

clinics, public health facilities, and similar establishments, including governmental entities and agencies for their own medical activities.

(2) This authority to operate does not extend to mobile vehicles, such as ambulances, even if those vehicles are associated with a health care facility.

(b) The fundamental emissions from a biomedical telemetry device operating under the provisions of this section shall be contained within a single television broadcast channel, as defined in part 73 of this chapter, under all conditions of operation and shall lie wholly within the frequency ranges of 174–216 MHz and 470–668 MHz.

(c) The field strength of the fundamental emissions shall not exceed 200 mV/m, as measured at a distance of 3 meters using a quasi-peak detector. Manufacturers should note that a quasi-peak detector function indicates field strength per 120 kHz of bandwidth  $\pm 20$  kHz. Accordingly, the total signal level over the band of operation may be higher than 200 mV/m. The field strength of emissions radiated on any frequency outside of the television broadcast channel within which the fundamental is contained shall not exceed the general limits in § 15.209.

(d) The user and the installer of a biomedical telemetry device operating within the frequency range 174–216 MHz, 470–608 MHz or 614–668 MHz shall ensure that the following minimum separation distances are maintained between the biomedical telemetry device and the authorized radio services operating on the same frequencies:

(1) At least 10.3 km outside of the Grade B field strength contour (56 dBuV/m) of a TV broadcast station or an associated TV booster station operating within the band 174–216 MHz.

(2) At least 5.5 km outside of the Grade B field strength contour (64 dBuV/m) of a TV broadcast station or an associated TV booster station operating within the bands 470–608 MHz or 614–668 MHz.

(3) At least 5.1 km outside of the 68 dBuV/m field strength contour of a low power TV or a TV translator station operating within the band 174–216 MHz.

(4) At least 3.1 km outside of the 74 dBuV/m field strength contour of a low power TV or a TV translator station operating within the bands 470–608 MHz or 614–668 MHz.

(5) Whatever distance is necessary to protect other authorized users within these bands.

(e) The user and the installer of a biomedical telemetry device operating within the frequency range 608–614

MHz and that will be located within 32 km of the very long baseline array (VLBA) stations or within 80 km of any of the other radio astronomy observatories noted in footnote US 311 of Section 2.106 of this chapter must coordinate with, and obtain the written concurrence of, the director of the affected radio astronomy observatory before the equipment can be installed or operated. The National Science Foundation point of contact for coordination is: Spectrum Manager, Division of Astronomical Sciences, NSF Rm 1045, 4201 Wilson Blvd., Arlington, VA 22230; tel: (703) 306–1823.

(f) Biomedical telemetry devices must not cause harmful interference to licensed TV broadcast stations or to other authorized radio services, such as operations on the broadcast frequencies under subparts G and H of part 74 of this chapter, land mobile stations operating under part 90 of this chapter in the 470–512 MHz band, and radio astronomy operation in the 608–614 MHz band. (See § 15.5.) If harmful interference occurs, the interference must either be corrected or the device must immediately cease operation on the occupied frequency. Further, the operator of the biomedical telemetry device must accept whatever level of interference is received from other radio operations. The operator, *i.e.*, the health care facility, is responsible for resolving any interference that occurs subsequent to the installation of these devices.

(g) The manufacturers, installers, and users of biomedical telemetry devices are reminded that they must ensure that biomedical telemetry transmitters operating under the provisions of this section avoid operating in close proximity to authorized services using this spectrum. Sufficient separation distance, necessary to avoid causing or receiving harmful interference, must be maintained from co-channel operations. These parties are reminded that the frequencies of the authorized services are subject to change, especially during the implementation of the digital television services. The operating frequencies of the part 15 devices may need to be changed, as necessary and in accordance with the permissive change requirements of this chapter, to accommodate changes in the operating frequencies of the authorized services.

(h) The manufacturers, installers and users of biomedical telemetry devices are cautioned that the operation of this equipment could result in harmful interference to other nearby medical devices.

[FR Doc. 97–28761 Filed 10–29–97; 8:45 am]  
BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

[CC Docket 96–128; FCC 97–371]

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

AGENCY: Federal Communications Commission.

ACTION: Final rule.

**SUMMARY:** On October 9, 1997, the Commission adopted a *Second Report and Order* in CC Docket 96–128, FCC 97–371, in which it concluded that interexchange carriers must compensate payphone service providers for all coinless payphone calls not otherwise compensated pursuant to contract, including subscriber 800 and access code calls, 0+ and inmate calls, at the rate of \$.284 per call. The Commission based this decision on the conclusion that the default rate for per-call compensation for these calls is the deregulated local coin rate adjusted for cost differences. This rate will continue to be the default rate for coinless payphone calls for the first two years of per-call compensation. After the first two years, the market-based local coin rate adjusted for certain costs is the surrogate for the default per-call rate.

**EFFECTIVE DATE:** October 30, 1997.

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

#### SUPPLEMENTARY INFORMATION:

Adopted: October 9, 1997.

Released: October 9, 1997.

By the Commission: Commissioners Quello and Ness issuing separate statements.

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## Rule Changes

Attachment B—List of Parties Filing Comments

Attachment C—List of Parties Filing Replies

(Note: In the FCC Record version of this order, Attachments are listed as Appendices, and their order is different from that stated above.)

**I. Introduction**

1. In this order, we address the default per-call compensation rate<sup>1</sup> for subscriber 800 and access code calls<sup>2</sup> originated from payphones in light of the decision of the United States Court of Appeals for the District of Columbia Circuit (the court) in *Illinois Public Telecommunications Ass'n versus FCC*,<sup>3</sup> which vacated and remanded portions of the *Payphone Orders*.<sup>4</sup> In that decision, the court concluded that the Commission did not justify adequately setting the per-call

compensation rate for subscriber 800 and access code calls at the deregulated local coin rate of \$0.35,<sup>5</sup> because it did not justify its conclusion that the costs of local coin calls are similar to those of subscriber 800 calls and access code calls.<sup>6</sup> After seeking additional comment on this issue, we conclude in this order that the default rate for per-call compensation of subscriber 800 and access code calls from payphones is the deregulated local coin rate adjusted for cost differences. As discussed herein, based on our analysis of the record and the statutory policy goals of Section 276 of the Communications Act,<sup>7</sup> we establish a rate of \$0.284 per call as the default per-call compensation rate for subscriber 800 and access code calls for the first two years of per-call compensation.<sup>8</sup> This rate will continue to be the default rate for coinless payphones absent a negotiated rate. Interexchange carriers (IXCs) must pay this per-call amount to payphone service providers (PSPs) for access code and subscriber 800 calls beginning October 7, 1997, as required by the *Payphone Orders*.<sup>9</sup> After the first two years of per-call compensation, the market-based local coin rate adjusted for certain costs is the surrogate for the

default per-call rate for subscriber 800 and access code calls.<sup>10</sup>

2. The compensation amount we adopt in this *Second Report and Order* is applicable, as Section 276(d) provides, to "[t]he provision of public or semi-public pay telephones, the provision of inmate telephone service in correctional institutions, and any ancillary services."<sup>11</sup> We previously have declined to treat 0+ and calls from inmate payphones differently from other payphone calls,<sup>12</sup> and we reaffirm that decision here. As of October 7, 1997, PSPs must be compensated for all payphone calls not otherwise compensated pursuant to contract, including 0+ and inmate calls.

3. The immediate implementation of the rule provisions adopted herein is crucial to the Commission's efforts to ensure fair compensation for PSPs, encourage the deployment of payphones, and enhance competition among payphone providers, as mandated by Section 276 of the Act.<sup>13</sup> The Commission's *Payphone Orders* require that per-call compensation for certain payphone calls begin by October 7, 1997. To meet this obligation, we must revise those rules vacated by the court in *Illinois Public Telecomm.* that relate to the implementation of a per-call compensation scheme and commence on October 7, 1997. *The Report and Order*, released September 20, 1996 (61 FR 52307 (October 7, 1996)), informed parties that per-call compensation would commence on October 7, 1997.<sup>14</sup> Therefore, parties affected by this rule change have had notice since the release of that order that they would be subject to certain obligations beginning October 7, 1997. Making this order effective immediately

<sup>1</sup> The default per-call rate is the rate that shall apply in the absence of a negotiated agreement between parties during the first two years of per-call compensation (October 7, 1997, through October 6, 1999). Thereafter, the default rate, in the absence of a negotiated agreement, is the market-based local coin rate less \$0.066. For coinless payphones, \$0.284 will continue to be the default rate, absent a negotiated agreement.

<sup>2</sup> An "access code" is a sequence of numbers that, when dialed, connect the caller to the operator service provider ("OSP") associated with that sequence, as opposed to the OSP presubscribed to the originating line. Access codes include 800 numbers, 10XXX in equal access areas and "950" Feature Group B dialing (950-XXXX or 950-1XXX) anywhere, where the three-digit XXX denotes a particular interexchange carrier. See Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, 57 FR 21038 (May 18, 1992); 7 FCC Rcd 3251, 3251 n.1 (1992) ("OSP Second Report and Order"). "Subscriber 800 calls" consist of calls to an 800 number assigned to a particular subscriber. See Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Notice of Proposed Rulemaking, 61 FR 31481 (June 20, 1996); 11 FCC Rcd 6716 (1996) ("NPRM"). In this order, subscriber 800 encompasses toll-free subscriber calls, including 888 numbers. See Toll Free Service Access Codes, 61 FR 7738 (February 29, 1996); 11 FCC Rcd 2496 (1996).

<sup>3</sup> 117 F.3d 555 (D.C. Cir. 1997) ("Illinois Public Telecomm.").

<sup>4</sup> Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Report and Order, 61 FR 52307 (October 7, 1996), 11 FCC Rcd 20,541 (1996) ("Report and Order"); Order on Reconsideration, 61 FR 65341 (December 12, 1996), 11 FCC Rcd 21,233 (1996) ("Order on Reconsideration") (collectively the "Payphone Orders").

<sup>5</sup> Illinois Public Telecomm., 117 F.3d at 564.

<sup>6</sup> *Id.*

<sup>7</sup> 47 U.S.C. § 276 Communications Act of 1934, Section 276 was added by the Telecommunications Act of 1996 ("1996 Act").

<sup>8</sup> In the Payphone Orders, we established a two-part compensation scheme for subscriber 800 and access code calls, as well as for local coin calls, to facilitate the transition from a highly regulated industry to a deregulated one. As noted above, the court vacated the interim compensation plan regarding compensation for subscriber 800 and access code calls; the court, however, upheld the interim compensation plan for local coin calls. Phase one, or the first year of interim compensation for access code and subscriber 800 calls, required that IXCs with a certain annual toll revenue pay PSPs a flat-rate compensation of \$45.85 per payphone per month in shares proportionate to their share of total market long distance revenues. During the second year of interim compensation (also, the first year of per-call compensation) we required the IXCs to pay the PSP for each completed subscriber 800 and access code call. See Report and Order, 61 FR 52307 (October 7, 1996); 11 FCC Rcd at 20,568 at para. 51. This order addresses specifically the first two years of per-call compensation, and as noted above, establishes a default rate for per-call compensation at \$0.284. See *infra* paras. 117-22.

<sup>9</sup> The Payphone Orders state that LEC PSPs are entitled to be paid per-call compensation by IXCs for access code and subscriber 800 calls when they have complied with the requirements of the Payphone Orders and will certify to that effect. Order on Reconsideration, 61 FR 65341 (December 12, 1996); 11 FCC Rcd at 21,293-94, paras. 130-32. We note that the Commission did not establish a requirement that LEC PSPs obtain a formal certification of compliance from the Commission or the states to receive per-call compensation pursuant to the Payphone Orders.

<sup>10</sup> As determined in this order, the difference between the per-call rate for subscriber 800 and access code calls and the local coin rate is \$0.066.

<sup>11</sup> 47 U.S.C. § 276(d).

<sup>12</sup> See Report and Order, 61 FR 52307 (October 7, 1996); 11 FCC Rcd at 20,579, para. 74; Order on Reconsideration, 61 FR 65341 (December 12, 1996); 11 FCC Rcd at 21,259, para. 52. A 0+ call occurs when the caller dials "0" plus the called telephone number. 0+ calls include credit card, collect, and third number billing calls. See OSP Second Report and Order, 7 FCC Rcd at 3251 n.4. 0-calls are calls in which the caller dials only the digit "0" and then waits for operator intervention. 0-transfer service is a service offered by LECs to OSPs under which LECs transfer a 0-call to the OSP requested by the calling party. See OSP Second Report and Order, 57 FR 21038 (May 18, 1992); 7 FCC Rcd at 3255 n.44.

<sup>13</sup> The normal period until effectiveness in a rulemaking is thirty days after publication of the changed rules in the *Federal Register*, but we accelerate that period here for good cause, pursuant to Section 553(d) of the Administrative Procedure Act. See 5 U.S.C. § 553(d).

<sup>14</sup> This requirement established in the *Report and Order* becomes effective October 7, 1997, one year after publication in the *Federal Register*, 61 FR 52,307 (1996).

minimizes disruption within the payphone industry by eliminating disputes about payment obligations and enhances the general availability of payphone services to the public.

4. This order does not address other issues vacated and remanded by the court or otherwise alter the requirements of the *Payphone Orders*. Other requirements remanded in *Illinois Public Telecomm.*, including the compensation obligations applicable during the period from November 1996, through October 6, 1997, will be addressed in a subsequent order in this proceeding. We tentatively conclude in this regard that the \$0.284 per-call rate we are adopting as a default rate on a going forward basis should also govern compensation obligations during the period ending October 6, 1997. We also tentatively conclude that PSPs are entitled to compensation for all of their access code and subscriber 800 calls during this period. We plan to address the manner in which the total payment obligation for that period will be calculated and allocated among IXC's in a subsequent order.

5. We note that the Common Carrier Bureau (Bureau) has granted a limited waiver, until March 9, 1998, for those payphones that cannot provide payphone-specific digits as required by the *Payphone Orders*.<sup>15</sup> This limited waiver applies to the requirement that local exchange carriers (LECs) provide payphone-specific coding digits to PSPs, and that PSPs provide coding digits from their payphones before they can receive per-call compensation from IXC's for subscriber 800 and access code calls. This limited waiver was granted by the Bureau to afford LECs, IXC's, and PSPs an extended transition period for the provision of payphone-specific coding digits without further delaying the payment of per-call compensation as required by Section 276 of the Act and this order. The Bureau made this limited waiver effective immediately in order to ensure that PSPs receive per-call compensation beginning October 7, 1997.

## II. Background

6. In the *Payphone Orders*,<sup>16</sup> the Commission adopted new rules and policies governing the payphone industry to implement Section 276 of the Act. Those rules and policies: (1)

establish a plan to ensure fair compensation for "each and every completed intrastate and interstate call using [a] payphone[.]"<sup>17</sup> (2) discontinue intrastate and interstate carrier access charge service elements and payments in effect on such date of enactment, and all intrastate and interstate payphone subsidies from basic exchange services;<sup>18</sup> (3) prescribe nonstructural safeguards for Bell Operating Company ("BOC") payphones;<sup>19</sup> (4) permit the BOCs to negotiate with payphone location providers on the interLATA carrier presubscribed to their payphones;<sup>20</sup> (5) permit all payphone service providers to negotiate with location providers on the intraLATA carriers that presubscribed to their payphones;<sup>21</sup> and (6) adopt guidelines for use by the states in establishing public interest payphones to be located "where there would otherwise not be a payphone[.]"<sup>22</sup>

7. In the *Report and Order*, the Commission noted that the 1996 Act erects a "procompetitive deregulatory national framework designed to accelerate rapid private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."<sup>23</sup> Thus, we sought to advance the twin goals of Section 276 of the Act of "promot[ing] competition among payphone service providers and promot[ing] the widespread deployment of payphone services to the benefit of the general public \* \* \*,"<sup>24</sup> by eliminating the effects of some long-standing barriers to full competition in the payphone market. To effectuate this objective, we concluded that we would continue to regulate certain aspects of the payphone market, but only until such time as the market evolves to erase these sources of market distortions.<sup>25</sup>

<sup>17</sup> 47 U.S.C. § 276(b)(1)(A).

<sup>18</sup> 47 U.S.C. § 276(b)(1)(B).

<sup>19</sup> 47 U.S.C. § 276(b)(1)(C).

<sup>20</sup> 47 U.S.C. § 276(b)(1)(D).

<sup>21</sup> 47 U.S.C. § 276(b)(1)(E).

<sup>22</sup> 47 U.S.C. § 276(b)(2).

<sup>23</sup> S. Conf. Rep. No. 104-230, 104th Cong. 1 (1996).

<sup>24</sup> 47 U.S.C. § 276(b)(1).

<sup>25</sup> A number of parties subsequently filed petitions requesting that the Commission reconsider or clarify the rules the Commission adopted in the *Report and Order*. In the *Order on Reconsideration*, we substantially affirmed the rules adopted in the *Report and Order*. We denied all but two of the requested reconsiderations; those exceptions are not at issue here. In the *Order on Reconsideration*, the Commission modified: (1) the requirements for LEC tariffing of payphone services and unbundled network facilities; and (2) the requirements for LECs to remove unregulated payphone costs from the carrier common line charge and to reflect the

8. Section 276(b)(1)(A) of the Act directs the Commission to establish a plan to ensure that all PSPs are fairly compensated for every completed call.<sup>26</sup> We defined "fair compensation" as the amount to which a willing seller (*i.e.* PSP) and a willing buyer (*i.e.* customer, or IXC) would agree for the completion of a payphone call. For certain calls, the PSP received no revenue for originating certain calls (*i.e.*, for subscriber 800 and other toll-free number calls) and could not block callers from making such calls (access code calls). Based on evidence in the record, we noted in the *Report and Order* that the number of these types of calls completed from payphones had proliferated in the past several years,<sup>27</sup> and we concluded that PSPs must be compensated for access code, subscriber 800, and other toll-free number calls, whether they are jurisdictionally intrastate or interstate.<sup>28</sup>

9. In the *Report and Order*, we concluded that the payphone marketplace has low entry and exit barriers and likely will become increasingly competitive,<sup>29</sup> and that the market generally is best able to set the appropriate price for payphone calls, including local coin calls, in the long term.<sup>30</sup> Therefore, because we have an obligation under Section 276 to ensure that the compensation for all local coin calls is fair, we concluded that the local market should be allowed to set the price for all compensable calls unless a state demonstrated that competition would not constrain prices; for example, payphones at certain locations would be priced at monopoly rates. This approach is appropriate, because once PSPs are free to enter the market, and once callers are free to choose payphones for their calls, the market ultimately will determine whether a particular payphone is economically viable. Therefore, in the *Payphone Orders*, we concluded that the appropriate per-call compensation amount, in the absence of a negotiated agreement, ultimately is the amount the particular payphone charges for a local coin call, because the market will determine the fair compensation

application of multiline subscriber line charges to payphone lines. See *Order on Reconsideration*, 61 FR 65341 (December 12, 1996); 11 FCC Rcd at 21,234, para. 3.

<sup>26</sup> See 47 CFR § 276(b)(1)(A) (directing the Commission to establish a plan "to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone"). See also *Report and Order*, 61 FR 52307 (October 7, 1996); 11 FCC Rcd at 20,566, para. 48.

<sup>27</sup> See *Report and Order*, 61 FR 52307 (October 7, 1996); 11 FCC Rcd at 20,568, para. 52 n.187.

<sup>28</sup> See *id.* at 20,568, para. 52.

<sup>29</sup> See *id.* at 20,547, para. 11.

<sup>30</sup> See *id.* at 20,567, 20,577, paras. 49, 70.

<sup>15</sup> *Order on Reconsideration*, 61 FR 65341 (December 12, 1996); 11 FCC Rcd at 21,278-79, paras. 93-95. See *Bureau Waiver Order*, DA 97-2162 (rel. Oct. 7, 1997).

<sup>16</sup> *Report and Order*, 61 FR 52307 (October 7, 1996); 11 FCC Rcd at 20,541; *Order on Reconsideration*, 61 FR 65341 (December 12, 1996); 11 FCC Rcd at 21,233.

rate for those calls. We further concluded that if a rate is compensatory for local coin calls, then it is an appropriate compensation amount for other calls as well, because we found the costs of originating various types of payphone calls such as access code and subscriber 800 calls to be similar to the costs incurred when initiating a local coin call.<sup>31</sup>

10. Before we moved to a local coin call default rate, however, we found that it was necessary to observe over time how the payphone marketplace would function in the absence of regulation. In particular, we concluded that consumers facing time constraints may not be able to find, in certain locations, a reasonable substitute for a payphone located on the premises. We stated that in these cases where the location provider has an exclusive contract with a PSP, the PSP may be able to charge supra-competitive prices. The location provider would share in the resulting "locational rents" through commissions paid by PSPs. We concluded that to the extent that market forces cannot ensure competitive prices at such locations, we may want to continue regulating, along with the states, the provision of payphone services generally or in particular types of locations where the size of the location or the caller's lack of time to identify potential substitute payphones could lead to locational monopolies. To allow us to ascertain the status of competition in the payphone marketplace, we concluded that we should establish the default per-call rate before leaving it to the market to set the rate, absent any changes in our rules.

11. We recognized that competitive conditions, which are a prerequisite to a deregulatory market-based approach, did not exist yet, and would not be achieved instantaneously. Therefore, we established an interim compensation plan to ease the transition to market-based local coin rates and ensure fair compensation for coin and noncoin calls. In particular, we established a two phase interim plan to address coin calls. During the first year (phase) the states would be responsible for ensuring that PSPs were fairly compensated for local coin calls as well as for protecting consumers from excessive rates. We concluded that states could continue to set the local coin rate during the year prior to market-based per-call compensation. During the second phase, beginning October 7, 1997, we stated that the market would set the price for the local coin call, absent particular

state concerns, and the need for modification.<sup>32</sup>

12. Additionally, in the *Payphone Orders*, the Commission established a two-year interim plan for payphone compensation for subscriber 800 and access code calls based on a rate of \$0.35 per call that began November 7, 1996. For the first year after the effective date of the rules adopted in this proceeding, we required that IXC's pay flat-rate compensation to PSPs. More specifically, under the first year of the interim plan, IXC's with annual toll revenues in excess of \$100 million were required to pay, collectively, a flat-rate compensation of \$45.85 per payphone per month in shares proportionate to their share of total market long distance revenues. During the second year of the interim plan, which is the first year of per-call compensation, all IXC's were required to pay \$0.35 per subscriber 800 call or access code call unless they contracted with the PSP to pay a different amount.<sup>33</sup>

13. Numerous parties filed petitions in federal court seeking review of the *Payphone Orders*. In *Illinois Public Telecomm*, the court affirmed important parts of the Commission's rules implementing Section 276, but also vacated and remanded certain other aspects of those rules. The court overturned our determination in the *Payphone Orders* regarding: (1) the

interim and permanent compensation rates established for access code and subscriber 800 calls; (2) the requirement that only those IXC's with annual toll revenues over \$100 million pay PSPs for these calls during the first year of the interim period; (3) the failure to provide any interim compensation to BOC PSPs for "0+" calls and calls made from inmate payphones; and (4) the use of fair market value for payphone assets transferred from a BOC to a separate affiliate.<sup>34</sup>

14. By Public Notice released August 5, 1997, we sought comment on the issues remanded by the court.<sup>35</sup> We sought comment on the differences in costs to the PSP of originating subscriber 800 and access code calls as compared to local coin calls.<sup>36</sup> We sought comment on whether these potential differences in costs should affect a market based compensation amount, and if so, how.<sup>37</sup> We sought comment on whether the local coin rate—subject to an offset for expenses unique to those calls—is an appropriate per-call compensation rate for calls that are not compensated pursuant to a contract or other arrangement, such as subscriber 800 calls and access code calls.<sup>38</sup> We stated that parties should respond specifically to concerns raised by the court in setting forth their views on the appropriate per-call compensation amount.<sup>39</sup>

15. This order addresses only the amount of default per-call compensation. We decline to address in this order other issues related to the implementation of the per-call compensation structure.<sup>40</sup> Because the court vacated and remanded the per-call compensation rate for access code and subscriber 800 calls, we have sought to act expeditiously to reevaluate the default per-call rate. We conclude, because of the exigency of the situation wherein PSPs are not receiving per-call

<sup>32</sup> See *Report and Order*, 61 FR 52307 (October 7, 1996); 11 FCC Rcd at 20,572, para. 60 (further stating that states are empowered to act where concerns exist about market failures, and that the Commission could address such market concerns if necessary).

<sup>33</sup> We noted that \$0.35 was the local coin rate in four of the five states where the local coin rate had been deregulated and concluded that the market-based rate in those states was the best evidence of the per-call compensation amount for PSPs for the first two years of interim compensation. See Letter to William Caton, Acting Secretary, FCC from Michael Kellogg, Counsel, Coalition (Aug. 30, 1996) (noting that the local coin rate is \$0.35 in four of the five states that have deregulated the local coin rate). The Coalition is comprised of the Bell Operating Companies ("BOCs")—Ameritech, the Bell Atlantic Telephone Companies, BellSouth Corporation, Pacific Bell, Nevada Bell, Southwestern Bell Telephone Company, and US West—together with GTE Service Corporation ("GTE") and Southern New England Telephone Company ("SNET"). See also *Report and Order*, 61 FR 52307 (October 7, 1996); 11 FCC Rcd at 20,578, para. 72. As we noted above, we believed the costs to originate access code and subscriber 800 calls were similar to those incurred when initiating a local coin call, and thus established a default rate based on the deregulated local coin rate. We note that of seven states that now have deregulated local coin rates, in five states (Michigan, Iowa, Nebraska, North Dakota and Wyoming) the rate is \$0.35, and in two states (Montana and South Dakota) the rate is \$0.25. See *Ex Parte Presentation* to FCC from Michael Kellogg, Counsel, Coalition (Sept. 26, 1997). In this order, the one year per-call compensation period subject to the \$0.284 default rate is extended to two years.

<sup>34</sup> *Illinois Public Telecomm.*, 117 F.3d at 558.

<sup>35</sup> See Pleading Cycle Established for Comment on Remand Issues in the Payphone Proceeding, CC Docket No. 96-128, 62 FR 43686 (August 15, 1997); DA 97-1673, rel. Aug. 5, 1997 (*Notice*). In the *Notice* we indicated that we placed the industry on notice that payphone compensation obligations, or the absence of such obligations, incurred by providers of interexchange services, and compensation levels paid or received under our existing rules pending action on remand, may be subject to retroactive adjustment. *Id.* at 1. With regard to the interim compensation plan, we specifically sought comment on compensation for subscriber 800, access code, and 0+ calls, and on retroactive adjustments to interim compensation levels and obligations. See *id.*

<sup>36</sup> See *id.* at 2.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 3.

<sup>40</sup> See *infra* paras. 123-33.

<sup>31</sup> *Id.* at 20,577-78, para. 70; *Order on Reconsideration*, 61 FR 65341 (December 12, 1996); 11 FCC Rcd at 21,268-69, para. 71.

compensation as required by Congress in Section 276, that we must address quickly and efficiently the most urgent issue—the per call compensation amount to be paid by IXC to PSPs beginning on October 7, 1997, the beginning of per-call compensation.

### III. Per-Call Compensation

#### A. The Standard for Determining Per-Call Compensation

16. In the *Notice*, we sought comment on whether the market-based local coin rate—subject to an offset for expenses unique to those calls—is an appropriate per-call compensation rate for calls that are not compensated pursuant to a contract or other arrangement, such as subscriber 800 and access code calls.<sup>41</sup> In *Illinois Public Telecomm.*, the court in particular concluded that the Commission did not adequately justify “tying the default rate [for per-call compensation] to local coin rates.”<sup>42</sup> The court found evidence in the record that the costs of coin calls are higher than those for coinless calls because: (1) additional costs are incurred for equipment and coin collection; and (2) the PSP pays for originating and terminating local calls, while for coinless calls the PSP only pays for originating the calls.<sup>43</sup> Therefore, the court stated that setting the per-call compensation for subscriber 800 calls and access code calls at the deregulated local coin rate of \$0.35 was not justified, and vacated and remanded the issue to the Commission for further consideration.<sup>44</sup>

#### 1. Comments<sup>45</sup>

17. APCC asserts that *Illinois Public Telecomm.* affirms the Commission’s market-based approach to determine compensation and does not mandate an analysis of costs.<sup>46</sup> According to APCC, the court also affirmed the Commission’s finding that the payphone marketplace is competitive, even if market forces do not yet operate freely for dial-around calling.<sup>47</sup> APCC further argues that the court did not preclude the Commission from relying on market-

based surrogates, such as the local coin rate, or require the Commission to calculate an exact cost differential to be reflected in the per-call compensation figure.<sup>48</sup> The Commission, APCC asserts, could exclude consideration of cost evidence altogether and focus solely on market price indicators.<sup>49</sup> APCC contends that the court objected only to the Commission’s attempt to compare the costs of dial-around calls and local coin calls.<sup>50</sup> Only if the Commission continues to rely on cost comparisons as a factor in the application of a market-based approach, must the Commission adhere to the reasoning issues raised by the court, states APCC.<sup>51</sup> Parties further contend that a market-based approach will fulfill the requirements of the statute, *i.e.*, provide rates that “fairly compensate” PSPs and “promote competition among payphone service providers and the widespread deployment of payphone services.”<sup>52</sup> APCC alleges that the IXCs do not provide any arguments for rejecting a market-based approach, and challenges the arguments that there are local payphone provider monopolies that prevent the payphone market from being competitive.<sup>53</sup> Peoples adds that PSPs are not monopoly providers because Commission rules require PSPs to unblock access code calls, giving every caller the option to dial around a PSP’s presubscribed service provider or to use a debit card to reach a carrier of their choice.<sup>54</sup>

18. The Coalition argues that the court did not question the Commission’s decision to rely on market-determined prices rather than regulatory accounting procedures.<sup>55</sup> The Coalition asserts that the court did not require the Commission to abandon its market-based proxies, but instead required the Commission to consider appropriate differences, such as originating costs, between coin and coinless calls.<sup>56</sup>

19. AT&T asserts that the court found that the Commission acted unlawfully in establishing an assumed market rate for coinless calls, because the Commission ignored record evidence on the cost differences between coin and coinless calls.<sup>57</sup> Because of this error, AT&T states, the court found that there

was no rational basis for the Commission’s conclusion that per-call compensation should be set at the assumed deregulated market price, and therefore, that the Commission’s compensation rate could not stand.<sup>58</sup>

20. Frontier similarly argues that the court did not endorse the Commission’s market-based approach,<sup>59</sup> and further, that the court found the Commission’s conclusion that the local coin rate represents the best surrogate of the costs of completing local calls unjustified.<sup>60</sup>

21. Sprint asserts that although the Commission used a market-based approach to determine local coin rates, the Commission never purported to use a market-based approach for per-call compensation for access code and subscriber 800 calls.<sup>61</sup> Instead, Sprint contends that the Commission has viewed costs as the appropriate approach from the outset, and has sought surrogates for originating costs while rejecting non cost-based market surrogates.<sup>62</sup>

22. PageMart and CPI argue that the great disparity in the record between the market rates and costs demonstrates that the payphone market is not yet competitive,<sup>63</sup> because price in a truly competitive market would have been driven closer to cost.<sup>64</sup> PageNet argues that market rates are misleading, because, as consumers, IXCs cannot decline a sale, *i.e.*, block incoming payphone calls, and thus have a weakened market power.<sup>65</sup> WorldCom asserts that market-based rate would be more arbitrary and artificial than rates based on objective and verifiable costs.<sup>66</sup>

#### 2. Discussion

23. Despite a careful review, we find no statement in the court’s decision that precludes us from relying on market-based surrogates, or requires us to determine a rate based on cost data

<sup>58</sup> AT&T Comments at 3–4.

<sup>59</sup> Frontier Reply at 3–4.

<sup>60</sup> *Id.* (stating that the “court plainly tied its assessment of what constitutes reasonable compensation to the costs of completing coinless calls”).

<sup>61</sup> Sprint Reply at 14.

<sup>62</sup> *Id.* at 14–15.

<sup>63</sup> CPI Comments at 3 (arguing that a market-based rate is inappropriate because the payphone industry is not competitive, and because PSPs are monopolies or near monopolies).

<sup>64</sup> PageMart Reply at 7.

<sup>65</sup> See PageNet Comments at 9–11; PageNet Reply at 5, 7. See also Section D *infra* (discussing reconsideration of caller pays and the paging carriers arguments that only a calling party pays system would result in a true market rate); see also WorldCom Comments at 3–4 (arguing that the rates being proposed by the LECs and PSPs—between \$0.42 and \$0.63 per call—would not be accepted if the consumer paid them directly).

<sup>66</sup> WorldCom Reply at 3.

<sup>41</sup> See *Notice* at 2–3.

<sup>42</sup> *Illinois Public Telecomm.* 117 F. 3d at 564.

<sup>43</sup> *Id.* at 563–64.

<sup>44</sup> See *id.*; *Illinois Public Telecomm.*, Supplemental Opinion, slip op. at 2.

<sup>45</sup> Abbreviations for parties are listed in Attachments B and C. The following section includes the analyses of the comments and reply comments submitted in this proceeding. Although for presentation the comments are summarized generally by subject area, we consider these comments and replies in reaching our decisions wherever the comment and reply comments are appropriate.

<sup>46</sup> See APCC Comments at 2–3; see also CCI Comments at 5.

<sup>47</sup> APCC Comments at 2–3.

<sup>48</sup> *Id.* at 3–4.

<sup>49</sup> *Id.*

<sup>50</sup> APCC Reply at 5.

<sup>51</sup> *Id.* at 6.

<sup>52</sup> APCC Comments at 2 (citing 47 U.S.C. §§ 276(b)(1), (1)(A)). See Coalition Reply at iv, 2, 5.

<sup>53</sup> APCC Reply at 7.

<sup>54</sup> Peoples Reply at 4.

<sup>55</sup> Coalition Reply at 6; Coalition Comments at 11–13.

<sup>56</sup> *Id.*

<sup>57</sup> AT&T Reply at 2; see also ACTA Comments at 3, CWI Comments at 11.

submitted by incumbent LECs, independent PSPs, and other parties to determine the new per-call rate. The court did not reject the concept of linking the market-based local coin rate to the per-call rate for access code and subscriber 800 calls based on the similarity in costs, nor conclude that our approach was irrational. Rather, the court concluded that the Commission had not responded to information on the record regarding the cost disparities between the cost of providing coin calls and subscriber 800 and access code calls. Therefore, the court concluded that adoption of the default rate without further explanation was arbitrary and capricious.<sup>67</sup>

24. The 1996 Act does not prescribe a particular course to ensure that all PSPs are fairly compensated for each and every call.<sup>68</sup> Nothing on the record in response to the *Notice* persuades us to change the deregulatory scheme established in the *Payphone Orders*. Based on the record in this proceeding, we affirm our decision in the *Payphone Orders* to use a market-based default rate for per-call compensation for subscriber 800 and access code calls. We conclude for the reasons stated there that a market-based rate best responds to the competitive marketplace for payphones consistent with the deregulatory scheme we adopted in the *Payphone Orders* for the provision of payphone services pursuant to Section 276, and also will effectively advance the statutory goals of encouraging competition and promoting the deployment of payphones.

25. As discussed above, because of market imperfections such as the inability of PSPs to block access code and subscriber 800 calls, we concluded in the *Payphone Orders* that a default rate was necessary to ensure that PSPs received fair compensation during the transition to a deregulated market. We also concluded in those orders, as we conclude here, that the default rate should be market-based. The method we use in this order to estimate a reasonable default per-call compensation rate addresses the court's concerns as well as those raised on the record in response to the *Notice* by LECs, IXC, and PSPs. Specifically, our approach continues to rely on a market-based rate (the local coin rate).

26. We, however, adjust the market-based local coin rate for differences in the costs of coin and coinless operation, reducing the market-based local coin rate for coin-related costs and increasing the market-based local coin rate to

reflect costs that are related to access code and subscriber 800 calls. In addition, in response to the arguments of parties in this proceeding that a market-based rate would be unreasonable and that we must establish a rate based on cost data submitted by the parties, we also have performed an analysis of those cost data to test the reasonableness of the selected per-call market-based rate. As discussed below, we find based on this analysis that the adjusted market-based rate is reasonable. Accordingly, we conclude that the deregulated local coin rate, adjusted for cost considerations, is a reasonable market-based surrogate for determining the default per-call compensation rate and specifically responds to the court's concerns that cost differences between coin calls and coinless access and subscriber 800 calls be explained. Furthermore, we conclude that the per-call rate established in this order will further the goals of Section 276 and is in the public interest.

27. The record on remand supports our prior conclusion that per-call compensation should be set by the marketplace and that full and unfettered competition is the best mechanism to achieve Congress' dual policy objectives.<sup>69</sup> Competition over time will lead to the more efficient placement of payphones, improved payphone service, and lower prices for consumers. To encourage competition in the payphone marketplace, we ensure in this *Second Report and Order* that PSPs are fairly compensated for "each and every completed intrastate and interstate call."

28. We conclude that because we make the per-call amount subject to negotiations, the marketplace will make the appropriate adjustments in the per-call rate. We established the per-call default rate to be applied only if the PSP and the IXC are unable to negotiate some other rate of compensation for compensable calls. Negotiations may lead to rates other than the default rate for several reasons. First, because virtually all of the costs are fixed costs and are not incurred on a per-call basis, an IXC and a PSP might agree to a flat-rated charge rather than a usage-based compensation rate. Second, there may be locations where a payphone would not be viable financially if compensated at only the default rate per compensable call, but would be viable at a higher compensation rate. If an IXC found it profitable to carry calls at this higher rate, it would be in the mutual interest of the two parties to agree on a higher rate. Third, IXCs may choose to pass on

the per-call compensation rate to their customers. In the case of 800 subscriber calls, the IXC could pass on the cost to the called party. If the called party refused to accept calls for which it was charged the default rate, but was willing to accept calls with a lower charge, the IXC and the PSP may find it in their mutual interest to negotiate a per-call rate lower than the default rate. Fourth, in locations where a competing payphone could be placed without the permission of the location provider, a PSP may be willing to negotiate a lower rate than the default rate, rather than give an IXC the incentive to place a competing payphone.

#### B. Market-Based Compensation Analysis

29. As discussed above, we conclude that the appropriate rate of per-call compensation for access code and subscriber 800 calls is the market-based local coin rate adjusted for costs. In setting the per-call compensation rate for the first two years of per-call compensation, we begin with the \$0.35 market-based local coin rate established in the *Payphone Orders* and adjust that rate to remove coin-related costs and add costs specific to subscriber 800 and access code calls.

##### 1. Comments

30. *Market Rate*. APCC, the Coalition, Peoples, and CCI request that the Commission adopt a market-based per-call compensation rate, and furthermore, assert that the underlying costs attributable to both coin and noncoin calls are similar.<sup>70</sup> APCC contends that any market-based rate-setting mistakes are self-corrective, because the market will demonstrate the mistake.<sup>71</sup> APCC further contends that contrary to the IXCs position, the market will prevent PSPs from gaining any long term windfall, and would force any such "windfall," to be passed on to consumers.<sup>72</sup> APCC contends that market-based rates are more objective than the subjective components of cost-based rates.<sup>73</sup>

31. The Coalition further maintains that the market will reflect variations from region to region and payphone to

<sup>70</sup> See APCC Comments at 4; APCC Reply at 10 (stating that the Commission adopted a market-based approach in the *Payphone Orders*, and that the Commission should apply that approach in the instant proceeding); Peoples Comments at 8 (stating that the cost of a dial around call is similar to the deregulated market rate). See also Coalition Reply at 2-3 (stating that once the cost analyses provided by the IXCs are corrected for costs that should be included, the cost of a call reaches, and in some cases exceeds, the market rate).

<sup>71</sup> APCC Comments at 5.

<sup>72</sup> APCC Reply at 14.

<sup>73</sup> APCC Comments at 6.

<sup>67</sup> See *supra* para. 13.

<sup>68</sup> 47 U.S.C. § 276(b)(1).

<sup>69</sup> 47 U.S.C. § 276(b)(1).

payphone.<sup>74</sup> The Coalition urges that the market rate be the local coin rate adjusted to reflect the relative elasticities of demand of the various types of calls.<sup>75</sup> The Coalition contends that under market conditions sellers will tend to load costs onto services for which prices are less likely to fluctuate, *i.e.*, that have a lower elasticity of demand, than onto services that have a higher price sensitivity. The Coalition further argues that the elasticity of demand for local coin calls is higher than for long distance calls. In other words, the Coalition argues, customers of local calls will respond more quickly to price changes than customers of 0+, subscriber 800 and dial-around calls.<sup>76</sup> Thus, the Coalition contends, the price of long distance calls should be the local call rate adjusted upward to reflect the lower elasticity of demand and the greater proportion of costs, relative to local calls, that such calls will carry under true market conditions.<sup>77</sup>

32. CCI, an independent payphone provider, argues that the Commission should adopt a market-based surrogate, and contends that there are few differences between the costs of a local coin call and a subscriber 800 or access code call.<sup>78</sup> CCI argues, however, that even under a cost-based approach, the cost of a local coin call and a dial around call is approximately \$0.35.<sup>79</sup>

33. Several of the IXC's assert that the retail price for local coin calls is not an appropriate surrogate for the costs of a noncoin call, because there are substantial cost differences between these two types of calls.<sup>80</sup> AT&T and MCI assert that if the Commission develops a rate based on an offset from the local coin rate, the offset should be at least fifty percent,<sup>81</sup> or based on the rate negotiated between AT&T and APCC in 1994 for dial-around access code calls.<sup>82</sup> MCI asserts that a market-based rate, being higher than a cost-based rate, would lead to increased blocking by 800 subscribers, as those

subscribers try to avoid having to pay IXCs for unduly high payphone charges.<sup>83</sup> MCI also asserts that market-based rates are artificially driven up by location owners holding out for the highest bidding PSP.<sup>84</sup> These higher, market-based rates will lead to an unwarranted income transfer from consumers to payphone providers, MCI contends, because excessively high rates will encourage PSPs to place payphones in increasingly marginal locations.<sup>85</sup> The Coalition disputes MCI's assertion that a market-based rate would lead to increased blocking arguing that PSPs have an interest in seeing calls completed, which call blocking would defeat, and an acceptable market rate would result in more completed calls.<sup>86</sup>

#### 34. Local Coin Rate as Surrogate.

Several of the PSPs argue that if the local coin calling rate is used, no significant adjustment for cost differences between the coin rate and dial-around calls is required, because any cost differences are minimal.<sup>87</sup>

35. Peoples argues that a single, flat default rate would simplify procedures, much as a first-class postage stamp covers mail that goes various distances.<sup>88</sup> Peoples further argues that the local coin rate is such a flat rate, because it is used to originate all types of calls from a payphone.<sup>89</sup> Moreover, Peoples argues, coinless calls alone do not justify installing a payphone; payphones are installed for coin calls, thus, the local coin rate is a good market measure for all of the calls that originate from it.<sup>90</sup>

36. Several of the IXC's oppose the use of the local coin rate as a surrogate, but state that if the Commission uses the local coin rate, then the Commission should reduce the local coin rate so that it reflect only expenses unique to access code and subscriber 800 calls.<sup>91</sup> CPI objects to the use of the local coin rate as a starting point because the coin rate does not represent the result of a competitive market.<sup>92</sup> TRA says that using the local coin rate will lead to a

grossly inflated default rate.<sup>93</sup> Frontier states that the coin rate bears little relationship to the costs of completing a coin call, much less a coinless call.<sup>94</sup>

37. *Other Surrogates.* APCC requests that the Commission consider other surrogates for the market rate, such as 0+ commissions, 0— transfer rates and sent-paid toll call surcharges.<sup>95</sup> According to APCC, the 0+ call commissions are the only known instance where carriers and PSPs meet in the marketplace to negotiate a price for routing a call from the payphone to the carrier, and therefore, the Commission should reconsider 0+ commissions.<sup>96</sup> APCC further contends that sent-paid tolls are another reasonable indicator of the market price.<sup>97</sup> Additionally, APCC contends that the 0— transfer rates are a reasonable surrogate, because these rates indicate the minimum price IXCs are willing to pay to obtain telephone traffic.<sup>98</sup> APCC concludes that the most appropriate market-based surrogates are local coin calls, operator-assisted call commissions and sent-paid toll surcharges, because these three surrogates are based on prices actually charged in the marketplace for origination of payphone calls. APCC states that a weighted average price for these three charges is \$0.45 per call.<sup>99</sup>

38. Several of the IXC's argue that 0+ commissions cannot be used as a market guide because these commissions include factors unrelated to the use of payphones for the use of access code and subscribers 800 calls.<sup>100</sup>

<sup>93</sup> TRA Comments at 20.

<sup>94</sup> Frontier Reply at 5.

<sup>95</sup> APCC Comments at 8–10.

<sup>96</sup> *Id.* at 7–8 (arguing that the Commission erroneously rejected 0+ commissions in its *Report and Order* in this proceeding, but accepted them as a benchmark in CC Docket No. 91–35). The mid-range level of these commissions, according to APCC's 1996 data, is \$0.62 per call. *See id.*

<sup>97</sup> *Id.* at 9–10 (explaining that the sent-paid toll call surcharge is the amount, above the standard transmission charge, that a PSP charges for the convenience of making a toll call from a payphone). The middle-range price of such a call is \$1.40 per call. *See id.*

<sup>98</sup> *Id.* at 9 (stating that the average price of a completed 0— transfer call is \$0.41).

<sup>99</sup> *Id.* at 10.

<sup>100</sup> *See, e.g.,* AT&T Reply at 35; CWI Reply at 2–4; CompTel Reply at 1, 2–3; RCN Reply at 7–8, Sprint Reply at 17; WorldCom Comments at 4; Excel Reply at 7 (arguing that these surrogates do not overcome the uncompetitive characteristic of the current payphone market by virtue of the fact that payphone callers are a captive audience); Frontier Comments at 3 (arguing that commissions paid on 0+ calls include monopoly rents and locational monopolies); ITA Comment at 6–7 (arguing that compensation for 0+ calls includes other compensation factors, such as the PSP's promotion of the operator service provider through payphone placards, and that market surrogates in

Continued

<sup>74</sup> Coalition Reply at 6 (citing *Order on Reconsideration*, 61 FR 65341 (December 12, 1996); 11 FCC Rcd at 21,268–69, para. 71).

<sup>75</sup> Coalition Comments at 22.

<sup>76</sup> *Id.* at 23.

<sup>77</sup> *Id.* at 12–14; Coalition Reply at 4, 14–15.

<sup>78</sup> CCI Comments at 2.

<sup>79</sup> *See id.*

<sup>80</sup> *See, e.g.,* AT&T Comments at 4, 6; AT&T Reply at 4 (stating that market-based compensation is unrelated to and in excess of costs to originate coinless calls); Excel Reply at 1; MIDCOM Comments at 4–6 (stating that any alleged market rate would be distorted by the binding contracts to which the majority of payphone locations already are subject).

<sup>81</sup> *See* AT&T Comments at 13; MCI Reply at 3.

<sup>82</sup> *See* AT&T Reply at 12–13 (explaining that since AT&T negotiated the 25 cent rate, the average price of a dial around call has declined).

<sup>83</sup> MCI Comments at 4.

<sup>84</sup> MCI Reply at 10.

<sup>85</sup> *Id.*

<sup>86</sup> Coalition Reply at 8–9.

<sup>87</sup> *See* APCC Comments at 11–15 (arguing that fixed payphone costs do not change with the presence of dial-around calls, and further that there are no major differences in the variable costs); *see also* TEI Comments at 2; CCI Comments at 6–8 (arguing that the deregulated coin rate of \$.35 per call is an appropriate surrogate).

<sup>88</sup> Peoples Comments at 7.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.* at 6–7.

<sup>91</sup> CWI Comments at 9 n.7; CompTel Comments at 14 n.7; LCI Comments at 8; RCN Reply at 1.

<sup>92</sup> CPI Comments at 7.



Furthermore, carriers argue, sent-paid calls are not a reliable surrogate, because these charges cover such services as a payphone's capability to track time and amount, and recognize types of coins, services not needed for 800 subscriber calls.<sup>101</sup> MCI argues that these surrogates are not representative because they are narrowly tailored to specific types of calls.<sup>102</sup> Moreover, MCI contends, some of so-called surrogates apply to calls from telephones that are not even payphones.<sup>103</sup> Sprint argues that the only truly reliable indicator of the market for subscriber 800 and access code calls is what the market provided to PSPs for such calls prior to the imposition of the Commission's orders in CC Docket No. 91-35.<sup>104</sup> At that time there was no compensation to PSPs for these calls, and therefore, Sprint contends, the market price was zero.<sup>105</sup>

39. Excel argues that the Commission should start with a local coin rate at \$0.25,<sup>106</sup> then subtract those costs unique to the local coin service—coin equipment and collection, coin rating, originating and terminating access from the local coin rate.<sup>107</sup> AT&T, CompTel, and CWI argue that the Commission should not rely on avoided costs in establishing the default compensation rate, because this method inappropriately compares the price of coin calls with the costs of coinless calls and may overcompensate PSPs. Nonetheless, if the Commission adopts this method, AT&T argues, the Commission must set the local coin rate at \$0.25 and determine the actual avoided costs related to coinless calls,<sup>108</sup> and CompTel and CWI argue that the Commission should subtract the costs of tracking and billing compensation.<sup>109</sup> MCI argues that if the Commission

adopts a top-down approach, it should calculate the default rate by subtracting the coin specific costs from the cost of a coin call, not from the market rate.<sup>110</sup> RCN argues that the Commission should determine a nationwide default rate and then subtract those costs that are unique to coin calls.<sup>111</sup>

40. The Coalition argues that the avoided cost methodology will not produce a per-call compensation rate lower than the deregulated coin rate, and in fact, will increase the amount of compensation owed to the PSPs.<sup>112</sup> Furthermore, the Coalition argues, avoided cost methodology will not produce competitive outcomes, because joint and common costs are a significant portion of the total costs, and the market does not price goods or services on costs alone.<sup>113</sup>

## 2. Discussion

41. In the *Payphone Orders*, we found that the market rate for a local coin call is \$0.35 and we stated that this is also the rate for access code and subscriber 800 calls for the first year of per-call compensation. In response to the court's concern that there may be differences in cost between providing local coin calls and subscriber 800 and access code calls, we have evaluated the evidence on the record to develop a default rate for access code and subscriber 800 calls that reflect those cost differences. On the record, parties discuss several cost factors suggesting that compensation for access code and subscriber 800 calls should be either above or below the market price for coin calls.<sup>114</sup> In section (a) we conclude that based on differences in costs, a market rate for access code and subscriber 800 calls likely would be between 5.9 and 7.3 cents lower than the market rate for a local coin call, resulting in a rate of \$0.284. In section (b) we conclude that the parties failed to provide sufficient information to adjust the default dial access and subscriber 800 rate to reflect differences in the elasticities of access code and subscriber 800 calls compared with local coin service. Thus, we do not

make any adjustment for elasticity differences.

### a. *Adjustments to the Local Coin Market Rate Based on Cost Differences*

#### i. *General Approach*

42. Our general approach is to start with the market rate for local coin service (\$0.35), and subtract costs directly attributable to coin calls and add costs specific to access code and subscriber 800 calls. The majority of the costs associated with a payphone are joint and common costs that are shared by the different types of calls made by means of the payphone. These costs do not increase or decrease as the number or composition of calls changes at a particular location. By making no adjustment to the coin rate for these costs, we conclude that each call placed at a payphone should bear an equal share of joint and common costs.

43. The long distance and paging companies argue that we should limit the costs attributed to access code and subscriber 800 calls to the costs that would be incurred from providing access at a coinless payphone; coin-related costs should not be included. Under this theory, all other costs that are incurred to support a payphone coin call would be attributed to coin calls and either removed from any market-based rate or excluded from any other type of cost estimate.<sup>115</sup> PSPs, however, maintain that few locations could support a coinless instrument.<sup>116</sup> Instead, they explain that most payphones are installed to handle both coin and coinless calls.<sup>117</sup>

44. We agree with the IXC's, and paging companies, that costs directly associated with the coin mechanism should be borne by coin calls. Under their general approach, however, compensation for subscriber 800 and access code calls would not fairly contribute to the recovery of joint and common costs of payphone service that would occur, even if the payphone is used solely to place such calls. In our view, such joint and common costs are not "additional" costs occurred to provide local coin calls. Hence, compensation for subscriber 800 and access code calls should contribute to the recovery of such costs. Our calculation assumes that each call will contribute to a multi-use payphone's joint and common costs.

general include costs not incurred in PSP origination of dial-around calls, such as LEC line costs, premise owner commissions, and billing and collection charges); PageNet Reply at 11 (arguing that 0-transfer rates include compensation for operator assistance services that subscriber 800 calls do not use). See *infra* para. 62 for a more thorough discussion regarding commissions.

<sup>101</sup> PageNet Reply at 11-12.

<sup>102</sup> MCI Reply at 6 (arguing that the 0+ commission represents the value to the IXC of being a payphone's presubscribed carrier).

<sup>103</sup> *Id.*

<sup>104</sup> Sprint Reply at 18.

<sup>105</sup> *Id.*

<sup>106</sup> Excel Reply at 3, 9 (arguing that setting the default rate at the highest deregulated rate in the country is contrary to competition, and further that the proceeding before the Massachusetts DPUC regarding NYNEX's payphone rates demonstrates that the market rate for local coin calls should not be higher than \$0.25 per call).

<sup>107</sup> Excel Comments at 4.

<sup>108</sup> AT&T Reply at 24 (stating that no charges should be added to this rate such as ANI or completion costs for local coin calls).

<sup>109</sup> CompTel Comments at 14 n.7.

<sup>110</sup> MCI Comments at 3.

<sup>111</sup> RCN Comments at 4 (stating that the per-call rate should not exceed the market-based local coin rate).

<sup>112</sup> Coalition Reply at 13-15 (arguing that an avoided cost methodology not only requires the deduction of certain costs, but also the addition of costs that PSPs must incur for a noncoin call).

<sup>113</sup> *Id.* at 14. See *infra* paras. 64-67 regarding demand elasticity.

<sup>114</sup> See, e.g., AT&T Comments at 11 (per-call compensation should be lower than the default rate); Sprint Comments at 9; APCC Comments at 8; Coalition Comments at 30-33 (stating that per-call compensation should be above the local coin rate to account for implementing ANI and other costs).

<sup>115</sup> AT&T Comments, Analysis of Economist David Robinson at 6 [hereinafter AT&T Comments, Robinson]; MCI Comments at 3.

<sup>116</sup> See Peoples Comments at 7.

<sup>117</sup> Coalition Comments, Analysis of Economist Jerry A. Hausman, Ph.D. at 9 [hereinafter Coalition Comments, Hausman].



45. We reject AT&T's contention that using a coinless payphone results in a per-call compensation rate of 11 cents per call and that this rate should be the basis for selecting a per-call compensation rate. We note that AT&T divided its monthly costs to install, operate, and maintain a coinless payphone (\$76.85) by the number of calls at a coin payphone estimated by APCC.<sup>118</sup> The APCC study showed that the average payphone carried 713 calls per month, and that 511 of these calls were coin calls and 202 of these calls were coin-less calls.<sup>119</sup> It is more reasonable to assume that you would divide AT&T's estimated monthly costs for a coinless payphone (\$76.85) by 202, the number of coinless calls. This calculation results in a cost of 38 cents per call, rather than the 11 cents estimated by AT&T. If the number of calls at coinless payphone were adjusted for a marginal location as we do in our analysis below, the per-call cost would be even greater. Thus, we conclude that the 11 cent rate obtained by AT&T in its analysis would not be an appropriate per-call compensation rate for subscriber 800 and access code calls.<sup>120</sup>

46. *Selecting the number of calls to represent a low traffic location.* Any analysis of the costs incurred for a call from a payphone must be based on a particular number of calls. Most of the parties presented cost information based on coin payphones serving locations with an average amount of calling. We believe, however, that it is appropriate to analyze cost for a location with less than average calling. Prices in competitive markets tend to be set at the marginal cost of production. For payphone service, the marginal unit of production is the installation of a payphone at a low traffic location. If prices for payphone calls increased, providers would be willing to install more payphones; however, customers would likely place fewer calls. At the equilibrium price for payphone calls, newly installed payphones would be expected to generate just sufficient calls to earn only a normal return on investment. Thus, we believe that setting a default compensation rate to achieve fair and reasonable compensation requires that a payphone operator be able to cover costs at a low traffic location. A single instrument would be required to provide both coin and coinless calls at such a location,

with neither class of calls, by itself, sufficient to justify installation of a payphone.

47. We select the number of calls to represent a low traffic location by estimating the number of calls that could cover all of the costs of operating a payphone with the exception of commissions paid to location owners. This number represents the lowest number of calls at which a payphone could be operated without requiring a subsidy. Most of the costs associated with a payphone do not vary with the number of calls made at an individual payphone. Thus an individual call must cover its own marginal costs as well as a share of the non-varying costs. The contribution made by an individual call is the price of the call less the marginal costs of the call. If the price of calls remains constant, each additional call adds a fixed amount of contribution. If the number of calls is high enough, the total of this contribution will exceed the total of non-varying costs, including a normal return on investment. The amount by which total revenue exceeds total cost is referred to as economic rent. In the long run, premises owners will be able to extract any economic rent from payphone owners through commissions.<sup>121</sup> If a location generates only enough traffic to support the installation and upkeep of a payphone, however, there will not be any commission payments. Some PSPs may choose to pay standardized commission amounts.<sup>122</sup> These companies will not serve as wide a mix of locations. All things being equal, the owner of a high traffic location would seek out the potential profits by choosing the PSP that is willing to pay the highest commissions. On the other hand, if the owner of a low traffic location insisted on a commission, no PSP would be willing to install a new payphone at that location because no PSP could pay the commission and generate a sufficient return on its new investment.<sup>123</sup> Accordingly, a marginal location is a location where traffic just covers costs other than premises owner commissions.

48. Based on the data provided by the commenters, it is necessary to complete several steps to determine the appropriate number of calls needed to sustain a payphone at a marginal location. As explained more thoroughly

below, we rely on APCC cost data, because these data are representative of the payphone industry as a whole. However, APCC did not provide a breakdown of the 689 calls that it reported as the average per payphone when it collected the cost data. Therefore, we first used APCC data from the call type study—which provided data based on an average of 713 calls—to determine the proportion of access code and subscriber 800, coin and other calls for the 689 calls reported in the cost study. Second, using these derived call numbers, we estimated the amount of coin and other calls necessary to generate commission payments, and subtract those calls to yield the number of calls needed to sustain the marginal payphone.

49. We use APCC data to estimate the number of calls per month that an average PSP would need at a location to cover costs other than commissions.<sup>124</sup> APCC reported \$242 monthly cost per payphone, including \$45 in commissions, based on an average of 689 calls of all types.<sup>125</sup> Until October 1996, \$6 of the monthly cost per payphone was met from dial around compensation and the balance of the monthly cost per payphone had to be met with coin revenues and revenues from 0+, 0-, and 00- calls.<sup>126</sup> To determine the amount of revenue that the average coin, 0+, 0-, and 00- call had to produce so that the average number of calls would cover total costs, we had to determine the total number of each such call type. Therefore, we used the data in the APCC call distribution study, which produced a total of 713 calls of all call types—152 access code and subscriber 800 calls and 561 coin and other calls—and applied this breakdown to the 689 calls in the cost study to develop a call distribution.

<sup>124</sup> APCC submitted data from two different studies; one pertaining to cost, and one pertaining to call type volumes. See APCC Comments, Attachment 3 ("Weighted Average of Cost and Call Volume Data from 46 Payphone Companies"), Attachment 4 ("Results of APCC's 1996 Survey of Payphone Call Volumes"). For this analysis we needed the following information: average cost per payphone; average commissions paid to premises owners per payphone; average number of calls per payphone; the marginal cost per coin call; and breakdown of average call types per payphone. APCC and CCI provided a breakdown by call type; in relying on APCC's data, we note that other commenters supplied APCC's call type data in their comments as representative of the payphone industry, and further, that CCI's call data is similar to that of APCC. See, e.g., CWI Comments, LCI Comments, CompTel Comments. APCC and several other commenters, such as Peoples and CCI, provided cost data; however, we selected the APCC data because it is the most thorough and representative of the payphone industry averages.

<sup>125</sup> See APCC Comments, Attachment 3.

<sup>126</sup> See *OSP Second Report and Order*, 57 FR 21038 (May 18, 1992); 7 FCC Rcd at 3251.

<sup>118</sup> AT&T Comments, Robinson at 12.

<sup>119</sup> APCC Comments, Attachment 4 at 2.

<sup>120</sup> Other parties believe that AT&T's estimated monthly cost of a coinless telephone is too low. Coalition Reply at 29.

<sup>121</sup> Several PSPs suggested that commissions should be included in the cost of providing access code and subscriber 800 calls. See *infra* para. 62.

<sup>122</sup> See TEI Comments at 8.

<sup>123</sup> Existing LECs require premises owners to pay for placement of payphones, rather than receive a commission, if there is a sufficiently low volume of coin traffic at a location.

Applying the representative percentages of the call types resulted in the following distribution: 147 access code and subscriber 800 calls, 494 coin calls, and 48 other calls.<sup>127</sup> Thus, to recover the \$242 in monthly costs at an average location, the PSPs surveyed by APCC had to collect an average of 43.5 cents per call in revenue from coin and other calls.<sup>128</sup>

50. The APCC data illustrate that PSPs pay an average of \$45 per month in commissions. For the purposes of this analysis, we impute the number of calls at a low traffic location by taking the number of calls at an average location, and subtract the number of coin and other calls that would produce marginal revenue of \$45. As explained above, to break even at an average location, PSPs must have generated 43.5 cents per call from an average number of coin and other calls. This revenue per call, however, is offset by about 4.8 cents of marginal cost per call,<sup>129</sup> meaning that payphone providers must realize about 38.7 cents in average net revenue per call. Dividing \$45, the average compensation to premises owners, by 38.7 cents, which is the marginal revenue per call, results in 116 coin and other calls. In other words, if the number of coin and other calls is decreased by 116, all other things being equal, the PSP's net revenue would be reduced by \$45 (116 calls times 38.7 cents per call). Assuming a proportionate reduction in all calls, a break even or low traffic location would

have 116 fewer coin and other calls and 31 fewer access code and subscriber 800 calls.<sup>130</sup> Using the total number of all calls from the cost study (689), we subtracted 116—the number of coin and other calls that would generate \$45 in commissions. This resulted in 573 calls. We also expect that the number of access code and subscriber 800 calls at a marginal payphone location would be less. As noted above, we determined that 147 of the 689 calls at an average location would be subscriber 800 and access code calls. To reduce that amount (147) by the decrease in access code and subscriber 800 calls that would be originated at a marginal location, we then determined how many of the remaining calls were subscriber 800 and access code calls. Comparing the numbers from the APCC call volume study, we determined that the number of coin and other calls (excluding subscriber 800 and access code calls) was approximately 21.4% less in the cost study.<sup>131</sup> Assuming that the subscriber 800 and access code calls also would decrease proportionately, we determined that there would be 31 fewer subscriber 800 and access code calls.<sup>132</sup> Thus, we subtracted 31 from 573, which results in 542 calls. Accordingly, we use this number, 542, as the total number of calls that would be made from a low traffic location.<sup>133</sup>

ii. *Estimate of avoided and added costs.*

51. The parties submitted data on avoided and added costs of dial access and subscriber 800 calls compared with local coin calls. Different parties have different costs by category due to differences in the type of location served and differences in accounting treatments. Line charges, for example, vary from state to state. One party may treat a specific cost as overhead while another party might include the same

sort of cost a direct cost of maintenance. It is not possible to fully reconcile differences in cost estimates by analyzing the data filed on the record. Accordingly, we have used the information submitted by the parties along with information from Securities and Exchange Commission 10K filings to develop ranges within which cost for an average PSP might reasonably be expected to fall.<sup>134</sup>

52. *Coin Mechanism Capital Costs.* While a single payphone may be installed to handle both coin and coinless traffic, the direct costs of the coin mechanism should be recovered by coin calls. After installation, the capital costs of a payphone become fixed. Because we are looking at the long run, where all costs are avoidable, we consider the decision made by the PSP at the time the phone is installed. When a payphone provider considers installing a telephone at a new location, it must consider whether the additional coin traffic at that location would justify the additional cost of installing a coin telephone. The PSP would not install a coin payphone instead of a coinless payphone unless the additional coin traffic would at least cover the additional costs of a coin mechanism. Therefore we conclude that costs directly associated with the coin mechanism should be attributed to coin traffic. We assume that the market rate for local coin calls recovers these costs and therefore conclude these costs should be removed from the adjusted market rate.

53. David Robinson, in a study submitted by AT&T, provided the most detailed information on the costs of purchasing and installing different types of telephones. Independent PSPs typically use smart payphones. Robinson estimated that new smart coin payphones cost about \$900 to \$1200 per unit compared with \$200 to \$250 per unit for coinless units.<sup>135</sup> The differences in cost are primarily due to equipment used to accept, count, and hold coins.<sup>136</sup> Some cost differences,

<sup>127</sup> See APCC Comments, Exhibit 4 (providing specific amount of numbers of each call type). The APCC survey found \$242 per month total cost based on an average of 689 calls per month. The APCC call distribution study (APCC Comments, Exhibit 4) showed 713 total calls, comprised of 152 access code and subscriber 800 calls (21%), and 561 coin and other calls (79%). We applied this breakdown to 689 calls to estimate 147 access code and subscriber 800 calls and 542 coin and other calls. The 542 coin and other calls includes 411 and 555 calls that we treated as coin calls for our analyses.

<sup>128</sup> The quantity (\$242 less \$6 dial around compensation) divided by (542 calls) results in 43.5 cents per call. The \$6 in dial around compensation is based on historic data. We have used historic data rather than the default compensation rate times projected access code and subscriber 800 calls in order both to meet the concern that the compensation rate be fair to existing payphone providers and also because it is difficult to forecast the future number of access code and subscriber 800 calls.

<sup>129</sup> We find below that the marginal collection, maintenance, and lines costs of a coin call are between 4.6 and 6.0 cents per call. The APCC usage study shows that if access code and subscriber 800 calls are omitted, about 91% of the remaining calls are strictly coin (i.e., excluding 411 and 555 calls). To determine an average cost for coin and other call types, we used an average marginal cost for a coin call multiplied by the percentage of coin calls. This translated to 5.3 cents of marginal cost for a coin call [(4.6+6.0)/2] multiplied by the percentage of coin calls (91%), which results in 4.8 cents per average coin and other call.

<sup>130</sup> Since our default compensation rate will cover more joint and common costs than the \$6 per month compensation rate in effect through October 6, 1996, payphones will become economically viable at more locations, satisfying one of the goals of the 1996 Act.

<sup>131</sup> Using the number 116 calls, we divided 116 coin and other calls (excluding subscriber 800 and access code calls) by 542 total coin and other calls (again excluding subscriber 800 and access code calls). This resulted in a reduction of 21.4%. This percentage does not indicate that the type of calls declined, but rather, is a percentage used to develop the relative proportions of the various call types from the call volume study to the cost study.

<sup>132</sup> This assumes that access code and subscriber 800 calls also would decline by the same percentage as would coin and other calls. 116 coin and other calls times (152 average access code and subscriber 800 calls / 561 coin and other) equals 31 fewer access code and subscriber 800 calls.

<sup>133</sup> We use the 542 number of calls at a low traffic payphone location in the following sections of the market based analysis: coin mechanism capital costs; line savings (in part); and ANI ii.

<sup>134</sup> *Bell Atlantic Telephone Companies v. FCC*, 79 F.3d 1195, 1202–04 (stating that the Commission is not required to include all data when determining a rate, and that the Commission has the authority to exclude suspicious data or statistical outliers).

<sup>135</sup> AT&T Comments, Robinson at 3.

<sup>136</sup> See Coalition Comments, Report of Arthur Andersen on per-call compensation and cost calculations, Carl Geppert at 8 (Aug. 26, 1997). Local exchange carriers, in contrast, have an installed base that typically consists of “dumb” payphones that must rely on telephone company central offices for functionality. The Coalition submitted a study by Carl Geppert for Arthur Andersen citing New England Telephone data for New Hampshire to show that the average costs of coin and coinless telephones were similar. Other parties have presented information to the effect that

however, may be due to quality features that allow the payphone to be used in harsher environments. We selected the \$900 figure for smart coin telephones as an amount that would be suitable for general locations instead of the \$1200 figure, because the latter figure likely included additional features that go beyond the standard smart coin telephone that would not be necessary at the general location. We determine that \$250 is an appropriate amount for the coinless phone operated in a general location, to reflect some quality features, and further, because there is not a significant difference in the capabilities among the coinless phones and the difference between the estimates (\$200 to \$250) is not significant. The difference in price, from \$900 to \$250, \$650 per telephone, would be due to added costs associated with coin traffic. Robinson also estimates that a smart coin telephone requires \$60 more for installation than does a coinless telephone due to additional testing and programming for the coin rating and collection functions.<sup>137</sup> Thus, we estimate a total investment cost of \$710 per payphone that is related to coin functions.<sup>138</sup> This equates to \$12.36 in investment costs per month for a coin telephone.<sup>139</sup> Thus, we impute that the market rate for local coin service includes 3.1 cents per coin call at a low usage location and that this amount represents an avoided cost for dial around and subscriber 800 calls.<sup>140</sup>

**54. Line Savings.** In some areas, all payphones are charged per-message or per minute charges for all local calls. In other areas, all payphones use

a coin mechanism by itself would cost less than \$100. Stronger, theftproof housing, however, also is required if a coin mechanism is to be included. We conclude that the best information is the current prices of comparable telephones with and without coin mechanisms and that the Robinson data is most suitable for this comparison.

<sup>137</sup> AT&T Comments, Robinson at 3.

<sup>138</sup> In reviewing costs *infra*, we use data from Peoples and CCI's 10K reports to estimate that the total new investment for a payphone would be about \$3000, including support facilities. Thus, the \$710 in coin related costs represents about a quarter of the total new investment.

<sup>139</sup> Equal monthly payments of \$12.36 would depreciate \$710 over a 10 year life and earn a return of 11.25% on net plant, allowing for the statutory federal income tax rate of 34%. We selected a 10 year life consistent with AT&T and Peoples. See AT&T Comments, Robinson at 5; Peoples 1996 10K at 31 (using a 10 year straight line depreciation rate for public payphones. Cf. CCI Comments at 10 (using a 7 year life). See also *infra* para. 59 for further explanation of interest rates.

<sup>140</sup> This is not a marginal cost per coin call. Rather, it represents the amount included in the market rate of local coin calls to recover the costs of equipment attributed to coin service. For this purpose, the market rate was assumed to be based on a low traffic location, meaning 542 total calls, including a total of 399 coin, 411, and 555 calls.

unmeasured lines. In still other areas, payphone providers can choose between using some form of measured service and unlimited calling. PSPs taking measured service pay message charges for local coin calls, but not for access code or 800 subscriber calls. This represents a marginal cost difference of coin versus coinless service. Based on the record, we conclude that the average cost savings for line charges is about 2.5 to 3.0 cents per call.<sup>141</sup>

**55. Collection and Maintenance Savings.** The parties concur that coin collection costs are related to coin calls, that coin telephones have higher maintenance costs than coinless telephones and that maintenance costs increase as the number of coin calls increases.<sup>142</sup> It is difficult to separate maintenance from coin collection costs, however, because some coin collection and routine maintenance may occur at the same time.<sup>143</sup> Not all maintenance is related to coin calls.<sup>144</sup> For example, key pads and handsets are used for both coin and non-coin calls and vandalism may be directed against the phone or the enclosure as well as targeted against the coin box. Based on the record, we conclude that the average savings from

<sup>141</sup> See Coalition Comments, Andersen at 4 (\$0.02); CCI Comments at 9 (\$0.02); Peoples Comments at 11 (\$0.04). We note, however, that six of the eight Coalition members reported no measured service lines, and further, that the line savings per call was \$0.07 and \$0.08 for the other two. In a deregulated environment, LECs will have incentives to select measured service lines for payphones when such lines would be the low cost alternative. Accordingly, the LEC data is not representative of costs for the PSPs. The Peoples estimate contains some avoided toll costs in addition to avoided coin collection costs. Peoples did not provide sufficient information to separate this part of the costs. Accordingly, that amount is too high to serve as a high range for estimates. See also AT&T Comments at 4 (\$0.029) (deriving this figure as total billing cost, \$15.03 local usage for a smart phone divided by 511 coin calls as represented in the APCC study, Attachment 4 at 2). Telaleasing data was excluded because its estimates are radically different from the estimates filed by any other party and because its data could not be verified by parent company 10K filing. See Telaleasing Comments at 7; Davel 10K at 19. Also, all of Sprint's payphones appeared to be in non-measured service areas, which is not representative of the industry average, so we did not use Sprint's line cost data when determining line savings. Sprint Reply, Exhibit 1 at 2. Line costs are dependent on local exchange carrier rates which vary by community. We do not believe that the industry average would be much higher than the figure derived from AT&T data. Accordingly, we select 3.0 cents per call for the high call estimate (slightly higher figure than that derived from AT&T data). We select 2.5 cents per call as the low estimate, based on an average of the AT&T and CCI data.

<sup>142</sup> See, e.g., AT&T Comments, Robinson at 7.

<sup>143</sup> This would more likely be the case at a low traffic location than a high traffic location, since more coin pickups are scheduled for high traffic locations.

<sup>144</sup> Peoples Comments at 13.

coin collection and maintenance is 2.1 to 3.0 cents per call.<sup>145</sup>

**56. Bad Debt / Collection Charges.** Peoples identifies some collection and bad debt expenses that it attributes solely to compensation for access code and subscriber 800 calls. Under the interim compensation plan, Peoples was unable to collect from IXC's approximately \$4.02 per payphone per month, which translates to \$0.03 per access code and subscriber 800 call.<sup>146</sup> Conversely, CompTel alleges that Peoples' bad debt expenses arose primarily from operator service operations.<sup>147</sup> CWI opposes including any allowance for increased collection costs of access calls, arguing this is not a cost of access and that the IXC's also bear such costs.<sup>148</sup> Furthermore, AT&T notes that collection costs should decrease steadily with the implementation of ANI and other Commission requirements.<sup>149</sup> CWI and CompTel contend that per-call compensation should not include billing or bad debt costs.<sup>150</sup> Neither the Coalition nor the other PSPs included specific estimates of increased

<sup>145</sup> Coalition Comments, Andersen at 4 (\$0.02 attributed to collection and maintenance); CCI Comments at 9 (\$0.01 based on comparing the collection and maintenance cost of a coin call of \$0.06 and maintenance cost of an access code call of \$0.05) This probably considers most, if not all, maintenance costs as joint and common. See also Peoples Comments at 13 (\$0.03 attributed to collection and some avoided maintenance); AT&T Comments, Robinson at 7 (maintenance: \$.018 = \$7 difference in coin vs. coinless monthly maintenance divided by 399). Note that the coinless phones Robinson studied might have had lower maintenance expense than the coin phones in his study not because of coin induced wear, but rather because the coinless phones were in sheltered locations. AT&T Comments at 9 (collection: \$0.047 based on \$13.50 collection costs per \$100 of coins times 35 cents per call). Robinson's collection costs represent the cost of collections if performed on a stand alone basis. PSPs often perform maintenance and collections at the same time and much of the combined cost should be considered joint and common to all calls, rather than solely attributable to coin calls. Accordingly, we selected 2.1 cents as the low estimate (the Coalition estimate allowing for slightly higher cost per call at a low traffic location) and 3.0 cents as the high estimate (the Peoples estimate with no adjustment).

<sup>146</sup> Peoples' 1996 Form 10K indicates that Peoples financial books for 1995 included approximately one million dollars in additional bad debt reserves related to both the inmate and payphone operations. Peoples 1996 10K at 29 (filed with the Securities and Exchange Commission Mar. 31, 1997). This translates to about \$2 per payphone per month. Since there was no change in the FCC's payphone compensation plan in 1995, this increase is not attributable to access code and subscriber 800 calls. Thus, some, if not most, of the \$4.02 per payphone per month cited by Peoples should not be viewed as an increased cost attributable solely to access code and subscriber 800 calls. Peoples Comments at 13.

<sup>147</sup> CompTel Reply at 13.

<sup>148</sup> CWI Reply at 11.

<sup>149</sup> AT&T Reply, Robinson at 11-12.

<sup>150</sup> CWI Reply at 11; CompTel Reply at 11.

collection and bad debts. As such, we do not have sufficient information to attribute an amount to bad debt and/or collection charges.

57. *ANI ii.* The Commission's rules require that LECs provide certain automatic number identification information (ANI ii) to the IXC with each call. These digits provide IXC's with automated information that enables them to bill, block, and track calls. On the record, the parties disagree about the costs associated with the provision of ANI ii digits, and further, who should bear those costs.<sup>151</sup> USTA estimated the cost of providing ANI ii digits through hardcoding and through FLEX ANI. The estimated total capital cost for hard coding the digits was about \$1.035 billion of which \$558 million was for upgrading all non-equal access switches and \$477 million was for hard coding switches.<sup>152</sup> Sprint notes that the USTA figure assumes equipment upgrades for every non-equal access switch, while many of these switches do not support any payphones.<sup>153</sup> Given that not all non-equal access switches would be upgraded, and that the upgrade would benefit all users of the switches, it seems unlikely that all the upgrade expense would be attributed to payphone service. For the purpose of translating the USTA cost estimates into additional pay telephone costs, we assume that \$600 million of additional LEC investment would be recovered from increased payphone line rates. \$600 million in increased investment recovered over 10 years would require increased monthly line charges of \$5.65.<sup>154</sup> Divided by the low traffic

location number of calls, 542, would equal approximately \$0.01 per call.

58. AT&T notes that less expensive alternatives to the plan advanced by USTA exist.<sup>155</sup> The Coalition indicates that if LECs are allowed to use a combination of FLEX ANI or original line screening technology, payphone digit identification costs may be as low as \$0.01 per call.<sup>156</sup> As discussed above, we have evaluated the data supplied by the USTA, the Coalition, AT&T, and Sprint, and we estimate a cost of \$0.01 per call.

59. *Interest.* Several payphone providers note that they have the use of coin receipts almost immediately while they must wait to collect compensation on access calls.<sup>157</sup> Peoples, for example, collected payphone compensation for access calls completed between October 8 and December 31, 1996 in April 1997.<sup>158</sup> Accordingly, we conclude that the delay in receipt of compensation for access calls represents an additional cost of providing access code and subscriber 800 service calls that would not be included in the market rate for local coin calls.

60. AT&T uses 11.25% as the interest rate and the return requirement for payphone investment.<sup>159</sup> APCC claims that the appropriate interest rate for many payphone providers would exceed that rate significantly.<sup>160</sup> Peoples used a 10% interest rate in its calculations.<sup>161</sup> Most payphones, however, are owned by large local exchange carriers, whose authorized interstate rate of return has been 11.25% representing a weighted average of debt and equity costs.<sup>162</sup> Accordingly, we conclude that 11.25% is the appropriate cost of capital for payphone providers in this context. Thus, the delayed receipt of compensation for access code and subscriber 800 calls justifies an upward adjustment of .8 cents (11.25% for 3 months times the market rate adjusted for other costs).

61. *Opportunity Costs.* Teleport contends that the Commission should recognize the opportunity costs associated with use of a payphone for non-coin calls.<sup>163</sup> This cost theoretically

arises because the payphone provider does not have the opportunity to realize coin or 0+ commission revenue whenever its payphone is being utilized for an access code or subscriber 800 call. Sprint, however, notes that the payphone will be available for 0+ and coin calls 98.2% of the time based on average amounts of access code and subscriber 800 calling. Sprint also states that when a given phone is not available, another phone from the same company may be available, so the call is not necessarily lost.<sup>164</sup> Therefore, we make no adjustments to the local coin rate based on opportunity costs.

62. *Commissions.* Several IXCs argue that commissions paid to location owners on 0+ and 1+ calls should not be attributed to per-call compensation rate.<sup>165</sup> CompTel argues that these commissions have been paid on 0+, 1+, and local calls, and recovered through these revenues. CompTel and RCN argue that there is no assurance that these commissions are just and reasonable.<sup>166</sup> WorldCom argues that 0+ commissions should not be included as a cost in computing per-call compensation because these commissions reflect the value of being selected as the default 0+ provider and as such are unrelated to the costs of providing subscriber 800 and access code calls. The Coalition and the independent PSPs propose that per-call compensation default be set on the basis of the average commission received by independent payphone providers on 0+ calls to set the rate for access code and subscriber 800 calls.<sup>167</sup> CompTel and

are eliminated by the opportunity costs associated with noncoin calls because coin paying customers cannot use a payphone if it is being used by a noncoin customer).

<sup>164</sup> Sprint Reply at 4.

<sup>165</sup> See, e.g., CWI Comments at 9, n.7; CWI Reply at 9; CompTel Comments at 14; CompTel Reply at 11; Excel Reply at 4; LCI Comments at 8. See ITA Reply at 2, 4 (requesting that the Commission adopt an incremental cost approach, and that such a rate should not include premise owner commissions); Sprint Reply at 7 (stating that pre-existing commission payments are recovered from local coin and 0+ calls); Frontier Comments at 3 (arguing that commissions cannot be included in computing the per-call compensation amount because compensation based on commissions paid on 0+ calls would allow monopoly rents for locational monopolies).

<sup>166</sup> CompTel Reply at 12; RCN Reply at 5 (arguing that without safeguards, PSPs have no incentive to keep rates low).

<sup>167</sup> APCC Comments at 13 (stating that commissions are unlikely to vary except in relation to the price of calls and that location owners demand and receive commissions on every form of revenue derived from a payphone including subscriber 800 and access code calls); CCI Comments at 9 (stating that commissions must be paid to location owners so that payphones can be placed for public use). CCI treated the costs as equal for coin calls and subscriber 800 and access code calls while noting that some marginal differences

<sup>151</sup> See, e.g., Coalition Comments at 19 (stating that the implementation of the Commission's ANI requirements for the provision of payphone specific coding digits might ultimately add \$0.05 to \$0.08 to the cost of a access code and subscriber 800 call); AT&T Reply at 27-28 (arguing that less expensive alternatives exist to the plan promoted by USTA); Excel Reply at 5; RCN Reply at 6. The Coalition based its figure on USTA estimates that LEC investments would increase by about \$1.035 billion dollars to implement ANI, that all of the cost would be borne by PSPs, and that such costs should be attributed entirely to access code and 800 subscriber calls. See Coalition Comments at 17. Sprint points out that most of the cost cited by USTA would arise from modifying all switches in non equal access areas. However, Sprint points out that many switches would not need to be modified because there are only 10,000 payphones in non-equal access areas compared with 3400 exchanges that lack equal access. See Sprint Reply at 8.

<sup>152</sup> Letter to Michael Carowitz, Common Carrier Bureau, from Keith Townsend, USTA, CC Docket 96-128, at 5 (July 28, 1997); USTA Petition for Waiver, CC Docket No. 96-128, Exhibit 1, 5 (Sept. 30, 1997).

<sup>153</sup> Sprint Reply at 8.

<sup>154</sup> \$5.65 is the levelized monthly amount per payphone that would depreciate \$600 million over 10 years and earn an 11.25% return on net investment, allowing for income taxes at the statutory rate of 34%.

<sup>155</sup> See AT&T Reply at 27-28. See also Excel Reply at 5; RCN Reply at 6.

<sup>156</sup> Coalition *Ex parte*, Sept. 26, 1997.

<sup>157</sup> APCC Comments at 15; CCI Comments at 9-10; TEI Reply at 5.

<sup>158</sup> Peoples Comments at 13.

<sup>159</sup> AT&T Comments, Robinson at 5.

<sup>160</sup> APCC Reply at 14.

<sup>161</sup> Peoples Comments at 10.

<sup>162</sup> *Representing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, 55 FR 51423 (December 14, 1990); 5 FCC Rcd 7507 (1990).

<sup>163</sup> Teleport Reply at 6. Teleport Comments at 3, 6 (arguing that whatever cost differences may exist

RCN argue that there is no assurance that these commissions are just and reasonable.<sup>168</sup> Accordingly, we do not need to make any adjustments to reflect commission costs.

63. *Total Adjustments to Market-Based Rate.* The preceding analysis suggests that costs associated with coin equipment, line, coin collection and maintenance are not directly attributable to provision of access code or subscriber 800 call. We estimate that in total, between 7.7 cents and 9.1 cents per call are directly attributable to local coin calls, and thus should be subtracted from the market rate. There are uncertainties with the estimates but we found no evidence to suggest a preponderance of either high or low biases. On the other hand, we adjust the local coin market rate upward by 1.0 cent to account for additional costs to PSPs resulting from ANI ii implementation to identify payphone originated calls for the benefit of IXC's, and 0.8 cents for interest attributable to the delay in compensation for access code and subscriber 800 calls. These additions and subtractions produce an adjusted market-based range of \$0.277 to \$0.291. The midpoint of that range is \$0.284. Thus, we conclude that the surrogate or adjusted market default price is \$0.284 per access code and subscriber 800 call.

*b. Adjustments to the Local Coin Market-Rate Based on Demand Differences*

64. The Coalition filed a study by Dr. Hausman that adjusts the local coin market rate for differences in demand. Dr. Hausman explains that in an industry with a significant amount of joint and common costs, competitive firms take into account demand conditions and competitive conditions as well as costs when setting price.<sup>169</sup> A competitive firm recovers joint and common costs through markups over marginal costs. Dr. Hausman states that the markups are set so that the firms recover total costs. Dr. Hausman then asserts that services, where the demand is relatively price elastic, compared to other services provided over the joint facility, would receive lower markups.<sup>170</sup> Dr. Hausman uses several methods to translate relative elasticities into relative prices for coin calls versus

access code and subscriber 800 calls.<sup>171</sup> Dr. Hausman uses derived elasticities to show that access code and subscriber 800 services are less elastic than local coin calling.<sup>172</sup> His analysis concludes that the Commission should set the default compensation rate at the local coin rate plus approximately \$0.07 to \$0.08 per call.<sup>173</sup>

65. AT&T replies with a study by Dr. Warren-Boulton, who contends that the derived elasticities presented by Dr. Hausman significantly underestimate true elasticities. Dr. Warren-Boulton notes that customers faced with a \$0.35 increase in toll rates at payphones likely would substitute toll services that did not increase in price, rather than simply deciding not to make the calls.<sup>174</sup> This view is supported by MCI's comment that many 800 customers are interested in blocking subscriber 800 calls from payphones to avoid paying the compensation charge.<sup>175</sup> MCI, however, suggests that the demand for coin calls is significantly less elastic than Dr. Hausman suggests.<sup>176</sup> These customers may anticipate that at least some potential callers subsequently would make a subscriber 800 call from another location.

66. Dr. Hausman's derived elasticities are sensitive to several of his underlying assumptions. He based the average price of an access code call on historic AT&T data. These data probably overstate the current average price for an access code call because many firms exclusively operate by providing prepaid calling cards, which do not include a surcharge,<sup>177</sup> and because there have been significant decreases in some interstate and international toll rates. Furthermore, Dr. Hausman uses the overall toll elasticity as the elasticity for dial around access calls. Customers placing access code calls, as opposed to 0+, 0-, and 00-calls, have already made choices based on perceived price

differences.<sup>178</sup> These customers therefore may be much more price sensitive than average toll customers, and may be far more willing to forego or delay calls than indicated by Hausman's derived elasticity. We conclude that the demand for access code and subscriber 800 calls are significantly more responsive to price than Dr. Hausman suggests.

67. We conclude that while differences in demand elasticities for access may prove useful to some firms in setting prices, the information presented in the current record evidences wide variations in assumed elasticities and the results are inadequate to determine whether access code and subscriber 800 service or local coin service is the more price elastic service. Because we do not have confidence in the elasticity analyses in the record given the variation in results, we decline to adjust the market-based default per-call compensation rate for differences in demand.

*C. Alternatives to a Market-Based Compensation Rate*

68. As noted above, some commenters request that we establish the default per-call compensation rate based on cost information filed by the parties in this proceeding. We decline to adopt this approach, but we have assessed the record evidence on this matter and have calculated a cost-based default rate below to validate that our market-based adjusted per-call rate is reasonable.<sup>179</sup>

*1. Comments*

*a. Costing Methodologies*

69. Several of the commenters argue that the Commission should derive a compensation rate based on the costs that are incurred to originate coinless calls.<sup>180</sup> Several of the IXC's request that

exist in the commission levels paid to coin as compared with noncoin calls. See also Peoples Reply at 11 (stating that commissions will not result in increased costs for the consumer).

<sup>168</sup> CompTel Reply at 12; RCN Reply at 5 (arguing that without safeguards, PSPs have no incentive to keep rates low).

<sup>169</sup> Coalition Comments, Hausman at 4-5.

<sup>170</sup> *Id.* at 11.

<sup>171</sup> Given the relative elasticities presented in the paper, these methods generally would produce market rates below \$0.35 for local coin telephone calls.

<sup>172</sup> Hausman estimates that the local coin rate elasticity is about -.663. (Coalition Comments, Hausman at 11) Hausman estimates a derived elasticity for dial around calls by multiplying an elasticity for interstate calls (-.723) times the percentage that a \$0.35 access cost would add to a dial around toll call, reported to have an average price of \$2.16. Hausman makes a similar calculation using an elasticity of -.77 and an average call price of \$0.50 for subscriber 800 calls. He calculates that the weighted average of these two derived elasticities is -.398, significantly less elastic than his estimated local coin call elasticity.

<sup>173</sup> Coalition Comments, Hausman at 28.

<sup>174</sup> AT&T Reply, Warren-Boulton at 4.

<sup>175</sup> MCI Comments at 4.

<sup>176</sup> MCI *ex parte* at 15 (Oct. 2, 1997).

<sup>177</sup> See ITA Comments at 8.

<sup>178</sup> For example, 0+ calls incorporate commission of \$0.62 per call and toll calls that customers pay for by depositing coins incorporate commissions of about \$1.40 per call. APCC Comments at 8-10.

<sup>179</sup> See *supra* paras. 30-40 for specific cost components discussed in the comments. These costs were discussed previously in determining for what costs the market-based rate should be adjusted, and are incorporated herein.

<sup>180</sup> See, e.g., ACTA Reply at 6 (arguing that any compensation scheme should focus the recovery on the PSPs forward looking direct costs associated with the origination of coinless calls). AT&T Comments at 2; AT&T Reply at 2 (including the following costs: maintaining the payphone instrument, excluding coin-related functions and coin collection costs; basic line costs, excluding coin rating functionalities but including the monthly subscriber line charge and tariffed screening and blocking service from the LEC; and other reasonable expenses such as touch tone and 911 charges). AT&T and MCI argue that the Commission should adopt a cost-based compensation scheme based on a PSP's actual efficient costs to originate access code and

the Commission adopt a bottom-up methodology to calculate per-call compensation.<sup>181</sup> AT&T argues that a rate computed in this manner will be sufficient to provide for the widespread deployment of payphones, and would not require the Commission to engage in lengthy cost proceedings.<sup>182</sup> AT&T argues that its analysis is based on TELRIC, which, AT&T argues, is the most appropriate methodology in the circumstances. Borden, Champion, and Sitel<sup>183</sup> argue that the fair compensation rate must be based on a PSP's actual costs for handling 800 calling card calls. SDN supports a national rate based on verifiable long range incremental costs for all PSPs. Excel argues that the Commission should adopt a rate that reflects the actual costs incurred by an efficient PSP for delivering subscriber 800 and access code calls.<sup>184</sup>

70. CompTel and ITA argue that the Commission should base compensation for subscriber 800 and access code calls on the PSPs' incremental cost of originating these calls.<sup>185</sup> ITA contends that the Commission should use the cost of a payphone call as determined by Massachusetts Department of Public Utilities (Massachusetts DPU) and adjust that number downward.<sup>186</sup> Sprint and AT&T also argue that the Commission should use the coin rate filed by New England Telephone (NET) with the Massachusetts DPU indicating a per-call local coin rate of \$0.167 as the point at which we should begin our analysis of a rate adjusted for costs related to coin calls.<sup>187</sup> The Coalition argues, however, that this cost study is not an appropriate basis for establishing per-call rate in this proceeding.<sup>188</sup> CWI, LCI, CompTel, and Sprint argue that the incremental costs to be included are the

additional or marginal costs created by access code and subscriber 800 calls—additional maintenance and wear and tear for increased usage, and the per minute usage charges, if any, imposed by a LEC for originating access code or subscriber 800 calls.<sup>189</sup>

71. Alternatively, Sprint argues that if the Commission takes a fully allocated approach to costs, then the rate should be based on the most efficient "bellwether" PSP's costs minus costs related to coin functionality, local call completion and premises owner commissions from a local coin call.<sup>190</sup> Sprint rejects Dr. Hausman's view that costs of the least efficient (or marginal) provider should be used as the default rate to prevent the removal of payphones, arguing that this approach overlooks the Commission's policy that inefficiency should not be rewarded in a multiprovider market and that rates should be based on the costs of an efficient provider to promote competition.<sup>191</sup> The Coalition and APCC contend that Sprint's "bellwether" approach is flawed, because large, fixed joint and common costs that should be included as costs, were omitted;<sup>192</sup> relying on incremental costs only is inappropriate because the PSP cannot recover the total costs of providing the service;<sup>193</sup> and cost estimates for a single state are not representative.<sup>194</sup>

72. TRA and WorldCom argue that the Commission should apply total service long term incremental costs (TSLRIC) principles to determine forward looking costs on efficient provider would incur to provide access to noncoin calls.<sup>195</sup>

CompTel, CWI, and LCI argue in the alternative that if the Commission wants access code and subscriber 800 calls to bear some of the costs to ensure that PSPs are fairly compensated, then the Commission should set the compensation rate based on forward looking direct costs for access code and subscriber 800 calls.<sup>196</sup> Frontier and RCN argue that the Commission should adopt a cost-based rate based on the costs of completing subscriber 800 and access code calls.<sup>197</sup> GCI argues that PSPs should be compensated solely for the costs of subscriber 800 and access code calls.<sup>198</sup>

73. PageMart and PageNet argue that the Commission should adopt a caller-pays rate. Alternatively, PageMart argues that it should remove the avoided costs of a coinless call from the compensation rate.<sup>199</sup> Alternatively, PageNet requests that the Commission adopt a cost-based approach that apportions only the additional costs that are incurred through the origination or subscriber 800 calls on a per-call increment, not per-call basis.<sup>200</sup>

74. CCI argues that the Commission should not adopt a cost-based methodology because a marginal cost rate does not fairly compensate all calls as required by Section 276 of the Act and does not address fair compensation for other types of calls from payphones or whether additional costs could be recovered through compensation available to PSPs.<sup>201</sup> CCI contends that if the Commission adopts a marginal cost standard, then the rates would need to be sufficient such that revenues would recover the total marginal costs of installing and operating payphones, which in the long run could increase long distance rates and force some PSPs out of business.<sup>202</sup>

75. Peoples and the Coalition argue that the Commission should not adopt a cost-based rate because the costs for local coin calls and dial around calls are similar, and further that access code and

be based on the forward looking costs that an efficient PSP would incur).

<sup>196</sup> CWI Comments at 9; CompTel Comments at 13–14; LCI Comments at 7. CWI, CompTel, and LCI argue that costs to be included are the following: the amortized cost of installing a coinless payphone; costs of maintaining the equipment; and the cost of a basic phone line plus usage charges, if any, for subscriber 800 and access code calls. Costs for coin equipment and coin collections, terminating local calls, bad debt, depreciation, interest, commissions, and administrative or overhead charges not attributed to coinless calls should be excluded.

<sup>197</sup> Frontier Reply at 2; RCN Comments at 1.

<sup>198</sup> GCI Reply at 3.

<sup>199</sup> PageMart Reply at 6; PageNet Comments at 12.

<sup>200</sup> PageNet Reply at 27–28.

<sup>201</sup> CCI Comments at 15–16.

<sup>202</sup> *Id.* at 17.

subscriber 800 calls. See AT&T Comments at 2; MCI Comments at 1.

<sup>181</sup> CPI Reply at 6. WorldCom Reply at 4. WorldCom cites the rates set forth in AT&T's comments (\$0.11 per call), MCI's comments (\$0.083 cents per call), and Sprint's Comments (\$0.057 cents per call), and states that the Commission should adopt one of these approaches or a blended approach using several methods. See WorldCom Reply at 4–5.

<sup>182</sup> AT&T Reply at 10, 17–18.

<sup>183</sup> Sitel Reply (stating that \$0.35 cents per call is too high and that such a rate could adversely effect small business due to increased telecommunications costs).

<sup>184</sup> Excel Comments at 3–4.

<sup>185</sup> CompTel Reply at 6–7 (stating that the rate should be based on the costs of an efficient provider to originate subscriber 800 and access code calls and noting that other call types would be compensated by market pricing); ITA Comments at 2 (stating that the rate should be based on economic costs including a reasonable profit for the PSPs).

<sup>186</sup> ITA Reply at 2, 5.

<sup>187</sup> Sprint Comments at 8–11; AT&T Comments at 15 n.12.

<sup>188</sup> Coalition Reply at 2.

<sup>189</sup> CWI Comments at 5; LCI Comments at 5 (stating that the only costs that are relevant are additional maintenance and wear and tear for usage attributed to access code and subscriber 800 calls); Sprint Reply at 3 n.5 (stating that although CWI, LCI, and CompTel raise the possibility that local usage charges should be included in marginal costs, Sprint is not aware that any LEC imposes such usage related costs for subscriber 800 and access code calls. Instead, Sprint states, the IXC carrying the call pays the LEC's access charges for the use of the LEC's network for call origination.). Sprint and CompTel also state that this method is appropriate because access code and subscriber 800 calls are by-products of payphone installation, not its primary purpose. Thus, the decision to install a payphone, Sprint and CompTel argue, is driven by the revenues the PSP anticipates from other types of calls such as 0+ and coin calls. Sprint Reply at 3; CompTel Comments at 10–13.

<sup>190</sup> Sprint Reply at 6.

<sup>191</sup> Sprint Reply at 5 (also arguing that the public is protected through the mandate for public interest payphones in the Act).

<sup>192</sup> Peoples Comments at 6–7; APCC Reply at 9.

<sup>193</sup> Coalition Comments at 21–23 (citing Reconsideration Order, 61 FR 65341 (December 12, 1996); 11 FCC Rcd at 21,268, para. 69).

<sup>194</sup> *Id.*

<sup>195</sup> TRA Comments at 19 (stating that a reasonable profit for PSPs could be included); WorldCom Comments at 4 (further stating that this rate should

subscriber 800 calls may be more costly than coin calls. Several of the PSPs and the Coalition further argue that a cost-based rate would lead to the removal of payphones with low call volumes or above average costs.<sup>203</sup> TEI argues that cost plus a fair rate of return is not appropriate, because the underlying costs are similar and there is seldom agreement regarding costs or a fair rate of return.<sup>204</sup> APCC argues that the Court did not require the Commission to adopt a cost-based methodology.

b. *Cost Components*<sup>205</sup>

76. *Equipment.* CWI contends that only forward-looking direct costs should be considered, including the amortized cost of installing a coinless payphone and the cost of maintaining the equipment, excluding the cost for coin equipment.<sup>206</sup> Several of the IXC's argue that coin equipment costs should be excluded when determining per-call compensation.<sup>207</sup> PageNet argues that coin related costs such as maintenance, repair and replacement for coin functions should not be included in determining per-call compensation.<sup>208</sup>

77. The Coalition contends that equipment costs are attributable to both coin and noncoin calls. Teleport contends that the fixed costs associated with installing a coin operated payphone, such as the cost of the payphone, the enclosure, the cable plant, and supporting network infrastructure, are attributable to both coin and noncoin calls.<sup>209</sup> APCC states that most payphone costs, including purchasing, installing, and maintaining equipment, are fixed and should be attributed to both coin and noncoin calls.<sup>210</sup>

78. CCI contends that monthly direct costs such as the telephone bill (6 cents

per call), location owner commissions (\$0.05 per call), maintenance and collection (\$0.05 per call), parts and supply are properly attributable to both coin and noncoin calls. CCI, however, discounts the telephone bill costs (\$0.02 per call) and maintenance and collection costs (\$0.01 per call) to deduct local measured usage charge and the costs associated with dial around collection.<sup>211</sup>

79. *Payphone Lines.* APCC states that local exchange line charges represent a small differential between coin and noncoin calls—on average, about 3 cents per call.<sup>212</sup> AT&T argues that tariffed screening and blocking service from the LECs as well as other reasonable expenses such as touch tone and 911 charges should be included in the cost of a call when computing the appropriate amount of per-call compensation.<sup>213</sup> CompTel argues that the line charge should be no more than \$0.046 per call.<sup>214</sup> CWI contends that basic phone line plus usage charges, if any, for subscriber 800 and access code calls should be included in computing per-call compensation.<sup>215</sup>

80. Several of the IXC's contend that the costs associated with terminating local calls should not be used to compute per-call compensation.<sup>216</sup> CompTel argues that per-minute usage charges, if any, imposed by a LEC for originating access code or subscriber 800 calls are appropriate.<sup>217</sup> PageNet argues that line charges should not be included because non-PSP carriers already pay the LEC for the use of the payphone line through originating access charges.<sup>218</sup>

81. Peoples argues that line charges are attributable to coin and noncoin calls. Peoples argues that there is a minimum fixed line charge, and that in some states, there is an additional usage

charge.<sup>224</sup> Peoples further argues, however, that as more states require fixed charges, there will be no difference between line charges for coin and noncoin calls.<sup>225</sup>

82. The Coalition contends that the Commission should not impose an offset for the local usage charge because in many cases payphone lines are flat-rated and PSPs do not recover termination or local usage charges. The Coalition contends, however, that if there is an offset, it should not be greater than \$0.02 per call, which reflects the average local termination cost across all Coalition members.<sup>226</sup> CCI does not include local usage charges in calculating per call compensation amount.<sup>227</sup>

83. *Coin/Noncoin Collections.* The Coalition contends that the cost of coin collection, counting, and related equipment accounts for approximately \$0.02 of the total cost of a local coin, but argues that this rate may be inflated because it allocates coin collection costs among coin calls based on coin volumes, not the number of coins deposited.<sup>228</sup> APCC argues that the differences between coin and noncoin calls in the area of coin collection are limited because coin collection is generally combined with general maintenance visits to the payphone, about \$0.03. APCC further argues that coinless collection costs are likely to increase and may actually be \$0.05–\$0.06, thus higher than coin calls.<sup>229</sup> Peoples contends that coinless collection costs are greater than coin call collection costs, and further that in the past six months, coin related maintenance accounted for only 38% of all maintenance visits.<sup>230</sup> Peoples estimates that coin collection related costs are approximately \$0.03 per call, and that coin collection costs are slightly lower than the cost involved in collecting for noncoin compensation.<sup>231</sup> Peoples contends that dial around collection costs are approximately \$0.05–\$0.06 per call.<sup>232</sup> CCI argues that it does not include coin collection costs of dial around calls in computing the appropriate amount of per-call

<sup>224</sup> Peoples Comments at 11–12 (arguing that at a minimum 50% of the line charge is fixed and that the variable portion that would be related to coin calls only is less than \$0.04 per call).

<sup>225</sup> *Id.* at 12.

<sup>226</sup> Coalition Comments at 14–17.

<sup>227</sup> CCI Comments at 9.

<sup>228</sup> Coalition Comments at 16.

<sup>229</sup> APCC Comments at 14–15 (estimating the costs of dial-around compensation to be about 5–6 cents per call).

<sup>230</sup> Peoples Comments at 12–13.

<sup>231</sup> *Id.* at 13.

<sup>232</sup> Peoples Reply at 8.

<sup>203</sup> APCC Reply at 11.

<sup>204</sup> TEI Comments at 10.

<sup>205</sup> The comments on commissions and billing/bad debt cost components are discussed *supra* at para. 62 and 56, respectively.

<sup>206</sup> CWI Comments at 8.

<sup>207</sup> MCI Comments at 3; RCN Comments at 4 (arguing that this cost is unique to the local coin rate and should be subtracted from a true rate that PSPs would provide as a deregulated local coin service on a nationwide basis). CompTel Comments at 13; CompTel Reply at 8 (CompTel argues that data is not available specifically for maintenance costs, but the cost for maintenance less coin capability is about \$0.029 per call, thus the maximum incremental costs would be approximately between \$0.01 to \$0.02 per call); LCI Comments at 5–6 (requesting that the Commission adopt a default rate based on marginal costs and stating that costs associated with installing and maintaining a payphone should not be considered when determining per-call compensation).

<sup>208</sup> PageNet Comments at 14.

<sup>209</sup> Teleport Comments at 4.

<sup>210</sup> APCC Comments at 11 (further stating that payphone equipment costs which include coin and coinless calling capabilities must be incurred by coin and noncoin calls); APCC Reply at 12.

<sup>211</sup> CCI Comments at 9.

<sup>212</sup> APCC Comments at 13.

<sup>213</sup> AT&T Comments at 9; CompTel Reply at 11, 14 (stating that some PSPs' basic payphone line charges include line cost categories such as network costs, which should not be included).

<sup>214</sup> CompTel Reply at 11, 14.

<sup>215</sup> CWI Comments at 8 (arguing that these costs should be considered proportionately based on relative usage for access code and subscriber 800 calls).

<sup>216</sup> See, e.g., CWI Comments at 9; LCI Comments at 7; MCI Comments at 3; Sprint Reply at 6; Excel Comments at 3 (also arguing that originating access should not be included in the per-call compensation amount). See AT&T Comments at 9 (stating that local usage charges should not be included in the cost of a noncoin call).

<sup>217</sup> CompTel Comments at 13; CompTel Reply at 8 (stating that it does not object to applying the average per-call usage charge in areas where usage is employed, about \$0.02–\$0.03 per call, citing APCC Comments at 13 and Coalition Comments at 16).

<sup>218</sup> PageNet Reply at 20.



compensation,<sup>233</sup> but argues, however, that the costs associated with noncoin calls may increase due to additional expenses for collecting and auditing such compensation.<sup>234</sup>

84. CPI and CompTel contend that PSPs experience lower costs for subscriber 800 and access code calls than for coin calls because it is more costly to maintain a coin phone than a coinless phone.<sup>235</sup> AT&T, CWI, Excel, Frontier, MCI, PageNet, RCN, and ITA state that coin collection costs should not be included in the rate of per-call compensation.<sup>236</sup> TEI states that some service costs can be deducted when determining the rate for a noncoin call.

85. Teleport contends that costs associated with coin calls—collection, maintenance, and cost of transporting a call—on a per call basis are de minimis, and further that the opportunity costs associated with noncoin calls offset the de minimis difference in cost. TEI argues that the Commission should include a cost for the time value of money used in collecting the compensation should the Commission not prescribe collection tools for the PSP, and further, suggests that the Commission impose a stated interest rate on late payers of per-call compensation.<sup>237</sup>

86. *ANI ii.* APCC contends that the Commission should not explicitly rule that such charges incurred in restructuring the LEC networks to provide a unique screening digit for

dumb payphone lines may be assessed on PSPs. However, APCC contends, if LECs are allowed to assess such charges on PSPs, then PSPs are entitled to recover those charges from IXC's dial-around compensation as part of the cost of originating dial-around calls.<sup>238</sup> The Coalition contends that requiring PSPs to pay LEC tariffs for ANI ii digits would add \$0.05 to \$0.08 to the per call rate, and Peoples supports attributing this cost to subscriber 800 and access code calls.<sup>239</sup> AT&T, Excel, Sprint, and GCI argue that the PSPs are not entitled to recover any costs for Flex ANI.<sup>240</sup> Excel and RCN state that IXC's should not be required to pay for ANI information provided by the PSPs, because the PSPs are the beneficiary of the information.<sup>241</sup>

87. *Depreciation/Overhead.* CWI, PageNet, and CompTel contend that per-call compensation should not include depreciation costs or interest.<sup>242</sup> LCI, CompTel, and CWI argue that administrative and overhead costs are not attributable to noncoin calls.<sup>243</sup>

88. CCI and TEI argue that overhead, depreciation, amortization, and interest are attributable to coin and noncoin calls.<sup>244</sup> Peoples contends that overhead costs are attributable to all calls made from payphones, and argues that the IXC's do not justify why such costs should not be included.<sup>245</sup>

89. *Other.* In its estimate, AT&T included an 11.25 percent interest on capital factor, maintenance/warehouse/part costs and added averaged costs for the basic line and other related charges.<sup>246</sup> AT&T admits that some costs such as overhead, general and administrative expenses and taxes are appropriate in the computation of the cost of a noncoin call. According to AT&T, these costs are approximately \$0.012 per call.<sup>247</sup> CCI includes taxes and the return on invested capital in the calculation of the costs of the per-call rate.<sup>248</sup>

90. CPI contends that subscriber 800 and access code calls are generally

shorter in duration than coin calls. Therefore, the longer duration of local calls could allow for opportunity costs since few local calls displace shorter long distance calls.<sup>249</sup> TRA contends that per-call rates should not include embedded or opportunity costs.<sup>250</sup> Excel argues that coin rating costs should not be included in determining per-call compensation.

## 2. Discussion

91. As discussed above, we conclude in this order that an adjusted market-based local coin rate is the appropriate surrogate for the default per-call rate for subscriber 800 and access code calls. In this section, we explain our reasons for rejecting the proposals of various parties that we derive a default per-call rate for such calls based on cost estimates submitted in the record of this proceeding.

### a. Problems with the Proposed Methodologies for Deriving Payphone Compensation.

92. A number of commenters, notably the IXC's, argue that the Commission should use the marginal cost of originating a payphone call as the basis for compensating PSPs.<sup>251</sup> Most of the parties, however, estimate marginal costs based on the incremental cost of an individual coinless call. Thus, as the Coalition explains, setting the rate at marginal or incremental costs means that joint and common costs could not be recovered.<sup>252</sup> We conclude that the use of a purely incremental cost standard for each type of call could leave PSPs without fair compensation for payphone calls, because such a standard would not permit the PSP to recover a reasonable share of the joint and common costs associated with those calls.<sup>253</sup> We also reject, for similar reasons, suggestions by commenters that we use local coin rates currently in place as a surrogate for per-call compensation. As we stated in the *NPRM*, "local coin rates in some jurisdictions may not cover the marginal [incremental] cost of the service."<sup>254</sup> Therefore, basing the per-call compensation amount on current local coin rates, which are frequently

<sup>233</sup> CCI Comments at 6–8.

<sup>234</sup> *Id.* at 2, 10.

<sup>235</sup> CPI Comments at 5 (arguing that only a keypad capable of originating dialing codes and electronics to identify the phone is needed and that PSPs do not incur costs of visiting a payphone and collecting and handling coins for subscriber 800 and access code calls); CompTel Reply at 11, 13. CompTel notes that Peoples argues a coin phone costs \$41.66 per month to operate, but a coinless phone (as reported by AT&T) costs only \$25.10 per month, and argues that coin phones are more costly, because a coin phone requires more frequent service and coin collection visits, and additional equipment that can be broken or vandalized. CompTel further argues that Peoples' cost figures for maintenance should be reduced by at least 50%. CompTel Reply, *supra*.

<sup>236</sup> See AT&T Comments at 9; CWI Comments at 9; MCI Comments at 3; PageNet Comments at 14 (arguing that the majority of features and functions as well as maintenance and repairs provisions of payphones are related to the acceptance and handling of coins, and that such costs are not properly attributable to subscriber 800 and access code calls); PageNet Reply at 19. See also Frontier Comments at 7–8 (stating that \$0.043 is attributable to coin collection costs); ITA Comments at 6–7 (stating that in the *Report and Order*, at para. 44, the Commission estimated the cost of coin collection to be \$0.02 per call); RCN Comments at 3 (stating that the PSP does not incur coin collection costs when originating a subscriber 800 or access code call, and therefore, the default rate of \$0.35 must be reduced).

<sup>237</sup> TEI Reply at 6.

<sup>238</sup> APCC Reply at 23.

<sup>239</sup> Coalition Comments at 18; Peoples Reply at 8.

<sup>240</sup> AT&T Reply at 27–28; Excel Reply at 5; GCI Reply at 3; Sprint Reply at 8–10.

<sup>241</sup> Excel Reply at 5; RCN Reply at 5.

<sup>242</sup> CWI Reply at 11; CompTel Reply at 11, 14 (stating, however, that if these costs are included, then the cost per call should be only \$0.011).

<sup>243</sup> LCI Comments at 8; CWI Comments at 9, n.7; CWI Reply at 9; CompTel Comments at 14.

<sup>244</sup> CCI Comments at 10. CCI attributes \$0.04 to overhead, \$0.03 to depreciation, \$0.02 to amortization, and \$0.02 to interest. CCI notes that these costs relate only to their payphones, but reflect the payphone industry. See *id.*

<sup>245</sup> Peoples Reply at 10.

<sup>246</sup> AT&T Comments at 10.

<sup>247</sup> AT&T Reply at 14.

<sup>248</sup> CCI Comments at 10.

<sup>249</sup> CPI Comments at 6.

<sup>250</sup> TRA Comments at 19.

<sup>251</sup> See CWI Comments at 5; CompTel Comments at 10; LCI Comments at 5; Sprint Comments at 3–4.

<sup>252</sup> Coalition Comments at 28 n.16.

<sup>253</sup> *Cf.* Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *First Report and Order*, 61 FR 45476 (August 29, 1996); 11 FCC Rcd 15,499,15844–15856 (1996) ("Local Competition Order") (describing total element long-run incremental cost methodology for pricing interconnection and unbundled network elements).

<sup>254</sup> *NPRM* at para. 22 n.64.

subsidized by state regulators, would not fairly compensate the PSPs. In the *Payphone Orders*, we rejected the use of the \$0.12 per-call compensation amount the Commission first discussed in its 1991 *Notice of Proposed Rulemaking* in the access code call compensation proceeding. We noted that we never adopted the \$0.12 per-call amount, and that rate was effectively rejected when the Commission adopted a \$6 flat rate per payphone per month based on a per-call rate for access code calls of \$0.40.<sup>255</sup>

93. We determined in the *Order on Reconsideration* that reliance on cost studies, *in general*, could reduce the revenue recovered by the PSPs, and therefore, might reduce the number of payphones deployed.<sup>256</sup> We reaffirm that decision here. Adopting a per-call compensation scheme that did not "promote the widespread deployment of payphone services" would be inconsistent with Congressional intent.<sup>257</sup>

94. We also affirm our conclusion in the *Report and Order* that the cost-based TELRIC standard that the Commission relied upon in the local competition proceeding is inapplicable here, because the payphone industry is not a bottleneck facility that is subject to regulation at virtually all levels.<sup>258</sup> The TELRIC pricing principles adopted in the local competition proceeding were designed to reflect the long run cost of an element or physical facility. Since there are relatively few common costs between separate facilities, TELRIC compensation will compensate a carrier for virtually all costs associated with providing (the services of) that facility. With the addition of a share of the relatively small common costs, the firm will be able to cover its total costs.<sup>259</sup>

<sup>255</sup> *OSP Second Report and Order*, 57 FR 21038 (August 29, 1992); 7 FCC Rcd at 3257.

<sup>256</sup> *Order on Reconsideration*, 61 FR 65341 (December 12, 1996); 11 FCC Rcd at 21,266, para. 66.

<sup>257</sup> See *infra* para. 119.

<sup>258</sup> See *Order on Reconsideration*, 61 FR 65341 (December 12, 1996); 11 FCC Rcd at 21,240-43, 21,268, paras. 11-19, 70 (noting that the payphone industry is likely to become increasingly competitive). See also Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, *First Report and Order*, 61 FR 45476 (August 29, 1996); 11 FCC Rcd 15,499 (1996), *Order on Reconsideration*, 61 FR 52706 (October 8, 1996); 11 FCC Rcd 13,042 (1996), *Second Order on Reconsideration*, 61 FR 66931 (December 19, 1996); 11 FCC Rcd 19,738 (1996), *further recon pending, aff'd in part and vacated in part sub nom., CompTel v. FCC*, 11 F.3d 1068 (8th Cir. 1997), *aff'd in part and vacated in part sub nom. Iowa Utilities Bd. v. FCC* and consolidated cases, 120 F.3d 753 (8th Cir. 1997).

<sup>259</sup> We also note that it would be particularly burdensome to impose a TELRIC-like costing standard on independent payphone providers, who have not had previous experience with any costing systems.

95. Additionally, we conclude that Congress' use of the phrase " \* \* \* payphone service providers are fairly compensated for each and every completed interstate and intrastate call \* \* \* " <sup>260</sup> is a different standard than the cost-based standard articulated for the compensation for interconnection and unbundled elements. We conclude that the PSP will be providing a competitive service (payphone use) and should therefore receive compensation equal to the market-determined rate for providing this service. In the *Local Competition Order*, we concluded that the cost-based interconnection standard, on the other hand, compensates a carrier for the long run incremental cost of providing interconnection or the long run incremental cost of providing an unbundled element plus a reasonable share of the common costs. Because the local exchange is not yet competitive, we could not rely on the market to set competitive rates for unbundled elements. In the case of payphones, the presence of multiple PSPs already operating in many markets, and the structure of the industry that allows relatively easy entry and exit, leads us to conclude that we can rely on market forces to provide for efficient pricing of these services in the near future.

96. In this proceeding commenters also argue that we should apply a TSLRIC cost standard to only a subset of services (i.e., subscriber 800 and access code calls) provided by a facility (payphone). In general, when several services are provided by the same facility, the incremental cost of providing any one service is very small and the common cost among these services is very large. Thus, a TSLRIC standard under which a carrier is compensated only for the incremental cost of each service individually without a reasonable allocation of common costs, as suggested by commenters, would not allow the carrier to recover the total costs of providing all of the services. A TSLRIC standard that yields prices that recover a reasonable share of joint and common costs would require the difficult allocation of those (large) costs among the different types of calls made from payphones.

97. We also reject suggestions that use of a market-based compensation standard, in lieu of one that is cost-based, will overcompensate PSPs. The marketplace will ensure, over time, that PSPs are not overcompensated. Carriers have significant leverage within the marketplace to negotiate for lower per-call compensation amounts, regardless

of the local coin rate at particular payphones, and to block subscriber 800 calls from payphones when the associated compensation amounts are not agreeable to the carrier.

98. Previously, in the access code call compensation proceeding, we relied upon AT&T 0+ commissions as a measure of the fair value of the service provided by independent payphone providers when they originate an interstate call. Data presented above, however, suggest that the 0+ commission rate exceeds the market rate for local coin calls while the costs of access code and subscriber 800 calls are less than the costs of local coin calls. Furthermore, commissions may include compensation for factors other than the use of the payphone, such as a PSP's promotion of the Operator Service Provider (OSP) through placards on the payphone. Accordingly, we conclude that a market rate based on 0+ commissions would result in a default rate that overcompensates payphone providers for access code and subscriber 800 calls. Moreover, our approach is based on the costs of a low traffic location that does not support commission payments.

#### b. *Analysis of Record Evidence of Payphone Costs*

99. Although we reject suggestions that we set the default rate based on the long run costs of providing service, our analysis of the record evidence indicates that an estimate of the long run costs of providing access code and subscriber 800 service, including an equal per call share of joint and common costs,<sup>261</sup> is not significantly less than the market-based rate determined above. Over time, the marginal cost associated with new entry (adding a payphone) may be an important determinant of the market rate for access compensation. For comparison, we estimated costs of the installation and operation of a payphone at a low traffic location; that is, at a location that would be expected to generate sufficient calls so that the payphone provider could earn only a normal return on investment and could not pay commissions to the premises owner.

100. We calculated a rate for access code and subscriber 800 calls by estimating the cost of a typical multi-use payphone that is capable of being

<sup>261</sup> As explained above, market forces in a competitive market (including both marginal cost and demand differences) determine how joint and common costs are recovered from different services. We determined, however, that we lacked adequate elasticity information to determine whether access code and subscriber 800 calls would recoup more or less joint and common costs per call than would local coin service.

<sup>260</sup> 47 U.S.C. § 276(b)(1)(A).

placed outdoors. We then subtracted all costs directly attributable to coin and access code calls to determine the amount of joint and common costs associated with a multi-use phone. We then determined the amount of joint and common costs attributable to each call by dividing these costs by an estimate of the number of calls placed at a location where a payphone will earn a normal return on investment. Three parties, Peoples, CCI and AT&T provided relatively consistent cost data that could be used to estimate joint and common costs. The following subsections summarize our category-by-category estimation of costs.

101. *Maintenance.* Data presented by Peoples indicates maintenance cost of 4.8 cents per call.<sup>262</sup> Sprint suggests 3.6 cents per call.<sup>263</sup> CCI data suggest 6.6 cents per call<sup>264</sup> and Robinson's data for AT&T suggest a total of between 2.5 and 4.0 cents per call.<sup>265</sup> Based on the information presented by the parties,<sup>266</sup> we estimate that joint and common maintenance costs at a low traffic location would amount to between 4.0 and 5.0 cents per call.<sup>267</sup>

102. *Line costs.* Data for Peoples suggests line costs of 5.9 cents per call.<sup>268</sup> Data for CCI suggests line costs

of 7.9 cents per call.<sup>269</sup> Sprint suggest 8.0 cents per call.<sup>270</sup> Robinson's study suggests line costs of 6.5 cents per call.<sup>271</sup> We estimate that joint and common line costs at a low traffic location would amount to between 6.5 and 7.5 cents per call.<sup>272</sup>

103. *Sales, General & Administrative.* Data for Peoples suggests SG&A of 5.4 cents per call.<sup>273</sup> Data for CCI indicates SG&A costs of 5.3 cents per call.<sup>274</sup> Sprint suggests 1.57 for SG&A.<sup>275</sup> Sprint, as a LEC and an IXC, has a significantly different organizational structure and payphone base from that of independent payphone providers. Accordingly, little weight was given to Sprint data for SG&A. Robinson did not develop an independent estimate of SG&A.<sup>276</sup> Accordingly, we use the estimates based on data for Peoples and CCI as the high and low estimates, respectively. We conclude that joint and common SG&A

Peoples Comments at 10–12. The difference, \$31.85, represents joint and common line costs. This amount, divided by the low traffic number of calls (542) equals 5.9 cents per call.

<sup>269</sup> CCI estimates joint and common line costs of \$0.06 per call, compared with \$0.08 per call for coin calls, based on 720 calls per payphone per month. CCI Comments at 9. Multiplying \$0.06 times 720 calls and dividing by the low traffic number of calls (542) equals 7.9 cents per call.

<sup>270</sup> \$43.22 for line charges divided by 542 calls. Sprint Reply, Exhibit 1 at 2.

<sup>271</sup> AT&T estimated a monthly line charge for a smart coin telephone of \$27.73, a subscriber line charge of \$5.83, and other line costs of \$1.84 for a total cost of \$35.40. See AT&T Comments, Robinson at 12. This amount, divided by the number of low traffic number of calls (542) equals 6.5 cents per call.

<sup>272</sup> As explained above, different line costs for different PSPs may simply reflect the fact that they have payphones located in different areas. Sprint, for example, may have higher joint and common line costs than others that filed data because Sprint cannot take advantage of potentially lower cost measured service options. We estimated a likely range for average PSPs by adjusting the high and low estimates of the carriers by approximately half a cent.

<sup>273</sup> Peoples estimated sales and general administrative expenses of \$25.27 per line as well as billing costs and bad debts of \$4.02 per line per month. See Peoples Comments at 10. We do not have sufficient information to estimate a higher or lower billing and bad debt cost for access code and consumer 800 calls compared with other payphone calls. The total, \$29.29, divided by the low traffic number of calls (542) equals 5.4 cents per call.

<sup>274</sup> CCI estimated expenses of \$0.04 per minute based on 720 calls per telephone. See CCI Comments at 10. Multiplying by 720 calls and dividing by the low traffic number of calls (542) equals 5.3 cents per call.

<sup>275</sup> (\$2.78 sales salaries + \$4.31 sales commissions + \$1.42 G&A) divided by 542 calls. Sprint Reply, Exhibit 1 at 2.

<sup>276</sup> Robinson accepts CCI and Peoples estimate of a total of \$0.04 per call for SG&A. See AT&T Comments, Robinson at 6. He considers \$0.02 of this to be attributable to coinless calls, implying that the total would be higher than \$0.04 per call for coin calls. Robinson, however, does not adequately explain why so much of SG&A should be solely attributable to coin operations and not treated as joint and common.

at a low traffic location would amount to between 5.3 and 5.4 cents per call.

104. *Capital and Equipments Costs.* Most parties recognize that payphone providers should have an opportunity to recover depreciation costs and earn a return on investment. Joint and common investments for a new payphone should include not only the costs of purchasing and installing a payphone, but also a normal increase in leasehold improvements, spare parts and inventory, and cash working capital.<sup>277</sup>

105. Robinson estimated the average outlay associated with adding a new smart coin telephone as \$1,050 for the instrument,<sup>278</sup> \$300 for a pedestal and enclosure, \$395 for installation of the telephone, pedestal and enclosure, and \$150 in local exchange carrier connection charges, for a total investment of \$1,895.<sup>279</sup> Some PSPs claim that Robinson underestimated pedestal and enclosure and related installation charges.<sup>280</sup> The Robinson estimates do not include other investments, such as maintenance vehicles and office equipment, needed to support a payphone business. Several PSPs estimated average capital costs per call, but did not provide sufficient detail to allow these estimates to be used to estimate the direct capital costs of adding a payphone.

106. We estimate joint and common equipment costs by: (a) estimating the amount of assets that are likely to be added when a payphone is added; (b) subtracting the amount attributable to the coin mechanism; (c) calculating a monthly cost for the balance; and (d) dividing the monthly cost per payphone by the low traffic location number of calls. Peoples 10K data indicate that Peoples depreciable net investment per payphone amounted to \$1,617 as of December 1996.<sup>281</sup> CCI's 10K data indicate that CCI's depreciable net assets per payphone amounted to \$1,704

<sup>277</sup> Some capital items, such as intangible assets and good will, would not need to be increased if the company added a payphone at a low traffic location.

<sup>278</sup> The Coalition notes that some coinless telephones cost significantly more than the basic coinless sets used in the Robinson study. See Coalition Reply at 27. The Coalition filed a study by Carl R. Geppert estimating that the AT&T Public Phone 2000, which incorporates a nine-inch color monitor, a dataport for laptop or fax communications, built in keyboards for access to e-mail and on-line weather services, cost between \$2000 and \$4000. See Coalition Ex. Parte, Oct. 1, 1997 at 3. This information, however, does not bear on how much of the costs of a new smart coin telephone are due to the coin mechanism. The typical new smart coin telephone does not incorporate these features.

<sup>279</sup> AT&T Comments, Robinson at 5.

<sup>280</sup> APCC Reply at 14; Coalition Reply at 29.

<sup>281</sup> \$65,067 million of net plant and property divided by 40,239 payphones.

<sup>262</sup> Peoples estimated total maintenance and coin collection costs per month of \$41.66, 38% of which was for coin collection costs. Peoples Comments at 10–12. Dividing the maintenance portion by the low traffic number of calls (542) gives the estimate of 4.8 cents per call. This estimate probably includes some incremental maintenance caused by coins being deposited in Peoples payphones.

<sup>263</sup> \$19.62 for maintenance divided by 542 calls. Sprint Reply, Exhibit 1 at 2.

<sup>264</sup> Based on an average call volume of 720 calls, CCI estimated that it spent \$0.05 per call for maintenance, exclusive of any costs solely due to coin collection and maintenance. CCI Comments at 9. We concluded above, however that this figure was probably biased high. Multiplying by 720 calls and dividing by the low traffic number of calls (542) gives an estimate of 6.6 cents per call.

<sup>265</sup> Robinson estimates that the monthly cost of maintenance plus repair parts for a coinless telephone is \$13.35 and for a smart coin telephone is \$21.70. AT&T Comments, Robinson at 13. Divided by 542, the low traffic location number of calls, yields estimated costs of 2.5 and 4.0 cents per call. Some of the increased cost of a coin telephone would be attributable to the coin mechanism.

<sup>266</sup> Teleport filed a return on investment analysis partially based on hypothetical information from a study by John S. Bain (Teleport Ex. Parte). This analysis is not sufficient to support a direct estimation of either the costs directly attributable to coin calls or total joint and common costs.

<sup>267</sup> The Sprint data may not be representative of costs that would be incurred by independent pay telephone providers. We select 4.0 cents as the low estimate of maintenance costs per call by selecting the highest value based on AT&T data. We select a figure between the Peoples and the CCI based estimates, 5.0 cents, as the high estimate. This amount is below the average of the estimates in recognition of possible biases in the Peoples and CCI estimates.

<sup>268</sup> Peoples filed \$59.54 of total line charges including message charges per month of \$27.69.

as of December 1996.<sup>282</sup> Firms, however, add new assets rather than depreciated assets. Adjusting for depreciation, we estimate new depreciable investment per payphone of \$3,234 for Peoples<sup>283</sup> and \$2,799 for CCI.<sup>284</sup> As explained above, we impute \$710 of new investment per payphone directly to coin calls. Accordingly, we calculate new joint and common investment per payphone of \$2,524 and \$2,089, respectively. These amounts of new investment would result in monthly investment costs of \$43.94 and \$37.07, respectively.<sup>285</sup> The carriers would also expect to earn a return on some other assets on the books—pre-paid expenses and inventory. These items add \$1.79<sup>286</sup> and \$2.01<sup>287</sup> in investment costs per month, respectively. Summing the investment costs and dividing the low traffic location number of calls results in estimates of total investment costs of 7.2 cents per call and 8.4 cents per call, which we use as the likely range.

107. *Other Costs.* We concluded above that it was reasonable to include \$0.01 in adjusting the market rate for a local coin call to account for the cost of ANI ii deployment by the LECs, passed through to PSPs in the form of higher access line charges, and include that figure in our analysis here. We also concluded that carriers would receive access code and consumer 800 access compensation approximately 3 months later than they would receive coin revenues, and thus included interest, based on an 11.25% annual cost of capital the long run cost estimate. We use that same figure in our analysis here. In addition, we explained earlier

the positions regarding including commissions as a cost-factor, and thus conclude that those costs are excluded properly from a cost-based analysis.<sup>288–289</sup>

108. *Total Long Run Cost.* The preceding analysis suggests that total long run cost of access code and consumer 800 calls would range from 24.7 cents per call (based on a sum of the low estimates) to 28.1 cents per call (based on the sum of the high estimates).

|                     | Low estimate | High estimate |
|---------------------|--------------|---------------|
| Maintenance .....   | 4.0          | 5.0           |
| Line costs .....    | 6.5          | 7.5           |
| SG&A .....          | 5.3          | 5.4           |
| Capital costs ..... | 7.2          | 8.4           |
| ANI ii .....        | 1.0          | 1.0           |
| Interest .....      | .7           | .8            |
| Total .....         | 24.7         | 28.1          |

109. *Sprint's Motion.* On September 16, 1997, Sprint filed a Motion asking that the Commission require Bell Atlantic to submit a copy of the NET cost study filed before the Massachusetts DPU and supporting papers to the Commission and to all parties of record in this proceeding. On September 26, 1997, Bell Atlantic filed an opposition to Sprint's motion to require production of a confidential cost study and conditional cross-motion for production of payphone cost data from Sprint and AT&T. Bell Atlantic argues that Sprint's motion should be rejected because: (1) The study was prepared for the Massachusetts DPU and Sprint should seek relief from that agency; (2) there is no justification for requiring the production of the study because the study examines incremental costs, which, Bell Atlantic argues, the Commission has rejected; and (3) the information is confidential.

110. We deny Sprint's motion and decline to require Bell Atlantic to submit a copy of NET's cost analysis. We are not persuaded that the NET cost study, which Sprint indicates was submitted to the Massachusetts DPU on a confidential basis, is necessary for us to reach a decision in this proceeding. Furthermore, we note that there are differences of opinion regarding the NET methodology. The NET study as well as other confidential studies filed in other states are not before us. We further note that as Bell Atlantic states, the information is confidential, and therefore, should we require Bell Atlantic to make such a filing, Bell Atlantic likely would require that we

treat the study as confidential. Were we to agree, the information would not be available to the parties. We note, moreover, information on the record provides deregulated coin rates for several states. Because we are denying Sprint's motion, we need not address Bell Atlantic's conditional motion for production of documents.

#### D. Per-Call Compensation Rate

111. In this section, we conclude that the default market-based per-call rate for subscriber 800 and access code calls is \$0.284, which reasonably accounts for the payphone costs that are incurred solely in connection with local coin calls and costs that are specific to access code and subscriber 800 calls.

#### 1. Comments

112. Parties filed comments that varied considerably, primarily depending on whether they relied on a market-based or derived rate methodology. AT&T and ARCH argue that the compensation rate should be \$0.11 per-call, based on the costs of providing a subscriber 800 or access code call.<sup>290</sup> AT&T arrives at this rate by estimating a cost of \$76.85 per month for a payphone divided by an average of 700 calls per phone per month.<sup>291</sup> AT&T contends that this rate is consistent with NYNEX's local coin rate of \$0.167. Alternatively, AT&T and MCI argue that if the Commission adopts a rate based on an offset from the local rate, then the offset should be at least 50%.<sup>292</sup> AT&T further argues that even using a adjusted market approach as suggested by the Coalition results in payphone compensation in the amount of \$0.1067 cents per call, which is in line with the rate that AT&T has calculated for coinless calls based on its estimated monthly costs of a payphone.<sup>293</sup> AT&T further states that even if adjustments have to be made for depreciation, overhead, general and administrative expenses and taxes, the per-call cost for coinless calls would only increase to 12.2 cents per call.<sup>294</sup> AT&T maintains that \$0.35 is not the appropriate

<sup>282</sup> \$73.263 million of gross property, plant and equipment plus \$1.595 of gross leasehold improvements, less \$29.922 of accumulated depreciation and amortization, divided by 26,377 payphones.

<sup>283</sup> Based on an assumed ratio of depreciation reserve to net plant of 50% (\$1,615 net plant and equipment per phone divided by .5).

<sup>284</sup> CCI's 10K depreciation reserve is 40% of gross depreciable net investment. The new investment per added payphone is \$1,649 average net plant and equipment per payphone, divided by 60%, plus \$60 average leasehold improvements per payphone. (Leasehold improvements are a joint and common cost for all payphone. The addition of one payphone would not necessarily cause any specific investment but rather, would result in a general increase in the size of the business. Thus, CCI would add an average amount of net leasehold improvements as opposed to the specific amount of investment for the instrument, the pedestal, etc.).

<sup>285</sup> Calculated as equal monthly payments to depreciate the investment over 10 years and earn a return of 11.25% on net investment, allowing for federal income taxes at the 34% statutory rate.

<sup>286</sup> Peoples reports \$2.665 million of pre-paid expenses and \$2.412 million of inventory. Peoples 10K at 39.

<sup>287</sup> CCI's 10K shows prepaid expenses of \$0.708 million and inventory and uninstalled equipment of \$1.438 million. See CCI 10K at 44.

<sup>288</sup> See *supra* paras. 59, 62.

<sup>290</sup> AT&T Comments at 2; AT&T Reply at 2; Arch Reply at 9. AT&T and ARCH state that this rate is based on the actual costs of an efficient PSP to originate access code and subscriber 800 calls. Note, however, that the Coalition challenges this estimate, arguing that AT&T's cost study merely reflects a hypothetical, not real, PSP, and links the costs to a coinless, not coin phone. The Coalition argues that adjusting AT&T's rate to reflect proper data would yield a rate of approximately \$0.41 per-call. Thus, if the Commission relies on costs, it should rely on the costs of an actual payphone. Coalition Reply at 31.

<sup>291</sup> AT&T Comments at 10–11; AT&T Reply at 14.

<sup>292</sup> AT&T Comments at 13; MCI Reply at 3.

<sup>293</sup> AT&T Reply at 13.

<sup>294</sup> *Id.* at 14.

unregulated coin rate because it was based on a small and unrepresentative sample of rural states, and the cost in those states could be higher than in other areas.<sup>295</sup> The Commission ignored the deregulated rate in other rural states, where the rate is \$0.25, which, AT&T asserts, also is the dominant rate where the majority of payphones are located.<sup>296</sup> Borden suggests a rate of approximately \$0.133 per call, and Champion suggests a rate between \$0.08 and \$0.11.

113. CompTel argues that a fair compensation amount based on incremental costs is between \$0.03 to \$0.05 per call,<sup>297</sup> and that even under a direct cost approach, compensation should not exceed \$0.10 per call.<sup>298</sup> Frontier argues that a cost-based rate should be approximately \$0.10 per call,<sup>299</sup> but no higher than \$0.11 per call.<sup>300</sup> ITA argues that the rate should be between \$0.08 and \$0.15 per call.<sup>301</sup> MCI argues that the per-call rate for access code calls is \$0.083 per call, and that the number for subscriber 800 calls should be even lower.<sup>302</sup>

114. MIDCOM states that the rate should be \$0.057.<sup>303</sup> Sprint argues that on a fully allocated approach to costs, using an efficient bellwether provider, the default rate per call should be \$0.06.<sup>304</sup> TRA argues that the 35 cent rate is too high.<sup>305</sup> Excel argues that the Court decision demonstrates that we cannot set the rate for subscriber 800 and access code calls at the same level as the local coin rate, and thus the Commission must reduce the \$0.35 rate.<sup>306</sup>

<sup>295</sup> See *id.* at 22–23; see also CFA Reply at 7; MIDCOM Comments at 5; RCN Comments at 4; TRA Comments at 21; Excel Reply at 9 (stating that the four states that have deregulated rates account for only two percent of the nation's payphones).

<sup>296</sup> See, e.g., Excel Reply at 10 (stating that a Massachusetts proceeding determined that the rate there is \$.25).

<sup>297</sup> CompTel Reply at i, 8.

<sup>298</sup> *Id.* at 14.

<sup>299</sup> Frontier Comments at 9.

<sup>300</sup> Frontier Reply at ii, 2 (arguing that a rate higher than \$0.11 per call would harm consumers).

<sup>301</sup> ITA Comments at 7 (basing the upper number on the \$0.17 rate identified for a local coin call by the Massachusetts DPU for NYNEX minus the cost of coin collection (\$0.02) and further stating that the \$0.35 rate results in increased cost of a typical prepaid phone card call by over fifty percent per call).

<sup>302</sup> MCI Comments at 3.

<sup>303</sup> MIDCOM Reply at 6. In its comments, MIDCOM argued that the rate should be between \$0.067 to \$0.25 per call. See MIDCOM Comments at 7.

<sup>304</sup> Sprint Reply at 4.

<sup>305</sup> TRA Comments at 21 (arguing that the costs associated with making a coinless call are significantly less than those associated with a coin call).

<sup>306</sup> Excel Comments at 2.

115. The Coalition states that, to truly reflect the market, the local coin rate needs to be adjusted from \$0.35 upward to \$0.42 or \$0.43 per call.<sup>307</sup> In a fully realized market, the Coalition states, noncoin calls would be carrying a greater portion of the payphone costs than coin calls, and therefore should be priced at a higher rate.<sup>308</sup> APCC alleges that the average per-call local coin rate is \$0.41, not \$0.35.<sup>309</sup> IPTA and TEI state that the record supports a compensation level of no less than \$0.35 per call.<sup>310</sup> CCI requests that the Commission set the per-call compensation rate at \$0.35.<sup>311</sup>

116. The majority of the IXC's argue that there should be one national rate,<sup>312</sup> because a varying rate would be nearly impossible to administer, and could increase the costs to carrier-payers of administering per-call compensation.<sup>313</sup> Furthermore, CWI argues that because not all carriers can block calls, the Commission should not create a situation where carriers must block calls because they are unaware of the rate to be charged.<sup>314</sup> MCI argues

<sup>307</sup> Coalition Comments at 13–14.

<sup>308</sup> *Id.*

<sup>309</sup> APCC Comments at 15 (explaining that coinless calls generate additional costs such as ANI).

<sup>310</sup> See IPTA Reply at 5, 11; see also TEI Comments at 10; TEI Reply at 2 (arguing that a lower figure could result in the removal of payphones).

<sup>311</sup> CCI Comments at 2, 10 (arguing that total cost plus return on invested capital is \$0.37 per call for a coin call, and \$0.34 per call for a coinless call).

<sup>312</sup> See, e.g., CWI Comments at 10–11; CWI Reply at i, 1, 12 (stating that the Commission should not start per-call compensation until thirty days after the release of an order on remand so that carriers will have ample time to recover per-call amount in their tariffed charges); LCI Comments at 8, n.14; MCI Comments at 5; RCN Comments at 4; Sprint Reply at 21; WorldCom Comments at 4 (stating that a national rate would enable IXCs to fulfill tracking and payment obligations and that this rate could be eligible for periodic adjustment based on changes in TSLRIC costs).

<sup>313</sup> CWI Reply at 12 (stating that it could cost carriers-payers perhaps up to 300 percent above the cost of administering a uniform compensation rate); AT&T Comments at ii, 16–17 (stating that a “floating” rate could cost carriers “hundreds of millions of dollars to track and block calls from excessively-priced payphones and would be virtually impossible, and extremely costly to administer.”); MCI Comments at 5 (stating that it would be costly due to administrative costs, switch software upgrades, and call processing systems development); LCI Comments at 8–9 (stating that the Commission should establish a uniform, national compensation rate for access code and subscriber 800 calls and that a uniform rate will allow the necessary business certainty and will reduce call blocking due to a carrier's lack of information concerning the rate to be charged); Sprint Reply at 21 (arguing that there is no basis for a mechanism to periodically adjust the rate upward because if the Commission bases the rate on costs that include fixed costs of the PSPs, then as traffic volumes grow, unit costs should decline).

<sup>314</sup> CWI Comments at 10–11; CWI Reply at 12.

that if the Commission does not adopt one uniform rate, then it should set parameters such as notifying carriers of the coin rate in advance and changing the coin rate not more than once per year.<sup>315</sup> APCC argues that the Commission should not adopt a uniform compensation rate, and although the costs associated with a non-uniform rate may be higher, the benefits of directly market-based compensation are worth the extra costs.<sup>316</sup>

## 2. Discussion

117. We conclude from our analysis in Section B, that the market-based rate for access code and subscriber 800 calls, adjusted for cost differences is \$0.284.<sup>317</sup> We further conclude that the market-based rate we establish herein as a default rate for per-call compensation promotes the goals of Section 276 of the Act, fair compensation, the deployment of payphones, and competition, and is a rate that is reasonably related to the market-based local coin rate. As discussed below, we conclude that the \$0.284 default rate for per-call compensation rate, absent negotiations, should be in effect for two years to enable LECs, PSPs and IXCs additional time to transition efficiently and without disruptions to the deregulated payphone market structure created in the *Payphone Orders*.<sup>318</sup> Furthermore, we conclude that after the two year per-call compensation rate period, “fair compensation” for access code and subscriber 800 calls pursuant to Section 276 and an analysis of the record is the deregulated market rate for the local coin call adjusted for costs as discussed herein. Accordingly, the default rate for the first two years of per-call compensation is \$0.284; after the first two years, the default rate is the market-based local coin rate minus \$0.066 per call. We conclude that the default per-call rate falls within a zone of reasonableness that will provide fair compensation for subscriber 800 and access code calls as required by Section 276, while allowing the market to

<sup>315</sup> MCI Comments at 5; MCI Reply at 12.

<sup>316</sup> APCC Reply at 32.

<sup>317</sup> The Commission has the authority to employ different methodologies and/or regulatory models to arrive at a particular rate. See *Permian Basin Area Rate Cases*, 390 U.S. 747, 767 (1968). We note that as discussed above, parties have argued for a range of from \$0.03 to \$0.63. While determining an appropriate rate, we have kept in mind that Congress specifically stated that “[c]arriers and customers that benefit from the availability of a payphone should pay for the service they receive when a payphone is used to place a call.” House Report at 88. See *supra* paras. 23–28, 63.

<sup>318</sup> See *infra* para. 121.

develop, and PSPs who desire, to negotiate a different rate.<sup>319</sup>

118. In adopting an adjusted market-based rate approach, we note that the Commission has the authority to rely on market forces, and further, that "market predictions are within the institutional competence of the Commission."<sup>320</sup> In adopting this approach, we are confident that market forces will keep payphone prices at competitive levels, and that our default rate is in accordance with prevailing market conditions adjusted for costs. Courts have upheld rates established by regulatory agencies that lie within a "zone of reasonableness,"<sup>321</sup> particularly, in the context of ratemaking. While we do not consider the development of the default rate established herein to be ratemaking, because market imperfections currently exist within the evolving competitive payphone market, we have set a default rate to ensure competition.<sup>322</sup>

119. As discussed above, in response to the claims of parties on the record that only a rate derived from cost data submitted in the record will provide a valid per-call rate, we have also performed an analysis of those data for purposes of comparison with the market-based per-call rate we establish in this order. In setting the default rate for per-call compensation at \$0.284 based on our market-based analysis, we have also considered the results of our analysis of the record information concerning the long run costs of payphone service. We have calculated the long run costs per-call for a provider to install a payphone to be in the range

of \$0.247 per call to \$0.281 cents per call.<sup>323</sup> An estimate compiled under this long run costs approach must be considered a lower bound when establishing a default rate. The rate derived in this manner, by definition, just covers the cost of installing and operating a payphone at a marginal location. As such, it will not encourage either the deployment of additional payphones or an incentive for IXC's to negotiate with PSPs. Such minimal incentives are contrary to the goals of promoting competition among payphone service providers and promoting the widespread deployment of payphone services. Accomplishing these goals requires that we ensure that the default rate, in addition to covering cost, provide sufficient incentives for PSPs to deploy additional payphones and tangible incentives for IXC and PSPs to negotiate. Thus, the default rate we adopt for subscriber 800 and access code calls based on the market-based local coin rate adjusted for costs differences is appropriately and reasonably at the high end of the range compiled from the long run cost analysis.

120. We deny requests that we should mandate a uniform and fixed per-call compensation rate for each compensable call. A fixed rate would not promote the statutory goals of Section 276, because it would not encourage negotiations between IXC's and PSPs. It is our expectation that IXC's and PSPs will build business relationships and create operating procedures to provide compensation in an efficient manner. Given that we have adopted a deregulatory approach in this order, we conclude that we should not establish those procedures. Under the approach we established in the *Report and Order*, (61 FR 52307 (October 7, 1996)) the market is allowed to set the compensation amount for calls originated by each payphone. The court did not vacate that part of the *Report and Order*. For market-based pricing to function effectively, it is not unreasonable that there be some variation in compensation amounts from location to location. We also

decline to delay the effective date of this order as requested by CWI. As we discussed previously, we conclude that it is in the public interest to make this order effective immediately.<sup>324</sup>

121. In this order, we extend the per-call interim compensation period subject to a default rate established in the *Payphone Orders* for an additional year. Thus, the per-call compensation period during which the default rate is \$0.284 begins on October 7, 1997, and ends on October 6, 1999. We established the interim compensation plan in the *Payphone Orders* in order to ease the transition to market-based rates. We stated that it was necessary to observe over time how the payphone marketplace would function in the absence of regulation. We noted that market imperfections had led us to establish a default rate. On this record, we conclude that additional time is required to ease the transition to market-based rates and that continuing the applicability of the default rate for an additional year is in the public interest. As we have summarized in this order, we have received comments from LECs, PSPs, and IXC's regarding the problems and issues they face in transitioning to the payphone market compensation structure we established in the *Payphone Orders*. For example, IXC's and their customers allege that after the first year of per-call compensation established in the *Payphone Orders*, when the default rate will be the deregulated coin rate adjusted for cost differences, PSPs will raise the coin rate in a manner that will raise substantially the per-call rate for access code and subscriber 800 calls. They indicate that their systems are not adequately prepared to respond to such situations. In addition, LECs have indicated problems in providing the payphone-specific coding digits required to respond to calls from payphones on a real-time basis for some payphones in their serving areas.

122. Although we conclude in this order that the marketplace, based on negotiations between IXC's and PSPs, is where compensation decisions should be determined and that the default rate after the per-call transition period should be the market-based local coin rate adjusted for cost difference, we believe that this two year per-call compensation period subject to the default rate is necessary to afford IXC's, PSPs and LECs the opportunity to adjust to and adequately prepare for the

<sup>319</sup> We note that the Illinois Commerce Commission adopted a rate of \$0.30 for retail 1-800 calls (which are synonymous with access code calls) when it deregulated payphones. The Illinois proceeding raised many of the same concerns as those raised in this proceeding. See IPTA Comments, July 1, 1996, Appendix B, Order of the Illinois Commerce Commission, 92-0400 at 18-19, 24. We also note that the rate that AT&T negotiated with PSPs for access code calls was \$0.25. The rate we adopt herein falls within the range of these rates. See AT&T Reply at 12-13.

<sup>320</sup> *FCC v. WNCN Listeners Guild*, 450 U.S. 582, 593, 596 (1981).

<sup>321</sup> See, e.g., *Nader v. FCC*, 520 F.2d 182 (D.C. Cir. 1975) (stating that there is a zone of reasonableness within which a rate will be upheld and that the Commission must identify the boundaries of such a zone); *National Cable Television v. Copyright Royalty Tribunal*, 724 F.2d 176 (D.C. Cir. 1983) (stating that rulings need not rest on precise mathematical calculations and that a ruling will be upheld if it lies within the zone of reasonableness); *Bell Atlantic Tel. Co. v. FCC*, 79 F.3d 1195, 1202 (D.C. Cir. 1996) (stating that the Commission is not required to include all data when determining a rate, and that the Commission has the authority to exclude suspicious data or statistical outliers).

<sup>322</sup> In *Illinois Public Telecomm.*, the court stated that "a market-based approach is as much a compensation scheme as a rate-setting approach." 117 F.3d at 563.

<sup>323</sup> In deriving a default per-call compensation rate based on the long run costs indicated in the record data, we do not adopt this approach on a going-forward basis but continue to rely instead on the market-based approach adjusted for cost differences. To do otherwise would lead to our continuing review of the costs associated with providing per-call compensation for subscriber 800 and access code calls and provide disincentives to PSPs and IXC's to negotiate market based rates for these services. Moreover, market-based rates lead to efficient allocation of resources and avoid the pitfalls of regulating rates for firms that use common facilities to produce both non-regulated and regulated services.

<sup>324</sup> See *supra* para. 3.

deregulatory market-based structure we adopted pursuant to Section 276.<sup>325</sup>

#### E. Other

##### 1. Comments

123. *AirTouch Plan.* AirTouch suggests that the Commission explore a new method to resolve the compensation issue due to the wide divergence of views expressed in the replies, and its concern that call blocking options do not exist. AirTouch argues that the Commission should adopt a method that does not rely on call tracking or call blocking to place checks on the imposition of excessive charges by payphone service providers.<sup>326</sup> AirTouch proposes that the Commission adopt a unique 8XX approach that would be toll-free for long distance charges, but could be accessed from a payphone only if the caller deposits coins (presumably at a fraction of the local coin rate). PageNet and PCIA support AirTouch's unique 8XX approach and state that it merits further investigation.<sup>327</sup> PageMart argues that if the Commission does not adopt a caller-pays approach, then it should consider AirTouch's modified approach.<sup>328</sup> Several of the paging companies argue that they should pay less than other carriers due to the short duration of the calls used to initiate pages.<sup>329</sup>

124. *Reconsider Use of Caller Pays.* AirTouch, PageNet, PageMart, Arch, and PCIA argue that the Commission should

adopt a caller-pays system, because such a system, they argue, is the only true surrogate for market-based compensation.<sup>330</sup> PCIA argues that the Commission should reconsider the caller-pays system because IXC's have a limited ability to block calls and thus have a check on excessive payphone rates.<sup>331</sup>

125. APCC contends that the paging industry's recommendation that the Commission should adopt a caller pays approach is without merit.<sup>332</sup> APCC contends that the information needed to block calls from PSPs that charge "too much" is located within a database, not the screening digits.<sup>333</sup> APCC contends that it is not necessary to implement this database until per-call compensation is tied to individual providers' prices in October 1998.<sup>334</sup>

126. *Call Blocking.* AirTouch reiterates its concern that call blocking options do not exist, and therefore suggests the proposal enumerated above, because the proposal does not rely on call tracking or call blocking to place checks on the imposition of excessive charges by payphone service providers.<sup>335</sup> AirTouch further states that paging companies should not have to pass through the \$0.35 charge until targeted call blocking is available for payphone calls,<sup>336</sup> and PageMart contends that call blocking technology is an integral part of the development of a competitive PSP market.<sup>337</sup> MCI argues that Congress did not intend for carriers to have to block calls, and furthermore, carriers will not be able to selectively block calls until the third quarter of 1998.<sup>338</sup>

127. PageNet, PageMart, and PCIA contend that without call blocking capability, the 800 subscriber does not have any leverage to negotiate for lower

rates for calls placed from payphones, therefore, these carriers argue, a market-based compensation scheme cannot work.<sup>339</sup> GCI contends that as a small carrier operating primarily in Alaska, it is not in a position to negotiate with payphone providers around the country to get a better rate and furthermore, it does not want to block calls from payphone locations.<sup>340</sup>

128. Arch requests that if the Commission maintains a carrier-pays approach, it should either order all 800 carriers to deploy blocking capability so that each 800 customer has the option to block, or apply notions of cost-causation so payphone costs are instead paid by the cost-causer, the payphone user.<sup>341</sup> Champion argues that a call blocking option must be provided, because it does not want to be liable for calls from places such as prisons or other non-business related locations. CPI contends that the cost of tracking individual payphones and blocking calls may be cost prohibitive such that blocking does not necessarily give IXC's any leverage to negotiate with PSPs to constrain the compensation rate. Furthermore, CPI contends that customers do not benefit when calls are blocked, and call blocking will not result in a price that is market based.<sup>342</sup> Several of the IXC's argue that call blocking technology is extremely costly, and that they do not currently have this technology in place.<sup>343</sup>

129. The Coalition contends that the argument that market-based prices may lead to call blocking is without merit, because PSPs have an interest in seeing calls completed—a blocked call does not generate compensation.<sup>344</sup>

130. *Other.* CWI argues that the Commission should clarify that payphones that do not transmit payphone specific coding digits are not eligible for compensation, and requests that the Commission clarify that the "07" coding digit does not identify a call from a payphone.<sup>345</sup>

131. ACTA argues that pass-through billing of an IXC's reseller customer should not be permitted until a new compensation scheme is in place.<sup>346</sup>

<sup>325</sup> We establish a default rate because certain call blocking capabilities are not yet available to participants in the provision of access code and subscriber 800 calls from a payphone, and thus the market is not yet free of impediments that interfere with the competitive negotiated process. In the *Payphone Orders* we concluded that, once competitive market conditions exist, the most appropriate way to ensure that PSPs receive fair compensation for each call is to let the market set the price for individual calls originated on payphones. It is only in cases where the market does not or cannot function properly that the Commission needs to take affirmative steps to ensure fair compensation. For example, because TOCSIA requires all payphones to unblock access to alternative OSPs through the use of access codes (including 800 access numbers), PSPs cannot block access to 800 numbers generally. However, TOCSIA does not prohibit an IXC from blocking subscriber 800 numbers from payphones, particularly if the IXC wants to avoid paying the per-call compensation charge on these calls. We concluded in the *Payphone Orders* that this uneven bargaining between parties necessitates the Commission's involvement.

<sup>326</sup> AirTouch Reply at 5.

<sup>327</sup> PageNet Reply at 10; PCIA Reply at 7.

<sup>328</sup> PageMart Reply at 8.

<sup>329</sup> See, e.g., AirTouch Reply at 8–9 (arguing that the average paging call lasts approximately 20 seconds, as compared to the Coalition data stating that the typical duration of a call from a payphone lasts 3.22 to 3.42 minutes); PageNet Reply at ii, 14–15 (stating that it should be charged rates that reflect its individual called party characteristics, because subscriber 800 calls are shorter in duration and generate less revenue than access code calls).

<sup>330</sup> AirTouch Reply at 5; PageNet Reply at i, 7 (arguing that a calling-party pays mechanism allows the calling party to seek out a lower priced payphone and thus exerts pressure on the PSPs to charge competitive rates and further, that the mechanism upon which the market scheme was established, call blocking, is not in place). PageNet further argues that a calling party pays system avoids FCC determination of payphone costs and the extent to which commissions paid to location owners should be included in these payphone costs. See PageNet Reply, supra. See also PageMart Reply at 3; PCIA Reply at 7; Arch Reply at 9.

<sup>331</sup> PCIA Reply at 2.

<sup>332</sup> APCC Reply at 23–32.

<sup>333</sup> Id. at 30.

<sup>334</sup> Id.

<sup>335</sup> AirTouch Reply at 5.

<sup>336</sup> AirTouch Comments at 8; AirTouch Reply at 4.

<sup>337</sup> PageMart Comments at 2.

<sup>338</sup> MCI Comments at 4. See PageMart Reply at 4 (stating that a system that encourages call blocking does not further the Commission's goal of providing telecommunications services to the greatest possible number of consumers).

<sup>339</sup> PageNet Reply at i, 3, 6 (arguing that the mechanism under which the Commission adopted a carrier party pays scheme—rates determined on real time basis—is not available); PageMart Reply at 3; PCIA Reply at 3.

<sup>340</sup> GCI Comments at 3.

<sup>341</sup> Arch Reply at 5.

<sup>342</sup> CPI Reply at 4.

<sup>343</sup> Sprint Comments at 6; AT&T Comments at 17; CWI Comments at 10–11.

<sup>344</sup> Coalition Reply at 8–9.

<sup>345</sup> CWI Reply at 14–15.

<sup>346</sup> ACTA Comments at 4 (stating that if pass through billing is permitted, then requirements



## 2. Discussion

132. We decline to address in this proceeding issues related to the implementation of the per-call compensation structure beyond the per-call compensation rate. The above issues were raised by parties in response to the *Notice*, despite its limited scope. In this order, we do not revisit the issue of who is responsible for paying compensation and whether carriers can block, issues already addressed in the *Payphone Orders*, and upheld by the court. We also decline to evaluate at this time, a new proposal relating to the tracking of calls, or that we establish a compensation scheme on a per-minute rather than per-call basis, which could substantially delay the beginning of the per-call compensation scheme. To the extent that we decide to revisit any of these issues, such review will be addressed in a subsequent proceeding.

133. We decline to grant CWI's request that we clarify the payphone-specific coding digit requirements set forth in the *Payphone Orders*, because the purpose of this order is to establish a default per-call compensation rate. We plan to address payphone-specific coding digit issues in a subsequent order. As discussed above, we note that the Bureau has granted a waiver until March 9, 1998, for PSPs to comply with payphone-specific coding digit requirements. Pursuant to that waiver, IXC's must pay compensation to PSPs including those with payphones that cannot transmit payphone-specific coding digits.<sup>347</sup>

## IV. Procedural Matters

### A. Final Paperwork Reduction Act Analysis

134. The decision herein has been analyzed with respect to the Paperwork Reduction Act of 1995, Pub. L. 104-13, and does not contain new and/or modified information collections subject to Office of Management and Budget review. The information and collection requirements in this item are contingent upon approval by the Office of Management and Budget.

### B. Final Regulatory Flexibility Act Analysis

135. As required by the Regulatory Flexibility Act (RFA),<sup>348</sup> an Initial

Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking*.<sup>349</sup> The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.<sup>350</sup>

#### 1. Need for, and Objectives of, the Second Report and Order

136. The objective of the rules adopted in this order is "to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public."<sup>351</sup> In doing so, the Commission is mindful of the balance that Congress struck between this goal of bringing the benefits of competition to consumers and its concern for the impact of the 1996 Telecommunications Act on small businesses.

#### 2. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

137. *Summary of the Initial Regulatory Flexibility Analysis (IRFA).* In the IRFA, the Commission solicited comment on alternatives to our proposed rules that would minimize the potential impact on small entities consistent with the objectives of this proceeding. The Commission received one comment on the potential impact on small business entities, which the Commission considered in promulgating the rules in this Order. Frontier commented generally that the compensation scheme advanced in the NPRM was "unnecessarily onerous and inefficient" and "in conflict with the goals of the \* \* \* Regulatory Flexibility Act."<sup>352</sup> Frontier did not comment specifically on what aspect of the compensation scheme would have economic impact on small business entities. We disagree with Frontier's general assertion that the compensation scheme is in conflict with the Regulatory Flexibility Act. Our rules are designed to facilitate the development of competition, which benefits many small business entities. The rules will ensure that payphone services providers, many of whom may be small business entities, receive fair

compensation. Our rules provide significant flexibility to permit the affected parties, including small business entities, to structure procedures that would minimize their burdens. For example, the rules require IXCs and intraLATA carriers, as primary economic beneficiaries of payphone calls, to track the calls they receive from payphones. These carriers have the option of performing these functions themselves or contracting out these functions to another party, such as a LEC or clearinghouse. We also provide a transition period. We believe that our rules are designed to effectively optimize the efficiency and minimize the burdens of the compensation scheme on all parties, including small entities.

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

138. For the purposes of this order, the RFA defines a "small business" to be the same as a "small business concern" under the Small Business Act, 15 U.S.C. § 632, unless the Commission has developed one or more definitions that are appropriate to its activities.<sup>353</sup> 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).<sup>354</sup> SBA has defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, Except Radiotelephone) to be a small entity when it has no more than 1,500 employees.<sup>355</sup>

139. We have found incumbent LECs to be "dominant in their field of operation" since the early 1980s, and we consistently have certified under the RFA<sup>356</sup> that incumbent LECs are not subject to regulatory flexibility analyses because they are not small businesses.<sup>357</sup> We have made similar

need to be established to ensure fair and accurate billing).

<sup>347</sup> *Bureau Waiver Order*, DA 97-2162 (rel. Oct. 7, 1997).

<sup>348</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>349</sup> Implementation of Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, *Notice of Proposed Rulemaking*, 61 FR 31481 (June 6, 1996); 11 FCC Rcd 6716 (1996) ("NPRM").

<sup>350</sup> See 5 U.S.C. § 604.

<sup>351</sup> 47 U.S.C. § 276(b)(1).

<sup>352</sup> Frontier Comments in response to the IRFA at 2.

<sup>353</sup> See 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. § 632).

<sup>354</sup> 15 U.S.C. § 632. See, e.g., *Brown Transport Truckload, Inc. v. Southern Wipers, Inc.*, 176 B.R. 82 (N.D. Ga. 1994).

<sup>355</sup> 13 CFR § 121.201.

<sup>356</sup> See 5 U.S.C. § 605(b).

<sup>357</sup> See, e.g., *Expanded Interconnection with Local Telephone Company Facilities, Supplemental Notice of Proposed Rulemaking*, 56 FR 52496 (October 21, 1991); 6 FCC Rcd 5809 (1991); MTS and WATS Market Structure, *Report and Order*, 52 FR 21536 (June 8, 1987); 2 FCC Rcd 2953, 2959 (1987) (citing MTS and WATS Market Structure, *Third Report and Order*, 48 FR 10319 (March 11, 1983); 93 F.C.C.2d 241, 338-39 (1983)).

determinations in other areas.<sup>358</sup>

However, in the *Local Competition* proceeding, several parties, including the SBA, commented that we should have included small incumbent LECs in the IRFA pertaining to that order.<sup>359</sup> We recognize SBA's special role and expertise with regard to the RFA, and intend to continue to consult with SBA outside the context of this proceeding to ensure that the Commission is fully implementing the RFA. Although we are not fully persuaded that our prior practice has been incorrect, we will, include small incumbent LECs in this FRFA, while continuing to hold that the terms "small entities" and "small businesses" does not encompass "small incumbent LECs." We use the term "small incumbent LECs" to refer to any incumbent LECs that arguably might be defined by SBA as "small business concerns."<sup>360</sup>

140. *Total Number of Telephone Companies Affected.* The United States Bureau of the Census (the Census Bureau) reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.<sup>361</sup> This number encompasses a broad category which contains a variety of different subsets of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated."<sup>362</sup> For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms

or small incumbent LECs that may be affected by this Order. We estimate below the potential small entity telephone service firms or small incumbent LECs that may be affected by this Order by service category.

141. *Wireline Carriers and Service Providers.* The SBA's definition of small entities for telephone communications companies, other than radiotelephone (wireless) companies, is one employing no more than 1,500 persons.<sup>363</sup> The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992.<sup>364</sup> All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and rules adopted in this Order.

142. *Local Exchange Carriers.* Neither the Commission nor SBA has developed a definition of small providers of local exchange services (LECs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4813). The most reliable source of information regarding the number of LECs nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS).<sup>365</sup> According to our most recent data, 1,347 companies reported that they were engaged in the provision of local exchange services.<sup>366</sup> Although it seems certain that some of these carriers

are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,347 small incumbent LECs that may be affected by the decisions and rules adopted in this Order.

143. *Interexchange Carriers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4813). The most reliable source of information regarding the number of IXCs nationwide of which we are aware appears to be the data that we collect annually in connection with TRS. According to our most recent data, 97 companies reported that they were engaged in the provision of interexchange services.<sup>367</sup> Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 97 small entity IXCs that may be affected by the decisions and rules adopted in this Order.

144. *Competitive Access Providers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of competitive access services (CAPs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4813). The most reliable source of information regarding the number of CAPs nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 30 companies reported that they were engaged in the provision of competitive access services.<sup>368</sup> Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are

<sup>358</sup> See, e.g., Implementation of Sections of the Cable Television Consumer Protection Act of 1992: Rate Regulation, *Sixth Report and Order and Eleventh Order on Reconsideration*, 60 FR 10534 (February 27, 1995); 10 FCC Rcd 7393, 7418 (1995).

<sup>359</sup> The Small Business Administration (SBA), the Rural Telephone Coalition (Rural Tel. Coalition), and CompTel maintain that the Commission violated the RFA when it failed to include small incumbent LECs in its IRFA without first consulting SBA to establish a definition of "small business." See *Local Competition Order* at paras. 1328-30.

<sup>360</sup> See 13 CFR § 121.210 (SIC 4813).

<sup>361</sup> United States Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size*, at Firm Size 1-123 (1995) ("1992 Census").

<sup>362</sup> 15 U.S.C. § 632(a)(1).

<sup>363</sup> 13 CFR § 121.201, Standard Industrial Classification (SIC) Code 4812.

<sup>364</sup> 1992 Census, *supra*, at Firm Size 1-123.

<sup>365</sup> All carriers that provide interstate service are required to pay into the TRS Fund, which provides access to Telecommunications Device for the Deaf (TDD). See generally 47 CFR §§ 64.601 *et seq.*

<sup>366</sup> Federal Communications Commission, CCB, Industry Analysis Division, Telecommunications Industry Revenue: TRS Fund Worksheet Data, Tbl. 21 (Average Total Telecommunications Revenue Reported by Class of Carrier) (Feb. 1996) ("TRS Worksheet").

<sup>367</sup> *Id.*

<sup>368</sup> *Id.*

fewer than 30 small entity CAPs that may be affected by the decisions and rules adopted in this Order.

145. *Operator Service Providers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of operator services (OSPs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4813). The most reliable source of information regarding the number of operator service providers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 29 companies reported that they were engaged in the provision of operator services.<sup>369</sup> Although it seems certain that some of these companies are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 29 small entity operator service providers that may be affected by the decisions and rules adopted in this Order.

146. *Payphone Operators.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of payphone operators nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 197 companies reported that they were engaged in the provision of payphone services.<sup>370</sup> Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of payphone operators that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 197 small entity payphone operators that may be affected by the decisions and rules adopted in this Order.

147. *Resellers (including debit card providers).* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to

resellers. The closest applicable definition under SBA rules is for all telephone communications companies (SIC 4812 and 4813). The most reliable source of information regarding the number of resellers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 206 companies reported that they were engaged in the resale of telephone services.<sup>371</sup> Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 206 small entity resellers that may be affected by the decisions and rules adopted in this Order.

148. *800-Subscribers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to 800-subscribers. The most reliable source of information regarding the number of 800-subscribers of which we are aware appears to be the data we collect on the number of 800-numbers in use.<sup>372</sup> According to our most recent data, at the end of 1995, the number of 800-numbers in use was 6,987,063. Although it seems certain that some of these subscribers are not independently owned and operated businesses, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of 800-subscribers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 6,987,063 small entity 800-subscribers that may be affected by the decisions and rules adopted in this Order.

149. *Location Providers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to location providers. A location provider is the entity that is responsible for maintaining the premises upon which the payphone is physically located. Due to the fact that location providers do not fall into any specific category of business entity, it is impossible to estimate with any accuracy the number of location providers. Using several sources, however, we have derived a figure of 1,850,000 payphones in existence.<sup>373</sup>

<sup>371</sup> *Id.*

<sup>372</sup> Federal Communications Commission, CCB, Industry Analysis Division, *FCC Releases, Study on Telephone Trends*, Tbl. 20 (May 16, 1996).

<sup>373</sup> There are approximately 1.5 million LEC payphones. Statistics of Communications Common Carriers, 1994/1995 edition, Common Carrier

Although it seems certain that some of these payphones are not located on property owned by location providers that are small business entities, nor does the figure take into account the possibility of multiple payphones at a single location, we are unable at this time to estimate with greater precision the number of location providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,850,000 small entity location providers that may be affected by the decisions and rules adopted in this Order.

150. *Wireless (Radiotelephone) Carriers (including paging services).* The SBA's definition of a small business radiotelephone company is one employing fewer than 1,500 persons.<sup>374</sup> The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992.<sup>375</sup> The Census Bureau also reported that 1,164 of those radiotelephone companies had no more than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,164 small entity radiotelephone companies that may be affected by the decisions and rules adopted in this Order.

151. *Cellular Service Carriers (including paging services).* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of cellular services. The closest applicable definition under SBA rules is for

Bureau, FCC at 159, Table 2.10 (1995). There are approximately 350,000 competitively provided payphones. See *Ex Parte* Letter to Michael Carowitz, Attorney, Common Carrier Bureau, FCC from Michael Benson, Senior Product Manager, PPO Compensation Clearinghouse, Cincinnati Bell (Apr. 24, 1996). Cincinnati Bell, as the payphone compensation paying agent for three interexchange carriers, states that it receives quarterly bills from PPOs for more than 350,000 competitively provided payphones. *Id.*

<sup>374</sup> 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4812.

<sup>375</sup> United States Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size*, at Firm Size 1-123 (1995) ("1992 Census").

<sup>369</sup> *Id.*

<sup>370</sup> *Id.*

telephone communications companies other than radiotelephone (wireless) companies (SIC 4813). The most reliable source of information regarding the number of cellular service carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 789 companies reported that they were engaged in the provision of cellular services.<sup>376</sup> Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 789 small entity cellular service carriers that may be affected by the decisions and rules adopted in this Order.

152. *Mobile Service Carriers (including paging services).* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of mobile service carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 117 companies reported that they were engaged in the provision of mobile services.<sup>377</sup> Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of mobile service carriers that would qualify under SBA's definition. Consequently, we estimate that there are fewer than 117 small entity mobile service carriers that may be affected by the decisions and rules adopted in this Order.

153. *Broadband PCS Licensees (including paging services).* The broadband PCS spectrum is divided into six frequency blocks designated A through F. As set forth in 47 CFR § 24.720(b), the Commission has defined "small entity" in the auctions for Blocks C and F as a firm that had average gross revenues of less than \$40 million in the three previous calendar years. Our definition of a "small entity" in the context of broadband PCS auctions has

been approved by SBA.<sup>378</sup> The Commission has auctioned broadband PCS licenses in Blocks A, B, and C. We do not have sufficient data to determine how many small businesses bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions.<sup>379</sup> Based on this information, we conclude that the number of broadband PCS licensees affected by the decisions in this Order includes, at a minimum, the 90 winning bidders that qualified as small entities in the Block C broadband PCS auction.

154. At present, no licenses have been awarded for Blocks D, E, and F of broadband PCS spectrum. Therefore, there are no small businesses currently providing these services. However, a total of 1,479 licenses will be awarded in the D, E, and F Block broadband PCS auctions, which are scheduled to begin on August 26, 1996. Of the 153 qualified bidders for the D, E, and F Block PCS auctions, 105 were small businesses.<sup>380</sup> Eligibility for the 493 F Block licenses is limited to entrepreneurs with average gross revenues of less than \$125 million.<sup>381</sup> There are 114 eligible bidders for the F Block.<sup>382</sup> We cannot estimate, however, the number of these licenses that will be won by small entities under our definition, nor how many small entities will win D or E Block licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees<sup>383</sup> and that no reliable estimate of the number of prospective D, E, and F Block licensees can be made, we assume for purposes of this FRFA, that all of the licenses in the D, E, and F Block Broadband PCS auctions may be awarded to small entities under our rules, which may be

affected by the decisions and rules adopted in this Order.

155. *SMR Licensees (including paging services).* Pursuant to 47 CFR § 90.814(b)(1), the Commission has defined "small entity" in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than \$15 million in the three previous calendar years. This definition of a "small entity" in the context of 800 MHz and 900 MHz SMR has been approved by the SBA.<sup>384</sup> The rules adopted in this Order may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than \$15 million. We assume, for purposes of this FRFA, that all of the extended implementation authorizations may be held by small entities, which may be affected by the decisions and rules adopted in this Order.

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

<sup>378</sup> See 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); 9 FCC Rcd 5532, 5581–84 (1994).

<sup>379</sup> The FCC's Personal Communications Services (PCS) Entrepreneurs' Block (C Block) auction began on December 18, 1995 and closed on May 6, 1996. The reauction for 18 defaulted PCS C Block licenses commenced on July 3, 1996 and was completed on July 16, 1996.

<sup>380</sup> See Auction of Broadband Personal Communications Service (D, E, and F Blocks), *Public Notice*, DA 96–1400 (rel. Aug. 20, 1996).

<sup>381</sup> 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, Amendment of the Commission's Cellular/PCS Cross-Ownership Rule, Report and Order, GN Docket No. 90–314, 61 FR 33859 (July 1, 1996); 11 FCC Rcd 7824 (1996).

<sup>382</sup> See Auction of Broadband Personal Communications Service (D, E, and F Blocks), *Public Notice*, DA 96–1400 (rel. Aug. 20, 1996).

<sup>383</sup> 1992 Census, Table 5, Employment Size of Firms: 1992, SIC Code 4812.

<sup>384</sup> See Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896–901 MHz and the 935–940 MHz Bands Allotted to the Specialized Mobile Radio Pool, PR Docket No. 89–583, *Second Order on Reconsideration and Seventh Report and Order*, 60 FR 48913 (September 21, 1995); 11 FCC Rcd 2639, 2693–702 (1995); Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93–144, *First Report and Order*, *Eighth Report and Order*, and *Second Further Notice of Proposed Rulemaking*, 61 FR 6212 (February 16, 1996); 11 FCC Rcd 1463 (1995).

<sup>376</sup> *Id.*

<sup>377</sup> *Id.*

than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we assume, for purposes of this FRFA, that all of the licenses may be awarded to small entities who, thus, may be affected by the decisions in this Order.

**4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements.**

157. This order results in no additional filing requirements.

**5. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered.**

158. Section 276(b)(1)(A) directs the Commission to "establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone. \* \* \*"<sup>385</sup> To implement Section 276(b)(1)(A), this *Second Report and Order* establishes a market-based per-call compensation rate of \$0.284 to be paid to the independent payphone service providers (PSPs) for services rendered in connection with originating noncoin calls from payphones. The payphone industry appears to have the potential of being a very competitive industry once the significant subsidies and entry/exit restrictions which are presently distorting the competition are removed. However, we perceive two potential areas that could have an economic impact on small businesses and small incumbent LECs: (1) the amount of compensation paid to PSPs, and (2) the administration of per-call compensation.

159. *Amount of compensation:* By adopting a market-based local coin rate adjusted for coin differences, we ensure that PSPs, many of whom may be small business entities, receive fair compensation for subscriber 800 and access code calls. By tying the per-call compensation to the market-based local coin rate, adjusted for cost differences, we further ensure that PSPs receive fair compensation for each and every completed call made from a payphone.<sup>386</sup>

160. Many commentators, notably the IXC's, contend that marginal cost of originating a payphone call should be used as the basis for compensating PSPs. We conclude that use of a marginal cost standard or any closely related TSLRIC standard would leave

PSPs under compensated, because such cost standards do not permit the recovery of any of a PSP's fixed costs, which make up the bulk of a PSP's costs. We also reject, for similar reasons, suggestions that current local coin rates be used as a surrogate for per-call compensation. Local coin rates are not necessarily fairly compensatory. Local coin rates in some jurisdictions may not cover the marginal cost of service and therefore, would not fairly compensate the PSPs.

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

162. *Payment of compensation:* Various commenters, including small IXCs and paging services, proposed that the Commission reconsider the use of a "caller-pays" system.<sup>387</sup> We decline to revisit a caller-pays approach on remand, because the caller-pays system adopted in the *Report and Order* was upheld by the court in *Illinois Public Telecomm*, and reiterate that those approaches would involve greater transaction costs that can pose particular burdens for small businesses.

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

164. *Report to Congress.* The Commission will send a copy of the *Second Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, see 5 U.S.C. § 801(a)(1)(A). A copy of the *Second Report and Order* and this FRFA (or summary thereof) will also be published in the **Federal Register**, see 5 U.S.C. § 604(b), and will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

**V. Conclusion**

165. We conclude in this order that as of October 7, 1997, IXCs must compensate PSPs for all coinless payphone calls not otherwise compensated pursuant to contract, including subscriber 800 and access code calls, 0+ and inmate calls, at the rate of \$0.284 per call. We base this decision on the conclusion that the default rate for per-call compensation for these calls is the deregulated local coin rate adjusted for cost differences. The rate of \$0.284 will serve as the default per-call compensation rate for coinless payphone calls for the first two years of per-call compensation. After the first two years of per-call compensation, the market-based local coin rate adjusted for net avoided costs is the surrogate for the default per-call rate for coinless calls.

**VI. Ordering Clauses**

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

167. *It is further ordered* that this order is effective upon publication in the **Federal Register**.

168. *It is further ordered* that the September 10, 1997 Motion of the American Public Communications Council For Leave To File Reply Comments One Day Late, and the September 10, 1997 Motion of MCI For Leave To File An Erratum Are *Granted*.

169. *It is further ordered* that the September 16, 1997 Motion of Sprint Corporation to Require Production of A Cost Study Is *Denied*.

170. *It is further ordered*, that 47 CFR Part 64 Is amended as set forth below, effective upon publication in the **Federal Register**.<sup>388</sup>

<sup>385</sup> 47 U.S.C. § 276(b)(1)(A).

<sup>386</sup> Additionally, by adopting a rate that is less than the \$0.35 initially proposed, we are mindful of the concerns of small businesses that the \$0.35 rate is too high.

<sup>387</sup> See *supra* paras. 126, 132.

<sup>388</sup> The Commission finds, for the reasons set forth in para .3, *supra*, that good cause exists for

171. It is further ordered that the Commission's Office of Managing Director SHALL SEND a copy of this *Second Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**William F. Caton,**  
Acting Secretary.

#### List of Subjects in 47 CFR Part 64

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

#### Rule Changes

Part 64 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 64 continues to read as follows:

**Authority:** Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 226, 228, 276, 48 Stat. 1070, as amended; 47 U.S.C. 201, 218, 226, 228, 276 unless otherwise noted.

2. Section 64.1300 (c) and (d) are revised to read as follows:

#### § 64.1300 Payphone compensation obligation.

\* \* \* \* \*

(c) In the absence of an agreement as required by paragraph (a) of this section, the carrier is obligated to compensate the payphone service provider at a per-call rate equal to its local coin rate less \$0.066 at the payphone in question.

(d) For the initial two-year period during which carriers are required to pay per-call compensation, in the absence of an agreement as required by paragraph (a) of this section, the carrier is obligated to compensate the payphone service provider at a per-call rate of \$0.284. After this initial two-year period of per-call compensation, paragraph (c) of this section will apply.

**Note:** This attachment will not be published in the Code of Federal Regulations.

#### Attachment B—Parties Filing Comments in Response to Payphone Remand Public Notice

1. Air Touch Paging ("AirTouch")
2. American Public Communications Council ("APCC")
3. America's Carriers Telecommunications Association ("ACTA")
4. AT&T Corp. ("AT&T")
5. Cable and Wireless, Inc. ("CWI")
6. Communications Central, Inc. ("CCI")
7. Competition Policy Institute ("CPI")
8. Competitive Telecommunications Association ("CompTel")

the effective date to be less than 30 days after publication in the **Federal Register**.

9. Excel Telecommunications, Inc. ("Excel")
10. Frontier Corporation ("Frontier")
11. General Communication, Inc. ("GCI")
12. Inmate Calling Services Providers Coalition ("Inmate")
13. International Telecard Association ("ITA")
14. LCI International Telecom Corp. ("LCI")
15. MCI Telecommunications Corporation ("MCI")
16. MIDCOM Communication, Inc. ("MIDCOM")
17. NATSO, Inc. ("NATSO")
18. PageMart Wireless, Inc. ("PageMart")
19. Paging Network, Inc. ("PageNet")
20. Peoples Telephone Company, Inc. ("Peoples")
21. Personal Communications Industry Association ("PCIA")
22. RBOC/GTE/SNET Payphone Coalition ("RBOC")
23. RCN Telecom Services, Inc. ("RCN")
24. Software Defined Network Users Association ("SDN")
25. Sprint Corporation ("Sprint")
26. Telaleasing Enterprises, Inc. ("TEI")
27. Telecommunications Resellers Association ("TRA")
28. Teleport Communications Group Inc. ("Teleport")
29. United States Telephone Association ("USTA")
30. WorldCom, Inc. d/b/a LDDS WorldCom ("WorldCom")

**Note:** This attachment will not be published in the Code of Federal Regulations.

#### Attachment C—Parties Filing Reply Comments to Payphone Remand Public Notice<sup>389</sup>

1. Air Touch Paging ("AirTouch")
2. American Public Communications Council ("APCC")
3. America's Carriers Telecommunications Association ("ACTA")
4. Arch Communications Group ("Arch")
5. AT&T Corp. ("AT&T")
6. Cable and Wireless, Inc. ("CWI")
7. Competition Policy Institute ("CPI")
8. Competitive Telecommunications Association ("CompTel")
9. Consumer Federation of American and Consumer Action ("CFA")
10. Excel Telecommunications, Inc. and Telco Communications Group, Inc. ("Excel")
11. Frontier Corporation ("Frontier")
12. GE Capital Communications Services Corporation ("GECCS")
13. General Communication, Inc. ("GCI")
14. Illinois Public Telecommunications Association ("IPTA")
15. Inmate Calling Services Providers Coalition ("Inmate")
16. International Telecard Association ("ITA")
17. IPSP Ad Hoc Committee for Consumer Choice ("IPSP")
18. MCI Telecommunications Corporation ("MCI")
19. MIDCOM Communication, Inc. ("MIDCOM")

<sup>389</sup> The following parties have submitted letters to the Commission, which are treated as informal comments and considered part of the record in this proceeding: Borden, Champion, and Sitel.

20. Oncor Communications ("Oncor")
21. PageMart Wireless, Inc. ("PageMart")
22. Paging Network, Inc. ("PageNet")
23. Peoples Telephone Company, Inc. and Communications Central, Inc. ("Peoples")
24. Personal Communications Industry Association ("PCIA")
25. RBOC/GTE/SNET Payphone Coalition ("Coalition")
26. RCN Telecom Services, Inc. ("RCN")
27. Sprint Corporation ("Sprint")
28. Telaleasing Enterprises, Inc. ("TEI")
29. United States Telephone Association ("USTA")
30. WorldCom, Inc. d/b/a LDDS WorldCom ("WorldCom")

[FR Doc. 97-28614 Filed 10-29 97; 8:45 am]

BILLING CODE 6712-01-p

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

[CC Docket 96-128; DA 97-2214]

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

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of partial waiver of regulations.

**SUMMARY:** On October 7, 1997, the Common Carrier Bureau granted, on its own motion, a limited waiver of five months, until March 9, 1998, to those local exchange carriers and payphone service providers that cannot provide payphone-specific digits as required by orders in this proceeding. This limited waiver applied to the requirement that local exchange carriers provide payphone-specific coding digits to payphone service providers, and that payphone service providers provide coding digits from their payphones before they can receive per-call compensation from interexchange carriers for subscriber 800 and access code calls, and 0+ and inmate calls (47 CFR 64.1300-64.1340). The limited waiver recognized that three parties had filed petitions for waiver of the payphone-specific coding digit requirements. This document seeks comment on those waiver requests.

**DATES:** The partial waiver of 47 CFR 64.1300-64.1340 is effective October 7, 1997 until March 9, 1998. Comments are due on or before October 30, 1997, and reply comments are due on or before November 6, 1997.

**ADDRESSES:** Federal Communications Commission, Room 222, 1919 M St., Washington, DC 20554.