

6. Section 22.949 is amended by revising the introductory text to read as follows:

§ 22.949 Unserved area licensing process.

This section sets forth the process for licensing unserved areas in cellular markets on channel blocks for which the five year build-out period has expired. This process has two phases: Phase I and Phase II. This section also sets forth the Phase II process applicable to applications to serve the Gulf of Mexico Coastal Zone.

* * * * *

7. Section 22.950 is added to read as follows:

§ 22.950 Provision of service in the Gulf of Mexico Service Area (GMSA)

The GMSA has been divided into two areas for licensing purposes, the Gulf of Mexico Exclusive Zone (GMEZ) and the Gulf of Mexico Coastal Zone (GMCZ). This section describes these areas and sets forth the process for licensing facilities in these two respective areas within the GMSA.

(a) The GMEZ and GMCZ are defined as follows:

(1) *Gulf of Mexico Exclusive Zone.* The geographical area within the Gulf of Mexico Service Area that lies between the coastline line and the southern demarcation line of the Gulf of Mexico Service Area, excluding the area comprising the Gulf of Mexico Coastal Zone.

(2) *Gulf of Mexico Coastal Zone.* The geographical area within the Gulf of Mexico Service Area that lies between the coast line of Florida and a line extending approximately twelve nautical miles due south from the coastline boundary of the States of Florida and Alabama, and continuing along the west coast of Florida at a distance of twelve nautical miles from the shoreline. The line is defined by Great Circle arcs connecting the following points (geographical coordinates listed as North Latitude, West Longitude) consecutively in the order listed:

- (i) 30°16'49" N 87°31'06" W
- (ii) 30°04'35" N 87°31'06" W
- (iii) 30°10'56" N 86°26'53" W
- (iv) 30°03'00" N 86°00'29" W
- (v) 29°33'00" N 85°32'49" W
- (vi) 29°23'21" N 85°02'06" W
- (vii) 29°49'44" N 83°59'02" W
- (viii) 28°54'00" N 83°05'33" W
- (ix) 28°34'41" N 82°53'38" W
- (x) 27°50'39" N 83°04'27" W
- (xi) 26°24'22" N 82°23'22" W
- (xii) 25°41'39" N 81°49'40" W
- (xiii) 24°59'02" N 81°15'04" W
- (xiv) 24°44'23" N 81°57'04" W
- (xv) 24°32'37" N 82°02'01" W

(b) *Service Area Boundary Calculation.* The service area boundary of a cell site located within the Gulf of Mexico Service Area is calculated pursuant to § 22.911(a)(2). Otherwise, the service area boundary is calculated pursuant to §§ 22.911(a)(1) or 22.911(b).

(c) Operation within the Gulf of Mexico Exclusive Zone (GMEZ). GMEZ licensees have exclusive right to provide service in the GMEZ, and may add, modify, or remove facilities anywhere within the GMEZ without prior Commission approval. There is no five-year buildout period for GMEZ licensees, no requirement to file system information update maps pursuant to § 22.947, and no unserved area licensing procedure for the GMEZ.

(d) Operation within the Gulf of Mexico Coastal Zone (GMCZ). The GMCZ is subject to the Phase II unserved area licensing procedures set forth in § 22.949(b).

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 96-128; FCC 02-22]

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

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission reconsidered certain aspects of per-payphone compensation pursuant to a remand by the U.S. Court of Appeals for the District of Columbia Circuit. To implement the remand, the Commission established a new default compensation amount for completed access charge and subscriber 800 calls per payphone per month, and resolved the issues of compensation for 0+ and inmate calls, interest rates, and a number of other related matters.

DATES: Effective January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Lynne Milne, Common Carrier Bureau, Competitive Pricing Division, (202) 418-1520.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Fourth Order on Reconsideration and Order on Remand (Order) in CC Docket No. 96-128, adopted January 28, 2002, and released on January 31, 2002. The complete text of this Order is available

for public inspection Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m. in the Commission's Consumer Information Bureau, Reference Information Center, Room CY-A257, 445 Twelfth Street, SW, Washington, DC 20554. The complete text is available also on the Commission's Internet site at www.fcc.gov. Alternative formats are available to persons with disabilities by contacting Martha Contee at (202) 418-0260 or TTY (202) 418-2555. The complete text of the Order may be purchased from the Commission's duplicating contractor, Qualex International, Room CY-B402, 445 Twelfth Street, SW, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or e-mail at qualexint@aol.com.

Synopsis of Fourth Order on Reconsideration and Order on Remand

1. After a remand by the U.S. Court of Appeals for the D.C. Circuit in *Illinois Pub. Telecomm. Ass'n v. FCC*, 117 F.3d 555 (D.C. Cir. 1997), *clarified on reh'g*, 123 F.3d 693 (D.C. Cir. 1997), cert. *denied sub nom. Virginia State Corp. Comm'n v. FCC*, 523 U.S. 1046 (1998) (hereinafter *Illinois*), the Commission established in this Order the amount of monthly per-payphone compensation for access charge and subscriber 800 calls, beginning November 7, 1996. This amount is \$33.892 per payphone per month. The Commission also calculated the amount of monthly per-payphone compensation for 0+ calls during the period beginning November 7, 1996 through October 6, 1997 (sometimes called the interim period), if the payphone service provider was not otherwise compensated. This amount is \$4.2747 per payphone per month, paid by the interexchange carrier presubscribed during the interim period.

2. In this Order, the Commission determined the rate of per-call compensation for inmate calls during the interim period, if the payphone service provider was not otherwise compensated. The interexchange carrier presubscribed during the interim period pays \$0.229 per inmate call "that otherwise would have been compensated." For example, if the policy or practice of the specific presubscribed interexchange carrier was not to pay compensation to a payphone service provider for a collect call from an inmate when the called party refused to accept charges for that particular call during the interim period, then the specific presubscribed interexchange carrier is not required now to pay compensation of \$0.229 for that

particular inmate call. In addition, if the presubscribed interexchange carrier failed to retain the records of inmate calls originating during the interim period for which compensation now must be paid according to this Order, then that presubscribed interexchange carrier must file a waiver request with the Common Carrier Bureau, pursuant to 47 CFR 1.3, specifying the number of inmate calls to be compensated for the interim period and the specific basis for its number. The specific payphone service provider to be compensated will be allowed thirty (30) days to file an objection with the Common Carrier Bureau, specifying an alternative number of inmate calls to be compensated for the interim period and the specific basis for its number.

3. For access code calls, subscriber 800 calls, inmate calls or 0+ calls, a payphone service provider that is affiliated with a local exchange carrier is not eligible to receive payphone compensation prior to April 16, 1997 or, in the alternative, the first day following both the termination of subsidies and payphone reclassification and transfer, whichever date is latest. The payphone compensation for access code calls, subscriber 800 calls, inmate calls or 0+ calls decided in this Order is a default amount, used in the absence of a negotiated amount. The Commission concluded moreover that the duty to pay interim compensation should not be limited to carriers with annual toll revenue above \$100 million, but should include all interexchange carriers and local exchange carriers to the extent that local exchange carriers receive compensable payphone calls. In addition, the Commission excluded resellers from direct payment obligations for interim compensation to eliminate some of the non-payment problems described in the *Second Reconsideration Order*, 66 FR 21105 (Apr. 27, 2001). See also *Third Reconsideration Order*, 67 FR 3621 (Jan. 25, 2002).

4. The Commission in this Order also designated the payphone compensation interest rate for the interim period and the period beginning October 7, 1997 through April 20, 1999 (sometimes called the intermediate period) as the applicable rate for refund obligations set by the Internal Revenue Service (IRS) pursuant to section 6621 of the Internal Revenue Code, 26 U.S.C. 6621. Based on an IRS Revenue Ruling published December 26, 2001, in Appendix C of the Order, the Commission provided the interest rates applicable to payphone compensation beginning the last quarter of 1996 through March 31, 2002.

TABLE OF OVERPAYMENTS INTEREST RATES FROM OCTOBER 1, 1996 THROUGH DECEMBER 31, 1998

Oct. 1, 1996–Dec. 31, 1996	8%
Jan. 1, 1997–Mar. 31, 1997	8%
Apr. 1, 1997–Jun. 30, 1997	8%
Jul. 1, 1997–Sep. 30, 1997	8%
Oct. 1, 1997–Dec. 31, 1997	8%
Jan. 1, 1998–Mar. 31, 1998	8%
Apr. 1, 1998–Jun. 30, 1998	7%
Jul. 1, 1998–Sep. 30, 1998	7%
Oct. 1, 1998–Dec. 31, 1998	7%

TABLE OF NONCORPORATE OVERPAYMENTS INTEREST RATES FROM JANUARY 1, 1999 THROUGH MARCH 31, 2002

Jan. 1, 1999–Mar. 31, 1999	7%
Apr. 1, 1999–Jun. 30, 1999	8%
Jul. 1, 1999–Sep. 30, 1999	8%
Oct. 1, 1999–Dec. 31, 1999	8%
Jan. 1, 2000–Mar. 31, 2000	8%
Apr. 1, 2000–Jun. 30, 2000	9%
Jul. 1, 2000–Sep. 30, 2000	9%
Oct. 1, 2000–Dec. 31, 2000	9%
Jan. 1, 2001–Mar. 31, 2001	9%
Apr. 1, 2001–Jun. 30, 2001	8%
Jul. 1, 2001–Sep. 30, 2001	7%
Oct. 1, 2001–Dec. 31, 2001	7%
Jan. 1, 2002–Mar. 31, 2002	6%

TABLE OF CORPORATE OVERPAYMENTS INTEREST RATES FROM JANUARY 1, 1999 THROUGH MARCH 31, 2002

Jan. 1, 1999–Mar. 31, 1999	6%
Apr. 1, 1999–Jun. 30, 1999	7%
Jul. 1, 1999–Sep. 30, 1999	7%
Oct. 1, 1999–Dec. 31, 1999	7%
Jan. 1, 2000–Mar. 31, 2000	7%
Apr. 1, 2000–Jun. 30, 2000	8%
Jul. 1, 2000–Sep. 30, 2000	8%
Oct. 1, 2000–Dec. 31, 2000	8%
Jan. 1, 2001–Mar. 31, 2001	8%
Apr. 1, 2001–Jun. 30, 2001	7%
Jul. 1, 2001–Sep. 30, 2001	6%
Oct. 1, 2001–Dec. 31, 2001	6%
Jan. 1, 2002–Mar. 31, 2002	5%

See Revenue Ruling 2001–63, 2001–52 Internal Revenue Bulletin (I.R.B.) 606 (Dec. 26, 2001), 2001 WL 1563674 (IRS RRU). For interest in subsequent quarters, interested parties must use subsequent IRS Revenue Rulings.

5. In the *First Report and Order*, 61 FR 52307 (Oct. 7, 1996), the Commission used annual toll revenue as a basis for allocation between the carriers of the duty to pay a specified amount per payphone per month as interim compensation. The court in *Illinois* rejected this allocation methodology and required that the compensation obligation be based on payment for the payphone services received by that particular carrier. Consequently, the

Commission must establish a nexus between the allocation methodology and the number of payphone calls routed to a specific carrier. The Commission is still considering the numerous proposals for various allocation methodologies received in this proceeding, CC Docket No. 96–128. Comments filed in this proceeding analyzing various proposed allocation methodologies emphasized the lack of a nexus between each proposed allocation methodology and the number of payphone calls routed to any specific carrier. For this reason, in letters dated December 20, 2001, the Common Carrier Bureau requested that Qwest, Verizon, BellSouth and SBC submit, no later than January 22, 2002, the number of call attempts designated by coding digits of 27 (dumb payphone) or 70 (smart payphone), routed to an interexchange carrier point of presence or handled entirely by the Regional Bell Operating Company facilities, for 1997, 1998, and fiscal year 2001 (beginning October 1, 2000 and ending September 30, 2001). Now that the record in this proceeding was supplemented, this specific call tracking data should allow the Commission to determine an allocation of the per-payphone compensation obligations. The Commission realized that this would effectively defer the determination of compensation owed for the interim and intermediate periods until it establishes a reasonable allocation methodology. To avoid further delay, however, in establishing some of the preconditions for per-payphone compensation, and to provide the industry with some guidance as to how the Commission intends to proceed, the Commission decided to adopt this Order at this time.

6. The Commission will determine in a subsequent order the issue of offsets of interim and intermediate overpayments as contemplated in the *Third Report and Order*, 64 FR 13701 (Mar. 22, 1999), and additional issues remanded in *Illinois*, such as an allocation methodology for per-payphone compensation, and the valuation of payphone assets transferred by local exchange carriers to a separate affiliate or operating division. See *Remand Public Notice*, 62 FR 43686 (Aug. 15, 1997).

Paperwork Reduction Act Analysis

7. This Order was analyzed with respect to the Paperwork Reduction Act of 1995, Public Law 104–13. It contains no new or modified information collections subject to Office of Management and Budget review.

Supplemental Final Regulatory Flexibility Act Analysis

8. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (IRFA) was provided in the *Notice of Proposed Rulemaking* in CC Docket No. 96-128, 61 FR 31481 (June 20, 1996). The Commission sought written public comment on the proposals in the *Notice of Proposed Rulemaking*, including comment on the IRFA. A Final Regulatory Flexibility Analysis (FRFA) was provided in the *First Report and Order*, 61 FR 52307 (Oct. 7, 1996), the *First Reconsideration Order*, 61 FR 65341 (Dec. 12, 1996), the *Second Report and Order*, 62 FR 58659 (Oct. 30, 1997), and the *Third Report and Order*, 64 FR 13701 (Mar. 22, 1999).

9. This present Supplemental FRFA conforms to the RFA, as amended. See 5 U.S.C. 604. The RFA, 5 U.S.C. 601 *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Public Law No. 104-121, 110 Stat. 847 (1996) (CWAA). Title II of the CWAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

10. To the extent that any statement in this Supplemental FRFA is perceived as creating ambiguity with respect to Commission rules or statements made in the sections of the Order preceding the Supplemental FRFA, the rules and statements set forth in those preceding sections are controlling.

Need for, and Objectives of, the Rules

11. In adopting section 276 in 1996, Public Law No. 104-104, 110 Stat. 56 (1996) (codified at 47 U.S.C. 276), Congress mandated *inter alia* that the Commission "establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone. * * *" In this Order, the Commission redetermined, pursuant to the remand by the U.S. Court of Appeals for the District of Columbia Circuit in the *Illinois* decision, certain aspects of the per-payphone compensation that interexchange carriers (IXCs) and local exchange carriers (LECs) must pay to payphone service providers (PSPs). *Illinois*, 117 F.3d. at 555.

Summary of Significant Issues Raised by Public Comments in Response to the FRFA

12. The Commission received no comments in direct response to the FRFA in the *Third Report and Order*. The Commission believes that the rules

as adopted in this Order minimize the burdens of the per-payphone compensation scheme to the benefit of all parties, including small entities. See "Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered," *infra*.

Description and Estimate of the Number of Small Entities to Which Rules Will Apply

13. The RFA directs agencies to provide a description of, and an estimate of, the number of small entities that may be affected by the rules adopted herein, where feasible. 5 U.S.C. 604(a)(3). The RFA generally defines "small entity" as having the same meaning as the term "small business," "small organization," and "small governmental jurisdiction." 5 U.S.C. 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities. 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. 632). Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). 5 U.S.C. 632. Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition in the **Federal Register**."

14. The Commission included small incumbent LECs in this RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." 5 U.S.C. 601(3). The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. See Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to Chairman William E. Kennard, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA

incorporates into its own definition of "small business." See 5 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 CFR 121.102(b). The Commission therefore included small incumbent LECs in this RFA analysis, although the Commission emphasizes that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

15. *Incumbent Local Exchange Carriers*. Neither the Commission nor the SBA has developed a specific definition of small providers of incumbent local exchange services. The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, North American Industry Classification System (NAICS) code 513310. According to the most recent *Telephone Trends Report* data, 1,335 incumbent LECs reported that they were engaged in the provision of local exchange services. FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service* (Aug. 2001) (*Telephone Trends Report*), Table 5.3. Of these 1,335 carriers, 1,037 reported that they have 1,500 or fewer employees and 298 reported that, alone or in combination with affiliates, they have more than 1,500 employees. *Id.* The Commission does not have data specifying the number of these carriers that are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of incumbent LECs that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that 1,037 or fewer providers of local exchange service are small entities that may be affected by the rules and policies adopted herein.

16. *Competitive Local Exchange Carriers*. Neither the Commission nor the SBA has developed a specific definition for small providers of competitive local exchange services. The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513310. According to the Commission's most recent *Telephone Trends Report* data, 349 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier

services. *Telephone Trends Report*, Table 5.3. Of these 349 companies, 297 reported that they have 1,500 or fewer employees and 52 reported that, alone or in combination with affiliates, they have more than 1,500 employees. *Id.* The Commission does not have data specifying the number of these carriers that are either dominant in their field of operations or are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of competitive local exchange carriers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that 297 or fewer providers of competitive local exchange service are small entities that may be affected by the rules.

17. *Competitive Access Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access providers (CAPS). The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513310. According to the Commission's most recent *Telephone Trends Report* data, 349 CAPs or competitive local exchange carriers and 60 "Other Local Exchange Carriers" reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. *Telephone Trends Report*, Table 5.3. Of these 349 competitive access providers and competitive local exchange carriers, 297 reported that they have 1,500 or fewer employees and 52 reported that, alone or in combination with affiliates, they have more than 1,500 employees. *Id.* Of the 60 "Other Local Exchange Carriers," 56 reported that they have 1,500 or fewer employees and 4 reported that, alone or in combination with affiliates, they have more than 1,500 employees. *Id.* The Commission does not have data specifying the number of these companies that are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of CAPS or "Other Local Exchange Carriers" that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 297 or fewer small entity CAPS and 56 or fewer small entity "Other Local Exchange Carriers" that may be affected by the rules.

18. *Local Resellers.* The SBA has developed a definition for small

businesses within the category of Telecommunications Resellers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513330. According to the Commission's most recent *Telephone Trends Report* data, 87 companies reported that they were engaged in the provision of local resale services. *Telephone Trends Report*, Table 5.3. Of these 87 companies, 86 reported that they have 1,500 or fewer employees and one reported that, alone or in combination with affiliates, it had more than 1,500 employees. *Id.* The Commission does not have data specifying the number of these local resellers that are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of local resellers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 86 or fewer small business local resellers that may be affected by the rules.

19. *Toll Resellers.* The SBA has developed a definition for small businesses within the category of Telecommunications Resellers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513330. According to the Commission's most recent *Telephone Trends Report* data, 454 companies reported that they were engaged in the provision of toll resale services. *Telephone Trends Report*, Table 5.3. Of these 454 companies, 423 reported that they have 1,500 or fewer employees and 31 reported that, alone or in combination with affiliates, they have more than 1,500 employees. *Id.* The Commission does not have data specifying the number of these toll resellers that are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of toll resellers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 423 or fewer toll resellers that may be affected by the rules.

20. *Payphone Service Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to payphone service providers (PSPs). The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513310. According to the Commission's most recent *Telephone Trends Report* data,

758 PSPs reported that they were engaged in the provision of payphone services. *Telephone Trends Report*, Table 5.3. Of these 758 payphone service providers, 755 reported that they have 1,500 or fewer employees and 3 reported that, alone or in combination with affiliates, they have more than 1,500 employees. *Id.* The Commission does not have data specifying the number of these PSPs that are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of PSPs that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 755 or fewer PSPs that may be affected by the rules.

21. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services. The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513310. According to the most recent *Telephone Trends Report* data, 204 carriers reported that their primary telecommunications service activity was the provision of interexchange services. *Telephone Trends Report*, Table 5.3. Of these 204 carriers, 163 reported that they have 1,500 or fewer employees and 41 reported that, alone or in combination with affiliates, they have more than 1,500 employees. *Id.* The Commission does not have data specifying the number of these carriers that are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of IXC's that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 163 or fewer small entity interexchange carriers that may be affected by the rules.

22. *Operator Service Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to operator service providers. The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513310. According to the Commission's most recent *Telephone Trends Report* data, 21 companies reported that they were engaged in the provision of operator services.

Telephone Trends Report, Table 5.3. Of these 21 companies, 20 reported that they have 1,500 or fewer employees and one reported that, alone or in combination with affiliates, it had more than 1,500 employees. *Id.* The Commission does not have data specifying the number of these operator service providers that are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under the SBA's definition.

Consequently, the Commission estimates that there are 20 or fewer small entity operator service providers that may be affected by the rules.

23. *Prepaid Calling Card Providers.* The SBA has developed a definition for small businesses within the category of Telecommunications Resellers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513330. According to the Commission's most recent *Telephone Trends Report* data, 21 companies reported that they were engaged in the provision of prepaid calling cards. *Telephone Trends Report*, Table 5.3. Of these 21 companies, 20 reported that they have 1,500 or fewer employees and one reported that, alone or in combination with affiliates, it had more than 1,500 employees. *Id.* The Commission does not have data specifying the number of these prepaid calling card providers that are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of prepaid calling card providers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 20 or fewer small business prepaid calling card providers that may be affected by the rules.

24. *Satellite Service Carriers.* The SBA has developed a definition for small businesses within the category of Satellite Telecommunications. Under that SBA definition, such a business is small if it has \$11 million or less in average annual receipts. 13 CFR 121.201, NAICS code 513340. According to the Commission's most recent *Telephone Trends Report* data, 21 carriers reported that they were engaged in the provision of satellite services. *Telephone Trends Report*, Table 5.3. Of these 21 carriers, 16 reported that they have 1,500 or fewer employees and five reported that, alone or in combination with affiliates, they have more than 1,500 employees. *Id.* The Commission does not have data

specifying the number of these carriers that are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of satellite service carriers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 16 or fewer small business satellite service carriers that may be affected by the rules.

25. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to "Other Toll Carriers." This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513310. According to the Commission's most recent *Telephone Trends Report* data, 17 carriers reported that they were engaged in the provision of "Other Toll Services." *Telephone Trends Report*, Table 5.3. Of these 17 carriers, 15 reported that they have 1,500 or fewer employees and two reported that, alone or in combination with affiliates, they have more than 1,500 employees. *Id.* The Commission does not have data specifying the number of these "Other Toll Carriers" that are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of "Other Toll Carriers" that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 15 or fewer small business "Other Toll Carriers" that may be affected by the rules.

26. *Wireless Service Providers.* The SBA has developed a definition for small businesses within the two separate categories of Paging or Cellular and Other Wireless Telecommunications. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513322. According to the Commission's most recent *Telephone Trends Report* data, 1,495 companies reported that they were engaged in the provision of wireless service. *Telephone Trends Report*, Table 5.3. Of these 1,495 companies, 989 reported that they have 1,500 or fewer employees and 506 reported that, alone or in combination with affiliates, they have more than 1,500 employees. *Id.* The Commission

does not have data specifying the number of these carriers that are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of wireless service providers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 989 or fewer small wireless service providers that may be affected by the rules.

27. *Broadband Personal Communications Service.* The broadband personal communications service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years. *See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, WT Docket No. 96-59, *Report and Order*, 61 Fed. Reg. 33859 (July 1, 1996); see also 47 CFR 24.720(b). For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. *See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, WT Docket No. 96-59, *Report and Order*, 61 Fed. Reg. 33859 (July 1, 1996). These regulations defining "small entity" in the context of broadband PCS auctions have been approved by the SBA. *See, e.g., Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, PP Docket No. 93-253, *Fifth Report and Order*, 59 FR 37566 (July 22, 1994). No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. FCC News, *Broadband PCS, D, E and F Block Auction Closes*, No. 71744 (rel. Jan. 14, 1997); see also *Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees*, WT Docket No. 97-82, *Second Report and Order*, 62 FR 55348 (Oct. 24, 1997). Based on this

information, the Commission concludes that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F Block auctions, for a total of 183 small entity PCS providers as defined by the SBA and the Commission's auction rules.

28. *800 MHz and 900 MHz Specialized Mobile Radio Licensees.* The Commission awards "small entity" and "very small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years, or that had revenues of no more than \$3 million in each of the three previous calendar years, respectively. 47 CFR 90.814. In the context of both the 800 MHz and 900 MHz SMR service, the definitions of "small entity" and "very small entity" have been approved by the SBA. These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. The Commission assumes, for its purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small and very small entities in the 900 MHz auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small and very small entities won 263 licenses. In the 800 MHz SMR auction, 38 of the 524 licenses won were won by small and very small entities. Consequently, the Commission estimates that there are 301 or fewer small entity SMR licensees in the 800 MHz and 900 MHz bands that may be affected by the rules.

29. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service. The service is defined in 47 CFR 22.99. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS). BETRS is defined in 47 CFR 22.757, 22.759. For purposes of this Supplemental FRFA, the Commission

uses the SBA's definition applicable to wireless companies, *i.e.*, an entity employing no more than 1,500 persons. 13 CFR 121.201, NAICS codes 513321, 513322. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA's definition. Consequently, the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules.

30. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. For common carrier fixed microwave services (except Multipoint Distribution Service), *see* 47 CFR part 101 (formerly 47 CFR part 21). Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. *See* 47 CFR parts 80, 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations. Auxiliary Microwave Service is governed by 47 CFR part 74. The Auxiliary Microwave Service is available to licensees of broadcast stations and to broadcast and cable network entities. Broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points, such as, a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

31. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not defined a small business specifically with respect to microwave services. For purposes of this Supplemental FRFA, the Commission utilizes the SBA's definition applicable to wireless companies—*i.e.*, an entity with no more than 1,500 persons. 13 CFR 121.201, NAICS codes 513321, 513322. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's

definition. Consequently, the Commission estimates that there are 22,015 or fewer small common carrier fixed microwave licensees and 61,670 or fewer small private operational-fixed microwave licensees and small broadcast auxiliary radio licensees in the microwave services that may be affected by the rules. The Commission notes, however, that the common carrier microwave fixed licensee category includes some large entities.

32. *39 GHz Licensees.* The Commission defined "small entity" for 39 GHz licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years. *See Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands*, ET Docket No. 95–183, *Report and Order*, 63 FR 6079 (Feb. 6, 1998). An additional classification for "very small business" was added and is defined as an entity that, together with affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. *Id.* The SBA approved these regulations defining "small entity" in the context of 39 GHz auctions. *See Letter to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA* (Feb. 4, 1998). The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that there are 18 or fewer small entities that are 39 GHz licensees that may be affected by the rules.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

33. As mandated by the court in the *Illinois* decision, the Commission established in this Order a compensation scheme for inmate telephone service during the interim period, if the payphone service provider (PSP) was not otherwise compensated for its inmate service. In a correctional institution, the PSP presubscribes the inmate telephones to a specific interexchange carrier (IXC) pursuant to a contract between the PSP and the interexchange carrier. If this previously existing contract failed to establish a duty to count and track inmate calls for compensation purposes, or if the presubscribed IXC failed to retain its records of the number of compensable inmate calls originating during the interim period for which compensation now must be paid according to this Order, the Commission established a

waiver procedure that provides the maximum amount of flexibility for the presubscribed IXC and the PSP, including small IXCs and small PSPs, to propose the number of inmate calls to be compensated. According to this waiver provision, the IXC presubscribed during the interim period must file a waiver request with the Common Carrier Bureau, pursuant to 47 CFR 1.3, specifying the number of inmate calls to be compensated for the interim period and the specific basis for its number. The specific PSP to be compensated is allowed thirty (30) days to file an objection with the Common Carrier Bureau, specifying an alternative number of inmate calls to be compensated for the interim period and the specific basis for its number. With this exception for those situations in which the number of compensable inmate calls for the interim period is not available, this Order imposes no new reporting, recordkeeping or other compliance requirements not previously adopted in this or related payphone proceedings.

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

34. To minimize the economic impact and administrative burden for both payors and recipients of payphone compensation, including small entities, the Commission required the payment of a flat fee of \$33.892 per payphone per month for access code and subscriber 800 calls originating from November 7, 1996 through October 6, 1997, for all payphones. For the same reason, the Commission also set compensation at a flat fee of \$33.892 per payphone per month for access code and subscriber 800 calls originating from October 7, 1997 through April 20, 1999, for those payphones for which compensation is or was not paid on a per-call basis. The payment of a prescribed flat fee of \$4.2747 per payphone per month for 0+ calls originating from November 7, 1996 through October 6, 1997, to PSPs that were not otherwise compensated for 0+ calls during the interim period, minimizes the economic impact and administrative burden for both IXCs and PSPs, including small entities.

35. Some of both payors and recipients of payphone compensation are small entities. Over time, the Commission learned that steps taken to minimize the economic impact on payors of payphone compensation that are small entities diminish the compensation received by recipients of payphone compensation that are small entities. This decrease in compensation contradicts one of the mandates of

section 276 that PSPs should receive compensation for each and every completed call originating at one of their payphones. For example, to ease the burden of implementing the per-call payphone compensation scheme on midsize and small local exchange carriers, the Common Carrier Bureau granted a waiver in 1998 to relieve such entities of the economic burden of installing flexible automatic number identification (FlexANI) software on their switches. If the PSP uses "smart" payphones, the payphone calls of small PSPs routed through these particular switches lacking FlexANI software cannot be counted, tracked, and compensated on a per-call basis. As a result, compensation must be paid on a per-payphone, not per-call, basis. The Bureau limited such payphone compensation to 16 calls per month, even if a small payphone service provider's payphone calls are more than 200 calls per payphone per month at a truck stop, for example, instead of 16 payphone calls per month. *Bureau Per-call Waiver Order*, 63 FR 26497 (May 13, 1998). At a rate of \$0.229 per payphone call as calculated in this Order, compensation would be limited to \$3.664 per payphone per month starting on November 7, 1996 through April 20, 1999. At the rate of \$0.24 per payphone call as calculated in the *Third Report and Order*, compensation would be limited to \$3.84 per payphone per month after April 20, 1999. Accordingly, the Commission found it necessary in this Order to balance the equities between these two groups of small entities.

36. In another example of the Commission's attempt to ease an economic impact, in 1996 the Commission exempted LECs and IXCs with annual toll revenues of \$100 million or less from the economic and administrative burdens of paying per-payphone compensation. The U.S. Court of Appeals for the District of Columbia Circuit vacated this determination as arbitrary and capricious in the *Illinois* decision, partially because it would deprive recipients of payphone compensation of approximately \$4 million per month, according to the court. *Illinois*, 117 F.3d at 565. After the *Illinois* decision, the Commission was asked again to exempt carriers with annual toll revenues of \$100 million or less from the economic and administrative burdens of paying interim compensation. In the alternative, the Commission was asked to exempt carriers with monthly toll revenues of \$1 million or less from the economic and administrative burdens of

paying interim compensation. In this Order, the Commission followed the mandates of the court in the *Illinois* decision and decided not to exempt carriers based on the amount of toll revenue.

Report to Congress

37. The Commission will send a copy of this Order, including this Supplemental FRFA, in a report to Congress pursuant to the Congressional Review Act. 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of this Order, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. See 5 U.S.C. 604(b).

Ordering Clauses

38. Accordingly, pursuant to the authority contained in 47 U.S.C. 151, 154, 201–205, 215, 218, 219, 220, 226, 276 and 405, *It is ordered* that the policies, rules and requirements set forth herein *Are Adopted*.

39. *It is further ordered* that the Commission's Consumer Information Bureau, Reference Information Center, *Shall Send* a copy of this Fourth Order on Reconsideration and Order on Remand, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Communications common carriers, Telecommunications, Telephone. Federal Communications Commission.

William F. Caton,
Acting Secretary.

Rules Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 is revised to read as follows:

Authority: 47 U.S.C. 154, 47 U.S.C. 225, 47 U.S.C. 251(e)(1), 47 U.S.C. 276. 151, 154, 201, 202, 205, 218–220, 254, 276, 302, 303, and 337 unless otherwise noted. Interpret or apply sections 201, 218, 225, 226, 227, 229, 332, 48 Stat. 1070, as amended. 47 U.S.C. 201–204, 208, 225, 226, 227, 229, 332, 501 and 503 unless otherwise noted.

2. Add § 64.1301 to read as follows:

§ 64.1301 Per-payphone compensation.

(a) *Interim access code and subscriber 800 calls.* In the absence of a negotiated

agreement to pay a different amount of compensation, the amount of default compensation to be paid to payphone service providers for payphone access code calls and payphone subscriber 800 calls is \$33.892 per payphone per month, for the period starting on November 7, 1996 and ending on October 6, 1997, except that a payphone service provider that is affiliated with a local exchange carrier is not eligible to receive payphone compensation prior to April 16, 1997 or, in the alternative, the first day following both the termination of subsidies and payphone reclassification and transfer, whichever date is latest.

(b) *Interim 0+ calls*. In the absence of a negotiated agreement to pay a different amount of compensation, if a payphone service provider was not compensated for 0+ calls originating during the period starting on November 7, 1996 and ending on October 6, 1997, an interexchange carrier to which the payphone was presubscribed during this same time period must compensate the payphone service provider in the default amount of \$4.2747 per payphone per month, except that a payphone service provider that is affiliated with a local exchange carrier is not eligible to receive payphone compensation prior to April 16, 1997 or, in the alternative, the first day following both the termination of subsidies and payphone reclassification and transfer, whichever date is latest.

(c) *Interim inmate calls*. In the absence of a negotiated agreement to pay a different amount of compensation, if a payphone service provider providing inmate service was not compensated for calls originating at an inmate telephone during the period starting on November 7, 1996 and ending on October 6, 1997, an interexchange carrier to which the inmate telephone was presubscribed during this same time period must compensate the payphone service provider providing inmate service at the default rate of \$0.229 per inmate call originating during the same time period, except that a payphone service provider that is affiliated with a local exchange carrier is not eligible to receive payphone compensation prior to April 16, 1997 or, in the alternative, the first day following both the termination of subsidies and payphone reclassification and transfer, whichever date is latest.

(d) *Intermediate access code and subscriber 800 calls*. In the absence of a negotiated agreement to pay a different amount of compensation, the amount of default compensation to be paid to payphone service providers for payphone access code calls and

payphone subscriber 800 calls is \$33.892 per payphone per month, for any payphone for any month in which compensation was not paid on a per-call basis, for the period starting on October 7, 1997 and ending on April 20, 1999.

(e) *Post-intermediate access code and subscriber 800 calls*. In the absence of a negotiated agreement to pay a different amount of compensation, the amount of default compensation to be paid to payphone service providers for payphone access code calls and payphone subscriber 800 calls is \$33.892 per payphone per month, for any payphone for any month in which compensation was not paid on a per-call basis, on or after April 21, 1999.

[FR Doc. 02-4979 Filed 3-1-02; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 74

[FCC 02-40]

Implementation of LPTV Digital Data Services Pilot Project

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document implements the provisions of LPTV Pilot Project Digital Data Services Act, which requires the Commission to implement regulations establishing a pilot project. This document also clarifies and revises issues raised in a Petition for Response to Reconsideration of the Implementation Order filed by U.S. Interactive, L.L.C., d/b/a AccelerNet.

DATES: Effective February 14, 2002.

FOR FURTHER INFORMATION CONTACT: Gordon Godfrey, Policy and Rules Division, Mass Media Bureau, (202) 418-2120; or Keith Larson, Mass Media Bureau, (202) 418-2600.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration ("*Order*") in FCC 02-40, adopted February 12, 2002 and released February 14, 2002. The complete text of this *Order* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW., Washington, DC and may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street SW., Room CY-B-402, Washington, DC 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or via email qualexint@aol.com.

Synopsis of Order

I. Introduction

1. In April, 2001 we released an *Order* implementing the provisions of the LPTV Pilot Project Digital Data Services Act (DDSA), (*Order*, In the Matter of Implementation of LPTV Digital Data Services Pilot Project, FCC 01-137, 66 FR 29040 (May 29, 2001)). The DDSA requires the Commission to issue regulations establishing a pilot project pursuant to which specified Low Power Television (LPTV) licensees or permittees can provide digital data services to demonstrate the feasibility of using LPTV stations to provide high-speed wireless digital data service, including Internet access, to unserved areas (Public Law 106-554, 114 Stat. 4577, December 21, 2000, Consolidated Appropriations—FY 2001, section 143, amending section 336 of the Communications Act of 1934, as amended, 47 U.S.C. 336, to add new subsection (h). 47 U.S.C. 336(h)(7)). As defined by the DDSA, digital data service includes: (1) Digitally-based interactive broadcast service; and (2) wireless Internet access (47 U.S.C. 336(h)(7)). The DDSA identifies twelve specific LPTV stations that are eligible to participate in the pilot project, and directs the Commission to select a station and repeaters to provide service to specified areas in Alaska. In this *Order*, we address issues raised in a petition for reconsideration of the *Order* filed by U.S. Interactive, L.L.C., d/b/a AccelerNet, and revise provisions of that *Order* in some respects. AccelerNet is an LPTV licensee providing one-way digital data service in Houston, Texas, from station KHLM-LP, and operating stations that are eligible to participate in DDSA pilot projects. Its investors own or have rights to acquire six of the other eight stations eligible for the pilot projects.

II. Discussion

A. Term of Pilot Project

2. In the *Order*, we noted that the DDSA does not specify how long the pilot project should last. Since the DDSA specified that our last report to Congress evaluating the utility of the pilot project is due on June 30, 2002, we clarified that we will issue experimental letter authorizations for the pilot project that will expire on June 30, 2002, unless the term is extended prior to that date. We delegated authority to the Mass Media Bureau to extend the term of the authorizations for individual participants or for participants as a group, and to do so by Public Notice, in the event that it is determined that the