

subcommittee in order to minimize harmful interference to the Tracking and Data Relay Satellite System's forward space-to-space link (TDRSS forward link-to-LEO).

PART 25—SATELLITE COMMUNICATIONS

1. The authority citation for Part 25 continues to read as follows:

Authority: Secs. 25.101 to 25.601 issued under Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply secs. 101-104, 76 Stat. 419-427; 47 U.S.C. 701-744; 47 U.S.C. 554.

2. Section 25.202(a)(1) is revised to read as follows:

§ 25.202 Frequencies, frequency tolerance and emission limitations.

(a)(1) *Frequency bands.* The following frequencies are available for use by the fixed-satellite service. Precise frequencies and bandwidths of emission shall be assigned on a case-by-case basis.

Space-to-Earth (GHz)	Earth-to-space (GHz)
3.7-4.2 ¹	1 5.925-6.425
10.95-11.2 ¹	4 13.75-14.0
11.45-11.7 ²	5 14.0-14.2
11.7-12.2 ³	14.2-14.5
17.7-19.7 ¹	1 27.5-29.5
19.7-20.2	29.5-30.0

¹ This band is shared coequally with terrestrial radiocommunication services.

² Use of this band by the fixed-satellite service is limited to international systems, i.e., other than domestic systems.

³ Use of this band by the fixed-satellite service in Region 2 is limited to national and sub-regional systems. Fixed-satellite transponders may be used additionally for transmissions in the broadcasting-satellite service.

⁴ This band is shared on an equal basis with the Government radiolocation service, grandfathered space stations in the Tracking and Data Relay Satellite System, and until January 1, 2000, spaceborne sensors.

⁵ In this band, stations in the radionavigation service shall operate on a secondary basis to the fixed-satellite service.

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3. Section 25.204(f) is added to read as follows:

§ 25.204 Power limits.

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(f) The e.i.r.p. of any emission from an earth station operating in the frequency band 13.75-14.0 GHz shall be at least 68 dBW and shall not exceed 85 dBW, with a minimum antenna diameter of 4.5 meters; except in the frequency band 13.772-13.778 GHz, where the e.i.r.p. shall be at least 68 dBW and shall not exceed 71 dBW per 6 MHz, with a minimum antenna diameter of 4.5 meters. Automatic power control may be used to increase the e.i.r.p. density

above 71 dBW per 6 MHz to compensate for rain attenuation to the extent that the power flux density at the fixed-satellite space station does not exceed the value resulting from use of 71 dBW per 6 MHz e.i.r.p. in clear sky conditions.

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for Part 90 continues to read as follows:

Authority: Sections 4, 303, 309 and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 303, 309 and 332, unless otherwise amended.

2. Section 90.103(b) is amended in the table by removing the entry for the 13,400-14,000 MHz band, and adding entries for 13,400 to 13,750 MHz band and 13,750 to 14,000, by revising paragraph (c)(12), and by adding paragraph (c)(31) to read as follows:

§ 90.103 Radiolocation Service.

* * * * *

(b) * * *

RADIOLOCATION SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitation
* * *	* * *	* * *
Megahertz:		
* * *	* * *	* * *
13,400 to 13,750.do	12
13,750 to 14,000.do	31
* * *	* * *	* * *

* * * * *

(c) * * *

(12) This frequency is shared with and is on a secondary basis to the Government Radiolocation Service.

* * * * *

(31) This frequency band is shared with and is on secondary basis to the Fixed-Satellite Service and to the Government's Radiolocation, Space Research and Earth Exploration-Satellite Services. After January 1, 2000, the Government's Space Research and Earth Exploration-Satellite Services shall operate on a co-equal secondary basis with the non-Government Radiolocation Service, except that grandfathered space stations in the Tracking and Data Relay Satellite System shall continue to be protected from harmful interference.

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47 CFR Parts 64 and 68

[CC Docket 96-128; FCC 96-388]

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

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission ("Commission") adopts 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 adopts new rules and policies governing the payphone industry that: establish a plan to ensure fair compensation for "each and every completed intrastate and interstate call using [a] payphone[.]" discontinue intrastate and interstate carrier access charge payphone service elements and payments and intrastate and interstate payphone subsidies from basic exchange services, prescribe nonstructural safeguards for Bell Operating Company ("BOC") payphones, permit the BOCs to negotiate with payphone location providers on the interLATA carrier presubscribed to their payphones, permit all payphone service providers to negotiate with location providers on the intraLATA carrier presubscribed to their payphones, and adopt guidelines for use by the states in establishing public interest payphones to be located "where there would otherwise not be a payphone[.]" As set forth in the *Report and Order* and explained below, the Commission is issuing the *Report and Order* to comply with the statutory mandate 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 * * *."

EFFECTIVE DATES: The revision of the heading of subpart M and the authority citation of part 64 and the amendment to § 64.1301 and new § 64.1340 become effective November 6, 1996. The amendments to § 64.703 and new § 64.1330 become effective December 16, 1996. Section 64.1301 is removed and §§ 64.1300, 64.1310 and 64.1320 become effective October 7, 1997. Sections 68.2 and 68.3 become effective April 15, 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] to implement Section 276 of the Telecommunications Act of 1996. This is a summary of the Commission's *Report and Order* in CC Docket No. 96-128, adopted and released on September 20, 1996. The full text of the *Report and Order* 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 *Report and Order* 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. The *Report and Order* contains new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other federal agencies are invited to comment on the new or modified information collections contained in this proceeding.

Parties must file any petitions for reconsideration of the *Report and Order* within 30 days from release of that document. The Commission waives the requirements of Section 1.4 of its rules to establish this new date of public notice in light of the deadline established in the 1996 Act to complete this proceeding. Parties may file oppositions to the petitions for reconsideration pursuant to Section 1.106(g) of the rules, except that oppositions to the petitions must be filed within seven (7) days after the date for filing the petitions for reconsideration. The Commission will not issue a separate notice of any petitions for reconsideration; the *Report and Order* serves as notice to all interested parties of the due dates for petitions and oppositions. In addition, the Commission waives Section 1.106(h) of the rules and will not accept reply comments in response to oppositions.

The Commission concludes that these actions are necessary to complete all Commission action in this proceeding, which involves issues concerning the expedited implementation of the 1996 Act, by the statutory deadline of November 8, 1996. The Commission will consider all relevant and timely petitions and oppositions before final action is taken in this proceeding.

Petitions for reconsideration must comply with Sections 1.106 and 1.49 and all other applicable sections of the Commission's rules. Petitions also must clearly identify the specific portion of the *Report and Order* for which relief is sought. If a portion of a party's arguments does not fall under a particular topic listed in the outline of the *Report and Order*, such arguments should be included in a clearly labeled section at the beginning or end of the filing. Parties may not file more than a total of ten (10) pages of *ex parte* submissions, excluding cover letters. This 10 page limit does not include: (1) written *ex parte* filings made solely to disclose an oral *ex parte* contact; (2) written material submitted at the time of an oral presentation to Commission staff that provides a brief outline of the presentation; or (3) written material filed in response to direct requests from Commission staff. *Ex parte* filings in excess of this limit will not be considered as part of the record in this proceeding.

To file a petition for reconsideration in this proceeding parties must file an original and ten copies of all petitions and oppositions. Petitions and oppositions should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. If parties want each Commissioner to have a personal copy of their documents, an original plus fourteen copies must be filed. In addition, participants should submit two additional copies directly to the Common Carrier Bureau, Enforcement Division, Room 6008, 2025 M Street NW, Washington, D.C. 20554. The

petitions and oppositions will be available for public inspection during regular business hours in the Dockets Reference Room (Room 230) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554. Copies of the petition and any subsequently filed documents in this matter may be obtained from ITS, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857-3800.

Paperwork Reduction Act

The Report and Order contains a new or modified information collection. 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 *Report and Order* as required by the Paperwork Reduction Act of 1995, Public Law No. 104-13. OMB notification of action is due 60 days from the date of publication of the *Report and Order* in the Federal Register. 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: New collections.

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

Section/title	Number of respondents	Estimated time per response (hours)	Total Annual burden (hours)
a. State Review/Removal of State Regulations Concerning Adequacy of Local Coin Rate Disclosure	50	50	2,500
b. State Review/Removal of Market Entry or Exit Requirements	50	50	2,500
c. State Showing of Proof of Market Failure for Exception to Market-Rate Local Coin Call Requirement	50	50	2,500
d. State Review/Removal of Adequacy of Provision of Public Interest Payphones	50	50	2,500
e. Payphone Providers' Transmission of Specific Payphone Coding Digits	197	20	3,940
f. Interexchange Carriers' Provision of Tracking of All Compensable Calls	275	100	27,500
g. Interexchange Carriers' Initiation of Annual Verification of Per Call Tracking Functions	275	20	5,500
h. LEC Verification of Disputed ANIs and Maintaining and Making Available the Verification Data	400	.5	800
i. LEC Provision of Timely Notification of Payphone Disconnection	400	.5	200
j. LEC Indication on the Payphone's Monthly Bill That the Amount Due is for Payphone Services	400	10	4,000

Section/title	Number of respondents	Estimated time per response (hours)	Total Annual burden (hours)
k. LEC Tariff Filings	400	100	40,000
l. Reclassification of LEC-Owned Payphones	400	100	40,000
m. Reclassification of AT&T Payphones	1	100	100
n. Payphone Provider's Verification of its Status to IXC Paying Compensation	197	1	197
o. Payphone Provider's Posting of Local Coin Call Rate on Each Payphone Placard	197	20	3,940

¹ This estimate was obtained by reference to the Regulatory Flexibility Analysis in the *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Report and Order, CC Docket No. 96-98, FCC 96-325 (rel. August 8, 1996).² *Id.*

Total Annual Burden: 136,177 hours.
Estimated Costs per Respondent: \$0.
Needs and Uses: The new and modified collections in this Report and Order are necessary to implement the provisions of Section 276 of the Telecommunications Act of 1996.
OMB Approval Number: 3060-0721.
Title: Report of Local Exchange Companies ("LECs") of Cost Accounting Studies.
Form No.: N/A.
Type of Review: Revised Collection.
Respondents: Business or other for-profit, including small businesses.
Number of Respondents: 400.
Estimated Time per Response: 50 hours.
Total Annual Burden: 20,000 hours.
Estimated Cost per Respondent: \$0.
Needs and Uses: Pursuant to the mandate in Section 276(b)(1)(A) 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", 47 U.S.C. § 276(b)(1)(A), incumbent LECs are required to offer individual central office coin transmission services to payphone service providers ("PSPs") under a nondiscriminatory, public tariffed offering if the LECs provide those services for their own operations. Because the incumbent LECs may have an incentive to charge their competitors unreasonably high prices for these services, the Commission requires them to submit cost support for their central office coin services, on a one-time basis. The report would contain engineering studies, time and wage studies, and other cost accounting studies to identify the direct cost of central office coin services. This will ensure that the services are reasonably priced and do not include subsidies.
OMB Approval Number: 3060-0719.
Title: Quarterly Report of IntraLATA Carriers Listing Payphone Automatic Number Identification (ANIs).
Form No.: N/A.
Type of Review: Revised collection.
Respondents: Business or other for-profit, including small businesses.
Number of Respondents: 400.

Estimated Time per Response: 3.5 hours.
Total Annual Burden: 5,600 hours.
Estimated Cost per Respondent: \$0.
Needs and Uses: Pursuant to the mandate in Section 276(b)(1)(A) 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", 47 U.S.C. § 276(b)(1)(A), intraLATA carriers are required to provide to interexchange carriers ("IXCs") a quarterly report listing payphone automatic payphone identifications ("ANIs"). Without provision of this report, resolution of disputed ANIs would be rendered very difficult. IXCs would not be able to discern which ANIs pertain to payphones and therefore would not be able to ascertain which dial-around calls were originated by payphones for compensation purposes. There would be no way to guard against possible fraud. Without this collection, lengthy investigations would be necessary to verify claims. The report allows IXCs to determine which dial-around calls are made from payphones. The data, which must be maintained for at least 18 months after the close of a compensation period, will facilitate verification of disputed ANIs. The Order does not specify the manner in which IntraLATA carriers must provide carrier-payors with the list of payphone ANIs. IntraLATA carriers are free to use any technologies at their disposal to distribute the necessary information, including innovative approaches such as posting the information on the Internet or distributing the information via electronic mail.
OMB Approval Number: 3060-0723.
Title: Public Disclosure of Network Information by Bell Operating Companies ("BOCs").
Form No.: N/A.
Type of Review: Revised collections.
Respondents: Business or other for-profit, including small businesses.
Number of Respondents: 7.
Estimated Time per Response: 50 hours.
Total Annual Burden: 350 hours.

Estimated Cost per Respondent: \$0.
Needs and Uses: Pursuant to Section 276(b)(1)(C) provisions that prescribe a set of nonstructural safeguards for BOC payphone services, to foster development of competition in the provision of local telephone service, 47 U.S.C. § 276(B)(1)(C), the BOCs are required to publicly disclose changes in their networks or new network services at two different points in time. First, disclosure would occur at the "make/buy" point: when a BOC decides to make for itself, or procure from an unaffiliated entity, any product whose design affects or relies on the network interface. Second, a BOC would publicly disclose technical information about a new service 12 months before it is introduced. If the BOC could introduce the service within 12 months of the make/buy point, it would make a public disclosure at the make/buy point. In no event, however, would the public disclosure occur less than six months before the introduction of the service. Without provision of these reports, the industry would be unable to ascertain whether the BOCs designing new network services or changing network technical specifications are to the advantage of their own payphones, or might disadvantage BOC payphone competitors. The requirement for a minimum 6-month period of public disclosure prior to the introduction of a new service is vital to ensure that BOCs do not design new network services or change network technical specifications to the advantage of their own payphones.
OMB Approval Number: 3060-0724.
Title: Annual Report of IXCs Listing the Compensation Amount Paid to Payphone Providers and the Number of Payees.
Form No.: N/A.
Type of Review: Revised collection.
Respondents: Business or other for-profit, including small businesses.
Number of Respondents: 275.
Estimated Time per Response: 2 hours.
Total Annual Burden: 550 hours.
Estimated Cost per Respondent: \$0.

Needs and Uses: Pursuant to the mandate in Section 276(b)(1)(A) 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", 47 U.S.C. § 276(b)(1)(A), IXCs, who are responsible for paying per-call compensation to payphone providers, are required to provide annual reports to the Common Carrier Bureau listing the amount of compensation paid to payphone providers and the number of payees. Without provision of this report, the Commission would be unable to ensure that all the IXCs are paying their respective compensation obligations. The report is intended to be very brief, and the reporting requirement will be terminated after the carriers have filed their reports for the 1999 calendar year. In addition, for further flexibility, the Chief, Common Carrier Bureau, is delegated the authority to establish the details, as necessary, of this annual report, including the authority to extend or limit the scope of this report.

OMB Approval Number: 3060-0726.

Title: Quarterly Report of IXCs Listing the Number of Dial Around Calls for Which Compensation is Being Paid to Payphone Owners.

Form No.: N/A.

Type of Review: Revised collections.

Respondents: Business or other for-profit, including small businesses.

Number of Respondents: 275.

Estimated Time per Response: 2 hours.

Total Annual Burden: 550 hours.

Estimated Cost per Respondent: \$0.

Needs and Uses: Pursuant to the mandate in Section 276(b)(1)(A) 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", 47 U.S.C. § 276(b)(1)(A), IXCs, who are responsible for paying per-call compensation to payphone providers are required to provide to payphone providers a quarterly report listing the dial-around calls made from each payphone provider's payphones. Without provision of this report, payphone providers would be unable to ascertain the compensation amount to be paid by the IXCs. The report allows each payphone provider to determine how many dial-around calls to the IXC generating the report were originated by each of the payphone provider's payphones. The Commission weighed several alternatives to achieve optimum efficiency and the least burdensome approach, before imposing this requirement. This requirement is imposed on the IXCs because they have

the greatest ability and incentive to establish the most efficient means of administering the payment of compensation.

SUMMARY OF REPORT AND ORDER

I. Background

1. Section 276(b)(1)(A) of the 1996 Act directs the Commission to establish a compensation plan to ensure "that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call" from their payphones. Section 276(b)(1)(B) mandates that the Commission "discontinue the intrastate and interstate carrier access charge payphone service elements and payments * * * and all intrastate and interstate subsidies from basic exchange and exchange access revenues." In addition, Section 276(b)(1)(D) directs the Commission to consider whether BOCs should be granted certain rights already available to all other payphone service providers ("PSPs") to participate in the location provider's selection of presubscribed interLATA carrier, while Section 276(b)(1)(E) grants certain rights to all PSPs to participate in the selection of presubscribed intraLATA carriers. Together with the other subsections of Section 276, these three provisions help to establish regulatory parity for all PSPs, whether independent payphone providers or incumbent LECs (both independent LECs and BOCs).

II. Discussion

2. In the *Report and Order*, the Commission adopts 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[.]"

3. The Telecommunications Act of 1996 fundamentally changes telecommunications regulation. 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." In this proceeding the Commission advances the twin goals of Section 276 of the Act of "promot[ing] competition among payphone service providers and promot[ing] the widespread deployment of payphone services to the benefit of the general public * * *." To this end, the Commission seeks 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 recognizes 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 will 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.

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

4. In the *Report and Order*, consistent with Section 276, the Commission establishes a plan to ensure fair compensation for all calls. The Commission concludes that fair compensation can be ensured best when the PSP can track the calls made from the payphone on a call-by-call basis and be assured efficient payment for those calls; when the market can set a fair rate for the call; and when the caller has the information necessary to make an informed choice as to whether to make the call and incur the compensation charge.

1. Payphone Calls Subject to this Rulemaking and Compensation Amount

5. The Commission concludes that, once competitive market conditions exist, the most appropriate way to ensure that PSPs receive fair compensation for each call is to let the market set the price for individual calls originated on payphones. It is only in cases where the market does not or cannot function properly that the Commission needs to take affirmative steps to ensure fair compensation, such as in the following situations. First, because the Telephone Operator Consumer Services Improvement Act (TOCSIA) requires all payphones to

unblock access to alternative operator service providers (OSPs) through the use of access codes (including 800 access numbers), PSPs cannot block access to toll free numbers generally. However, TOCSIA does not prohibit an interexchange carrier (IXC) from blocking subscriber 800 numbers from payphones, particularly if the IXC wants to avoid paying the per-call compensation charge on these calls. This uneven bargaining between parties necessitates the Commission's involvement. Second, the Commission concludes that each state should, in light of the instant proceeding, examine and modify its regulations applicable to payphones and PSPs, particularly those rules that impose market entry or exit requirements, and others that are not competitively neutral and consistent with the requirements of Section 276 of the Act. The Commission concludes that, for purposes of ensuring fair compensation through a competitive marketplace, states need only remove those regulations that restrict competition, and they need not address those regulations that, on a competitively neutral basis, provide consumers with information and price disclosure. Third, the Commission concludes that callers should have information in every instance about the price of the calls they make from payphones. To this end, the Commission requires that each payphone clearly indicate the local coin rate within the informational placard on each payphone.

6. While the most appropriate way to ensure fair compensation is to let the market set the price for individual payphone calls, the Commission concludes that this transition to market-based rates should occur in two phases. Because local exchange carriers (LECs) will terminate, pursuant to Section 276(b)(1)(b), subsidies for their payphones within one year of the effective date of the rules adopted in this proceeding, LECs will not be eligible to receive compensation under Section 276(b)(1)(a) until that termination date. This one-year period before per-call compensation is effective, as discussed below, will be the first phase of implementing the rules adopted in this proceeding. During this first phase, states may continue to set the local coin rate in the same manner as they currently do. States may, however, move to market-based local coin rates anytime during this one-year period. In addition, the states must conduct its examination of payphone regulations during this one-year period to review and remove, if necessary,

those regulations that affect competition, such as entry and exit restrictions. IXCs will pay compensation for access code calls and subscriber 800 calls on a flat-rate basis. In addition, all payphones must provide free access to dialtone, emergency calls, and telecommunications relay service calls for the hearing disabled.

7. In the second phase, which will begin one year after the effective date of rules adopted in this proceeding, LECs will have already terminated the subsidies prohibited by Section 276(b)(1)(B), and per-call tracking capabilities will be in place. The carriers to whom payphone calls are routed will be responsible for tracking each compensable call and remitting per-call compensation to the PSP. During this second year, which is the first year of per-call compensation (as opposed to flat-rate compensation), the market will be allowed to set the rate for local coin calls, unless the state can show that there are market failures within the state that would not allow market-based rates. In addition, during the second phase, which will be the first year of per-call compensation (after the initial year of flat-rate compensation), to allow the Commission to ascertain the status of competition in the payphone marketplace, the Commission concludes that IXCs must pay PSPs a default rate of \$.35 for each compensable call, which may be changed by mutual agreement. PSPs will be required to post the local coin rate they choose to charge at each payphone. During the second phase, the Commission may review, at the Commission's option, the deregulation of local coin rates nationwide and determine whether marketplace disfunctions exist, such as locational monopolies caused by the size of the location with an exclusive PSP contract or the caller's lack of time to identify potential substitute payphones, and should be addressed by the Commission. If the Commission finds that the deregulation of local coin rates warrants a modification of its approach due to market failures, the Commission may choose to set a cap on the number of calls subject to compensation from particular payphones to limit the exercise of locational market power. Absent such a finding, at the conclusion of the second phase, the market-based local coin rate at these payphones will be the default compensation rate for all compensable calls in absence of an agreement between the PSP and the carrier-payor.

8. *Ensuring Fair Compensation.* To ensure fair compensation, the Commission concludes that it must provide for compensation for access

code calls and subscriber 800 and other toll-free number calls, whether they are intrastate or interstate in destination.

9. The Commission concludes that it must ensure fair compensation for 0+ calls that use BOC payphones. The Commission concludes that once the BOCs reclassify their payphones and terminate all subsidies, pursuant to Section 276(b)(1)(B), they may receive the per-call compensation established by the *Report and Order*, so long as they do not otherwise receive compensation for use of their payphones in originating 0+ calls. The Commission concludes further that, in the absence of a contract providing compensation to the PSP for intraLATA 0+ calls, the PSP shall be eligible to collect per-call compensation from the carrier to whom the call is routed. The Commission also concludes that when a caller dials "0" and the payphone subsequently translates this digit, unbeknownst to the caller, into an 800 access number (*i.e.*, as a way of presubscribing the payphone to a particular IXC), such a call is not compensable as an access code call, because it does not put the caller into contact with an alternative carrier.

10. The Commission concludes that PSPs should receive compensation for international calls. The Commission concludes that it has authority under Sections 4(i) and 201(b) of the Communications Act of 1934, as amended, to ensure that PSPs are fairly compensated for international as well as interstate and intrastate calls using their payphones in the United States.

11. *Local Coin Calls.* The Commission concludes that full and unfettered competition is the best way of achieving Congress' dual objectives to promote "competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public." Once competitive conditions exist, the Commission believes that the market should set the compensation amount for all payphone calls, including local coin calls. Because the Commission has an obligation under Section 276 to ensure that the compensation for all local coin calls is fair, it concludes that the market should be allowed to set the price for all compensable calls, including a local coin call.

12. Section 276(b)(1)(A) gives the Commission both the jurisdiction to ensure fair compensation for local coin calls and the mandate to establish a plan to compensate PSPs on a per-call basis. Based on the record in this proceeding, the Commission concludes that a deregulatory, market-based approach to setting local coin rates is appropriate, because existing local coin rates are not

necessarily fairly compensatory. The Commission recognizes, however, that the competitive conditions, which are a prerequisite to a deregulatory, market-based approach, do not currently exist and cannot be achieved immediately. Many states impose regulations on PSPs, including certain requirements that must be fulfilled before a PSP can enter or exit the payphone marketplace. In addition, in some locations, because of the size of the location with an exclusive PSP contract or the caller's lack of time to identify potential substitute payphones, the PSP may be able to charge an inflated rate for local calls based on its monopoly, pursuant to an exclusive contract with the location provider, on all payphones at the location. The Commission concludes that such monopoly arrangements, in the absence of regulatory oversight, could impair competition.

13. Based on these concerns, the Commission concludes that the overall transition to market-based local coin rates should not occur immediately. As discussed below, LECs will not be required to terminate, pursuant to Section 276(b)(1)(b), certain subsidies associated with their payphones until April 15, 1997. LECs will not be eligible to receive per-call compensation under Section 276(b)(1)(a) for one year, when all such subsidies are terminated. For this one-year period, the states will be responsible for both ensuring that PSPs are fairly compensated for local coin calls and protecting consumers from excessive rates. Eventually, when fully competitive conditions exist, the marketplace will address both concerns. The Commission concludes that, during this one-year period before per-call, as opposed to flat-rate, compensation becomes effective, states may continue to set the local coin rate in the same manner as they currently do. States may, however, move to market-based local coin rates anytime during this one-year period, and are encouraged to do so. In addition, the Commission concludes that during the same period, the states should take additional action to ensure that payphone competition is promoted. The Commission believes that ease of entry and exit in this market will foster competition and allow the market, rather than regulation, to dictate the behavior of the various parties in the payphone industry. To this end, each state should examine and modify its regulations applicable to payphones and PSPs, removing, in particular, those rules that impose market entry or exit requirements. The Commission concludes that, for purposes of ensuring fair compensation through a competitive

marketplace, the states should remove only those regulations that affect payphone competition; the states remain free at all times to impose regulations, on a competitively neutral basis, to provide consumers with information and price disclosure. In addition, the states at all times must ensure that access to dialtone, emergency calls, and telecommunications relay service calls for the hearing disabled is available from all payphones at no charge to the caller.

14. At the conclusion of this first one-year period, the market will be allowed to set the price for a local coin call, as discussed more fully above. However, the Commission concludes that it should make an exception to the market-based approach for states that are able to demonstrate to the Commission that there are market failures within the state that would not allow market-based rates. Such a detailed showing could consist of, for example, a detailed summary of the record of a state proceeding that examines the costs of providing payphone service within that state and the reasons why the public interest is served by having the state set rates within that market. In addition, under the Commission's deregulatory, market-based approach, when states have concerns about possible market failures, such as that of payphone locations that charge monopoly rates, they are empowered to act by, for example, mandating that additional PSPs be allowed to provide payphones, or requiring that the PSP secure its contract through a competitive bidding process that ensures the lowest possible rate for callers. If a market failure persists after such action, the state should recommend the matter to the Commission for possible investigation. In addition, during the second phase, after the initial year of flat-rate compensation, the Commission may review, at its option, the deregulation of local coin rates nationwide and determine whether marketplace disfunctions, such as locational monopolies where the size of the location or the caller's lack of time to identify potential substitute payphones, exist and should be addressed by the Commission. At this point, if the Commission finds that the deregulation of local coin rates warrants a modification of its approach due to market failures, the Commission may choose, for example, to set a cap on the number of calls subject to compensation from particular payphones to limit the exercise of locational market power.

Absent such a finding, at the conclusion of the second phase, the market-based local coin rate at these payphones will be the default compensation rate for all compensable calls in absence of an agreement between the PSP and the carrier-payor.

15. With regard to "411" directory-assistance calls, the Commission noted that, while incumbent LECs in many jurisdictions currently do not charge the payphone caller for "411" calls made from their own phones, the LECs charge independent payphone providers for directory-assistance calls made from their payphones, and are not always allowed by the state to pass those charges on to callers. The Commission concludes that it must ensure fair compensation for "411" and other directory assistance calls from payphones by permitting the PSP to charge a market-based rate for this service, although a PSP may decline to charge for this service if it chooses. In addition, to help ensure that a LEC does not discriminate in favor of its own payphones, the Commission concludes 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.

16. *Completed Calls.* The Commission concludes that a "completed call" is a call that is answered by the called party. The Commission has previously found that, where an 800 calling card call is routed through an IXC's platform, it should not be viewed as two distinct calls—one to the platform and one to the called party. In addition, in *Florida Public Telecommunications Ass'n v. FCC*, the United States Court of Appeals for the District of Columbia Circuit emphasized the one-call nature of a subscriber 800 call from the caller's point of view. To comply with this the mandate of Section 276, the Commission concludes that multiple sequential calls made through the use of a payphone's "#" button should be counted as separate calls for compensation purposes.

17. The Commission concludes that Section 276(b)(1)(A) was not intended to apply to both incoming and outgoing calls. Because PSPs may block incoming calls, they are able to restrict use of their payphones if they are concerned about a lack of compensation. For this reason, the Commission concludes that incoming calls are not within the purview of Section 276, and it is not required, as a result, to address them in the order.

18. *Payphone Fraud.* The Commission has recognized, since it first addressed the issue of compensation for subscriber

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

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

20. *Compensation Amount.* Because the Commission has established that the payphone marketplace has low entry

and exit barriers and will likely become increasingly competitive, it concludes that the market (or the states, where there are special circumstances) is best able to set the appropriate price for payphone calls in the long term. The Commission concludes further that the appropriate per-call compensation amount ultimately is the amount the particular payphone charges for a local coin call, because the market will determine the fair compensation rate for those calls. For example, if the rate at a particular payphone is \$.35, absent an agreement between the PSP and the carrier-payor for a different amount, then the PSP should receive \$.35 for each compensable call (access code, subscriber 800, and directory assistance). If a rate is compensatory for local coin calls, then it is an appropriate compensation amount for other calls as well, because the cost of originating the various types of payphone calls are similar. Although the Commission tentatively concluded in the *NPRM* that PSPs should be compensated for their costs in originating calls, as these costs are measured by appropriate cost-based surrogates, the Commission now concludes that deregulated local coin rates are the best available surrogates for payphone costs and are superior to the cost surrogate data provided by the commenters.

21. The Commission concludes that the per-call compensation amount equal to the local coin rate is a default rate that will apply only in the absence of a negotiated agreement between the parties. PSPs, IXCs, subscriber 800 carriers, and intraLATA carriers may agree on an amount for some or all compensable calls that is either higher or lower than the local coin rate at a given payphone. In absence of an agreement, the PSP shall be entitled to receive compensation for compensable calls at a per-call rate equal to its local coin rate, which represents the market-based rate for a call at the payphone in question.

22. To allow the Commission to ascertain the status of competition in the payphone marketplace, it concludes that it should establish the default per-call rate for two years before leaving it to the market to set rate, absent any changes in the Commission's rules. More specifically, for the first year after the effective date of the rules adopted in this proceeding, IXCs will pay flat-rate compensation to PSPs. After the initial year, when per-call tracking capabilities will be in place, the Commission concludes that IXCs will be required to pay a default rate of \$.35 per call, which is the local coin rate in four of the five states that have deregulated their local

calling rates. The Commission concludes that the market-based rate in these states is the best evidence of a per-call compensation amount that will fairly compensate PSPs. Therefore, for the limited purpose of calculating compensation for PSPs for the first two years of compensation (one year of flat-rate and one year of per-call compensation), the Commission will use a default rate of \$.35 per call, which is the rate in the majority of states that have allowed the market to determine the appropriate local coin rate. The carrier-payor and the PSP may agree to a compensation rate that is different, and, therefore, the default rate would not apply. For coinless payphones, which by definition do not have a local coin rate, the default rate will remain \$.35 per call for as long as this rate is fairly compensable under Section 276(b)(1)(A).

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

24. The Commission rejects the argument by four states that Section 276 applies only to payphones provided by the BOCs. While Section 276(a), which the states cite as support for their argument, applies only to the BOCs, as do Sections 276(b)(1)(C) and Section 276(b)(1)(D), the remainder of Section 276 applies to all payphones, regardless of their provider. Therefore, based on the plain language of the statute, the Commission concludes that Section 276 grants us the requisite authority to adopt rules that apply to all payphones, regardless of their provider, except where the language clearly applies only to the BOCs.

2. Entities Required To Pay Compensation

25. The Commission concludes that the primary economic beneficiary of payphone calls should compensate the PSPs. It concludes that the "carrier-pays" system for per-call compensation places the payment obligation on the primary economic beneficiary in the least burdensome, most cost effective manner. The Commission has previously adopted such an approach in the access code compensation proceeding, and the compensation

participants have created a payment system that is an appropriate model for this proceeding. In addition, under the carrier-pays system, individual carriers, while obligated to pay a specified per-call rate to PSPs, have the option of recovering a different amount from their customers, including no amount at all. The Commission concludes further that all IXC's that carry calls from payphones are required to pay per-call compensation.

26. The Commission concludes that it is the underlying, facilities-based carrier that should be required to pay compensation to the PSP in lieu of a non-facilities-based carrier that resells services, for example, to specific subscribers or to debit card users. Although the Commission has concluded that the primary economic beneficiary of payphone calls should bear the burden of paying compensation for these calls, it concludes that, in the interests of administrative efficiency and lower costs, facilities-based carriers should pay the per-call compensation for the calls received by their reseller customers. The Commission concludes further that the facilities-based carriers may recover the expense of payphone per-call compensation from their reseller customers as they deem appropriate, including negotiating future contract provisions that would require the reseller to reimburse the facilities-based carrier for the actual payphone compensation amounts associated with that particular reseller. While the Commission has not placed the burden of paying per-call compensation directly on resellers or debit card providers, it concludes that the underlying carrier must begin paying compensation on all compensable calls facilitated by its reseller and debit card customers and it is, in turn, permitted to impose the payphone compensation amounts on these customers.

3. Ability of Carriers To Track Calls From Payphones

27. Based on the information in the record, the Commission concludes that the requisite technology exists for IXCs to track calls from payphones. The Commission recognizes, however, that tracking capabilities vary from carrier to carrier, and that it may be appropriate, for an interim period, for some carriers to pay compensation for "each and every completed intrastate and interstate call" on a flat-rate basis until per-call tracking capabilities are put into place.

28. The Commission concludes further that, as stated in the *NPRM*, it is the responsibility of the carrier, whether

it provides intraLATA or interLATA services, as the primary economic beneficiary of the payphone calls, to track the calls it receives from payphones, although the carrier has the option of performing the tracking itself or contracting out these functions to another party, such as a LEC or clearinghouse. In other words, while the Commission assigns the burden of tracking on the carrier receiving the call from a payphone, parties to a contract may find it economically advantageous to place this tracking responsibility on another party. The Commission declines to require LECs or PSPs to perform per-call tracking themselves. Neither LECs nor PSPs are the primary economic beneficiaries of payphone calls. The Commission concludes, however, that LECs, PSPs, and the carriers receiving payphone calls should be able to take advantage of each other's technological capabilities through the contracting process. To this end, the Commission concludes that no standardized technology for tracking calls is necessary, and that IXCs may use the technology of their choice to meet their tracking obligations.

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

30. In view of the current difficulties in tracking such calls, the Commission concludes that a transition is warranted for requiring carriers to track compensable calls. Therefore, the Commission requires carriers to provide for tracking of all compensable calls they receive from payphones, through any arrangement they choose, as soon as possible, but no later than one year from the effective date of the rules adopted in this proceeding. Until that date, carriers must pay flat-rate compensation, as specified below.

31. The Commission recognizes that implementing a per-call tracking capability will require new investments for some carriers, particularly small carriers, but it concludes that the mandate of Section 276 that the Commission ensure a fair "per call compensation plan" for "each and every completed intrastate and interstate call" requires these carriers to provide tracking for calls for which they receive revenue, even though they previously

did not have to compensate the PSP for many of these calls. The Commission concludes further that, by permitting carriers to contract out their per-call tracking responsibility, and by allowing a transition for tracking subscriber 800 calls, it will have taken the appropriate steps to minimize the per-call tracking burden on small carriers. In addition, the Commission concludes that, to parallel the obligation of the facilities-based carrier to pay compensation, the underlying facilities-based carrier has the burden of tracking calls to its reseller customers, and it may recover that cost from the reseller, if it chooses.

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

4. Administration of Per-Call Compensation

33. The Commission concludes that it should adopt a direct-billing arrangement between IXCs and PSPs, once tracking capabilities are in place, that would build on the arrangement established in the access code call compensation proceeding, with the addition of the requirement that these carriers must send back to each PSP a statement indicating the number of toll-free and access code calls that each carrier has received from each of that PSP's payphones. This arrangement places the burden of billing and collecting compensation on the parties who benefit the most from calls from payphones—carriers and PSPs. As with the tracking of calls, carrier-payers are free to use 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.

34. The Commission requires that the carrier responsible for paying compensation file each year a brief report with the Common Carrier Bureau listing the total compensation paid to PSPs for intrastate, interstate, and international calls; the number of compensable calls carried by the carrier; and the number of payees. This requirement will apply to calendar year 1998, when tracking capabilities are in place and compensation is being paid on a per-call basis. The Commission concludes further that, once per-call compensation is routinely paid by IXC's, this reporting requirement will be terminated after the carriers have filed their reports for the 1998 calendar year. Carrier-payers should file their reports as soon as possible after the end of the calendar year, but no later than the end of the first quarter of the following year. To implement the reporting requirement, the Commission delegates to the Chief, Common Carrier Bureau, the authority to establish the form and content, if necessary, of the annual report listing the total amount of compensation paid to PSPs, including the authority to extend or limit the scope of this report.

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

36. The Commission concludes that the following guidelines will facilitate the proper verification of payphone ANIs by LECs. First, LECs must provide a list of payphone ANIs to carrier-payers within 30 days of the close of each compensation period (i.e., each quarter). Second, LECs must provide verification of disputed ANIs on request, in a timely fashion. Such verification data must be maintained and available for at least 18

months after the close of a compensation period. Third, once a LEC makes a positive identification of an installed payphone, the carrier-payer must accept claims for that payphone's ANI until the LEC provides information, on a timely basis, that the payphone has been disconnected. Fourth, a LEC must respond to all requests for ANI verification, even if the verification is a negative response. Carrier-payers are not required to pay compensation once the LEC verifies that the particular ANI is not associated with a COCOT line for which compensation must be paid. Fifth, carrier-payers should be able to refuse payment for compensation claims that are submitted long after they were due. Carriers should not refuse payment on timeliness grounds, however, for ANIs submitted by a PSP up to one year after the end of the period in question. Further, the period for a PSP to bring a complaint to the Commission based on an ANI disputed by the carrier-payer will not begin to accrue until the carrier-payer issues a final denial of the claim. The Commission concludes that the guidelines, as outlined above, will facilitate the proper verification of payphones without imposing undue burdens on LECs, PSPs, or carrier-payers.

37. Because a carrier-payer's administrative expenses are presumably reduced through the payment of compensation on a quarterly, as opposed to monthly, basis, the Commission concludes that the reasonable trade-off is that the carrier remains liable, as discussed above, for compensation claims that are submitted within one year of the end of the compensation period in question. The parties may themselves revisit this issue if they elect a shorter compensation period. Sprint argues that a carrier should be allowed to defer payments to individual PSPs until the amount due aggregates to \$10 from that carrier to the particular PSP for all of its payphones. The Commission agrees and concludes that such a requirement would reduce the administrative expenses associated with the payment of compensation. If PSPs would like to charge interest on overdue payments from IXC's, as suggested by APCC, they should negotiate such a provision in their compensation agreement with the particular carrier.

38. The Commission concludes that the payment of compensation would be facilitated and some disputes avoided if LECs were required to state affirmatively on their bills to PSPs that the bills are for payphone service. The Commission concludes that LECs, who have knowledge that a particular phone

line is used for a payphone, must indicate on that payphone's monthly bill that the amount due is for payphone service. The Commission also agrees with CompTel's suggestion that the registration of all payphones with a central resource or clearinghouse would reduce administrative costs for all parties and would avoid duplication of efforts. The Commission declines, however, to mandate the creation of a central resource or clearinghouse for compensation purposes, and believes that the parties themselves are better able to establish such a resource that would be directly connected to the payment of compensation.

5. Interim Compensation Mechanism

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

longer a basis for being excused from the obligation to pay either the total flat-rate compensation amount established in the instant proceeding, or a portion thereof.

40. When the Commission adopted a compensation mechanism for interstate access code calls, it concluded that, because they did not involve use of a "carrier-specific access code" and were routed directly to an end user, subscriber 800 calls were not within the class of calls for which TOCSIA directed the Commission to consider compensation. The Commission, therefore, limited compensation to interstate "access code calls." In the *Florida Payphone* decision, the United States Court of Appeals for the District of Columbia Circuit found no reason to distinguish between the routing of access code calls and subscriber 800 calls. Therefore, it reversed and remanded the case to the Commission to "consider the need to prescribe compensation for subscriber 800 calls 'routed to providers of operator services that are other than the presubscribed provider of operator services.'" For the limited purpose of calculating compensation for PSPs on a flat-rate basis until per-call compensation becomes mandatory the Commission will use a rate of \$.35 per call, which is the rate in the majority of states that have allowed the market to determine the appropriate local coin rate.

41. The Commission next re-examines the average number of access code calls originated by a payphone per month. In 1992, the Commission found that the average was 15 calls. As summarized below, data on the record in the instant proceeding indicate that the average number of access code calls per month is now considerably higher. In addition, similar data show the volume of subscriber 800 calls generated by the average payphone.

42. Based on the call volume data provided by the PSPs, the Commission concludes that, for purposes of calculating flat-rate compensation, that the average payphone originates a combined total of 131 access code calls and subscriber 800 calls per month. When 131 calls per month is multiplied by the \$.35 compensation amount, the monthly flat-rate compensation amount is \$45.85. The Commission concludes that this \$45.85 flat-rate amount must be paid by carriers, proportionally to their annual toll revenues, to PSPs. This flat-rate obligation applies to access code calls and subscriber 800 calls originated on or after the effective date of the rules adopted in this proceeding. PSPs that are affiliated with LECs will not be eligible for this interim compensation

until the first day following their reclassification and transfer of payment equipment along with the termination of subsidies, as discussed below.

B. Reclassification of Incumbent LEC-Owned Payphones

43. In the foregoing Part, the Commission establishes rules and guidelines to ensure that PSPs are fairly compensated for calls originating at their payphones. For certain PSPs—those who are LECs—the new compensation arrangement can be implemented only upon the discontinuance of the regulatory system under which they now recover their costs of providing payphone service. In this Part, the Commission describes the necessary steps for the LECs' transition to the new compensation framework, and sets a schedule for the LECs' implementing actions.

44. Section 276(b)(1)(B) directs the Commission to "discontinue the intrastate and interstate carrier access charge payphone service elements and payments in effect on such date of enactment, 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. 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 Commission adopts requirements on: (1) the prospective classification of incumbent LEC payphones as Customer Premises Equipment (CPE); (2) the transfer of incumbent LEC payphone equipment assets from regulated to nonregulated status; (3) the termination of access charge compensation and all other subsidies for incumbent LEC payphones; and (4) the classification of AT&T payphones.

1. Classification of LEC Payphones as CPE

i. CPE Deregulation

45. The Commission concludes 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. The Commission determined in *Computer II*

that CPE should be deregulated and detariffed to ensure that the costs associated with regulated services are separated from the competitive provision of the equipment used in conjunction with those services. The Commission concluded that CPE should be unbundled from its underlying transmission service in order to prevent improper cross-subsidization. Consistent with this prior finding, it concludes that LEC payphones must be treated as unregulated, detariffed CPE in order to ensure that no subsidies are provided from basic exchange and exchange access revenues or access charge payphone service elements as required by the Act.

ii. Unbundling of Payphone Services

46. The Commission concludes, pursuant to *Computer II*, Section 201, 202, and 276 of the Act, and previous CPE decisions, that incumbent LECs must offer individual central office coin transmission services to PSPs under nondiscriminatory, public, tariffed offerings if the LECs provide those services for their own operations. Under *Computer II*, all carriers must unbundle basic transmission services from CPE. Moreover, Section 202 of the Act prohibits a carrier from discriminating unreasonably in its provision of basic service. The Commission concludes that incumbent LECs must provide coin service so competitive payphone providers can offer payphone services using either instrument-implemented "smart payphones" or "dumb" payphones that utilize central office coin services, or some combination of the two in a manner similar to the LECs. Because the incumbent LECs have used central office coin services in the past, but have not made these services available to independent payphone providers for use in their provision of payphone services, the Commission requires that incumbent LEC provision of coin transmission services on an unbundled basis be treated as a new service under the Commission's price cap rules. Because incumbent LECs may have an incentive to charge their competitors unreasonably high prices for these services, the Commission concludes that the new services test is necessary to ensure that central office coin services are priced reasonably. Incumbent LECs not currently subject to price cap regulation must submit cost support for their central office coin services, pursuant to Sections 61.38, 61.39, or 61.50(i) of the Commission's rules. Incumbent LECs must file tariffs with the Commission for these services no later than January 15, 1997. To the extent that this requirement precludes

the BOCs from complying with the *Computer II*, *Computer III*, and *ONA* network information disclosure requirements, the Commission waives the notice period in order to ensure that these services are provided on a timely basis consistent with the other deregulatory requirements of this order. Pursuant to this waiver, network information disclosure on the basic network payphone services must be made by the BOCs by January 15, 1997.

47. The Commission concludes that tariffs for payphone services must be filed with the Commission as part of the LECs' access services to ensure that the services are reasonably priced and do not include subsidies. This requirement is consistent with the Section 276 prescription that all subsidies be removed from payphone operations. Accordingly, the Commission concludes that *Computer III* tariff procedures and pricing are more appropriate for basic payphone services provided by LECs to other payphone providers. Pursuant to Section 276(c), any inconsistent state requirements with regard to this matter are preempted.

iii. Other LEC Payphone Services

48. The Commission concludes that incumbent LECs should provide certain other services to other payphone providers if they provide those services to their own payphone operations. These services must be made available by the LEC or its affiliate to other payphone providers on a comparable basis in order to ensure that other payphone providers do not receive discriminatory service from the LECs once LEC payphones are deregulated, and to ensure that other payphone providers can compete with LEC payphone operations. The Commission concludes that fraud protection, special numbering assignments, and installation and maintenance of basic payphone services should be available to other providers of payphone services on a nondiscriminatory basis. Validation services are required by another proceeding. Regarding billing and collection services, the Commission concludes that if a LEC provides basic, tariffed payphone services that will only function in conjunction with billing and collection services from the LEC, the LEC must provide the billing and collection services it provides to its own payphone operations for these services to independent payphone providers on a nondiscriminatory basis. The Commission expects this requirement to apply, for example, in situations where coin services require the LEC to monitor coin deposits and such information is not otherwise available to third parties

for billing and collection. It adopts this requirement to ensure that when a LEC has structured its payphone services in a way that they could not operate without the LECs billing and collection services, those services will be available to other payphone providers on the same basis they are available to the LEC.

iv. Registration and Demarcation Point for Payphones

49. The Commission amends its Part 68 rules to provide for the registration of central-office-implemented coin payphones to enable independent payphone providers as well as the LECs to utilize "dumb" payphones. Under the *Coin Registration Order*, 49 FR 27763 (July 6, 1984), and current Part 68 rules, only instrument-implemented payphones can be registered for connection to the network. Amending the Commission's rules enables independent payphone providers to have the same choices as LECs in providing payphone services. Accordingly, the Commission adopts amendments to Section 68.2(a)(1) and Section 68.3 of the Commission's rules to facilitate registration of both instrument-implemented and central-office-implemented payphones. The Commission grandfathers existing LEC payphones from the Commission's revised Part 68 requirements, unless the basic functionality in the payphones is changed. The Commission requires incumbent LECs to submit proposed interconnection requirements to effectuate such interconnection within 90 days of the effective date of this order. The California Payphone Association (CPA) filed before the Commission a Petition for Rule Making requesting that Section 68.2(a)(1) of the rules be amended to allow for the registration of all coin-operated telephones and that the Commission re-examine and clarify its interpretation of Section 68.2(a)(1). The Commission notes that its decision in the Report and Order addresses the relief requested in the CPA petition. The *Report and Order* also effectively grants a petition filed by the Public Telephone Council to treat payphones as CPE, and resolves the issues raised in RM 8723 regarding exclusion of public payphones from end user access charges.

50. Consistent with the Commission's objective of treating incumbent LEC and independent payphone providers' payphones in a similar manner, the Commission concludes that the demarcation point must be the same as incumbent LECs use for independent payphone providers today. Accordingly, the demarcation for all new LEC payphones must be consistent with the

minimum point of entry, demarcation point standards for other wireline services. The Commission grandfathers the location of all existing LEC payphones in place on the effective date of this order because of the difficulty and cost of moving these payphones to meet the Commission's new demarcation point requirements. Similarly, the Commission does not require that network interfaces be placed for existing LEC payphones unless these payphones are substantially refurbished, for example, upgraded from dumb to smart payphones or replaced.

2. Reclassification or Transfer of Payphone Equipment to Nonregulated Status

51. The Commission's nonstructural safeguards include the cost allocation rules and affiliate transactions rules adopted in the *Joint Cost Order*. Under those rules, the BOCs and other incumbent LECs must classify each of their activities as regulated or nonregulated in accordance with the Commission's requirements. The Commission now requires that the BOCs and other incumbent LECs, subject to the Commission's joint cost rules, classify their payphone operations as nonregulated for Part 32 accounting purposes. The Commission notes, however, that the BOCs or other incumbent LECs are free to provide these services using structurally separate affiliates if they choose to do so. Therefore, the discussion below will address two possible approaches a carrier may take in reclassifying its payphone activities as nonregulated: (1) A carrier may maintain its payphone assets on the carrier's books but treat the assets as nonregulated, or (2) a carrier may transfer its payphone assets to a separate affiliate engaged in nonregulated activities.

i. Specific Assets Reclassified or Transferred

52. The payphone assets to be reclassified or transferred include all facilities related to payphone service, including associated accumulated depreciation and deferred income tax liabilities. The Commission, however, does not include as payphone assets to be reclassified or transferred the loops connecting the payphones to the network, the central office "coin-service," or operator service facilities supporting incumbent LEC payphones because these are part of network equipment necessary to support basic telephone services.

ii. Accounting Treatment for Assets Reclassified or Transferred

53. Whether a carrier should account for the transfer or reclassification of the payphone assets from regulated to nonregulated status at "fair market value" or the net book value of the assets is determined on whether a carrier maintains the assets in its regulated Part 32 accounts or instead transfers the payphone assets to a separate affiliate or an operating division within the carrier that is treated as an affiliate.

54. Carriers that do not transfer the payphone assets to a separate affiliate make no reclassification accounting entries to their Part 32 regulated accounts. The reclassification of these assets to nonregulated status is accomplished instead through the operation of Part 64 cost allocation rules. Accordingly, the Commission concludes that payphone investment in Account 32.2351, Public telephone terminal equipment, and any other assets used in the provision of payphone service, along with the associated accumulated depreciation and deferred income tax liabilities should be directly assigned or allocated to nonregulated activities pursuant to cost allocation rules. LECs should establish whatever Part 64 cost pools are needed and should file revisions to their cost allocations manuals within sixty (60) days prior to the effective date of the change.

55. Carriers that transfer their 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 in accordance with Section 32.23(b) of the Commission's rules must account for the transfer according to the affiliate transactions rules of Section 32.27(c) which require that the transfer be recorded at the higher of fair market value or cost less all applicable valuation reserves (net book cost). Fair market value has been defined as "the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts." The Commission concludes, that in instances when the transfer of payphone assets is governed by Section 32.27(c), it is appropriate that the going concern value associated with the payphone business be taken into consideration in determining fair market value. Such going concern value should include intangible assets such as location contracts that add value to the

payphone business. These intangible assets would be considered in the theoretical purchase price negotiated by a willing buyer and seller. The Commission does not believe, however, that the intangible asset value of BOC or LEC brand names should be included in the determination of going concern or fair market value because a BOC or a LEC would not transfer the right to use its brand name to a third party willing buyer.

56. The difference in accounting treatment for payphone assets either reclassified as nonregulated pursuant to the Commission's Part 64 cost allocation rules or transferred to a separate affiliate and accounted for in accordance with the Commission's Part 32 affiliate transactions rules stems primarily from the fact that in one instance there is no transfer, only a reallocation of assets to nonregulated status, and in the other instance, there has been an actual transfer. In addition, in the first instance the Commission's rules are designed to promote fair cost allocation between regulated and nonregulated activities; in the second instance, the Commission's rules are designed to protect against cross-subsidies between separate companies by capturing any appreciated value of assets transferred on the books of the carrier.

iii. Other Matters

57. The Commission requires the LECs to reclassify any pay telephone investments recorded in Account 32.2351, Public telephone terminal equipment, and other assets used in the provision of payphone service, along with the associated accumulated depreciation and deferred income tax liabilities, from regulated to nonregulated status pursuant to the Commission's Part 64 and Part 32 rules by April 15, 1997 when the associated revised tariffs are effective. The Commission thus agrees with Ameritech that it should adopt its tentative conclusion that a phase-in period is unnecessary.

3. Termination of Access Charge Compensation and Other Subsidies

58. In the telephone network, payphones, as well as all other telephones, are connected to the local switch by means of a subscriber line. The costs of the subscriber line that are allocated to the interstate jurisdiction are recovered through two separate charges: a flat-rate SLC assessed upon the end-user customer who subscribes to local service; and a per-minute CCL charge assessed upon IXCs that recovers the balance of the interstate subscriber line costs not recovered through the

SLC. LEC payphone costs are also included in the CCL charge. The CCL charge, however, applies to interstate switched access service that is unrelated to payphone service costs. While independent payphone providers are required to pay the SLC for the loop used by each of their payphones, LECs have not been required to pay this charge because the subscriber lines connected to LEC payphones have been recovered entirely through the CCL charge.

59. The Commission concludes that to implement Section 276 (b)(1)(B) of the 1996 Act, incumbent LECs must reduce their interstate CCL charges by an amount equal to the interstate allocation of payphone costs currently recovered through those charges. LECs subject to the price cap rules would treat this as an exogenous cost change to the Common Line basket pursuant to Section 61.45(d) of the Commission's rules. The incumbent LECs' residential SLC is limited to \$3.50 per month and their multi-line business SLC is currently subject to a \$6.00 per month cap. Those LECs with interstate subscriber line costs that exceed this amount recover a portion of the interstate costs of subscriber lines through the CCL charge. The issue of the appropriate interstate SLC has been referred to a Federal-State Joint Board.

60. Incumbent LECs today generally recover payphone costs allocated to the interstate jurisdiction through the per-minute carrier CCL charge they assess on IXCs and other interstate access customers for originating and terminating interstate calls. The incumbent LEC assesses the independent payphone provider a SLC (at the multi-line business rate) to recover the payphone common line costs associated with that phone. In the case of competitive payphones, an independent payphone provider recovers its payphone costs out of the revenue it receives from end users, premises owners, and OSPs to whom its payphones are presubscribed. The 1996 Act mandates that the Commission "discontinue the intrastate and interstate carrier access charge payphone service elements and payments * * * and all intrastate and interstate subsidies from basic exchange and exchange access revenues[.]"

61. Accordingly, the Commission adopts rules that provide for the removal from regulated intrastate and interstate rate structures of all charges that recover the costs of payphones (*i.e.*, the costs of payphone sets, not including the costs of the lines connecting those sets to the public switched network, which, like the lines

connecting competitive payphones to the network, will continue to be treated as regulated). Therefore, the Commission concludes that incumbent LECs must file revised CCL tariffs with the Common Carrier Bureau no later than January 15, 1997 to reduce their interstate CCL charges by an amount equal to the interstate allocation of payphone costs currently recovered through those charges, scheduled to take effect April 15, 1997. LECs subject to the price cap rules must treat this as an exogenous cost change to the Common Line basket pursuant to Section 61.45(d)(1)(v) of the Commission's rules. Incumbent LECs must identify and report accounts that contain costs attributable to their payphone operations. Incumbent LECs must identify specific cost pools and allocators that are required to capture the nonregulated investment and expenses associated with their payphone operations. LECs must file this information with the Common Carrier Bureau by January 15, 1997.

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

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

64. The Commission requires, pursuant to the mandate of Section 276(b)(1)(B), incumbent LECs to remove from their intrastate rates any charges that recover the costs of payphones. Revised intrastate rates must be effective no later than April 15, 1997. Parties did not submit state-specific information regarding the intrastate rate elements that recover payphone costs. States must determine the intrastate rate elements that must be removed to eliminate any intrastate subsidies within this time frame.

65. Finally, the Commission concludes that, to avoid discrimination among payphone providers, the multiline business SLC must apply to subscriber lines that terminate at both LEC and competitive payphones. It concludes that the removal of payphone costs from the CCL and the payment or imputation of a SLC to the subscriber line that terminates at a LEC nonregulated payphone will result in the recovery of LEC payphone costs on a more cost-causative basis consistent with the requirements of the 1996 Act. No action the Commission takes in the Report and Order affects the authority of states to address the state ratemaking implications of reclassification or transfer of payphone assets.

4. Deregulation of AT&T Payphones

66. The Commission concludes that AT&T payphones must be deregulated, detariffed and treated as CPE. The Commission concluded that there is a competitive market for payphones, and, pursuant to Section 276, subsidies must be removed from payphone service. AT&T payphones have been treated like BOC payphones for regulatory purposes. It would be incongruous to deregulate payphone equipment owned by all other carriers except AT&T. The Commission concludes, therefore, that AT&T payphones must be removed from regulation and treated as independent PSPs' payphones. Accordingly, the Commission requires that AT&T follow the same procedures discussed above for valuing LEC payphone assets and transferring them to nonregulated status. After deregulation, AT&T payphones will be subject to the same requirements as independent payphone provider payphones.

67. With regard to the issue of bundling of transmission capacity and payphone CPE, the Commission does not have a sufficient record to revise, with regard to payphone CPE, the Commission's conclusion in the *Computer II* proceeding that there are public interest benefits in unbundling CPE from the underlying transmission service. The issue of IXC CPE bundling

will be addressed in the *Interstate, Interexchange Marketplace* proceeding.

C. Nonstructural Safeguards for BOC Provision of Payphone Service

68. The foregoing parts establish a compensation arrangement that applies equally to the payphone operations of the BOCs, other LECs, AT&T and PSPs not affiliated with LECs. In this part, the Commission addresses certain operating requirements that are imposed only on the BOCs' payphone operations.

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

a. Nonstructural Safeguards

70. In addition to the accounting safeguards that the Commission will adopt with respect to payphone services in the accounting safeguards proceeding, it concludes that the *Computer III* and *ONA* nonstructural safeguards will provide an appropriate regulatory framework to ensure that BOCs do not discriminate or cross-subsidize in their provision of payphone service. The Commission and the BOCs have substantial experience in the application of these safeguards that will facilitate their use in the context of BOC payphone services. Pursuant to these requirements, the Commission notes that any basic services provided by a BOC to its payphone affiliate must be available on a nondiscriminatory basis to other payphone providers and that payphone providers may request additional unbundled payphone services through the 120 day *ONA* service request process. To ensure that the BOCs comply with the *Computer III* and *ONA* nonstructural separation requirements for the provision of payphone services, the Commission requires that, within 90 days following publication of a summary of the *Report and Order* in the Federal Register, BOCs must file CEI plans describing how they will comply with the *Computer III* unbundling, CEI parameters, accounting requirements, CPNI requirements as

modified by Section 222 of the 1996 Act, network disclosure requirements, and installation, maintenance, and quality nondiscrimination requirements. Except for the Commission's Part 64 cost allocation rules and Part 32 affiliate transaction rules, the Commission declines to apply the *Computer III* nonstructural safeguards to other LECs.

b. BOC CEI Plans

71. The Commission requires that each BOC file, within 90 days following publication of a summary of the *Report and Order* in the Federal Register, an initial CEI plan describing how it intends to comply with the CEI equal access parameters and nonstructural safeguards for the provision of payphone services. In *Computer III*, CEI plans have been an integral part of ensuring that BOCs do not discriminate in providing basic underlying services to enhanced services providers. The Commission likewise requires the filing of CEI plans for payphone services, even though the Commission has traditionally only required such plans for the BOC provision of enhanced services, to ensure that the BOCs provide payphone services in a nondiscriminatory manner and consistent with other *Computer III* and *ONA* requirements. Finally, the Commission concludes that this requirement is consistent with the requirement in Section 276 that the Commission establish safeguards, at a minimum, "equal to those adopted in the *Computer III* Inquiry."

72. In a CEI plan, a BOC must describe how it intends to comply with the CEI "equal access" parameters for the specific payphone service it intends to offer. The CEI equal access parameters include: interface functionality; unbundling of basic services; resale; technical characteristics; installation, maintenance, and repair; end user access; CEI availability; minimization of transport costs; and availability to all interested customers or enhanced service providers.

73. In its CEI plan, a BOC must explain how it will unbundle basic payphone services. Thus, a BOC must indicate how it plans to unbundle, and associate with a specific rate element in a tariff, the basic services and basic service functions that underlie its provision of payphone service. Nonproprietary information used by the BOC in providing the unbundled basic services will be made available as part of CEI. In addition, any options available to the BOC in the provision of such basic services or functions would be included in the unbundled offerings.

74. A BOC also must explain in its CEI plan how it will comply with the CPNI requirements. The Commission has continued to require compliance with the *Computer III* and *ONA* CPNI requirements that are not inconsistent with Section 222 of the 1996 Act, which was immediately effective. In the *CPNI NPRM*, the Commission is currently examining a carrier's obligations under the CPNI provisions of the 1996 Act.

75. BOCs must comply with the *Computer III* and *ONA* network information disclosure requirements. The BOCs cannot design new network services or change network technical specifications to the advantage of their own payphones. Pursuant to these rules, the BOCs must disclose information about changes in their networks or new network services at two different points in time. First, disclosure must occur at the "make/buy" point: when a BOC decides to make for itself, or procure from an unaffiliated entity, any product whose design affects or relies on the network interface. Second, a BOC must publicly disclose technical information about a new service 12 months before it is introduced. If the BOC can introduce the service within 12 months of the make/buy point, it would make a public disclosure at the make/buy point. The public disclosure, however, must not occur less than six months before the introduction of the service.

76. In addition, BOCs must comply with the *Computer III* and *ONA* requirements regarding nondiscrimination in the quality of service, installation, and maintenance. BOCs must indicate in their CEI plans how they will comply with these requirements. The Commission does not impose any new continuing reporting requirement because BOCs are already subject to reporting requirements pursuant to *Computer III* and *ONA*. BOCs must report on payphone services as they do for other basic services.

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

77. Section 276(b)(1)(D) of the 1996 Act directs the Commission to eliminate the court-ordered competitive barrier prohibiting the BOCs from participating in the selection of presubscribed interLATA carriers to their payphones, unless the Commission finds such activity to be contrary to the public interest.

78. Payphone providers, both PSPs and independent LECs, compete in the market for payphone services by offering location providers a commission on coin and 0+ traffic originating from the payphones located

on the location providers' premises. In turn, these payphone service providers earn revenues by contracting for the presubscription of 0+ traffic originating from their payphones. The 1996 Act directs the Commission to provide similar rights to the BOCs, unless the Commission determines it is not in the public interest. The Commission concludes that it would not be contrary to the public interest to allow the BOCs to negotiate with location providers with respect to the selecting and contracting for the interLATA carriers presubscribed to their payphones. The Commission first finds that the payphone industry is competitive and characterized by low barriers to entry which would act to prevent the BOCs from exercising market power in the provision of payphone services. The Commission explains that, although the BOCs currently have a large share of the payphone services market, there are also thousands of competitors. These competitors range in size from very small entities with only a handful of payphones, to the major long distance companies. The Commission finds that the existence of these many small competitors demonstrates that entry is relatively easy and does not require investment or scale levels that would deter many potential competitors. The Commission also concludes that any ability that the BOCs might have to raise prices to end users above competitive levels is severely restricted by the ability of end users to dial around the presubscribed interLATA carrier. The Commission explains that a sustained effort by the BOCs to pass on monopoly price levels to consumers would induce more end users to take advantage of this alternative.

79. The Commission also determines that the nonstructural and accounting safeguards required with respect to the BOCs' payphone operations are sufficient to deter the BOCs from improperly subsidizing those operations from their local access services or discriminating in the provision of local access services to the detriment of their payphone competitors. As discussed previously, the Commission is applying all *Computer III* and *ONA* nonstructural and accounting safeguards to the BOCs' provision of payphone services, and requiring that any basic services provided by a BOC to its own payphone operations to be available on a nondiscriminatory basis to other payphone providers. The Commission concludes that these safeguards provide an appropriate regulatory framework to ensure that BOCs do not engage in improper subsidization or discriminate

in the provision of services required by their payphone competitors. For these reasons, and because it finds that the statutory language reflects a Congressional determination that structural separation of the BOCs' payphone operations from their core business is neither necessary nor appropriate, the Commission declines to impose such structural separation on the BOCs' payphone business. The Commission does require that the nonstructural and accounting safeguards established pursuant to Section 276(b)(1)(C) of the 1996 Act be in place before the BOCs are allowed to participate in the interLATA presubscription process for their payphones. Specifically, the *Report and Order* requires a BOC to submit and receive approval of an initial CEI plan filed pursuant to Section 276(b)(1)(C) as a precondition to being authorized to engage in the conduct authorized by Section 276(b)(1)(D).

80. The *Report and Order* recognizes that location providers are to retain the ultimate decision-making authority in determining interLATA services in connection with the choice of payphone providers. The Commission finds that if strong competition is established in the payphone industry, location providers will be assured of the ultimate choice of the interLATA carrier serving payphones on their premises through the selection of PSPs. The Commission concludes that competition in the payphone industry is sufficiently strong to ensure that location providers have freedom of choice concerning the interLATA carrier for payphones on their premises. The Commission emphasizes, however, that a location provider's ability to choose should be protected from unjust and unreasonable practices which seek to foreclose meaningful choice. Such practices as unreasonable interference with pre-existing agreements between location providers and PSPs or carriers, or conduct which is unduly coercive of the location provider's right to choose the carrier for payphones on its premises, may constitute violations of Section 201 of the Communications Act.

81. The Commission rejects the argument that the presubscription rights specified in Section 276(b)(1)(D) constitute the provision of interLATA service subject to the restrictions of Sections 271 and 272 of the 1996 Act. The Commission finds that the statutory language authorizing the BOCs to "select and contract with, the carriers that carry interLATA calls from their payphones," grants the BOCs no more than the right to participate as a contractual intermediary between a

location provider and a third-party interLATA carrier. Such conduct does not amount to the provision of interLATA telecommunications service addressed under Sections 271 and 272. The Commission does find, however, that, for purposes of Section 276, resale by a BOC of interLATA service for its in-region presubscribed payphones lies outside of the specific rights granted by Section 276(b)(1)(D) of the 1996 Act, and is subject to the requirements set forth in Section 271(b).

82. The Commission affirms its tentative conclusion in the *NPRM* that the 1996 Act grandfathers all contracts in force between location providers and PSPs or interLATA or intraLATA carriers which were in force and effect as of February 8, 1996.

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

83. The Commission affirms its tentative conclusion in the *NPRM* that all PSPs should have the right to negotiate with location providers concerning the intraLATA carriers presubscribed to their payphones. The Commission also concludes that state regulations which require the routing of intraLATA calls to the incumbent LEC are inconsistent with this provision of the 1996 Act. Pursuant to the specific authority in Section 276(c), the Commission concludes that all such state requirements are therefore preempted by the Commission's regulations.

84. The Commission also affirms its tentative conclusion in the *NPRM* that intraLATA carriers presubscribed to payphones should be required to meet the Commission's minimum standards for routing and handling emergency calls. By mandating the application of minimum standards to intraLATA carriers presubscribed to payphones, the Commission seeks to ensure that individuals receive timely and proper assistance when they rely on payphones for 0- and 911 emergency calls.

F. Establishment of Public Interest Payphones

85. Section 276(b)(2) of the 1996 Act directs the Commission to "determine whether public interest payphones, which are provided in the interest of public health, safety, and welfare, in locations where there would otherwise not be a payphone, should be maintained, and if so, ensure that such public interest payphones are supported fairly and equitably." The Commission concludes that there is a need to ensure the maintenance of public interest payphones that serve public policy

interests in health, safety, and welfare, in locations where there might not otherwise be a payphone as a result of the operation of the market. The Commission explains that all payphones serve the public interest by providing access to basic communications services. The Commission expresses particular concern about the role served by payphones in providing access to emergency services, especially in isolated locations and areas with low levels of residential phone penetration. The Commission recognizes, however, the potential that a freely competitive marketplace may not provide for payphones in locations where they serve important public policy objectives, but which, for various reasons, may not be economically self-supporting. With the elimination of subsidies which have helped to support such payphones in the past, as directed by the 1996 Act, it is possible that many of these payphones could disappear absent the availability of alternative methods to ensure their existence.

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

87. While leaving broad discretion to the states with respect to the implementation of public interest payphone programs, the Commission finds that the adoption of certain minimum guidelines is necessary to meet its statutory obligation to ensure that public interest payphones are funded fairly and equitably. The Commission adopts as a definition of "public interest payphone," a payphone which (1) fulfills a public policy objective in health, safety, or public welfare, (2) is not provided for a location provider with an existing contract for the provision of a payphone, and (3) would not otherwise exist as a result of the operation of the competitive marketplace. The Commission concludes that reliance on the public interest payphone provisions of the 1996 Act should be limited to instances where a payphone location serves a strong public interest that would not be fulfilled by the normal operation of the market. The Commission also concludes that the statutory language requires a national guideline that companies providing public interest payphones be fairly

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

88. Also in furtherance of its statutory responsibility under Section 276(b)(2), the Commission directs each state to review whether it has adequately provided for public interest payphones in a manner consistent with the *Report and Order*. Each state is required, within two years of the date of issuance of the *Report and Order*, to evaluate whether it needs to take any measures to ensure that payphones serving important public interests will continue to exist in light of the elimination of subsidies and other competitive provisions established pursuant to Section 276 of the 1996 Act, and that any existing programs are administered and funded consistent with the Commission's rules. The Commission also provides that interested parties may file petitions with the Commission challenging state requirements that are believed to be inconsistent with Section 276(b)(2) or guidelines adopted by the Commission implementing the provisions of that Section.

G. Other Issues

1. Dialing Parity

89. The Commission affirms its tentative conclusion in the *NPRM* that the benefits of dialing parity adopted pursuant to Section 251(b)(3) of the 1996 Act should extend to all payphone location providers. The Commission finds that dialing parity is an important element in fostering vigorous competition in the payphone industry, as in the local exchange and long distance industry, by ensuring that each customer has the freedom and the flexibility to choose among different carriers for different services without

the burden of dialing access codes. The Commission concludes that the technical and timing requirements established pursuant to Section 251(b)(3), and Section 271(c)(2)(B), should apply equally to payphones.

90. The Commission also concludes that the unblocking of carrier access codes mandated by the Telephone Operator Consumer Services Improvement Act of 1990 ("TOCSIA"), Section 226 of the Act, and the Commission's rules for interstate calls, should also apply to intrastate (including local) access code calls. Given the existence of compensation and the pro-competitive purpose of Section 276 of the 1996 Act, and the absence of any technical limitations, the Commission finds that unblocked access for all access code calls from payphones is required.

2. Letterless Keypads

91. The Commission affirms its tentative conclusion in the *NPRM* that the use of letterless keypads on payphones violates both TOCSIA and the 1996 Act. The Commission finds that an exclusively numeric payphone keypad defeats a caller's attempt to reach its OSP of choice through the use of commonly-used "vanity" access sequences such as AT&T's "1-800-CALL-ATT" and MCI's "1-800-COLLECT." Such access sequences, which can be easily remembered by consumers, require the presence of both alphabetic and numeric characters on payphone keypads. The Commission finds no plausible purpose for letterless keypads other than to restrict access to a non-presubscribed carrier. The Commission determines that it has authority to take enforcement action, including forfeitures, if such devices are used, and orders that OSPs may not pay commissions to PSPs utilizing such devices.

3. Oncor Petition

92. The Commission denies the petition of Oncor Communications, Inc., filed August 7, 1995, requesting that the Commission prescribe compensation for public payphone premises owners and presubscribed OSPs. The Commission invited comment on Oncor's petition by Public Notice released September 12, 1995. The Commission finds that the presubscribed OSP incurs no costs when a consumer makes an access code call from a payphone, and it would be inequitable to require any party to compensate the presubscribed OSP because the caller chose not to use it. The Commission also notes that the rules adopted in the *Report and Order* will ensure that PSPs are fairly

compensated for calls that originate from their payphones, and market forces will ensure that the PSPs fairly compensate premises owners.

III. Conclusion

93. In the *Report and Order*, the Commission establishes procedures that will ensure that all payphone service providers are fairly compensated for every completed intrastate, interstate and international call, except for those calls excepted by statute, and adopts interim compensation until the new compensation procedures are effective. The Commission also establishes procedures that ensure that all subsidies from basic exchange and exchange access revenues are removed simultaneous with the LECs' receipt of compensation for calls from LEC payphones. The Commission requires the BOCs to comply with certain nonstructural safeguards for their provision of payphone service, and allows them to negotiate with location providers for selecting and contracting with the carriers that provide interLATA service from their payphones. The *Report and Order* also sets forth guidelines for public interest payphones, and establishes guidelines for states to use in their proceedings for funding of such payphones.

IV. Ordering Clauses

94. Accordingly, pursuant to authority contained in Sections 1, 4, 201-205, 215, 218, 219, 220, 226, and 276 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 201-205, 215, 218, 219, 220, 226, and 276, *it is ordered* that the policies, rules, and requirements set forth herein *are adopted*.

95. *It is further ordered*, that 47 CFR Part 64, Sections 64.1301 and 64.1340, *are amended* as set forth below, effective November 6, 1996, and that 47 CFR Part 64, Sections 64.1330 and 64.703 *are amended* as set forth below, effective December 16, 1996.

96. *It is further ordered*, that 47 CFR Part 64, Section 64.1301 is removed and Sections 64.1300, 64.1310 and 64.1320, *are amended* as set forth below, effective October 7, 1997.

97. *It is further ordered*, that 47 CFR Part 68, *is amended* as set forth below, effective April 15, 1997.

98. *It is further ordered*, that local exchange carriers *shall reclassify* their payphone assets and related expenses to nonregulated status on April 15, 1997.

99. *It is further ordered*, that carriers required to file a cost allocation manual pursuant to 47 CFR Section 64.903 or by Commission order *shall file* revisions to their manuals implementing the

reclassification required herein no later than February 14, 1997.

100. *It is further ordered*, that local exchange carriers shall file tariff revisions required by paras. 180 to 187 of the *Report and Order* on January 15, 1997, to be effective April 15, 1997.

101. *It is further ordered*, the Bell Operating Companies are granted waivers of the time requirements of the *Computer II* and the *Computer III* network disclosure requirements in order to provide basic network payphone services by April 15, 1997. Pursuant to this waiver, network disclosure notification for these basic network payphone services must be filed no later than January 15, 1997.

102. *It is further ordered*, that the Bell Operating Companies shall file CEI plans for the provision of payphone service not later than January 6, 1997.

103. *It is further ordered*, that the waivers of Section 64.1301 of the Commission's Rules granted to AT&T and Sprint in the proceedings referenced in para. 119 of the *Report and Order* are revoked, effective 30 days after publication of a summary of this *Report and Order* in the Federal Register.

104. *It is further ordered*, that the proceedings initiated by our *Memorandum Opinion and Order on Further Reconsideration and Second Further Notice of Proposed Rulemaking* in CC Docket 91-35, 60 FR 48957 (September 21, 1995), Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, 10 FCC Rcd 11457 (1995), are terminated.

105. *It is further ordered*, that the July 18, 1988 Petition of the Public Telephone Council for a declaratory ruling that BOC Payphones should be treated as CPE is dismissed as moot.

106. *It is further ordered*, that the August 7, 1995 Petition of Oncor Communications, Inc. Requesting Compensation for Competitive Payphone Premises Owners and Presubscribed Operator Services Providers is denied.

107. *It is further ordered*, that the proceedings entitled Amendment of Section 69.2 (m) and (ee) of the Commission's Rules to Include Independent Public Payphones Within the "Public Telephone" Exemption from End User Common Line Access Charges, RM 8723, are terminated.

108. *It is further ordered*, that the December 28, 1989 Petition of the California Payphone Association is dismissed as moot.

109. *It is further ordered*, that the provisions set forth in Section 1.4 of the Commission's rules establishing the

date of public notice for this *Report and Order* are waived, and petitions for reconsideration shall be filed within 30 days of release of this document, and oppositions to the petitions must be filed within seven (7) days after the date for filing the petitions for reconsideration. For purposes of this proceeding, Section 1.106(h) of the Commission's Rules is waived, and the Commission will not accept replies to oppositions.

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 carrier, Communications equipment, Labeling, Reporting and record keeping requirements, Telephone.

Federal Communications Commission.

Shirley S. Suggs,
Chief, Publications Branch.

Rule Changes

Parts 64 and 68 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. Effective November 6, 1996, the authority citation for Part 64 is revised to read as follows:

Authority: 47 U.S.C. 154, unless otherwise noted. Interpret or apply 47 U.S.C. 201, 218, 226, 228, 276 unless otherwise noted.

2. Effective December 16, 1996, § 64.703(b) is amended by removing the word "and" at the end of paragraph (b)(2), and by redesignating paragraph (b)(3) as paragraph (b)(4); and adding a new paragraph (b)(3) to read as follows:

§ 67.703 Consumer information.

* * * * *

(b) * * *

(3) In the case of a pay telephone, the local coin rate for the pay telephone location; and

* * * * *

3. Effective November 6, 1996, the heading of Subpart M of Part 64 is revised to read as follows:

Subpart M—Payphone Compensation

4. Effective November 6, 1996, § 64.1301 is amended by revising the first sentence of paragraph (a) and paragraph (b) to read as follows:

§ 64.1301 Competitive payphone compensation.

(a) Each payphone service provider eligible to receive compensation shall be paid \$45.85 per payphone per month for originating access code and toll-free calls. * * *

(b) This compensation shall be paid by interexchange carriers (IXCs) that earn annual toll revenues in excess of \$100 million, as reported in the FCC staff report entitled "Long Distance Market Shares." Each individual IXC's compensation obligation shall be set in accordance with its relative share of toll revenues among IXCs required to pay compensation. For example, if total toll revenues of IXCs required to pay compensation is \$50 billion, and one of these IXCs had \$5 billion of total toll revenues, the IXC must pay \$4.585 per payphone per month.
* * * * *

5. Effective December 16, 1996, § 64.1330 is added to subpart M to read as follows:

§ 64.1330 State review of payphone entry and exit regulations and public interest payphones.

(a) Each state must review and remove any of its regulations applicable to payphones and payphone service providers that impose market entry or exit requirements.

(b) Each state must ensure that access to dialtone, emergency calls, and telecommunications relay service calls for the hearing disabled is available from all payphones at no charge to the caller.

(c) Each state must review its rules and policies to determine whether it has provided for public interest payphones consistent with applicable Commission guidelines, evaluate whether it needs to take measures to ensure that such payphones will continue to exist in light of the Commission's implementation of Section 276 of the Communications Act, and administer and fund such programs so that such payphones are supported fairly and equitably. This review must be completed by September 20, 1998.

6. Effective November 6, 1996, § 64.1340 is added to read as follows:

§ 64.1340 Right to negotiate.

Unless prohibited by Commission order, payphone service providers 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 interLATA and intraLATA calls from their payphones.

7. Effective October 7, 1997, § 64.1300 is added to subpart M to read as follows:

§ 64.1300 Payphone compensation obligation.

(a) Except as provided herein, every carrier to whom a completed call from a payphone is routed shall compensate the payphone service provider for the call at a rate agreed upon by the parties by contract.

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

(c) In the absence of an agreement as required by paragraph (a) of this section, the carrier obligated to compensate the payphone service provider shall do so at a per-call rate equal to its local coin rate at the payphone in question.

(d) For the initial one-year period during which carriers are required to pay per-call compensation, in the absence of an agreement as required by paragraph (a) of this section, the carrier is obligated to compensate the payphone service provider at a per-call rate of \$.35 per call. After this initial one-year period of per-call compensation, paragraph (c) of this section will apply.

§ 64.1301 [Removed]

8. Effective October 7, 1997, § 64.1301 is removed.

9. Effective October 7, 1997, section 64.1310 is added to read as follows:

§ 64.1310 Payphone compensation payment procedures.

(a) It is the responsibility of each carrier to whom a compensable call from a payphone is routed to track, or arrange for the tracking of, each such call so that it may accurately compute the compensation required by Section 64.1300(a).

(b) Carriers and payphone service providers shall establish arrangements for the billing and collection of compensation for calls subject to Section 64.1300(a).

(c) Local Exchange Carriers must provide to carriers required to pay compensation pursuant to Section 64.1300(a) a list of payphone numbers in their service areas. The list must be provided on a quarterly basis. Local Exchange Carriers must verify disputed numbers in a timely manner, and must maintain verification data for 18 months after close of the compensation period.

(d) Local Exchange Carriers must respond to all carrier requests for payphone number verification in connection with the compensation requirements herein, even if such verification is a negative response.

(e) A payphone service provider that seeks compensation for payphones that are not included on the Local Exchange Carrier's list satisfies its obligation to provide alternative reasonable verification to a payor carrier if it provides to that carrier:

(1) A notarized affidavit attesting that each of the payphones for which the payphone service provider seeks compensation is a payphone that was in working order as of the last day of the compensation period; and

(2) Corroborating evidence that each such payphone is owned by the payphone service provider seeking compensation and was in working order on the last day of the compensation period. Corroborating evidence shall include, at a minimum, the telephone bill for the last month of the billing quarter indicating use of a line screening service.

10. Effective October 7, 1997, § 64.1320 is added subpart M to read as follows:

§ 64.1320 Payphone compensation verification and reports.

(a) Carriers subject to payment of compensation pursuant to Section 64.1300(a) shall conduct an annual verification of calls routed to them that are subject to such compensation and file a report with the Chief, Common Carrier Bureau within 90 days of the end of the calendar year, provided, however, that such verification and report shall not be required for calls received after December 31, 1998.

(b) The annual verification required in this section shall list the total amount of compensation paid to payphone service providers for intrastate, interstate and international calls, the number of compensable calls received by the carrier and the number of payees.

PART 68—CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORK

11. The authority citation for Part 68 is revised to read as follows:

Authority: 47 U.S.C. 151, 154, 155, 201-5, 208, 215, 218, 226, 227, 303, 313, 314, 403, 404, 410, 602.

12. Effective April 15, 1997, § 68.2(a)(1) is revised to read as follows:

§ 68.2 Scope.

(a) * * *

(1) Of all terminal equipment to the public switched telephone network, for use in conjunction with all services other than party line service;

* * * * *

13. Effective April 15, 1997, § 68.3 is amended by adding the definitions of "central-office implemented telephone" and "instrument implemented telephone" in alphabetical order and removing the definitions of "coin-implemented telephone" and "coin service" to read as follows:

§ 68.3 Definitions.

* * * * *

Central-office implemented telephone: A telephone executing coin acceptance requiring coin service signaling from the central office.

* * * * *

Instrument-implemented telephone: A telephone containing all circuitry required to execute coin acceptance and related functions within the instrument itself and not requiring coin service signaling from the central office.

* * * * *

This Attachment will not be published in the Code of Federal Regulations.

ATTACHMENT—INTERIM COMPENSATION OBLIGATIONS

Company	1995 Total toll services revenues (dollar in millions)	Percent of total toll revenues	Amount per phone per month
AT&T Companies:			
AT&T Communications, Inc	\$38,069	56.69	\$25.9923406
Alascom, Inc	325	0.48	0.2219000
MCI Telecommunications Corp	12,924	19.25	8.8241091
Sprint Communications Co	7,277	10.84	4.9685115
LDDS Worldcom	3,640	5.42	2.4852799

ATTACHMENT—INTERIM COMPENSATION OBLIGATIONS—Continued

Company	1995 Total toll services revenues (dollar in millions)	Percent of total toll revenues	Amount per phone per month
Frontier Companies:			
Allnet Comm. Svcs. dba Frontier Comm. Svcs	827	1.23	0.5646501
Frontier Communications Intl, Inc	309	0.46	0.2109757
Frontier Comm. of the North Central Region	133	0.20	0.0908083
Frontier Communications of the West, Inc	127	0.19	0.0867117
Cable & Wireless Communications, Inc	700	1.04	0.4779384
LCI International Telecom Corp	671	1.00	0.4581381
Excel Telecommunications, Inc	363	0.54	0.2478452
Telco Communications Group, Inc	215	0.32	0.1467954
Midcom Communications, Inc	204	0.30	0.1392849
Tel Save, Inc ⁹	180	0.27	0.1228985
U.S. Long Distance, Inc	155	0.23	0.1058292
Vartex Telecom, Inc	125	0.19	0.0853461
General Communication, Inc	120	0.18	0.0819323
Business Telecom, Inc	115	0.17	0.0785185
Oncor Communications, Inc	111	0.17	0.0757874
The Furst Group, Inc	109	0.16	0.0744218
American Network Exchange, Inc	101	0.15	0.0689597
Total	67,153	100.00	45.85

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1815, 1816, 1852, and 1870

Rewrite of the NASA FAR Supplement (NFS)

AGENCY: Office of Procurement, National Aeronautics and Space Administration (NASA).

ACTION: Interim rule.

SUMMARY: Part 1815 is revised to delete the NASA-unique source selection procedures and established those in FAR 15.6 as the standard for NASA negotiated competitive acquisition, with appropriate supplementation; implement recent FAR changes resulting from provisions of the Federal Acquisition Streamlining Act (FASA) of 1994; and incorporate other acquisition streamlining procedures or delete unnecessary regulatory coverage, consistent with the NFS rewrite philosophy. Part 1816 is revised for the same reasons as above, as well as to clarify the relationship between cost-plus-award-fee (CPAF) contracting and performance based contracting (PBC). Subpart 1870.3 is deleted in its entirety. The numbering of NFS sections has been changed to indicate the exact section of the FAR being implemented or supplemented. Since the changes either conform NASA procedures to those of the FAR, implement FASA-

related FAR changes, or affect acquisition procedures to the extent that immediate adoption is necessary, NASA is issuing the changes as an interim rule, with an effective date 30 days after publication.

DATES: This rule is effective November 6, 1996. All comments on this interim rule should be in writing and must be received by November 6, 1996.

ADDRESSES: Bruce King, Code HC, NASA Headquarters, 300 E Street, SW., Washington, DC 20546-0001; Tom O'Toole, Code HC, NASA Headquarters, 300 E Street, SW., Washington, DC 20546-0001.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas O'Toole, (202) 358-0478; Mr. Bruce King, (202) 358-0461.

SUPPLEMENTARY INFORMATION:

Background

The National Performance Review urged agencies to streamline and clarify their regulations. The NFS rewrite initiative was established to pursue these goals by conducting a section review of the NFS to verify its accuracy, relevancy, and validity. The NFS will be rewritten in blocks of parts and upon completion of all parts, the NFS will be reissued in a new edition.

Impact

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule does not impose any reporting or record

keeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 1815, 1816, 1852, and 1870

Government procurement.

Deidre A Lee,

Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1815, 1816, 1852, and 1870 are amended as follows:

2. Part 1815 is revised to read as follows:

PART 1815—CONTRACTING BY NEGOTIATION

Subpart 1815.4—Solicitation and Receipt of Proposals and Quotations

Sec.

- 1815.405 Solicitations for information or planning purposes.
- 1815.405-70 Draft requests for proposals.
- 1815.406 Preparing requests for proposals (REPs) and requests for quotations (FRQs).
- 1815.406-2 Part I—The Schedule.
- 1815.406-5 Part IV—Representations and instructions.
- 1815.406-70 Page limitations.
- 1815.406-71 Installation reviews.
- 1815.406-72 Headquarters reviews.
- 1815.407 Solicitation provisions.
- 1815.407-70 NASA solicitation provisions.
- 1815.408 Issuing solicitations.
- 1815.408-70 Blackout notices.
- 1815.412 Late proposals, modifications, and withdrawals of proposals.
- 1815.412-70 Broad agency announcements (BAAs), Small Business Innovative Research (SBIR), and Small Business Technology Transfer (STTR) solicitations.
- 1815.413 Disclosure and use of information before award.
- 1815.413-2 Alternate II.