October 1995, and October 1996. No chemical compounds of concern related to the site were detected in these groundwater samples.

- EPA oversight sampling since the Removal Action has identified the presence of Pentachlorophenol in some groundwater samples, however no evidence of Pentachlorophenol was ever identified at the site during site inspections, field investigations, the Removal Action, or post-removal confirmation sampling. EPA has provided Ecology with these results and the Agencies have agreed that EPA will continue efforts to identify the source and potential impacts of the Pentachlorophenol, but that since there is no evidence to date that the Pentachlorophenol is site-related, its detection should not preclude deletion of this site from the NPL. Note that deleted sites remain eligible for future Fund-financed response actions should future conditions warrant such action, and whenever there is a significant release from a site or portion of a site deleted from the NPL, the site or portion may be restored to the NPL without application of the Hazard Ranking System.
- EPA sees no reason to require continued annual ground water monitoring for PCBs, although periodic monitoring to support five-year reviews may still be appropriate. TPH is being addressed as an additional state requirement, which the Washington Department of Ecology will determine whether or not to continue.

C. Characterization of Risk

- The risk assessment was done subsequent to the Removal Action, and documented that current and future potential risks posed by the site are within the acceptable risk range of 10^{-5} or less. There is no current pathway for human exposure since all soil contamination has been removed and/or capped and no site-related contaminants of concern have been detected in groundwater. Because site risks were so low, EPA determined that no feasibility study was necessary and no other alternatives were considered or evaluated.
- The site remains a useful parking lot, serving downtown Everson, including the Senior Center and City Hall.

D. Public Participation

Community input has been sought by EPA Region 10 throughout the cleanup process at the Site. An information repository was established and has been maintained at the Everson Public Library. Fact sheets and public notices were distributed when the site was placed on the NPL in 1990, when Notice Letters were sent to the PRPs in December 1991, when the Removal Action was proposed in August 1993, and at several other times.

A public comment period was held from August 16 to September 15, 1993 on the proposed removal action. At that time the public was informed that if the Removal Action was successful, no further action would likely be necessary. EPA issued a Proposed Plan calling for No Further Action on August 24, 1994, and held a public comment period from August 26 to September 26, 1994. A fact sheet and two public notices of the Plan were issued by EPA, but EPA received no public comments on the Proposed Plan.

A copy of the Deletion Docket can be reviewed by the public at the Everson Public Library, or the EPA Region 10 Superfund Records Center. The Deletion Docket includes this Notice, the ROD, Amended ROD, Remedial Action Construction Report, and Final Site Close-Out Report. EPA Region 10 will also announce the availability of the Deletion Docket for public review in a local newspaper and informational fact sheet.

One of the three criteria for deletion specifies that EPA may delete a site from the NPL if ''responsible parties or other persons have implemented all appropriate response actions required.'' EPA, with the concurrence of Ecology, believes that this criterion for deletion has been met. Groundwater and soil data from the Site confirm that the ROD cleanup goals have been achieved. There is no significant threat to human health or the environment and, therefore, no further remedial action is necessary. Consequently, EPA is proposing deletion of this Site from the NPL. Documents supporting this action are available in the docket at the information repositories.

Dated: August 4, 1997.

Randall F. Smith,

Acting Regional Administrator.

[FR Doc. 97–21380 Filed 8–14–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 96–128]

Pleading Cycle Established For Comment On Remand Issues In The Payphone Proceeding

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document clarifies the status of the requirements in the *Payphone Orders* in light of the D.C. Circuit's decision in *Illinois Public Telecommun.*, and establishes a pleading cycle for comment on issues remanded by that Court.

DATES: Comments are due on or before August 26, 1997 and reply comments are due on or before September 9, 1997.

ADDRESSES: Office of the Secretary, Federal Communications Commission, Room 222, 1919 M St. N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Greg Lipscomb, Formal Complaints and Information Branch, Enforcement Division, Common Carrier Bureau. (202) 418–0960.

SUPPLEMENTARY INFORMATION: DA 97–1673, August 5, 1997.

Comments Due: August 26, 1997.
Reply Comments Due: September 9, 1997.

I. Introduction

1. This Public Notice clarifies the status of the requirements of the *Payphone Orders*[1] in light of the D.C. Circuit's decision in *Illinois Public Telecommunications Ass'n* v. *FCC*,[2] and seeks further comment on certain issues raised by that court decision. In *Illinois Public Telecomm.*, the court granted in part and denied in part petitions for judicial review of the *Payphone Orders*. In doing so, however, the court actually vacated only one narrow aspect of those orders, *i.e.*, the asset valuation standard that the Commission adopted with respect to transfers of telephone company payphone assets to separate affiliates. The remaining portions of the orders were either upheld, or remanded to the Commission for further consideration and explanation. Thus,

[1] *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96–128, Report and Order, 11 FCC Rcd 20541 (1996) (''*Payphone Order*''); Order on Reconsideration, 11 FCC Rcd 21233 (1996) (''*Order on Reconsideration*'') (both orders together ''*Payphone Orders*''); 61 Fed. Reg. 65,341 (Dec. 12, 1996).

[2] D.C. Circuit Nos. 96–1394 *et al.* (July 1, 1997).

except for the vacated asset valuation standard, all of the requirements of the *Payphone Orders*—including those portions that were remanded to the Commission—remain in effect pending further action by the Commission on remand.[3] We place the industry on notice, however, that should the equities so dictate, payphone compensation payment obligations (or the absence of such obligations) incurred by providers of interexchange services and compensation levels paid or received under our existing rules pending action on remand may be subject to retroactive adjustment in order to undo the effects of applying aspects of the current rules that were identified by the court as potentially arbitrary.[4]

2. As discussed below, we also seek comment to supplement the record on certain issues raised by the court's ruling in *Illinois Public Telecomm*.

II. Issues for Comment

A. Default Rate for Compensation of Subscriber 800 and Access Code Calls

3. The court concluded that the Commission did not adequately justify setting the per-call compensation rate for subscriber 800 and access code calls at the same rate as the deregulated local call rate of $.35. In particular, the court held that the Commission did not justify its conclusion that the costs of coin calls, subscriber 800 calls, and access code calls all are similar.[5] The court concluded that the Commission had not responded to arguments by parties in the proceeding that the ''costs of local coin calls versus 800 and access code calls are not similar.'' The court cited the filings of various IXCs that argued that: (1) the costs of coin calls are higher than those for coinless calls because of additional costs for equipment and coin collection; (2) the costs of local coin calls are higher because the PSP pays for originating and completing local calls while, for coinless calls (*e.g.*, subscriber 800 calls or access code calls) the PSP only pays for originating the calls.[6]

4. We seek comment on the differences in costs to the PSP of originating subscriber 800 calls and access code calls, on the one hand, and local coin calls, on the other hand. We also seek comment on whether and, if so, how these cost differences should affect a market-based compensation amount. Finally, we seek comment on whether the local coin rate, subject to an offset for expenses unique to those calls, is an appropriate per-call compensation rate for calls not compensated pursuant to a contract or other arrangement, such as subscriber 800 calls and access code calls. Parties should respond specifically to concerns raised by the court in setting forth their views on the appropriate per-call compensation amount.

B. Interim Compensation Plan

5. In the *Payphone Orders*, the Commission established a two-year interim plan for payphone compensation for subscriber 800 and access code calls based on a rate of $.35 per call. Under the first year of the interim plan, IXCs with annual toll revenues in excess of $100 million are required to pay, collectively, a flat-rate compensation of $45.85 per payphone per month in shares proportionate to their share of total market long distance revenues. During the second year, all IXCs are required to pay $.35 per subscriber 800 call or access code call unless they have contracted for a different amount.

6. The court remanded the interim plan for two reasons. First, the court concluded that the Commission failed to provide a reasonable justification for an interim rate based on $.35 per call. As discussed above, the court remanded the decision to set compensation for subscriber 800 calls and access code calls at the deregulated local coin rate. The court concluded that the Commission ''must now set a new interim rate and decide what is to happen once the interim period is over.'' [7] Second, the court held that the Commission acted arbitrarily and capriciously because it required payments only from IXCs with over $100 million in toll revenues for the first year of the interim plan. The court concluded that administrative convenience was an insufficient justification for an interim plan that exempts all but large IXCs from paying for the costs of services received.[8] In addition, the court found that the Commission did not adequately justify why it based its interim plan on total toll revenues, ''as it did not establish a nexus between total toll revenues and the number of payphone-originated calls.'' The court concluded that the Commission could decide that the new interim rate is an appropriate default rate after the interim period and that, through negotiations, PSPs and IXCs could be left free to depart from the default rate.[9]

i. Compensation for Subscriber 800 and Access Code Calls During the Interim Period

7. In response to the court's conclusion that the Commission had not justified setting the interim flat rate compensation level on the basis of $0.35 per call (which we had multiplied by an estimate of the number of monthly compensable calls), we seek comment on the proper aggregate amount of compensation PSPs should receive per payphone during the period before per call compensation becomes available.

8. We also seek comment on the proper allocation of a flat-rate compensation obligation, if any, among providers of interexchange service. The Commission currently does not have specific toll revenue data or market share data for IXCs with toll revenues under $100 million. Consequently, we seek comment on how the Commission could establish the relative compensation obligations of such smaller IXCs, if such carriers were to be included in the interim compensation mechanism. We also seek comment on whether annual toll revenues are the appropriate basis for allocating flat-rate compensation obligations among all of the IXCs, regardless of their annual toll revenues, or whether some other basis is more appropriate. If parties argue that another basis is appropriate for allocating flat-rate compensation, they should also discuss how differences in the amount of interim compensation obligations would be accounted for, given that the existing interim mechanism continues to be in effect. We also seek comment on whether the Commission should include LECs that carry toll traffic among the carriers required to pay interim compensation, and, if so, the data we would use to ascertain their respective obligations.[10]

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[3] *See Allied-Signal Inc.* v. *NRC*, 988 F.2d 146, 151 (D.C. Cir. 1993); *Checkosky* v. *SEC*, 23 F.3d 452, 463 (D.C. Cir. 1994) (opinion of Silberman, J.). It follows logically that because the court held that the failure of the Commission to provide interim compensation for 0+ calls that are not compensated pursuant to contract is arbitrary and capricious and not responsive to the § 276 requirement that there be compensation for each and every call, the court would similarly find a decision by the Commission to discontinue interim compensation during the remand proceedings as contrary to § 276. The court's decision to remand but not vacate the interim compensation provisions of the *Payphone Orders* supports this assumption.

[4] *See Natural Gas Clearinghouse* v. *FERC*, 965 F.2d 1066, 1073–75 (D.C. Cir. 1992); *Public Utils. Comm'n of California* v. *FERC*, 988 F.2d 154, 162–63 (D.C. Cir. 1993).

[5] *Illinois Public Telecomm.*, No. 96–1394, slip op. at 16.

[6] *Id.* at 14.

[7] *Id.* at 17.

[8] *Id.*

[9] *Id.*

[10] LECs are currently excluded from interim obligations because of ''. . . administrative practicality and because LECs, on an individual basis, currently do not carry a significant volume

Continued

ii. Compensation for 0+ Calls During the Interim Period

9. The *Payphone Orders* do not provide compensation for any calls that are compensated pursuant to a contract between the PSP and a presubscribed carrier. The interim compensation mechanism provides compensation only for subscriber 800 calls and access code calls,[11] which are the most significant classes of calls currently not compensated pursuant to contract. The court found that the Commission's ''failure to provide interim compensation for 0+ calls is patently inconsistent with § 276's command that fair compensation be provided for 'each and every completed . . . call.' '' [12] As the Commission noted in the *Payphone Order*, a significant number of payphones maintained by the BOCs are not subject to a contract between the PSP and the presubscribed IXC, due to the previous restrictions imposed by the Modification of Final Judgment.[13] Because the court's statement is made in response to an argument made by the BOCs, it appears that the court's concern about a lack of compensation for 0+ calls in the interim period is limited to situations where such compensation is not paid pursuant to a contract. We seek comment on this interpretation. Further, we seek comment on how the BOCs, and any other similarly situated PSP, should be compensated during the interim period for 0+ calls for which they do not receive compensation by contract. More specifically, because the presubscribed carrier on a particular payphone receives the 0+ calls from that payphone and often pays a commission on such calls to the location provider, we seek comment on whether it would be appropriate to have the presubscribed carrier pay the default per-call compensation amount to the PSP for each such call. The concerns that the Commission expressed when it deferred per-call tracking and per-call compensation are not implicated in this situation, because the presubscribed carrier is already keeping track of these calls. The presubscribed carrier could simply pay the PSP for the number of calls it has received from the payphone multiplied by the default rate. We seek comment on this option, and any other options parties may suggest for responding to the court's concerns.

iii. Compensation for Inmate Calls During the Interim Period

10. In the *Payphone Orders*, the Commission decided that inmate payphones would not be eligible for interim flat-rate compensation because such payphones are not capable of originating either access code or subscriber 800 calls, the only types of calls for which interim compensation was provided.[14] The Commission found that virtually all calls originated by inmate payphones are 0+ calls, which tend to be compensated pursuant to a contract between the PSP or location provider and the presubscribed IXC.[15] The court remanded this issue because it held that § 276 requires the Commission to adopt regulations that will ensure that PSPs receive fair compensation for every call using their payphone as required by the Act.[16] As with its discussion of interim compensation for 0+ calls, the court's statements were made in response to arguments made by the BOCs. Thus, as we discussed above, it appears that the court's concern about a lack of compensation for inmate calls in the interim period is limited to situations where such compensation is not paid pursuant to a contract. We seek comment on this interpretation. Further, we seek comment on how the BOCs, and any other similarly situated PSP, should be compensated for inmate payphone calls during the interim period. We specifically seek comment on whether it would be appropriate to have the presubscribed carrier pay the default per-call compensation amount to the PSP for each inmate payphone call for which compensation is not provided pursuant to a contract with the PSP. Again, the Commission's concerns absent tracking and per-call compensation are not implicated in this situation, because the presubscribed carrier is already keeping track of the calls.

iv. Retroactive Adjustments to Interim Compensation Levels and Obligations

11. As noted at the outset of the Public Notice, the Commission may impose retroactive adjustments to the payment obligations and compensation levels that are incurred under our existing rules during the period before the Commission completes action on remand. We seek comment on whether, how, and under what authority any such retroactive adjustments should be made. Parties should specify the time period covered by such potential adjustments, *e.g.*, the entire first year of interim compensation (beginning in October 1996), or from the date of the court's remand in *Illinois Public Telecomm. Ass'n.*

C. Asset Valuation

12. In order to implement the § 276 requirement to remove subsidies from payphone operations,[17] the Commission required deregulation of payphone assets.[18] Upon deregulation of payphone assets, LECs are allowed either to maintain the assets in their books of account but reclassify the assets as nonregulated, or to transfer the payphone assets to a structurally separate affiliate.[19] In the *Payphone Order*, the Commission stated that LECs that elect not to transfer their payphone assets to a separate affiliate may maintain their assets on the books at net book value. The Commission further stated that, under its affiliate transactions rules, if a LEC transfers its payphone assets to either a separate affiliate or an operating division that has no joint and common use of assets or resources with the LEC and maintains a separate set of books, the LEC must record the transfer of assets at the higher of fair market value or net book value. The Commission concluded that fair market valuation will capture any appreciation in value of those assets, ''thus ensuring that any eventual gains

of compensable calls.'' *Order on Reconsideration*, 11 FCC Rcd at 21291, para. 126.

[11] *Payphone Order*, 11 FCC Rcd at 20603–04, paras. 124–25.

[12] *Illinois Public Telecomm.*, No. 96–1394, slip op. at 19.

[13] *See United States* v. *Western Elec. Co.*, 698 F. Supp. 348, 360 (D.D.C. 1988) (*MFJ*). The BOCs were not compensated for these calls through contracts with IXCs like other PSPs. The Commission included per-call compensation for 0+ plus calls made from BOC payphones and inmate payphones so long as they do not otherwise receive compensation for originating 0+ calls. The Commission did not, however, provide for such compensation during the first year of the interim period. *Order on Reconsideration*, 11 FCC Rcd at 21259–60, para. 52.

[14] *Order on Reconsideration*, 11 FCC Rcd at 21259–21260, para. 52.

[15] *Id.*

[16] *Illinois Public Telecomm.*, No. 96–1394, slip op. at 19–20.

[17] Section 276(a)(1) provides that ''any Bell operating company that provides payphone service shall not subsidize its payphone service directly or indirectly from its telephone exchange service operations or its exchange access operations.'' 47 U.S.C. 276(a)(1). Paragraph (b) of § 276 requires the Commission to issue ''regulations that . . . discontinue . . . all intrastate and interstate payphone subsidies from basic exchange and exchange access revenues.'' *Id.* U.S.C. 276(b)(1)(B).

[18] *See Payphone Order*, 11 FCC Rcd at 20,621, para. 142–45.

[19] 47 CFR 32.27(b). *See Payphone Order*, 11 FCC Rcd at 20,621, para. 157. The court rejected the petitioners' argument that § 276 requires that a BOC's payphone assets be transferred to its unregulated books. *Illinois Public Telecomm.*, No. 96–1394, slip op. at 28.

would accrue to the benefit of the ratepayers and shareholders.'' [20]

14. The court held that the Commission's valuation methodology with respect to the one-time transfer of assets mandated by industry reform was arbitrary and capricious and contrary to precedent.[21] The court concluded that the Commission failed to recognize that the court's test in *Democratic Central*, which the Commission declined to apply, was designed to protect not only the interests of ratepayers, but also the competing interests of shareholders.[22] The court found inappropriate under *Democratic Central* the Commission's valuation methodology, because the court held that the Commission was attempting to transfer the increase in the value of the payphone operations from the LECs' shareholders to ratepayers. The court held that, under *Democratic Central*, as a result of the Commission's price cap rules, investors rather than ratepayers have borne the risk of loss on payphone assets. Therefore, the court concluded that investors should reap the benefit of increases in the value of such assets.[23] The court stated that in *Southwestern Bell Corp.* v. *FCC*, while upholding the Commission's affiliate transactions rules, specifically ''noted *Democratic Central's* continued applicability to 'one-time' transfers mandated by industry reform.'' The court held that the transfer of payphone assets pursuant to § 276 fell within this category.[24] The court rejected upon similar analysis a challenge by other petitioners to the net book valuation method required by the Commission with respect to the reclassification of payphone assets as nonregulated within the same corporate entity.[25]

15. We seek comment on how the asset valuation requirements for the transfer of payphone assets established in the *Payphone Orders* should be revised to respond to the concerns raised by the court. The court appears to hold that net book value must be used for one-time transfers mandated by industry reform, which would apply to payphone asset transfers. If other approaches are recommended, parties should address how such approaches comply with the court's *Democratic Central* analysis.

III. Ex Parte Presentations

16. This Public Notice is a ''permit-but-disclose proceeding and subject to the ''permit-but-disclose'' requirements under § 1.1206(b) of the rules, 47 CFR 1.1206(b), as revised. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. See 47 CFR 1.1206(b)(2), as revised. Other rules pertaining to oral and written presentations are set forth in § 1.1206(b), as well. The Commission requires all written *ex parte* presentations or summaries of oral *ex parte* presentations in this proceeding to be served on all parties to this proceeding.

IV. Comment Filing Dates

17. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments with the Office of the Secretary, Federal Communications Commission, Room 222, 1919 M St., N.W., Washington, D.C. 20554 on or before *August 26, 1997*, and reply comments on or before *September 9, 1997* from the release of this public notice. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. In addition, parties should file two copies of any such pleadings with the Chief, Enforcement Division, Common Carrier Bureau, Stop 1600A, Room 6008, 2025 M Street, N.W., Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, N.W., Washington, D.C. 20036. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C.

17. For further information, contact Michael Carowitz, Rose Crellin, or Greg Lipscomb, Enforcement Division, Common Carrier Bureau, 202/418–0960.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–21819 Filed 8–14–97; 8:45 am]

BILLING CODE 6712–01–P

[20] *Payphone Order*, 11 FCC Rcd at 20,623–20,625, paras. 163–66.

[21] *Illinois Public Telecomm.*, No. 96–1394, slip op. at 28.

[22] *Id.* at 26, *citing Democratic Cent. Comm. of the Dist. of Columbia* v. *Washington Metro. Area Transit Comm'n*, 485 F.2d 785, 806 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 935 (1974) (*Democratic Central*).

[23] *Id.* at 27.

[24] *Id.* (*citing Southwestern Bell Corp.* v. *FCC*, 896 F.2d 1378, 1382 (D.C. Cir. 1990)).

[25] *Illinois Public Telecomm.*, No. 96–1394, slip op. at 28.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 080597F]

RIN: 0648–AK14

Amendment 34 to the Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 34 to the Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands Area (FMP) for Secretarial review. Amendment 34 would authorize an allocation of Atka mackerel to vessels using jig gear. Annually, up to 2 percent of the total allowable catch (TAC) specified for this species in the Eastern Aleutian Islands District (AI)/Bering Sea subarea (BS) could be allocated to the jig gear fleet fishing in this area. This action is necessary to provide an opportunity to a localized, small-vessel jig gear fleet to fish for Atka mackerel in summer months. The large-scale trawl fisheries typically harvest the available TAC for this species early in the fishing year, which does not allow the jig gear fishermen an opportunity for a summer fishery. Comments from the public are requested.

DATES: Comments on Amendment 34 must be submitted on or before October 14, 1997.

ADDRESSES: Comments on Amendment 34 should be submitted to Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th. Street, Juneau, AK. Copies of Amendment 34 and the Environmental Assessment/Regulatory Impact Review/ Initial Regulatory Flexibility Analysis prepared for the amendment are available from NMFS at the above