levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies), Prisoners, Whistleblowing.

For the reasons stated in the preamble, Title 28, Part 0, Subpart K of the Code of Federal Regulations is amended as follows:

PART 0—[AMENDED]

1. The authority citation for Part 0 continues to read as follows:


2. Section 0.64–2 is amended as follows:

   a. The phrase “Public Law 95–44” is removed and the phrase “Public Law 95–144” is inserted in its place;
   b. The final sentence is revised to read as follows:

   §0.64–2 Delegation respecting transfer of offenders to or from foreign countries.

   * * * The Assistant Attorney General in charge of the Criminal Division is authorized to delegate this authority to his Deputy Assistant Attorneys General, the Director of the Office of Enforcement Operations, and the Senior Associate Director and Associate Directors of the Office of Enforcement Operations.


Janet Reno
Attorney General.

[FR Doc. 98–10832 Filed 4–24–98; 8:45 am]
BILLING CODE 4410–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket 96–128; DA 98–481]


AGENCY: Federal Communications Commission.

ACTION: Final rule; clarification and waivers.

SUMMARY: The Common Carrier Bureau adopted a Memorandum Opinion and Order, which clarifies the requirements for the provision of payphone-specific coding digits by local exchange carriers (LECs) and payphone service providers (PSPs) to interexchange carriers (IXCs). The order also clarifies that automatic number identification indicators (“ANI ii”) and flexible automatic numbering identification (“FLEX ANI”), are the methods to provide payphone-specific coding digits that comply with the requirements of the Payphone Orders. In addition, the order clarifies the tariff requirements that LECs must file pursuant to the Payphone Orders. The order also grants a waiver of part 69 of the Commission’s rules so that LECs can establish rate elements to recover the costs of implementing FLEX ANI to provide payphone-specific coding digits for per-call compensation. Additionally, this order provides limited waivers to LECs, PSPs, and IXCs, when appropriate, to facilitate the implementation of per call compensation.


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

SUPPLEMENTARY INFORMATION: This is a summary of the Bureau’s Memorandum Opinion and Order in CC Docket No. 96–128 [DA 98–481], adopted on March 9, 1998, and released on March 9, 1998. The full text of the Memorandum Opinion and Order (“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 this decision also may be purchased from the Commission’s duplicating contractor, International Transcription Services, 1231 20th Street, N.W., Washington, D.C. 20036.

Paperwork Reduction Act

The Federal Communications Commission has received Office of Management and Budget (OMB) approval for the following public information collections contained in the Order pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number.

OMB Control Number: 3060–0823.

Expiration Date: 09/30/98.

Title: Pay Telephone Reclassification

Memorandum Opinion and Order, CC Docket No. 96–128.

Form No.: N/A.

Respondents: Business or other for-profit entities.

Information collection requirement | No. of respondents (approximate) | Est. time per response (hours) | Total annual burden |
--- | --- | --- | --- |
(a) LEC Tariff To Provide FLEX ANI to IXCs | 400 | 35 | 14,000 |
(b) LEC Tariff To Recover Costs | 400 | 35 | 14,000 |
(c) LECs Must Provide IXCs on Payphones that Provide Payphone specific Coding Digits | 400 | 24 | 9,600 |
(d) LECs must Provide IXCs and PSPs Information on where FLEX ANI is Available Now and When it is to be Scheduled in the Future | 400 | 16 | 6,400 |
(e) Waiver; LECs to Provide Cost Analysis Upon Request | 20 | 35 | 700 |

Total Annual Burden: 44,700 Hours.

Estimated Annual Reporting and Recordkeeping cost Burden: $0.

Needs and Uses: In the MO&O, the Bureau clarifies and provides waivers of requirements established in the Payphone Orders for the provision of payphone-specific coding digits by LECs and PSPs, to IXCs, beginning October 7, 1997. The information disclosure rules and policies governing the payphone industry to implement Section 276 of the Act will ensure the payment per-call...
compensation by implementing a method for LECs to provide information to IXC s to identify calls, for each and every call made from a payphone. The Bureau has reviewed several methods of identifying payphone calls and has determined that among them, FLEX ANI is the most flexible and has the added capability of providing a number of additional coding digits, in real-time, that can uniquely identify a call as coming from a payphone. Obligation to respond: Required. Public reporting burden for the collections of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, D.C. 20554.

Summary of Memorandum Opinion and Order

1. In the order, the Bureau clarifies and waives certain requirements established in the Payphone Orders regarding payphone-specific coding digits to facilitate the transition for local exchange carriers (“LECs”), payphone service providers (“PSPs”) and interexchange carriers (“IXCs”) to provide and receive payphone-specific coding digits to identify calls from payphones to payphone service providers.

2. In the Order, the Bureau clarifies requirements established in the Payphone Orders for the provision of payphone-specific coding digits by LECs and PSPs, to IXCs beginning October 7, 1997. Specifically, the Order explains that automatic number information indicators (“ANI II”) and flexible automatic numbering identification (“FLEX ANI”) are the methods that LECs can use to provide payphone-specific coding digits that comply with the requirements of the Payphone Orders. The Order concludes that all LECs must implement FLEX ANI to comply with the requirements of the Payphone Orders subject to the limited waivers granted in the Order. (i) In concluding that hardcoding ANI II payphone-specific coding digits and FLEX ANI, not list information database (LIDB), as the only approaches that comply with the requirements of the Payphone Orders for the provision of payphone-specific coding digits, the Bureau, in the Order, rejects the claim that LIDB also complies with those requirements because the implementation of FLEX ANI is too costly for LECs. In the Order, the Bureau explains that the mechanisms established by the Commission in the Payphone Orders and the Second Report and Order, as well as the waivers granted therein respond to those concerns.

3. The Order also clarifies the requirement to transmit payphone-specific coding digits applies only to payphone service provided by LECs to dumb, smart, and inmate payphones. It does not apply to any other LEC provided service such as business lines, PBX, or Centrex lines to which a payphone may be connected.

4. In the Bureau Waiver Order, the Bureau stated that payphones appearing on the LEC-provided lists of payphones (LEC ANI lists) will be eligible for per-call compensation even if they do not transmit payphone-specific coding digits. Although payphones on the LEC ANI lists are eligible for per-call compensation during the waiver period of the Bureau Waiver Order, and this Order, to ensure an orderly transition to the provision of FLEX ANI for all payphones on LEC payphone service lines, not just any LEC service line, PSP payphones must be on LEC payphone lines within 30 days of the release of this order to continue to be eligible for per-call compensation, even if the PSP payphones are on the LEC ANI lists.

5. In response to the concerns raised by LECs, PSPs, and IXCs, the Order further clarifies the requirements for the provision of payphone-specific coding digits established in the Payphone Orders. The Order on Reconsideration required that LECs “must make available to PSPs, on a tariffed basis, such coding digits as their transmission obligations under the Payphone Orders. See Order paras. 23–25. Where a LEC chooses to employ hardcoding to provide payphone-specific coding digits and to recover the incremental costs from PSPs, as provided in this order, we assume that LEC would file an appropriate tariff as provided in other parts of this order.
part of the ANI for each payphone.” 12 In the Second Report and Order, the Commission included the estimated cost of providing coding digits in the per-call default compensation rate to be paid by IXC to PSPs for subscriber 800 and access code calls. To comply with the requirements of the Payphone Orders, LECs must provide FLEX ANI to IXC through their interstate tariffs, so that IXC can identify which calls come from payphones. The LEC Coalition, Bell South, and Bell Atlantic have proposed that LECs modify their interstate access tariffs to provide that IXC may request FLEX ANI without charge if it is for the purpose of complying with the per-call compensation requirements of the Payphone Orders. The LEC Coalition also proposes that LECs recover the costs of providing FLEX ANI to IXC through a new federal rate element to be applied to all payphone lines on a nondiscriminatory basis. That proposed rate is to be charged monthly on a per-line basis until the costs for implementation of FLEX ANI for payphone compensation are recovered. The Order concludes that this approach is consistent with the tariff requirements of the Payphone Orders.

6. PSPs will pay the costs incurred by LECs to implement FLEX ANI for payphone compensation through the rate applied to all payphones by the LECs. LECs must provide FLEX ANI to IXC and the IXC are charged for this service through the per-call payphone compensation rate which IXC pay to PSPs. Thus, IXC will not be charged directly for this service by the LECs. LEC FLEX ANI tariff revisions to provide FLEX ANI to IXC must be filed no later than March 31, 1998, with a scheduled effective date of April 15, 1998, if a LEC is able to provide FLEX ANI to 25% or more of the smart payphones in its service area. Thereafter, within the waiver period granted in this order, a LEC must file its FLEX ANI tariff to provide FLEX ANI to IXC no later than when it is able to provide FLEX ANI to 25% or more of the payphones in its service area. After filing the FLEX ANI tariff, LECs will continue to make FLEX ANI available as each end office becomes FLEX ANI capable.

7. Beginning March 27, 1998, all LECs must provide FLEX ANI for all payphones it serves, it must provide monthly to IXC and PSPs, upon request, information on: (1) End offices where FLEX ANI is available; and (2) proposed dates for the availability of FLEX ANI by end office for all areas where it is not yet available. Beginning March 27, 1998, all LECs must provide on a monthly basis to IXC, upon request: (1) The number of smart and the number of dumb payphones that are owned by the LEC PSP and IXC in the LEC service area; and (2) The ANI for smart payphones and the ANI for dumb payphones owned by the LEC and independent IXC that are providing phone-specific coding digits and those that are not providing payphone-specific coding digits in the LEC service area. Because many LECs have reported technical problems in transmitting payphone specific coding digits even when FLEX ANI is available for a payphone, we require that in these two reports required herein, that LECs indicate which end offices and payphone ANI’s are “coding-digit-capable.” A payphone is “coding-digit-capable” when it is able to transmit payphone-specific coding digits that are capable of reaching an IXC point of presence (POP) for subscriber 800 and access code calls from payphones using 10XXX and 101XXX. LECs may provide these reports earlier and LECs do not have to provide this information to an IXC that indicates that it does not require this information to pay per-call compensation.

8. The Bureau required in the Bureau Waiver Order, and the Order requires therein, that LECs and PSPs must transmit payphone-specific coding digits, or that IXC is technically capable, and no later than the waivers have been granted. The Order notes, however, that IXC must request, test, and coordinate with LECs to implement this service under carrier to carrier procedures to ensure that there are no problems in providing and receiving the FLEX ANI digits for a particular IXC or LEC. The Bureau notes, however, that LECs will reduce the burden on IXC of requesting FLEX ANI by simplifying the service request process. While PSPs are obligated, pursuant to the Payphone Orders, to compensate LECs for coding of the PSE payphone lines for the transmission from the PSEs payphones to payphone-specific coding digits through LEC tariffed payphone services, PSPs are not required to request the LEC payphone-specific coding digits transmission service to IXC.

9. LEC tariffs to recover the costs of implementing FLEX ANI from PSPs must be filed no later than 30 days after full implementation of FLEX ANI. The costs of implementing FLEX ANI can include, for example, generic upgrades excluding the costs of other software features, loading the software, paying a fee for usage of the software, translations and conditioning the trunks for each end office. These costs will be distributed over a reasonable period and be paid by all PSPs. Under § 69.4 (g) of the Commission’s Rules, 47 CFR 69.4 (g), a LEC subject to price cap regulation may establish a switched access rate element for a new interstate service upon approval of a petition demonstrating that establishment of the new rate element would be in the public interest. Because Part 69 authorizes only a limited number of rate elements, a non-price cap LEC must still obtain a waiver of that Part to establish any rate element for a new interstate service. The Order grants a blanket waiver of Part 69.4(b) and (c) of the Commission’s rules to enable those LECs to establish an appropriate new rate element in their interstate tariffs that reflects the incremental costs directly attributable to the implementation of FLEX ANI to transmit payphone-specific coding digits for the purposes of payphone compensation as described elsewhere in the Order and to file the necessary revisions to their interstate tariffs.

Second, the Order grants to those price cap LECs that must secure it, blanket permission under Part 69.4 (g) of the Commission’s rules to establish a new rate element in their interstate tariffs that reflects that same incremental costs and to file the necessary revisions to their tariffs.

10. The Bureau also affirms its grant in the Bureau Waiver Order, 13 on its own motion, of a blanket waiver of five months, until March 9, 1998, to those LECs and PSPs who assert that they cannot provide payphone-specific coding digits as required by the Payphone Orders.

11. The Bureau also grants in part the requests of USTA, TDS, and the LEC Coalition. USTA requested that LECs with digital, equal-access switches be given an additional nine months to provide the technology required to supply and accommodate the coding digits; that LECs with non-equal-access switches be exempt from providing payphone identification information until their switches are replaced or upgraded for equal-access; and that LECs be permitted to use whatever technology they select for digital, equal-access switches to provide information that will permit IXC to track payphone calls in order to compensate PSPs. The

12 The Bureau Waiver Order extended that period for LECs that were unable to provide coding digits until March 9, 1998. 62 FR 58659 (October 30, 1997). 12 FCC Rcd at 16,387, para. 1.

13 The Bureau also affirming its grant in the Bureau Waiver Order, on its own motion, of a blanket waiver for the Payphone Orders.
LEC Coalition requested that the Commission waive the October 7, 1997 deadline, stating that LECs would be unable to supply forty percent of payphone lines with the requisite coding digits by that date. The LEC Coalition requests a waiver of the payphone-specific coding digit requirements until the Commission clarifies the coding digit requirement. The LEC Coalition states that implementation of FLEX ANI requires loading of the software in switches that do not have it, provisioning, translations, and trunk conditioning. The LEC Coalition also indicates that LECs must test FLEX ANI with IXCs that wish to receive it and ensure proper functioning so that calls are not dropped. TDS, an owner of local exchange carriers, petitioned the Commission to extend the deadline for payphone-specific coding digits from October 7, 1997, until July 1, 1998 and to use LIDB. TDS states that it needs additional time to arrange agreements with database suppliers, and to complete transmission tests to IXCs selected by its subsidiaries.

12. All of the BOCs have indicated problems in implementing FLEX ANI, because of problems, for example, with software upgrades, certain switch types, and network configurations that required heavy vendor software development and network reconfiguration, and therefore, argue that they need additional time to implement FLEX ANI. The Order concludes that the LEC Coalition has shown that limited waivers are justified to allow for additional time to implement FLEX ANI. In the Order, the Bureau grants Bell Atlantic, SBC, Ameritech, and BellSouth no more than a 90 day waiver to resolve technical and other implementation problems with specific switch types and some call types. In addition, the Order grants US West a waiver to provide payphone-specific coding digits until June 30, 1998, to be able to provide FLEX ANI for 90 percent of the smart payphones in its service area and until December 31, 1998, to complete FLEX ANI implementation. With regard to all other LECs that may require additional time to implement FLEX ANI, including GTE and SNET, the Order grants each LEC a waiver until no later than September 30, 1998, to be able to provide FLEX ANI for 75 percent of the smart payphones in its service area and until December 31, 1998, to complete FLEX ANI implementation. With regard to all other LECs that may require additional time to implement FLEX ANI, including GTE and SNET, the Order grants each LEC a waiver until no later than September 30, 1998, to be able to provide FLEX ANI for 75 percent of the smart payphones in its service area and until December 31, 1998, to complete FLEX ANI implementation. Those LECs and PSPs that are able to transmit the required coding digits by March 9, 1998, remain obligated to do so. Similarly, all LECs and PSPs are obligated to transmit the required coding digits as soon as they are technically capable, but in any event no later than the end of the waiver period for which they are eligible pursuant to this order.

13. The Order requires that LECs that have been granted a waiver for additional time beyond March 9, 1998, to implement FLEX ANI, must implement FLEX ANI first in locations where there are larger numbers of payphones owned by independent PSPs for which payphone-specific coding digits are not available. The LEC Coalition states that midsize LECs and small LECs where a LEC is unable to recover its costs, through a monthly charge for no longer than a 10 year period, from all payphones in its serving area. This waiver is specifically granted for small and midsize LECs for which the cost of implementing FLEX ANI would be unreasonably burdensome, despite provisions in the Order for cost recovery. The LEC is required to use the analysis set forth in the Order to determine whether it qualifies for the waiver. The LEC must perform the analysis on an annual basis. The LEC may assume that the payphone rate element established to recover the cost over a period not greater than 10 years would not be greater than 20% of the national average payphone line cost of $38.90, or $7.78 per line per month. LECs must make this evaluation and qualify for this waiver individually and not as part of a holding company. LECs must make this evaluation within 30 days of the release of this order, and notify IXCs, upon request, that they will not be implementing FLEX ANI pursuant to this waiver. The Order requires that a LEC delaying the implementation of FLEX ANI pursuant to this waiver provision, must be prepared to submit its analysis of cost recovery for implementing FLEX ANI, if the Bureau requests the analysis. The Bureau may at such time determine whether there continues to be a justification to grant a waiver to that LEC because it is unable to recover its cost of implementing FLEX ANI.

14. The Order grants small and midsize LECs an extension to implement FLEX ANI until September 30, 1998, to be able to provide payphone-specific coding digits through FLEX ANI to 75 percent of the smart payphones in its service area and until no later than December 31, 1998, to complete FLEX ANI implementation. The Order grants a limited waiver to midsize and small LECs where a LEC is unable to recover its costs, through a monthly charge for no longer than a 10 year period, from all payphones in its serving area. This waiver is specifically granted for small and midsize LECs for which the cost of implementing FLEX ANI would be unreasonably burdensome, despite provisions in the Order for cost recovery. The LEC is required to use the analysis set forth in the Order to determine whether it qualifies for the waiver. The LEC must perform the analysis on an annual basis. The LEC may assume that the payphone rate element established to recover the cost over a period not greater than 10 years would not be greater than 20% of the national average payphone line cost of $38.90, or $7.78 per line per month. LECs must make this evaluation and qualify for this waiver individually and not as part of a holding company. LECs must make this evaluation within 30 days of the release of this order, and notify IXCs, upon request, that they will not be implementing FLEX ANI pursuant to this waiver. The Order requires that a LEC delaying the implementation of FLEX ANI pursuant to this waiver provision, must be prepared to submit its analysis of cost recovery for implementing FLEX ANI, if the Bureau requests the analysis. The Bureau may at such time determine whether there continues to be a justification to grant a waiver to that LEC because it is unable to recover its cost of implementing FLEX ANI.

15. The Order grants LECs a waiver of the payphone-specific coding digit requirement for non-equal access switches until such switches are either upgraded to equal access or replaced. In the Order, the Bureau concludes that USTA has shown special circumstances with regard to non-equal access switches and switches with Bell I signaling, because LECs are not able to implement FLEX ANI in those switches at reasonable costs. The Bureau concludes that it would not be in the public interest to require the replacement of these switches with the expenditure of substantial investment solely for the provision of payphone-specific coding digits. When LECs replace or upgrade these switches, however, the Order requires that FLEX ANI be implemented within 60 days unless they qualify for another waiver discussed herein. LECs with non-equal access switches must provide information as required above regarding payphones in their service areas.

16. In the Order, the bureau denies TDS’s request that it be allowed to implement LIDB to comply with the payphone-specific coding digits requirement. TDS is eligible, however, for one or more of the waivers described above.

17. Some LECs indicate that it would be costly to implement FLEX ANI now for switches that they plan to replace in the near future. The Order concludes that it is not cost effective to require LECs to implement FLEX ANI in switches that are going to be replaced before October 6, 1999, the end of the default compensation period. Accordingly, the Order grants LECs that plan to replace switches before October 6, 1999, a waiver until that date to...
provide FLEX ANI through those switches.

18. SBC, BellSouth, Ameritech, SNTE, and Bell Atlantic have requested additional time to implement FLEX ANI to resolve specific problems with certain switches and call types, and request waivers because there are technical limitations in passing FLEX ANI payphone-specific coding digits on certain types of calls and switches, and the modifications cannot be completed by March 9, 1998.

19. The Order grants BOCs 90 days to resolve technical problems in implementing FLEX ANI. BOCs must provide payphone-specific coding digits earlier than the end of the waiver period for each technical problem, if these problems are resolved earlier than the end of the waiver period granted. BOCs must notify IXCs regarding the call and switch problems the BOCs are having on a monthly basis. With regard to these technical problems, BOCs and other LECs must notify IXCs regarding these problems implementing FLEX ANI. With regard to problem (2), cited by SBC, FGB service, the Order notes that there is currently no standard to provide payphone-specific coding digits and carriers wishing to receive FLEX ANI must take FGD service. Thus, pending the development of standards, the Order grants all LECs a waiver and require that carriers taking FGB service pay PSPs per-call compensation using ANI lists or other means they may identify.

20. All LECs and PSPs are obligated to transmit the required coding digits as soon as they are technically capable, but in any event, no later than the end of the waiver period for which they are eligible, pursuant to the Order. During the period of the BOCs' waiver Order and the waivers granted in the Orders, the IXC obligation to pay per-call compensation established in the Payphone Orders remains in effect. Neither the Bureau Waiver Order, nor the Order, waives the per-call compensation requirements of the Payphone Orders and the Second Report and Order. As required in the Bureau Waiver Order, payphones appearing on the LEC-provided lists of payphones are eligible for per-call compensation even if they do not transmit payphone-specific coding digits. As required in the Payphone Orders and the Second Report and Order, absent a negotiated agreement, IXCs must pay per-call compensation of $0.284, for all calls they receive from payphones not otherwise compensated. Payments must be remitted at least on a quarterly basis. The period from October 1, 1997 through December 31, 1997 period must be paid no later than April 1, 1998.

LEC that have certified to the IXC that they comply with the requirements of the Payphone Orders must receive per-call compensation. The Order further states that there likely will be some disputes between IXCs and PSPs about the true number of compensable calls, but that these disputes should not be a basis for delay of payphone compensation payments. The Order states that whether a retroactive adjustment (true-up) of payphone compensation may be necessary for the waiver periods granted in the Bureau Waiver Order and this order will be addressed in a subsequent order in this proceeding if necessary. The Order also does not address AT&T's request, in response to the Bureau Waiver Order, that it and similarly situated IXCs receive a waiver to pay per-phone rather than per-call compensation for payphones that do not provide payphone-specific coding digits. Nonetheless, IXCs must still pay compensation on April 1, 1998.

21. The waivers granted in the Order are effective immediately in order to ensure that all PSPs continue to receive per-call compensation, as required by the Payphone Orders. Without these waivers, many PSPs would not receive per-call compensation, because the LECs servicing them are not yet able to provide the required payphone-specific coding digits.

22. In the Order, the Bureau rejects the argument that IXCs should not be required to compensate PSPs for the costs they incur in paying LECs to implement FLEX ANI for payphone compensation. The Commission concludes in the Payphone Orders that IXCs are the primary beneficiaries of dial-around calls and they should perform per-call tracking and pay per-call compensation. In addition, the Commission concludes in the Second Report and Order that the costs of providing coding digits to IXCs is a cost of doing business of PSPs for which IXCs must provide compensation as part of the per-call rate. In the Order, the Bureau declines USTA's request that the Commission must authorize full cost recovery and additional time for LECs that implemented LIDB for CC Docket No. 91–35 stating that it is unclear what additional costs would have been incurred to implement LIDB to comply with the payphone-specific coding digit requirement of the Payphone Orders. Separate from those incurred for CC Docket No. 91–35 and that there is insufficient information on the record to grant the request.

23. The Order concludes as did the Bureau Waiver Order, that it is in the public interest for IXCs to pay payphone compensation beginning October 7, 1997, despite the limited waivers of the requirement to provide payphone-specific coding digits provided in the Bureau Waiver Order and this order, because of the clear mandate of Section 276 that PSPs be paid compensation for each and every call. The Second Report and Order established a default per-call compensation rate and extended the period of its applicability to address the problem presented by the LECs, IXCs, and PSPs in these waiver requests.

Pursuant to the waivers granted in the Order, if a payphone does not provide payphone-specific coding digits, the default per-call rate established in the Second Report and Order for the first two years of per-call compensation, $0.284 per-call, will continue to be the per-call default rate for that payphone until that payphone provides payphone-specific coding digits.

24. The Order also concludes that a continuing waiver of the rule requiring the provision of payphone-specific coding digits as a prerequisite to payphone compensation is in the public interest for IXCs to pay payphone compensation on a per-call basis. The inability to provide payphone-specific coding digits identified in the payphone proceeding will serve the public interest, because it will allow us to move forward in implementing the statutory requirement that PSPs receive fair compensation for calls placed from their phones while continuing to progress to a market-based structure for payphone compensation. The Bureau stated in the Bureau Waiver Order that the unavailability of the payphone-specific coding digits will not preclude IXCs from identifying payphone-specific calls for the purposes of determining the number of calls for which compensation is owed. Nor will the waiver interfere with the payphones that currently are able to transmit payphone-specific coding digits.

25. The waivers the Bureau grants in the Order to LECs and PSPs are effective March 9, 1998, to ensure that all PSPs continue to receive per-call compensation after the expiration of the waiver granted in the Bureau Waiver Order. The immediate implementation of these waivers is crucial to the Commission's efforts to ensure fair compensation for all PSPs, encourage the deployment of payphones, and enhance competition among PSPs, as mandated by Section 276 of the Act. In the Order the Bureau grants these waivers to all similarly situated LECs and PSPs to avoid a significant administrative impact and further delay of the payment of payphone compensation as required by Section 276.

26. In the Order, the Bureau declines to waive the obligation of IXCs to pay per-call compensation during the waiver
period of the Bureau Waiver Order and the additional waivers granted within
the Order. The Payphone Orders concluded that the primary economic
beneficiaries of a subscriber 800 and access code calls are the carriers that
carry the call. The Bureau Waiver Order required that IXCs pay per-call
compensation during the coding digit waier period as required by the
Payphone Orders. During that period, IXCs and their customers continued to
use payphones to make calls that must be compensated pursuant to the
Payphone Orders and the Second Report and Order. Moreover, IXCs already have
implemented surcharges for per-call compensation and they would be
benefiting unreasonably if the Bureau were to grant them a waiver of the
code compensation obligations so that they do not have to pay per-call
compensation when payphone-specific coding digits are not available.

27. In the Order, the Bureau denies
ITA's petition for reconsideration of the
obligation to pay compensation during the
waiver period, and AirTouch's petition for waiver seeking similar relief,
both of which were filed in response to the Bureau Waiver Order.
The Bureau also denies the requests of ITA and AirTouch that they be granted
relief from the payment obligations of the Payphone Order and the Second
Report and Order until they can block calls. In denying AirTouch's petition,
the Bureau notes that AirTouch has not shown special circumstances or that a
waiver is in the public interest. The Bureau also declined to reconsider, in
response to ITA's Petition, its decision in the Bureau Waiver Order to waive
payphone-specific coding digit requirements while maintaining, and
not waiving, the per-call compensation requirements during the waiver period.

28. Accordingly, pursuant to authority contained in Sections 1, 4, 201–205,
218, 226, and 276 of the Communications Act of 1934, as
amended, 47 U.S.C. 151, 154, 201–205,
218, 226, and 276, that the policies and
requirements set forth herein are
adopted.

29. It is further ordered that this Order
is effective immediately upon release
thereof, and that the waivers included in
this order are effective March 9, 1998.

30. It is further ordered that pursuant to
Section 203 of the Communications Act, 47 U.S.C. 203, each of the LECs,
absent a waiver, shall FILE tariff revisions to their interstate access tariffs to
reflect the availability of FLEX ANI
for IXCs for the purpose of payphone
compensation after March 31, 1998, with a scheduled effective date of
April 15, 1998, if FLEX ANI is available
for 25% or more of the smart payphones in
its service area. Thereafter, within the
waiver period it is granted in this order, a LEC must file its tariff revision to
provide FLEX ANI to IXCs no later than
when it provides FLEX ANI to 25% or
more of the smart payphones in its service area.

31. It is further ordered that pursuant to
Section 203 of the Communications Act, 47 U.S.C. 203, each of the LECs
providing FLEX ANI shall FILE tariffs to
recover the cost of implementing FLEX
ANI as required herein no later than 30
days after full implementation of FLEX
ANI.

32. It is further ordered that the LECs are
granted a waiver of Part 69 of the
Commission's rules to develop a rate
element for recovery of costs incurred to
implement FLEX ANI from PSPs for the
requirements of this order to provide
FLEX ANI to IXCs.

33. It is further ordered that the ITA
Petition for Reconsideration and the
AirTouch Petition for Waiver of the
Bureau Waiver Order are denied.

34. It is further ordered that the
waiver requests of USTA, the LEC
Coalition, and TDS are granted to the
extent described herein, and otherwise
are denied.

Federal Communications Commission.
A. Richard Metzger, Jr.,
Chief, Common Carrier Bureau.
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DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
50 CFR Part 660
[Docket No. 980415098–0898–01;
L.D.031998A]
RIN 0648–AK22
Fisheries Off West Coast States and in the
Western Pacific; Western Pacific
Crustacean Fisheries; Vessel
Monitoring System; Harvest Guideline;
Closed Season
AGENCY: National Marine Fisheries
Service (NMFS), National Oceanic and
Atmospheric Administration (NOAA),
Commerce.
ACTION: Final rule.
SUMMARY: NMFS issues this final rule to
implement three management measures
governing the crustacean fisheries in the
Exclusive Economic Zone around
Hawaii. The first measure allows fishing
vessels in the Northwestern Hawaiian
Islands (NWHI) lobster fishery with
vessel monitoring system (VMS) units to
transit the prohibited Crustaceans
Permit Area 1 VMS Subarea while
returning to port following closure of
the fishery. Because these vessels are
under surveillance by NMFS, they are
allowed to traverse the permit subarea.
Lobster vessels without VMS units must
be outside the permit area when the
closure takes effect and be back in port
as specified by the Administrator,
Southwest Region, NMFS. The second
measure changes the deadline by which
NMFS must announce the NWHI lobster
harvest guideline for the following
fishing season from March 31 to
February 28. This action gives
fishermen additional lead time to
prepare their vessels for the lobster
season which opens on July 1. The third
measure, which pertains to the main
Hawaiian Islands crustacean fishery,
adds another month (May) to the
existing closed lobster season (June
through August), which makes Federal
regulations for the lobster closed season
consistent with the State of Hawaii's
closed season for State waters. This rule
also contains a nonsubstantive
clarification of the definition of
Crustaceans Permit Area 1 VMS
Subarea.
ADDRESSES: Copies of background
material pertaining to this action may be
obtained from Kitty Simonds, Executive
Director, Western Pacific Fishery
Management Council (Council), 1164
Bishop St., Suite 1400, Honolulu, HI
96813, or Alvin Katekaru, Resource
Management Specialist, Pacific Islands
Area Office, Southwest Region, NMFS,
2570 Dole Street, Honolulu, HI 96822,
FOR FURTHER INFORMATION CONTACT:
Alvin Katekaru at (808) 973–2985 or
Kitty Simonds at (808) 522–8220.
SUPPLEMENTARY INFORMATION: Following
the 1997 NWHI lobster season, lobster
fishermen reviewed the program and
identified two issues that needed to be
addressed. First, the requirement that
VMS–carrying lobster vessels be outside
the Crustaceans Permit Area 1 VMS
Subarea when the fishery is closed (50
CFR 660.48), causes these vessels to take
an indirect route back to port adding
approximately 50 nautical miles to their
return trip. Second, fishermen also
requested more lead time to prepare (i.e.,
purchase and outfit lobster traps) for the
lobster season and recommended that
NMFS announce the next season's
harvest guideline no later than 90 days
following closure of the previous
season.
These issues were initially discussed at
the 92nd Council meeting held in