropriate adjustments over time. In addition, it concludes that by monitoring the status of competition in the payphone marketplace, and by allowing states to refer potential market failures to it, it has 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, it rejects arguments by some petitioners that all payphones will become individual unregulated monopolies with monopoly-level pricing.

5. *Ensuring Fair Compensation.* The Commission disagrees with MCI that its 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, it 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 payphone service provider (''PSP''). Second, it finds 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 operator service provider (''OSP''). Third, it concludes 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.'' Finally, it notes 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, the Commission concludes that its 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 it 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, it denies MCI's request for reconsideration of this requirement.

6. In response to the RBOCs' request that it clarify that the BOCs are able to collect per-call compensation for 0+ calls originated from BOC inmate payphones, the Commission concludes that such per-call compensation is warranted when the BOCs do not otherwise receive compensation pursuant to a contract. This clarification is consistent with the conclusion that BOCs should receive per-call compensation on 0+ calls from their payphones in the absence of receiving compensation under a contract. In addition, the clarification is consistent with its 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. The Commission also clarifies 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, the Commission declines to require that LECs 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.

7. The Commission concluded in the Report and Order that it has 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. The Commission notes that it has relied upon its authority under these two sections of the Act, because it had concluded that there was ''no evidence of congressional intent to leave these calls uncompensated under Section 276.'' In addition, it found that a payphone performs similar functions in originating a call, regardless of the call's destination. Therefore, it concludes that its 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 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, the Commission concludes that carriers and PSPs may negotiate differing compensation amounts, which take into account varying costs, for different types of calls.

8. *Completed Calls.* Because it would be an interpretation inconsistent with its responsibility under section 276, the Commission denies 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. It had concluded in the Report and Order that, to comply with its 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.'' Although Cable & Wireless states that this approach is technically difficult, the Commission notes 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.

9. The Commission declines 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, the Commission concludes that PSPs are better equipped to take the necessary steps, including posting notices, to educate callers at their payphones and protect their equipment. The Commission also declines to reconsider its conclusion, as urged by AirTouch, that carriers are permitted to block calls originated by payphones. It concludes 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. The Commission declines to require the PSP to provide a coin-deposit mechanism for calls that are blocked by carriers.

10. The Commission disagrees 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 the Commission's conclusion in the Report and Order that incoming calls need not be compensated because they can be blocked. First, the Commission 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. In contrast, there was no showing that the average payphone necessarily receives any incoming calls in a typical month. Second, while the Commission recognized in the Report and Order that carriers are permitted to block subscriber 800 calls, it did not address blocking of subscriber 800 calls by PSPs. It notes, however, that, if a PSP blocks access code calls (including 1–800 access numbers), it is in violation of its rules under Telephone Operator Consumer Services Improvement Act (''TOCSIA''). Third, the Commission concluded in the Report and Order that section 276's mandate that it provide fair compensation for ''each and every completed intrastate and interstate call'' requires it to provide such compensation for subscriber 800 calls. For these reasons, the Commission rejects MCI's request that it reconsider its decision to compensate subscriber 800 calls.

11. *Local Coin Calls.* The Commission finds that 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'' and, more specifically, to ensure fair compensation for ''each and every completed intrastate and interstate call.'' In enacting section 276 after section 2(b), and squarely addressing the issue of interstate and intrastate jurisdiction, 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, and 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.'' Congress gave the Commission the requisite authority in section 276 and directed us to adopt a comprehensive compensation plan for payphones, and it 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.'' Contrary to an argument by Maine, the Commission concludes that section 276(c) eliminates any question about its authority to adopt a particular compensation plan, even if it contradicts existing state regulations. It finds that Congress's use of the term ''compensation'' instead of ''rates'', as argued by Maine, did not limit its authority to address local coin rates. It concludes that, because Congress gave it 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, the Commission denies all petitions for reconsideration that have as their basis arguments that the Commission lacks jurisdiction to deregulate local coin rates, or that the Commission's action constitutes unwarranted preemption.

12. The Commission also rejects 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 1996 Act concerning forbearance applies. It concludes 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, it concludes that it did not forebear from imposing regulation and are not required to conduct the forbearance analysis required by section 10.

13. Because section 276 gives the Commission jurisdiction to ensure fair compensation for ''each and every completed call'' originated by payphones, the Commission concludes that it has jurisdiction to impose a market-based rate for intrastate directory assistance calls from payphones. It also clarifies 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 the 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, it concludes 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.

14. The Commission concludes that, contrary to arguments by certain states, it gave adequate notice to interested parties, in accordance with the Administrative Procedures Act, that it was contemplating action concerning local coin rates. It concludes further that this notice was broad enough to encompass the option it ultimately adopted: the determination that the market should set the per-call rate for local coin calls at each payphone. In the Notice, the Commission 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.'' The Commission then discussed a number of possible options within that range, including setting a nationwide local coin rate. The use of the term ''range'' was an indication that its 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. It concludes that letting the market set local coin rates was within the range of options on which it sought comment and a logical outgrowth from soliciting comment on ''how we should exercise our jurisdiction under Section 276'' with regard to local coin rates. It notes that various parties responding to the Notice addressed the issue of Commission jurisdiction over local coin rates in their comments.

15. In the Report and Order, the Commission stated that ''the market * * * is best able to set the appropriate price for payphone calls in the long term.'' It concludes that the record contained 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, it denies requests that it reconsider its conclusions about local coin rates because of arguments by petitioners that there is no evidence that local coin rates are not fairly compensatory. It also rejects 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, the Commission concludes that market-based pricing will result in a greater availability of payphones at more economically efficient prices, which will ultimately benefit callers.

16. 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. The Commission declines both to reconsider its conclusions and to make the modifications suggested by the states. It concludes that the Report and Order adequately addresses the possibility of market failures that would lead to local coin rates that are not reasonable. It made 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. Because the Commission intended the exception to be a limited one, however, it concludes that a state's showing would have to be detailed and likely the result of a state proceeding that itself examined the market failure.

17. *Payphone Fraud.* A number of petitioners request that the Commission reconsider its conclusions about payphone fraud and take steps to reduce the risk of fraud. In the Report and Order, the Commission stated that ''[w]e will aggressively take action against those involved in such fraud'' and detailed how we would proceed to address fraudulent practices.'' Without any specific factual circumstances before it, the Commission declines to take further steps that could be both costly and burdensome to all parties involved in payphone compensation. It states that it will continue, however, to monitor developments in this area and respond to specific requests for intervention from carriers or PSPs.

18. In response to requests that it reconsider its conclusions about the definition of ''payphone,'' the Commission clarifies that for the first year of the payphone compensation mechanism, when compensation is paid on a flat-rate basis, the definition of ''payphone,'' for compensation purposes, will be the one established in CC Docket No. 91–35, along with the alternative verification procedures. Once per-call compensation becomes effective, the Commission clarifies that, to be eligible for such compensation, 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. Each payphone must transmit coding digits that specifically identify it as a payphone, and not merely as a restricted line. It also clarifies that LECs must make available to PSPs, on a tariffed basis, such coding digits as a part of the ANI for each payphone. The Commission declines to require PSPs to use customer-owned, coin-operated telephone (''COCOT'') lines, as suggested by the RBOCs, because it previously found that COCOT service is not available in all jurisdictions.

19. More generally, as it 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.'' It clarifies that this definition of ''payphone'' excludes from the compensation mechanism phones in hotel rooms, dormitory rooms, or hospital rooms. It also concludes that, 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.

20. *Compensation Amount.* The Commission denies all requests for reconsideration of the per-call compensation amount that it 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 Congress could have directed it 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. The Commission 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.'' In the Order on Reconsideration, the Commission concludes that the cost-based total element long run incremental cost (''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. It notes 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 it concluded in the Report and Order, the Commission finds that the payphone industry is likely to become increasingly competitive. It also rejects 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, the Commission states that a cost-based 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 the Commission ''promote the widespread deployment of payphone services to the benefit of the general public.''

21. More specifically, in denying all requests for reconsideration of the per-call compensation amount that it adopted in the Report and Order, the Commission rejects the arguments that the per-call compensation amount adopted in the Report and Order is inconsistent with the cost based approach the Commission established in the local competition proceeding. It concludes 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.

22. Second, the Commission concludes that Congress's use of the phrase ''* * * payphone service providers are fairly compensated for each and every completed interstate and intrastate call * * * '' is a different standard than the cost based standard articulated for the compensation for interconnection and unbundled elements. It concludes that the PSP will be providing a competitive service (payphone use) and should therefore receive compensation equal to the market-determined rate for proving this service. As it 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, the Commission 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, led it to conclude that it can rely on market forces to provide for efficient pricing of these services in the near future.

23. 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. Commenters argue that the Commission should apply a total service long-run incremental cost (''TSLRIC'') 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.

24. The Commission also denies a request that it reconsider its compensation rules because the Commission did not mandate a uniform per-call compensation amount of $.90 to $1.50 for each compensable call. Under the approach it 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 be some variation in compensation amounts from location to location. It also denies Sprint's request that it 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 the Commission's responsibility under the statute to ensure fair compensation for all payphone calls.

25. 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. The Commission disagrees. In the Report and Order, it found that the costs of originating the various types of payphone calls are similar. If there are significant cost differences between local coin calls and other types of calls,

however, it concludes that, over time, the market will address these differences and dictate appropriate per-call compensation amounts for each type of payphone call. The Commission also concludes 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, it 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. It concludes 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, the Commission denies those requests for reconsideration that are premised on the local coin rate being an inappropriate default compensation amount. It also declines 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.

26. The Commission denies 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 intraLATA calls. The Commission notes 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.'' In the Report and Order, it elected to treat inmate payphones in the same manner as all other payphones, including semi-public payphones. 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. 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 the Commission 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 the statutory obligation to provide fair compensation is satisfied. It notes 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 borne both by the Commission 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.

27. 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 the Commission should not preempt forms of compensation that are outside the scope of our compensation rules. The Commission concludes 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, 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 the Commission's rules, that party may file a petition for a declaratory ruling, and the Commission will evaluate the state compensation regulation at that time. Accordingly, the Commission declines to make the clarification requested by AT&T and MCI.

ii. Entities Required To Pay Compensation

28. As it stated in the Report and Order, the Commission concludes that of the two approaches initially proposed in the Notice, 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.'' 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, the Commission concludes that it is the called party that receives greater economic benefit from the payphone call than the calling party. The Commission concludes that the interexchange carrier (''IXC'') can best pass on, in the most cost effective manner, any charges for compensable calls to the appropriate customer. Therefore, it rejects the caller-pays, coin-deposit approach to compensation, as proposed by commenters, because it would unduly burden transient payphone callers. The Commission also notes that TOCSIA prohibits it from prescribing that approach for interstate access code calls. Contrary to the arguments raised by petitioners, it concludes that its 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. It notes that coinless calling, including use of coinless payphones, has proliferated in recent years. It concludes 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. The Commission concludes further that the ability to make coinless calls from payphones is a convenience that transient callers value.

29. While the prohibition in TOCSIA against advance payment by callers, as cited in the Report and Order, does not apply to subscriber 800 calls and, therefore, is not dispositive, the Commission concludes that the statute's direction that it avoid prescribing such a payment mechanism for a particular class of payphone calls (*i.e.* interstate access code calls) is consistent with the Commission's 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. 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. While this provision of the Act does not expressly apply to PSPs, the Commission concludes 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. In addition to the foregoing reasons, the Commission concludes that it would be unduly burdensome and costly to mandate 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.

30. With regard to arguments by AT&T and Sprint that the Commission adopt a set-use fee that could be billed by carriers as agents for PSPs, the Commission concludes that its 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. The Commission 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.'' The Commission concludes 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.

31. In the Report and Order, the Commission stated that ''[a]lthough some commenters would have the Commission limit the ways in which carriers could recover the cost of per-call compensation, it concluded that the marketplace will determine, over time, the appropriate options for recovering these costs.'' It concluded that this approach is necessary to give carriers the most flexibility in recovering their costs. For this reason, the Commission declines to adopt PageNet's proposal that the Commission 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, the Commission notes that these petitions do not contain specific data showing the volume of calls the paging companies receive from payphones. Therefore, it concludes that these claims are unsubstantiated and the possible costs and burdens unknown. It also rejects proposals that it increase the SLC as a means of spreading the cost of compensation over all callers. It 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 the cost causer.'' While the public is indeed a beneficiary of payphone calls generally, the primary economic beneficiary of a particular compensable payphone call is the carrier that carries the call.

32. In the Report and Order, the Commission 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[.]'' Some IXCs argue in response that the Commission should, concurrent with its 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. The Commission concludes 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. It concludes, however, that it should clarify its conclusion in the Report and Order concerning which carriers are required to pay compensation and provide for per-call tracking. It clarifies 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 it 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, the underlying carrier remains obligated to pay compensation to the PSP in lieu of its customer that does not maintain a switching capability.

iii. Ability of Carriers To Track Calls From Payphones

33. In the Report and Order, the Commission 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.'' It 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.'' During the period before per-call tracking becomes mandatory, the Commission concludes in the Order on Reconsideration 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, it declines to modify the per-call tracking requirements set forth in the Report and Order and concludes that carriers should meet their per-call tracking obligations, if they are not otherwise technically able, through contracts with other entities.

iv. Administration of Per-Call Compensation

34. Some IXCs 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. The Commission disagrees. While there are expenses associated with administering the compensation rules, the Commission concludes 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 the Commission's decision to let the market set the appropriate per-call compensation amount for compensable calls, it notes that for the first two years of the compensation mechanism established by its rules, the carrier-payors will not be required to pay per-call compensation in varying amounts. 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, the Commission declines to modify its per-call

compensation rules as requested. It concludes 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.

35. In the Report and Order, the Commission concluded, in response to an argument that we require compensation to be paid on a monthly basis, that it should ''leave the details associated with the administration of this compensation mechanism to the parties to determine for themselves through mutual agreement.'' Therefore, it declines to mandate a particular period for paying compensation, including penalties for late payments, and concludes 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.

36. With regard to MCI's argument that the Commission reconsider its conclusion that PSPs may submit bills for compensation for one year after the end of the compensation period in questions, the Commission concludes, as it did in the Report and Order, 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 the Commission should reconsider its 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. The Commission concludes that while the statute of limitations for bringing a complaint before the Commission is set by the Act, it is within its discretion to define the point at which the compensation claim becomes ripe for a complaint. Therefore, as it concluded in the Report and Order, it finds 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.''

v. Interim Compensation Mechanism

37. A number of IXCs argue that the interim compensation rules are discriminatory because they exclude LECs and small IXCs at the expense of the large IXCs. The Commission notes that once per-call compensation becomes effective, all carriers, including small IXCs 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 it did in the access code compensation proceeding, the Commission excludes small carriers with annual toll revenues under $100 million, because ''IXCs earning less than $100 million in toll revenues per year collectively account for less than five percent of long-distance carrier toll revenues.'' It also excludes 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. Thus, because the interim flat-rate compensation mechanism was adopted for a finite, transitional period, the Commission declines to modify its rule to include additional carriers, as suggested by the IXCs. 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. The Commission delegates 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.

38. With regard to AT&T's argument that interim compensation should not apply to low-usage and semi-public payphones, the Commission notes that it concluded in the Report and Order that PSPs will be allowed to receive per-call compensation for calls originated by semi-public payphones. For the reasons indicated in the Report and Order, the Commission concludes 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 the Commission to treat so-called ''low-usage'' payphones differently than other payphones, it concludes that flat-rate interim compensation applies to all payphones, regardless if they are considered to be ''low-usage'' payphones. The Commission notes that the call volume data upon which it 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. Its estimate of 131 compensable calls originated by each payphone each month is an average for each payphone; some payphones will originate more than 131 calls, while others will originate less. In sum, the Commission concludes that the level of interim compensation already takes into account the varying call volumes from payphones.

39. The Commission denies 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, 1997. Although Cable & Wireless argues that it currently does not have a system in place for paying such compensation to PSPs, the Commission notes 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 1996 Act 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. Because the 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, the Commission denies Cable & Wireless's motion.

40. The Commission denies a request that it require those IXCs that are currently able to pay per-call compensation to begin to do so immediately. The Commission has provided IXCs with a one-year period to implement a per-call tracking and compensation mechanism. In the interim, the Commission dated 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, it declines to modify its rules to require some IXCs to pay per-call compensation for all or some calls under the interim compensation mechanism. It concludes 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 the Commission for waiver and receive an approval before implementing such an arrangement. The Commission delegates the requisite authority to the Chief, Common Carrier Bureau, to determine whether any such waivers from its interim flat-rate compensation mechanism in the instant proceeding should be granted.

41. 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. The Commission clarifies that the LECs may complete all of the steps necessary to receive compensation by April 15, 1997. In this regard, it recognizes that LECs may be in different positions with regard to the actions required to comply with the requirements established in the Report and Order. It also recognizes that there are benefits to moving quickly to the more competitive payphone market structure that it seeks to establish. The Commission states that it must be cautious, however, to ensure that LECs comply with the requirements set forth in the Report and Order. Accordingly, the Commission concludes that LECs will be eligible for compensation like other PSPs when they have completed the requirements for implementing its 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 in the Order on Reconsideration, 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 carrier common line (''CCL'') tariff reflecting a reduction for deregulated payphone costs and reflecting additional multiline subscriber line charge (''SLC'') revenue; (3) it has effective intrastate 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. The Commission clarifies that the requirements of the Report and Order apply to inmate payphones that were deregulated in an earlier order. As the requirements of the Report and Order become due, LECs must comply with those requirements for all payphones, including inmate payphones.

42. 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. The Commission delegates 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.

vi. Barriers to Entry and Exit

43. As it stated in the Report and Order, the Commission's ultimate goal in this proceeding is to ensure the wide deployment of payphones through the development of a competitive payphone industry. To achieve this goal, it 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 directed the removal of subsidies to payphones, provided for nondiscriminatory access to bottleneck facilities, ensured compensation for all calls from payphones, and allowed all competitors an equal opportunity to compete for essential aspects of the payphone business. In particular, the Commission 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. The Commission concludes on reconsideration 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.'' It also concludes 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 * * *'' In short, burdensome state entry and exit requirements would be inconsistent with the rules the Commission has 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, the Commission expresses satisfaction that its directive to the states to eliminate such burdens is within the preemption authority granted to it by Congress in section 276(c). Accordingly, it denies requests by the states that it reconsider its conclusions in that regard.

44. While it recognizes the concerns expressed by the states, the Commission finds that none of the actions it took to ensure a competitive payphone industry is inconsistent with, or infringes upon, the states' 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 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. 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, the Commission stated in the Report and Order that states need remove or modify only ''those regulations that affect payphone competition[.]'' The

Commission notes, 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.'' It emphasizes 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.

45. 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. California argues that these restrictions would limit the states' ability to provide for the welfare of their residents. The Commission disagrees, explaining that 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. 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. Such a requirement would neither be competitively neutral, nor ensure fair compensation to the PSP as required by the 1996 Act. A state may, however, enter into a voluntary agreement with a PSP at mutually agreeable terms for the provision of such service.

B. Reclassification of Incumbent LEC-Owned Payphones

46. 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) 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.

i. Classification of LEC Payphones as CPE

a. *CPE Deregulation.* 47. In the Report and Order, the Commission 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 addition, the Commission concluded that AT&T payphones must be deregulated, detariffed, and treated as CPE.

b. *Unbundling of Payphone Services.* 48. Petitions for reconsideration requested that the Commission reconsider its requirement that LECs file federal tariffs for payphone services. In the Order on Reconsideration the Commission modifies the tariffing requirement. 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.'' To implement this requirement, in the Report and Order the Commission 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. Federal tariffing enables the Commission to directly ensure that payphone services comply with section 276. In Computer III and ONA, the Commission included both state and federal tariffing requirements. The Commission's requirement in the Report and Order for federal tariffing was consistent with section 276, Computer III and ONA. The Commission did not, in the Report and Order, preclude states from requiring the tariffing of payphone services. Consistent with this conclusion, the Commission provided that states could require further unbundling of payphone services than those required in the Report and Order. Although the Commission disagrees with petitioners regarding its authority to require federal tariffing of payphone services, on reconsideration the Commission modifies the federally tariffing requirement as discussed below. 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 states. 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. The Commission states that those unbundled features or functions must be tariffed in the state and federal jurisdiction, and that 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.

49. In the Order on Reconsideration, the Commission requires 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. 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. LECs are not required to file tariffs for the basic payphone line for smart and dumb payphones with the Commission. The Commission 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 in the Order on Reconsideration, 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 the Order on Reconsideration, the Report and Order, and section 276, conclude: (1) That existing tariffs are consistent with the requirements of the Report and Order as revised in the Order on Reconsideration; and (2) that in such case no further filings are required. The Commission delegates 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.

50. In the Report and Order the Commission provided a waiver of the notification period of Computer II and Computer III network information disclosure requirements with which BOCs may be required to comply pursuant to the requirements of the Report and Order. In the Order on Reconsideration, consistent with the clarification above that LECs may comply with all the requirements of the Report and Order by April 15, 1997, the Commission also clarifies that the waiver of the network information disclosure requirements to allow a minimum three month period for notification of payphone service and related unbundled features tariffs is also granted if BOCs file those tariffs earlier than the January 15, 1997 date. The Commission clarifies further that the waiver provided in the Report and Order and in the Order on Reconsideration is only effective for payphone tariffs to comply with these requirements 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.

51. On reconsideration, the Commission declines to require further unbundling of payphone services beyond those established in the Report and Order. The Commission clarifies 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. In the Report and Order, the Commission did not create a similar requirement for LECs other than BOCs to provide unbundled network functionalities requested by independent payphone providers. However, as discussed in the Order on Reconsideration, 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.

c. *Other Payphone Services*. 52. In the *Order on Reconsideration,* the Commission clarifies 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. The Commission declines 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. The Commission also declines to require the LECs to joint market for independent payphone providers. The Commission states that it has not required joint marketing in Computer III, which also required nondiscriminatory access to BOC services.

d. *Registration and Demarcation Point for Payphones*. 53. As requested by the RBOC Coalition, the Commission clarifies that its 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. The Commission notes that this conclusion is consistent with the Commission's rules at 47 CFR 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.'' The Commission requires that LECs must treat independent payphone providers in a nondiscriminatory manner with regard to such flexible placement.

54. The Commission delegates to the Chief, Common Carrier Bureau, the authority to establish any specific requirements associated with the existing payphone equipment the Commission grandfathered from registration requirements under section 68.2 in the Report and Order.

ii. Reclassification or Transfer of Payphone Equipment to Nonregulated Status

55. The Commission reaffirms its conclusions in the Report and Order regarding payphone asset valuation and accounting issues. The Report and Order addressed the issues that were 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, the Commission's 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. Pursuant to these long-standing cost allocation rules, carriers are not required to ''write-up'' payphone assets when they are reclassified as nonregulated assets. The Commission concludes that APCC raised no new arguments in either its petition or comments that contradict the conclusions in the Report and Order.

56. The Commission reaffirms its conclusions with respect to asset valuation when a BOC or a LEC transfers payphone assets to an affiliate. The Commission states that it does not believe, however, that the RBOC Coalition, BellSouth, SW Bell, and Ameritech raise an issue that it must clarify on reconsideration. The Commission states that those petitioners agree with the Commission that, if payphone assets are transferred from the carrier to an affiliate, the affiliate transactions rules must apply, and that under the Commission's rules, the transferred assets must be valued at the higher of fair market value or net book value. The petitioners disagree, however, with the Commission's determination that fair market value of assets transferred includes intangible assets that are not recorded on the carrier's regulated books. Some of these petitioners cited the Joint Cost Reconsideration Order and a 1988 Ameritech Cost Allocation Manual Review Order as authority for their contention. The Commission disagrees with the petitioners for the reasons discussed below.

57. In the Report and Order, the Commission stated that, if a carrier

transferred its payphone assets to an affiliate, the transaction would be governed by the Commission's affiliate transactions rules. Accordingly, the payphone asset transfer would be recorded on the carrier's books at the higher of fair market value or net book value. The Commission 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.'' The Commission 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. The Commission clarifies this latter point.

58. The Commission reiterates in the Order on Reconsideration, that it continues 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 on reconsideration focused 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. The Commission clarifies that the answer depends on the nature of the transfer itself.

59. The Commission 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. 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. The Commission further states in the Report and Order, and the Order on Reconsideration, that the value of the carrier's brand name should not be included in the fair market value computation. 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.

60. The Commission states that it did not envision in the Report and Order that a carrier would transfer only the physical assets themselves, but it discusses that situation in the Order on Reconsideration. 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.

61. The Commission states that the conclusions in the Report and Order and in the Order on Reconsideration are consistent with its affiliate transactions rules and do not reflect any change in those rules. The Commission states that its 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 to the affiliate. 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. 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. 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.

62. In the Order on Reconsideration the Commission states that it agrees 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 the Commission 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. The Commission thus concludes in the Order on Reconsideration that such intangible assets should not be included in the determination of fair market value. The Commission states that this determination is consistent with existing Commission rules and the Ameritech CAM Order.

63. The Commission disagrees 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. 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.

64. The Commission states that it does not see any 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, the Commission concludes that these types of intangible benefits are distinguishable from the going concern value generated by the location contracts of the payphone assets. The Commission thus concludes that it did nothing in the Report and Order that conflicted with existing

Commission rules, nor deviated from either the Joint Cost Reconsideration Order or the Ameritech CAM Order.

iii. Termination of Access Charge Compensation and Other Subsidies

65. 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. The Order on Reconsideration addresses petitions seeking clarification of the method of revising CCL charges under price cap rules, and provides some modifications.

66. The Commission denies USTA's request regarding § 61.45(d)(1)(vi). The Commission indicates that it stated clearly in the Report and Order that LECs are required to transfer payphone set costs from regulated to nonregulated accounts pursuant to § 64.901 and other applicable rules. 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.'' The Commission concludes USTA has not provided any reasonable basis for construing § 61.45(d)(1)(v) to be inapplicable.

67. USTA seeks clarification of the procedure for LECs to use in removing from the CCL charges the deregulated payphone costs described in § 69.501(d) of the rules. 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 price cap index (''PCI'') by that percentage. USTA maintains that costs associated with payphone lines identified by § 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 § 69.501(d) should remain as part of the LEC's regulated operations, and thus supports USTA's position.

68. 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. 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.

69. The Commission agrees that LECs should subtract the payphone costs described in § 69.501(d) associated with payphone lines, prior to developing the payphone cost allocator. The Commission therefore clarifies and revises the exogenous cost adjustment mechanism it adopted in paragraph 185 of the Report and Order, and requires LECs to subtract the costs of lines associated with payphones from the costs described in § 69.501(d), prior to calculating their payphone cost allocator. The Commission further agrees 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. The Commission states that LECs proposing to subtract payphone line costs or inmate payphone costs from § 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.

70. 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 costs such as the cost of the local network used for payphone service and local business office expense. BellSouth maintains that local network and local business associated with the payphone lines should not be reclassified as nonregulated. The Commission agrees with Sprint that there are non-equipment, local and network costs attributable to payphone set cost and concludes that the exogenous cost adjustment, as modified, removes an adequate amount of such interstate overhead costs from the LEC's common line charges. The Commission also agrees with BellSouth that line cost should not be reclassified, and concludes that this is clearly stated in the Report and Order.

71. 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. The RBOC Coalition supports USTA's methodology. Similarly, AT&T maintains that LECs should reduce CCL charges by an amount equal to the additional SLC revenue. 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.

72. The Commission agrees that application of multiline SLCs to payphone lines is a restructure pursuant to § 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 § 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.

73. 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 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.

74. 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. 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. BellSouth contends there is no subsidization, because the SLC serves the purpose of recovering regulated costs associated with payphone lines. The Commission agrees 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.

75. Finally, The Commission revises the rules regarding the recovery of common line costs. The Commission revises Part 69 of its rules to reflect the changes.

C. Nonstructural Safeguards for BOC Provision of Payphone Service

76. In response to the request from the RBOC Coalition that the Commission clarify that the Report and Order preempts inconsistent nonstructural safeguards, the Commission notes in the Order on Reconsideration that section 276(c) provides for such preemption. The Commission clarifies that the Report and Order does preempt nonstructural safeguards that are inconsistent with those established in the Report and Order. In that order, the Commission specifically preempted any structural separation requirements for the LEC provision of payphone service because it concluded that such requirements are inconsistent with section 276. With regard to other nonstructural safeguards, the Commission noted that it applied the Computer III and ONA safeguards to the provision of payphone service by the BOCs. Although the Commission declined to apply these same safeguards to the nonBOC LECs, the Commission indicated that it did not preempt the states from imposing nonstructural safeguards that are no more stringent than those the Commission imposed on the BOCs. In the Computer III proceeding the Commission addressed when state nonstructural safeguards would be inconsistent with Computer III. The Commission addressed such preemption of state requirements with regard to jurisdictionally-mixed enhanced services in Computer III. In the Order on Reconsideration, the Commission adopts that analysis for preemption of state payphone service nonstructural safeguards that are inconsistent with the Report and Order. The Commission concludes 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. The Commission has previously addressed state regulations that may conflict with the Computer III network disclosure and CPNI requirements. In the Order on Reconsideration, the Commission adopts that analysis for clarifying when state requirements would be inconsistent with those requirements, although the Commission notes 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.

77. The Commission clarifies 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.

78. With regard to CEI Plans for payphone service, in the Order on Reconsideration, the Commission clarifies 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, the Commission delegates the authority to review CEI plans to the Chief, Common Carrier Bureau. The Commission states that it anticipates 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 the Order on Reconsideration.

D. Ability of BOCs To Negotiate With Location Providers on the Presubscribed Interlata Carrier

79. *InterLATA Presubscription*. The Commission denies BellSouth's request to reconsider or clarify whether BOCs may engage in branding of interLATA service for its payphones. The Commission concludes that nothing in section 276(b)(1)(D) of the 1996 Act authorizes BOCs to engage in branding, or ''packaging,'' of interLATA service. The Commission explains that section 276(b)(1)(D) does not place BOCs on an equal footing with independent PSPs in every conceivable regard. Rather, that section is, by its own terms, limited to BOCs ''negotiating'' with location providers with respect to the location providers' ''selecting and contracting'' for interLATA service to their payphones. In the Report and Order, the Commission 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. The Commission finds that the same reasoning refutes BellSouth's argument that 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. The Commission adds that if Congress had intended such a broad grant of authority, it would not have included such specific limiting language in the statute. The Commission also notes 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, as well as inconsistent with the requirements of section 271 of the 1996 Act.

80. *Contracts*. The Commission declines AT&T's request that it 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. The Commission believes that this issue was satisfactorily addressed in the Report and Order.

81. The Commission concludes that contracts entered into pursuant to the grant of authority in section 276(b)(1)(D), but 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 the proceeding. The Commission explains that 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. 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. In carrying out this responsibility, the Commission 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. The Commission finds that full compliance with these precautions is necessary to ensure the BOCs are not acting in an anticompetitive manner in the provision of these services and, ultimately, to protect the interests of the public. The Commission states that its 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. The Commission concludes that, while it is not in a position to declare null and void specific contracts that it has not determined to be unlawful, it will review any complaints concerning such contracts in light of this policy.

E. Ability of Payphone Service Providers to Negotiate With Location Providers on the Presubscribed Intralata Carrier

82. The Commission clarifies that, for purposes of the rules implementing section 276(b)(1)(E) of the 1996 Act, intraLATA calls include local calls. The Commission agrees with the reasoning presented by APCC that the policies supporting free competition in intraLATA presubscription are equally applicable to local calls.

83. The Commission declines, however, to reconsider its 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. As the Commission stated in the Report and Order, it does 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. The Commission notes that states may impose reasonable requirements on the exercise of these rights, especially for purposes of ensuring public health and safety. Accordingly, it is 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

84. The Commission denies APCC's request that the definition of public interest payphones be modified to exclude payphones located within 200 yards of another payphone. Besides lacking any basis in the record for specifying a particular distance restriction, the Commission finds that such a requirement would unnecessarily restrict the states' ability to address local geographic, social and economic conditions impacting the need for payphones. The Commission concludes, as it did in the Report and Order, that the states are better positioned to respond to the diverse and unique payphones need of their communities.

85. The Commission also denies Ohio PUC's request that it reconsider its determination that PIPs may not be placed in locations where payphones already exist as a result of the market. The Commission finds that Congress restricted the locations for which states could use the public interest payphone support mechanisms to subsidize the placement of a payphone. As 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.

86. The Commission adds that, 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. A state may, for example, 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 may not, however, subsidize such payphones through a public interest payphone support mechanism. Moreover, a state may contract with the PSP on any basis which a PSP is voluntarily willing to offer its services. Thus, if a 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.

III. Conclusion

87. In the Order on Reconsideration, the Commission affirms the essential features of the policies established in the Report and Order. On reconsideration, however, the Commission modifies: (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. The Commission also clarifies various issues addressed in the *Report and Order.*

IV. Ordering Clauses

88. 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.*

89. *It is further ordered,* that 47 CFR Part 69 is amended and shall be effective (30) days after publication in the Federal Register.

90. *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

91. *It is further ordered,* that the Petitions for Clarification filed in this proceeding are denied in part, and granted in part, as described herein.

92. *It is further ordered,* that MCI's Motion to Serve One Day Late is granted.

93. *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.

94. *It is further ordered,* that Cable & Wireless' Motion for Temporary Waiver or, in the Alternative, for a Limited Stay, is denied.

95. *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.

List of Subjects

47 CFR Part 64

Communications common carriers, Payphone compensation, Operator service access, Telephone.

47 CFR Part 68

Administrative practice and procedure, Communications common carriers, Communications equipment, Labeling, Reporting and recordkeeping requirements, Telephone.

47 CFR Part 69

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

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: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1070, 1072, 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 paragraph (d)(1) of this section.

* * * * *

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.

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 199

[Docket No. PS–152; Amendment 199–14]

RIN 2137–AC95

Reporting of Drug and Alcohol Testing Results

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Direct final rule.

SUMMARY: This direct final rule amends the Drug and Alcohol Testing Rules to allow the optional reporting of drug and alcohol testing results to RSPA by computer disk.

DATES: This direct final rule takes effect April 11, 1997. If RSPA does not receive any adverse comment or notice of intent to file an adverse comment by February 10, 1997, RSPA will publish a confirmation document within 15 days of the close of the comment period, advising the public of the date the direct final rule will become effective. If an adverse comment is received, RSPA will issue a timely notice in the Federal Register to confirm that fact and RSPA would withdraw the direct final rule in whole or in part. RSPA may then incorporate changes based on the adverse comment into a subsequent direct final rule or may publish a notice of proposed rulemaking.

ADDRESSES: Written comments must be submitted in duplicate and mailed or hand-delivered to the Dockets Unit, room 8421, U.S. Department of Transportation, Research and Special Programs Administration, 400 Seventh Street, SW, Washington, D.C. 20590. Identify the docket and notice numbers stated in the heading of this notice. All comments and materials cited in this document will be available for inspection and copying in room 8421 between 8:30 a.m. and 5:00 p.m. each business day. Non-federal employee visitors are admitted to the DOT headquarters building through the southwest quadrant entrance at Seventh and E Streets, SW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Marvin Fell, (202) 366–6205, regarding the subject matter of this document, or the Dockets Unit (202) 366–4453, for copies of this document or other information in the docket.

SUPPLEMENTARY INFORMATION:

I. Background

On March 28, 1996, RSPA published a Request for Public Comment (61 FR 13918) on its Management Information System Standardized Data Collection and Reporting of Drug Testing Materials information collection. Two commentors requested that RSPA allow electronic filing of drug testing forms. RSPA agrees with these commentors that allowing the filing of this information by computer disk may reduce the paperwork burden of this regulation. Therefore, RSPA is amending Section 199.25(d), Reporting of anti-drug testing results, to allow the alternative of filing the report on a computer disk provided by RSPA. The disk can be submitted in Word Perfect 6.1, Microsoft Word 6.0, or any ASCII format. If this option is used, a signature page attesting to the validity of the computer form must be sent to the RSPA address specified in Section 199.25(b). Additionally, RSPA is amending Section 199.229(c), Reporting of Alcohol Testing Results, to allow operators the option of filing their alcohol testing results by computer disk. If this option is used, a signature page attesting to the validity of the information must be submitted similar to the drug filing procedure.

II. Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This amendment may reduce the administrative burden of the drug and alcohol testing results reporting rules by