

Subelements for Open Network Architecture, the Commission concluded that LECs may have an incentive to price basic transmission services, used to deliver an enhanced service, at unreasonably high rates in an effort to raise their rivals' costs of delivering the enhanced service.<sup>132</sup> To deter this type of anti-competitive conduct, the Commission revised the new service test, which all "new services"<sup>133</sup> offered by incumbent LECs regulated by price caps must satisfy.<sup>134</sup> Under the new services test, local exchange carriers (LECs) must submit cost support for the prices they intend to charge for new services.<sup>135</sup> The new services test thus places a flexible, cost-based upper bound on new service prices to guard against unreasonably high rates and, by requiring that prices exceed direct costs, also establishes a price floor, ensuring that prices are not predatory. In addition, to prevent predatory pricing, the new services test requires that the projected revenues from the new service outweigh the costs of provision of that service.<sup>136</sup> We seek comment on whether incumbent LEC provision of coin transmission services on an unbundled basis should be treated as a new service under the Commission's rules. While the incumbent LECs have used central office coin services in the past, they have not made these services available to PPOs for use in their provision of payphone services. Because incumbent LECs may have an incentive to charge their competitors unreasonably high prices for these services, we also tentatively conclude that the new services test is necessary to ensure that central office coin services are priced reasonably. We seek comment on whether incumbent LECs not currently subject to price cap regulation be required to submit cost support for their central office coin services, pursuant to Sections 61.38, 61.39, and 61.50(i) of our rules.<sup>137</sup>

47. In Section 68.3 of the Commission's rules, the Commission defined a coin implemented telephone<sup>138</sup> as a telephone containing all circuitry required to execute coin acceptance and related functions within the instrument itself and not requiring coin service

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<sup>132</sup> Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, CC Docket Nos. 89-79 and 87-313, 6 FCC Rcd 4524, 4531 (1991) ("Part 69 Amendments Order"), modified on recon., 7 FCC Rcd 5235 (1992); further recon. denied, 10 FCC Rcd 1570 (1994).

<sup>133</sup> The Commission defines a "new service" as a service that adds to the range of options already available to customers. Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order, 5 FCC Rcd 6824 (1990).

<sup>134</sup> Part 69 Amendments Order, 6 FCC Rcd at 4531

<sup>135</sup> Id.

<sup>136</sup> In the Matter of Policy and Rules Concerning Rates for Dominant Carriers Order on Reconsideration, 6 FCC Rcd 2637, 2695 (1991).

<sup>137</sup> 47 C.F.R. §§ 61.38, 61.39, 61.50(i).

<sup>138</sup> These payphones have also been referred to as instrument implemented payphones.

signaling from the central office.<sup>139</sup> Coin service is defined as central-office-implemented coin telephone service.<sup>140</sup> Under the Coin Registration Order and current Part 68 rules, only instrument-implemented payphones can be registered for connection to the network. On the other hand, central-office-implemented coin telephone service interacts with the telephone itself to provide coin service and answer supervision. PTC's petition requests that the coin service line be tariffed and offered to the public presumably for connection of instruments capable of interacting with the central-office-implemented line and service.<sup>141</sup> We tentatively conclude that Section 68.2(a)(1) of the Commission's regulations should be amended to facilitate registration of both instrument implemented and central-office-implemented payphones.<sup>142</sup> We seek comment on this tentative conclusion. We also seek comment on the location of the demarcation point for reclassified LEC payphones. We tentatively conclude that the demarcation for all new LEC payphones should be consistent with the minimum point of entry ("MPOE") standards for other wireline services.<sup>143</sup> In addition, we tentatively conclude the demarcation point should be the same one as incumbent LECs use for PPOs today.<sup>144</sup>

**48.** Incumbent LECs, particularly the BOCs, also provide to their own payphones a number of other services that may be appropriate to unbundle and make available to PSPs. We seek comment on whether any of the following services, or others suggested by commenters, should be unbundled under the rules to be adopted in this proceeding: fraud protection; installation and maintenance services; joint marketing opportunities; per-call tracking capabilities; and call validation services. With regard to fraud protection, the superior fraud protection available to BOC payphones is partly due to the BOCs' use of network coin control functions, which are not as easily bypassed as set-based coin control functions. Another fraud protection feature is the use of specialized telephone numbers to alert international operators that a telephone to which a collect or third-party call is attempted to be billed is a payphone. Should the Commission require these aspects of fraud protection to be available on an unbundled basis, as discussed above?

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<sup>139</sup> 47 C.F.R. § 68.3

<sup>140</sup> Id.

<sup>141</sup> PTC Petition at 1

<sup>142</sup> The California Payphone Association (CPA) filed before the Commission a Petition for Rule Making requesting that Section 68.2(a)(1) of the rules be amended to allow for the registration of all coin-operated telephones and that the Commission re-examine and clarify its interpretation of Section 68.2(a)(1). We note that our tentative conclusion that we should amend this rule would address the CPA petition.

<sup>143</sup> 47 C.F.R. § 68.3

<sup>144</sup> Id.

**b. Transfer of Payphone Equipment to Unregulated Status**

49. If we conclude that we will treat payphones as detariffed CPE,<sup>145</sup> the incumbent LECs would have to transfer their payphones and related equipment from regulated to unregulated activities. Our rules provide that, if reallocations of telecommunications plant (i.e., central office equipment and outside plant) from regulated to nonregulated operations are required, such plant will be transferred at undepreciated baseline cost<sup>146</sup> plus an interest charge based on the authorized interstate rate of return to reflect the time value of money.<sup>147</sup> We seek comment on the specific assets to be transferred. We tentatively conclude that the assets to be transferred should be defined generally in terms of CPE deregulation. Thus, the assets to be transferred may include all facilities related to payphone service, including associated taxes and depreciation, but likely would not include the loops connecting the payphones to the network, or the central office "coin-service"<sup>148</sup> or operator service facilities supporting incumbent LEC payphones. Including these network support facilities may be inappropriate because it would allow incumbent LECs to continue providing a different form of interconnection to their payphones than is available to PSPs. We also tentatively conclude that a phase-in period for a transfer of payphone-related assets is not necessary, because payphone terminal equipment consists of less than one percent of total plant investment for the entire LEC industry.<sup>149</sup> We seek comment on our tentative conclusions and the general approach to asset transfers outlined here. We note that we will seek comment in a separate proceeding on how we should treat the LECs' payphone service operations for accounting purposes. We also seek comment on whether our approach to asset transfers is consistent with the 1996 Act's definition of "payphone service" as the "provision of public or semi-public pay telephones, the provision of inmate telephone service in correctional institutions, and any ancillary services"<sup>150</sup>

**c. Termination of Access Charge Compensation and Other Subsidies**

50. Incumbent LECs today generally recover payphone costs allocated to the interstate jurisdiction through the per-minute carrier common line ("CCL") charge they assess on IXCs and other interstate access customers for originating and terminating interstate calls. The incumbent LEC assesses the PPO a subscriber line charge ("SLC") (at the multi-line business

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<sup>145</sup> See para. 44, above.

<sup>146</sup> By baseline cost, we mean either the depreciated original cost at the time of the initial assignment or allocation of existing plant or the original cost of subsequently acquired new plant. *Id.*

<sup>147</sup> Joint Cost Order, 2 FCC Rcd 1298, 1320.

<sup>148</sup> As discussed in paras. 45-47, above.

<sup>149</sup> Common Carrier Statistics at 27, Table 2.7.

<sup>150</sup> 47 U.S.C. § 276(d).

rate) to recover the payphone common line costs associated with that phone.<sup>151</sup> In the case of competitive payphones, a PPO recovers its payphone costs out of the revenue it receives from end users, premises owners, and OSPs to whom its payphones are presubscribed.

**51.** The 1996 Act mandates that the Commission "discontinue the intrastate and interstate carrier access charge payphone service elements and payments ... and all intrastate and interstate subsidies from basic exchange and exchange access revenues[.]"<sup>152</sup> Accordingly, we must adopt rules that provide for the removal from regulated intrastate and interstate rate structures of all charges that recover the costs of payphones (*i.e.*, the costs of payphone sets, not including the costs of the lines connecting those sets to the public switched network, which, like the lines connecting competitive payphones to the network, will continue to be treated as regulated). We tentatively conclude that incumbent LECs must reduce their interstate CCL charges by an amount equal to the interstate allocation of payphone costs currently recovered through those charges. LECs subject to the price cap rules would treat this as an exogenous cost change to the Common Line basket pursuant to Section 61.44(c) of our rules.<sup>153</sup> We request incumbent LECs to identify in their comments all accounts that contain costs attributable to their payphone operations. We also request comment on whether specific cost pools and allocators should be used to capture the nonregulated investment and expenses associated with their payphone operations. We also seek comment on whether a transition period is necessary to move from subsidized compensation to per-call compensation for LEC payphones, and how that transition would proceed. For example, should there be a one-time elimination of the subsidies, or should they be phased out over a specified time? If the latter, what time period would be appropriate?

**52.** We also propose, pursuant to the mandate of Section 276(b)(1)(B), to require incumbent LECs to remove from their intrastate rates any charges that recover the costs of payphones. We solicit comment on whether the Commission should set a deadline and a specific mechanism for elimination of any intrastate subsidies as well, or whether it would be both consistent with the statute as well as preferable from a policy perspective to permit the states to formulate their own mechanisms for achieving this result within a specific time frame? We ask parties to provide state-specific information regarding the intrastate rate elements that recover payphone costs.

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<sup>151</sup> We recently reaffirmed a decision by the Common Carrier Bureau concluding that PPOs should be classified as "end users" under our rules. *C.F. Communications Corp. v. Century Telephone of Wisconsin, Inc.*, Memorandum Opinion and Order, 10 FCC Rcd 9775 (1995), petition for review filed, *C.F. Communications Corp. v. FCC and United States*, No. 95-1563 (D.C. Cir. filed Nov. 6, 1995). Thus, PPOs are required to pay a SLC for their use of common lines connected to the payphones they serve, but are not assessed a per-minute CCL charge.

<sup>152</sup> 47 U.S.C. § 276(b)(1)(B)

<sup>153</sup> 47 C.F.R. § 61.44(c)

53. In the telephone network, payphones, as well as all other telephones, are connected to the local switch by means of a subscriber line. The costs of the subscriber line that are allocated to the interstate jurisdiction are recovered through two separate charges: a flat-rate SLC assessed upon the end user customer who subscribes to local service; and a per-minute CCL charge that recovers the balance of the interstate subscriber line costs not recovered through the SLC. As noted earlier, LEC payphone costs are also included in the CCL charge. The CCL charge, however, applies to interstate switched access service that is unrelated to payphone service costs. While PPOs are required to pay the SLC for the loop used by each of their payphones, LECs have not been required to pay this charge because the subscriber lines connected to LEC payphones have been recovered entirely through the CCL charge. We tentatively conclude that, to avoid discrimination among payphone providers, the SLC should apply to subscriber lines that terminate at both LEC and competitive payphones. We tentatively conclude that the removal of payphone costs from the CCL and the payment or imputation of a SLC to the subscriber line that terminates at a LEC nonregulated payphone would result in the recovery of LEC payphone costs on a more cost-causative basis.<sup>154</sup> We seek comment on these tentative conclusions and, more generally, on how removing LEC payphones from the CCL charge would affect the SLC.<sup>155</sup>

54. The incumbent LECs' multi-line business SLC is currently subject to a \$6.00 per month cap.<sup>156</sup> As noted above, those LECs with interstate subscriber line costs that exceed this amount recover a portion of the interstate costs of subscriber lines through the CCL charge. The issue of the appropriate interstate SLC for the future has been referred to a Federal-State Joint Board.<sup>157</sup> To the extent that LECs charge or impute to their own payphone operations only the multi-line business SLC, which may be less than the full interstate cost of the subscriber lines connecting their payphones to the network, and recover the balance of the cost of these lines through the CCL charge, they may, in effect, be subsidizing their payphones with access charge revenues, in violation of Section 276. We seek comment on whether LECs in those circumstances should charge or impute to their own payphone operations, as well as to PPOs, an additional monthly charge representing the difference between the SLC cap and the full interstate cost of these subscriber lines. We also seek comment on whether comparable changes should be made to incumbent LECs' intrastate rates.

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<sup>154</sup> See Ameritech/SW Bell Waiver at para. 25

<sup>155</sup> We note that pursuant to Section 254 of the Act we have referred to the universal service Joint Board the issue of whether the existing SLC should be preserved or otherwise altered. See Federal-State Joint Board on Universal Service, NPRM and Order Establishing Joint Board, FCC 96-93 at para. 114 (rel. March 8, 1996) ("Joint Board Notice"). Because the SLC recovers only the costs of the telephone line, the effect on the SLC of removing LEC payphones from the CCL charge is beyond the scope of the referral to the Joint Board. Our inquiry in this proceeding is strictly limited to determining whether terminating all subsidies for LEC payphones would include requiring LECs to pay the SLC for their payphones.

<sup>156</sup> 47 C.F.R. § 69.104

<sup>157</sup> See Joint Board Notice at para. 114

**d. Deregulation of AT&T Payphones**

55. In the Interstate, Interexchange Marketplace proceeding, we noted that we would consider in the instant proceeding "the issue of bundling pay telephone equipment with the underlying transmission capacity."<sup>158</sup> We tentatively conclude that other IXC bundling issues should be treated under the same rules we have proposed in the Interstate, Interexchange Marketplace proceeding. Commenters who disagree with this tentative conclusion, however, are invited to comment in this proceeding.

56. Like LEC payphones, AT&T payphones are classified as network equipment and, therefore, may receive subsidies.<sup>159</sup> We tentatively conclude that payphones provided by AT&T should be classified as CPE. While the 1996 Act does not expressly address AT&T payphones, Section 276 directs the Commission to adopt regulations that will "promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public[.]"<sup>160</sup> Discontinuing possible subsidies for AT&T payphones would be congruent with the 1996 Act's requirement that the Commission discontinue subsidies for other payphones (i.e., those owned by incumbent LECs) and would provide for symmetrical regulation of the payphone industry.<sup>161</sup> There are other reasons why this proposed action is in harmony with the other rules we propose in this NPRM. First, since Tonka, AT&T payphones have been treated the same as BOC payphones. Once LEC telephones, including those provided by the BOCs, are declared to be CPE, the basis for treating AT&T payphones as network equipment no longer exists. Second, we believe that deregulating AT&T payphones is in line with our general policy to deregulate non-dominant carriers.<sup>162</sup> We seek comment on this tentative conclusion.

**C. NONSTRUCTURAL SAFEGUARDS FOR BOC PROVISION OF PAYPHONE SERVICE****1. The 1996 Act**

57. Section 276(b)(1)(C) directs the Commission to "prescribe a set of nonstructural safeguards for Bell operating company payphone service to implement the

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<sup>158</sup> In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace, Notice of Proposed Rulemaking, CC Docket No. 96-61 (rel. March 25, 1996) at para. 91.

<sup>159</sup> Tonka, 58 Rad. Reg. 2d (P&F) at 903, 910-11.

<sup>160</sup> 47 U.S.C. § 276(b).

<sup>161</sup> 47 U.S.C. § 276(b)(1)(B).

<sup>162</sup> AT&T Reclassification Order, 11 FCC Red at 3271.

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

## 2. Discussion

### a. Background

58. The Computer III nonstructural safeguards currently apply to a BOC’s provision of payphone service if enhanced services are provided through the payphone.<sup>163</sup> Under the Computer III framework, BOCs are permitted to provide enhanced services on an integrated basis subject to nondiscrimination safeguards. The safeguards the Commission adopted in Computer III<sup>164</sup> include: (1) nondiscriminatory access to network features and functionalities; (2) restrictions on the use of Customer Proprietary Network Information (“CPNI”); (3) network information disclosure rules; (4) nondiscrimination in the provision, installation, and maintenance of services as well as nondiscrimination reporting requirements; and (5) cost accounting safeguards. We tentatively conclude that all Computer III nonstructural safeguards must be applied to meet our obligation under the 1996 Act. We seek comment on this tentative conclusion. We also seek comment on whether there are other nonstructural safeguards that, while not explicitly specified in the Computer III, should be applied to BOC payphones.

59. Currently, the Commission regulates BOC provision of enhanced services through Comparably Efficient Interconnection (“CEI”) and Open Network Architecture (“ONA”) requirements that require unbundled nondiscriminatory access to BOC network features and

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<sup>163</sup> See In the Matter of American Telephone and Telegraph Company Petition for Limited Waiver of Comparably Efficient Interconnection Requirements of Third Computer Inquiry; Report and Order, 8 FCC Rcd 6808 (1993).

<sup>164</sup> See Amendment of Section 64.702 of the Commission’s Rules and Regulations (Computer III), CC Docket No. 85-229, Phase I, 104 FCC 2d 958 (1986) (Phase I Order), recon., 2 FCC Rcd 3035 (1987) (Phase I Reconsideration Order), further recon., 3 FCC Rcd 1135 (1988) (Phase I Further Reconsideration Order), second further recon., 4 FCC Rcd 5927 (1989) (Phase I Second Further Reconsideration Order); Phase I Order and Phase I Reconsideration Order vacated California v. FCC, 905 F.2d 1217 (9th Cir. 1990) (California I); Phase II, 2 FCC Rcd 3072 (1987) (Computer III Phase II Order), recon., 3 FCC Rcd 1150 (1988) (Phase II Reconsideration Order), further recon., 4 FCC Rcd 5927 (1989) (Phase II Further Reconsideration Order); Phase II Order vacated, California I, 905 F.2d 1217 (9th Cir. 1990); Computer III Remand Proceeding, 5 FCC Rcd 7719 (1990) (ONA Remand Order), recon., 7 FCC Rcd 909 (1992), pets. for review denied, California v. FCC, 4 F.3d 1505 (9th Cir. 1993) (California II); Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards, 6 FCC Rcd 7571 (1991) (BOC Safeguards Order), BOC Safeguards Order vacated in part and remanded, California v. FCC, 39 F.3d 919 (9th Cir. 1994) (California III), cert. denied, 115 S.Ct. 1427 (1995).

functionalities.<sup>165</sup> Pursuant to these requirements, BOCs must file a service-specific CEI plan before offering any enhanced service on an integrated basis.<sup>166</sup> A BOC must demonstrate in its CEI plan how it would provide competing enhanced service providers (ESPs) with "equal access" to all basic underlying network services the BOC used to provide its own enhanced services.<sup>167</sup> Subsequently, the Commission required BOCs to develop and implement ONA plans detailing more fundamental unbundling of their basic network services.<sup>168</sup> ONA requires further unbundling of network elements than under CEI because it is not limited to those elements associated with specific BOC enhanced services.<sup>169</sup> In 1993, the Common Carrier Bureau lifted structural separation requirements after each BOC demonstrated that its ONA plan complied with the BOC Safeguards Order.<sup>170</sup> Following the California III court decision, the Commission has continued to require BOCs to file CEI plans for each individual enhanced service it offers in addition to fulfilling the access requirements of its ONA plan.

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<sup>165</sup> Filing and Review of Open Network Architecture Plans, 4 FCC Rcd 1 (1988) (BOC ONA Order), recon., 5 FCC Rcd 3084 (1990) (BOC ONA Reconsideration Order); 5 FCC Rcd 3103 (1990) (BOC ONA Amendment Order), erratum, 5 FCC Rcd 4045, pets. for review denied, California v. FCC, 4 F.3d 1505 (9th Cir. 1993), recon., 8 FCC Rcd 97 (1993) (BOC ONA Amendment Reconsideration Order); 6 FCC Rcd 7646, 7649-50 (1991) (BOC ONA Further Amendment Order); 8 FCC Rcd 2606 (1993) (BOC ONA Second Further Amendment Order), pet. for review denied, California v. FCC, 4 F.3d 1505 (9th Cir. 1993).

<sup>166</sup> Phase I Order, 104 FCC 2d at 964-965.

<sup>167</sup> See Phase I Order, 104 FCC 2d at 1036.

<sup>168</sup> Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services, Notice of Proposed Rulemaking, 10 FCC Rcd 8360, 8372, para. 17 (1995) ("Computer III Further Remand Proceedings").

<sup>169</sup> Id.

<sup>170</sup> See Bell Atlantic's Notice and Petition for Removal of the Structural Separation Requirement and Waiver of Certain State Tariffing Requirements, CC Docket Nos. 90-623 and 88-2, Phase I, 7 FCC Rcd 3877 (1992) (Bell Atlantic Order); Southwestern Bell Telephone Company Notice and Petition for Removal of the Structural Separation Requirement and Waiver of Certain State Tariffing Requirements, CC Docket Nos. 90-623 and 88-2, Phase I, 7 FCC Rcd 7294 (1992) (SWBT Order); US West Notice and Petition for Removal of the Structural Separation Requirement and Waiver of Certain State Tariffing Requirements, CC Docket Nos. 90-623 and 88-2, Phase I, 7 FCC Rcd 3639 (1992) (US West Order); Ameritech Operating Companies Notice and Petition for Removal of the Structural Separation Requirement and Waiver of Certain State Tariffing Requirements, CC Docket Nos. 90-623 and 88-2, Phase I, 7 FCC Rcd 4104 (1992) (Ameritech Order); New York Telephone Company and New England Telephone Company Notice and Petition for Removal of the Structural Separation Requirement and Waiver of Certain State Tariffing Requirements, CC Docket Nos. 90-623 and 88-2, Phase I, 7 FCC Rcd 8633 (1992) (NYNEX Order); Pacific Bell and Nevada Bell Notice and Petition for Removal of the Structural Separation Requirement and Waiver of Certain State Tariffing Requirements, CC Docket Nos. 90-623 and 88-2, Phase I, 8 FCC Rcd 3982 (1993) (Pacific Order); BellSouth Corporation Notice and Petition for Removal of the Structural Separation Requirement and Waiver of Certain State Tariffing Requirements, CC Docket Nos. 90-623 and 88-2, Phase I, 8 FCC Rcd 4864 (1993) (BellSouth Order).

**b. BOC CEI Plans**

**60.** To ensure BOC compliance with the Computer III and ONA requirements, we propose to require that each BOC file, within 90 days of the effective date of the order in this proceeding, an initial CEI plan describing how it intends to comply with the CEI equal access parameters and nonstructural safeguards for the provision of payphone services. Thereafter, the BOCs may integrate the filing of information on payphone services unbundling and nonstructural safeguards with their ongoing ONA filings. Generally, in a CEI plan, a BOC must describe how it intends to comply with the CEI "equal access" parameters for the specific payphone service it intends to offer. The CEI equal access parameters include: interface functionality; unbundling of basic services; resale; technical characteristics; installation, maintenance, and repair; end user access; CEI availability; minimization of transport costs; and availability to all interested customers or enhanced service providers.<sup>171</sup> We discuss those parameters in more detail below. For each parameter listed, we seek comment on whether that particular CEI requirement should apply to a BOC's provision of payphone service. In addition, a BOC must describe in a CEI plan how it will handle CPNI; network disclosure; and nondiscrimination in the provision of installation, maintenance, and quality of service. Because the 1996 Act requires that we apply safeguards that are equal to those set forth in Computer III "at a minimum,"<sup>172</sup> we also seek comment on any other parameters or requirements for BOC payphone service that, while not listed in this Notice, are consistent with the intent of the 1996 Act.

**61.** Under Computer III and ONA, BOCs must provide comparably efficient interconnection (CEI) to unbundled network features and functionalities. The Commission has specified seven parameters to judge whether a BOC is providing CEI. We tentatively conclude that these CEI parameters should apply to BOC provision of basic payphone services. Thus, we propose to require that the BOCs specify how they will provide CEI for payphone services in the payphone CEI plan for the following parameters: (1) Interface functionality. A BOC would "make available standardized hardware and software interfaces that are able to support transmission, switching, and signalling functions identical to those utilized" in its own payphone services.<sup>173</sup> (2) Technical Characteristics. A BOC would provide basic services with technical characteristics that are equal to the technical characteristics it uses for its own payphone services.<sup>174</sup> (3) Installation, Maintenance, and Repair. The time for installation, maintenance and repair of the basic services and facilities included in a CEI offering would be the same as those the BOC provides to its own payphone service operations.<sup>175</sup> (4) Resale. A BOC's payphone

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<sup>171</sup> Phase I Order, 104 FCC 2d at 1039-1043

<sup>172</sup> 47 U.S.C. § 276(b)(1)(C)

<sup>173</sup> Phase I Order, 104 FCC 2d at 1039.

<sup>174</sup> Id. at 1041.

<sup>175</sup> Id.

service operations would take the basic services used in its payphone service offerings at their unbundled tariffed rates to prevent improper cost-shifting to regulated operations and anti-competitive pricing in unregulated markets.<sup>176</sup> (5) End User Access. A BOC would provide to all end users the same capabilities to use abbreviated dialing or signalling to activate or obtain access to payphone services that utilize its facilities. This parameter would require the BOC to provide end users equal opportunities to obtain access to basic facilities through derived channels, whether they use the payphone service offerings of the BOC or of a competing provider.<sup>177</sup> (6) CEI Availability. A BOC's CEI offering would be available and fully operational on the date that it offers its corresponding payphone service to the public. That parameter also would require the BOC to provide a reasonable time prior to that date when prospective users of the CEI offering can utilize the CEI facilities and services for purposes of testing their payphone service offerings.<sup>178</sup> BOCs would be prevented from restricting the availability of the CEI offering to any particular class of customer or payphone service competitor.<sup>179</sup> (7) Minimization of Transport Costs. A BOC would provide competitors with interconnection facilities that minimize transport costs.<sup>180</sup>

62. In its CEI plan, a BOC would explain how it would unbundle basic payphone services. Thus, a BOC would indicate how it plans to unbundle, and associate with a specific rate element in the tariff, the basic services and basic service functions that underlie its provision of payphone service.<sup>181</sup> Nonproprietary information used by the BOC in providing the unbundled basic services would be made available as part of CEI.<sup>182</sup> In addition, any options available to the BOC in the provision of such basic services or functions would be included in the unbundled offerings.<sup>183</sup> As discussed above,<sup>184</sup> we tentatively conclude that all incumbent LEC payphones should be treated as detariffed CPE. With this treatment, incumbent LECs must make payphone services available to customers on an individual, unbundled basis. We seek

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<sup>176</sup> Id. at 1040.

<sup>177</sup> Id.

<sup>178</sup> Id.

<sup>179</sup> Id. at 1042.

<sup>180</sup> Id.

<sup>181</sup> Id. at 1040.

<sup>182</sup> Id.

<sup>183</sup> Id.

<sup>184</sup> See para. 44, above.

comment on whether this tentative conclusion concerning all incumbent LECs would satisfy this aspect of the nonstructural safeguards for BOC payphones.

63. In a separate proceeding, the Commission is currently examining a carrier's obligations under the CPNI provisions of the Act.<sup>185</sup> We tentatively conclude that the rules we adopt in that proceeding should apply to a BOCs' provision of payphone service. We invite comments on this tentative conclusion.

64. We tentatively conclude that the BOCs must comply with the Computer III and ONA network information disclosure requirements. The BOCs cannot design new network services or change network technical specifications to the advantage of their own payphones.<sup>186</sup> Pursuant to these rules, the BOCs would disclose information about changes in their networks or new network services at two different points in time.<sup>187</sup> First, disclosure would occur at the "make/buy" point: when a BOC decides to make for itself, or procure from an unaffiliated entity, any product whose design affects or relies on the network interface. Second, a BOC would publicly disclose technical information about a new service 12 months before it is introduced. If the BOC could introduce the service within 12 months of the make/buy point, it would make a public disclosure at the make/buy point. The public disclosure, however, would not occur less than six months before the introduction of the service.<sup>188</sup> We also seek comment on whether the network information disclosure requirements we have proposed in the Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 proceeding should augment or replace the application of the Computer III disclosure requirements proposed in this proceeding.<sup>189</sup>

65. In addition, we tentatively conclude that BOCs must comply with the Computer III and ONA requirements regarding nondiscrimination in the quality of service, installation, and maintenance. BOCs must indicate in their CEI plans how they would comply with these requirements. BOCs must also report quarterly on nondiscrimination in installation and maintenance, semi-annually on tariffed payphone services, and annually on any changes to

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<sup>185</sup> Implementation of the Telecommunications Act of 1996, Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, CC Docket No. 96-115 (rel. May 17, 1996).

<sup>186</sup> BOC Safeguards Order, 6 FCC Rcd at 7602-04.

<sup>187</sup> Report and Order, Amendment to Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), 2 FCC Rcd 3072, 3087-88 (1988). The network information subject to disclosure includes only network changes or new basic services that affect the interconnection of enhanced services with the network. Id. at 3097. These network disclosure rules parallel those for CPE.

<sup>188</sup> Computer III, 3 FCC Rcd 1150, 1164 (1988).

<sup>189</sup> Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Notice of Proposed Rulemaking, CC Docket 96-98, FCC 96-182 (rel. April 19, 1996) at paras. 189-194.

its payphone CEI plan to comply with other Computer III and ONA requirements. BOCs must also annually certify with regard to nondiscrimination in the quality of service. We seek comment on how these reporting requirements should apply to BOC payphones.

66. We will seek comment in a separate proceeding on whether we should apply accounting safeguards identical to those safeguards adopted in Computer III to prevent the subsidization of payphone services by BOC telephone exchange service or exchange access operations, or whether additional accounting safeguards are necessary to fulfill our responsibilities under Sections 276(a)(1) and (b)(1)(C).

#### **D. ABILITY OF BOCs TO NEGOTIATE WITH LOCATION PROVIDERS ON THE PRESUBSCRIBED INTERLATA CARRIER**

##### **1. The 1996 Act**

67. Section 276(b)(1)(D) directs the Commission to

provide for Bell operating company payphone service providers to have the same right that independent payphone providers have to negotiate with the location provider on the location provider's selecting and contracting with, and, subject to the terms of any agreement with the location provider, to select and contract with, the carriers that carry interLATA calls from their payphones, unless the Commission determines in the rulemaking pursuant to this section that it is not in the public interest[.]<sup>190</sup>

68. Section 276(b)(3) states that "[n]othing in this section shall affect any existing contracts between location providers and payphone service providers or interLATA or intraLATA carriers that are in force and effect as of the date of enactment of the Telecommunications Act of 1996." The legislative history of Section 276 states "that the location provider has the ultimate decision-making authority in determining interLATA services in connection with the choice of payphone providers."<sup>191</sup>

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<sup>190</sup> 47 U.S.C. § 276(b)(1)(D).

<sup>191</sup> Conference Report at 44.

## 2. Discussion

69. In the years immediately following divestiture, the BOCs routed all 1+ and 0+ interLATA traffic from their payphones to AT&T.<sup>192</sup> This practice continued until 1988, when the U.S. District Court for the District of Columbia found that the solution most in keeping with the Decree's terms was a "billing party pays" system where "the billed party [would] select the interexchange carrier of his choice simply by dialing 0+."<sup>193</sup> But the Court also recognized that the technology for such a system would not be available for several years. The Court, therefore, adopted an interim solution in which the owners or proprietors of the premises on which BOC payphones are located would select the presubscribed IXC for those telephones.<sup>194</sup> This solution is still in force today.<sup>195</sup>

70. While the location provider selects the OSP for BOC and GTE payphones, all other payphone providers are able to select the OSP serving their payphones. As discussed above, payphone providers, both PPOs and independent LECs, compete in the market for payphone services by offering the location provider a commission on coin and 0+ traffic originating from the payphones located on the location provider's premises. In turn, payphone providers earn revenue by reselling local and 1+ long distance service and by contracting for 0+ traffic with OSPs that pay commissions on 0+ traffic.<sup>196</sup> The legislation directs the Commission to provide similar rights to BOCs, unless the Commission determines that it is not in the public interest.

71. We seek comment on the extent to which extending to the BOCs the same rights that all other payphone providers have to select and contract with the interLATA carriers that carry interLATA traffic from their payphones would be "not in the public interest."<sup>197</sup> Will these rights benefit the general public by increasing competition, available services, and overall efficiency? Will carrier-selection rights help to foster increased competition and market parity that will "promote the widespread deployment of payphone services to the benefit of the general

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<sup>192</sup> The divestiture decree allocated to the BOCs ordinary coin and "Charge-a-Call" (credit card) public payphones. See Plan of Reorganization, United States v. Western Elec. Co., No. 82-0192, slip op. at 83 (D.D.C. Dec. 16, 1982); United States v. Western Elec. Co., 569 F. Supp. at 1102 n. 195.

<sup>193</sup> Id. at 360.

<sup>194</sup> Id. This same condition was later extended to GTE. United States v. GTE Corp., No. 83-1298, slip op. at 4-5 (D.D.C. Dec. 23, 1988).

<sup>195</sup> See n. 23, above.

<sup>196</sup> Second Report and Order, 7 FCC Rcd at 3251.

<sup>197</sup> 47 U.S.C. § 276(b)(1)(D).

public"?<sup>198</sup> Parties commenting on this issue should also address how any Commission action with respect to a BOC's right to select and contract with interLATA carriers would be consistent with the other goals enunciated in Section 276, such as promoting regulatory parity between BOCs and independent payphone providers, and that the location provider has the ultimate decision-making authority in determining interLATA services in connection with the choice of payphone providers.

72. We also seek comment on whether the ability to select the interLATA carrier serving their payphones is likely to permit the BOCs to behave anticompetitively in the payphone market in the absence of safeguards to prevent cost misallocations and discrimination. For example, if the Commission ultimately provides the BOCs with carrier-selection rights, should we be concerned that the BOCs, if they are able to provide interLATA service, will direct such service to themselves? In addition, we seek comment on whether the structural and accounting safeguards mandated under Sections 271 and 272 of the 1996 Act, and any Commission rules implementing these safeguards, are sufficient to prevent anticompetitive abuses. If not, we seek comment on whether the Commission should adopt rules to prevent BOCs from giving more favorable interLATA rates to their own payphone operations than to their payphone competitors. Parties are asked to specify what safeguards would be necessary to prevent potential anticompetitive behavior by the BOCs in this regard. We also seek comment on to what extent a BOC not authorized to provide in-region interLATA service under Section 271 of the 1996 Act should be allowed to participate in the selection of the interLATA carrier, especially if the BOC has a non-attributable interest in the interLATA carrier, such as an option to purchase or an agreement to merge. Parties commenting on the BOCs' role in selecting a presubscribed interLATA carrier for BOC payphones should include a detailed analysis of why a BOC's participation, together with the location provider, in the selection of the presubscribed interLATA carrier is or is not in the public interest.

73. We tentatively conclude that, Section 276(b)(3) of the Act, which provides that "nothing in this section shall affect any existing contracts between location providers and payphone service providers or interLATA or intraLATA carriers that are in force and effect as of the date of enactment of the [Act]," grandfathers all contracts in existence as of February 8, 1996. In addition to seeking comment on this tentative conclusion, however, we also seek comment on what should be considered a Section 276(b)(3) contract for purposes of Section 276(b)(1)(D). For example, should a location provider's letter of authorization ("LOA") for a particular IXC be considered a "contract"? We tentatively conclude that a Section 276(b)(1)(D) contract must be a lawful agreement where both parties intended to be bound. Commenters should address the issue of whether an LOA or other such similar documents fit within this definition.

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<sup>198</sup> 47 U.S.C. § 276(b)(1).

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**E. ABILITY OF PAYPHONE SERVICE PROVIDERS TO NEGOTIATE WITH LOCATION PROVIDERS ON THE PRESUBSCRIBED INTRALATA CARRIER****1. The 1996 Act**

74. Section 276(b)(1)(E) directs the Commission to "provide for all payphone service providers to have the right to negotiate with the location provider on the location provider's selecting and contracting with, and, subject to the terms of any agreement with the location provider, to select and contract with, the carriers that carry intraLATA calls from their payphones."<sup>199</sup>

**2. Discussion**

75. Currently, in some states, competitive payphones are required to route intraLATA 0+ and 0- calls, and sometimes other intraLATA calls, to the incumbent LEC. In contrast, Section 276(b)(1)(E) requires us to prescribe regulations to allow PSPs to negotiate with the location provider on the selecting and contracting with the intraLATA carrier serving the payphone. In accordance with this requirement, we tentatively conclude that all PSPs, whether LECs or PPOs, should be given this right to negotiate with location providers concerning the intraLATA carrier. We also tentatively conclude that the intraLATA carrier presubscribed to a payphone should be required to meet our minimum standards for the routing and handling of emergency calls.<sup>200</sup> We seek comment on these tentative conclusions.

**F. ESTABLISHMENT OF PUBLIC INTEREST PAYPHONES****1. The 1996 Act**

76. Section 276(b)(2) requires the Commission to "determine whether public interest payphones, which are provided in the interest of public health, safety, and welfare, in locations where there would otherwise not be a payphone, should be maintained, and if so, ensure that such public interest payphones are supported fairly and equitably."<sup>201</sup>

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<sup>199</sup> 47 U.S.C. § 276(b)(1)(E)

<sup>200</sup> 47 C.F.R. § 64.706. We have previously recognized that "states are free to adopt more stringent requirements" in this area. Policies and Rules Concerning Operator Service Providers and Call Aggregators, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 94-158, FCC 96-75 at para. 22 (rel. March 5, 1996).

<sup>201</sup> 47 U.S.C. § 276(b)(2).

## 2. Discussion

77. Because Section 276(b)(2) directs the Commission to "determine whether public interest payphones ... should be maintained,"<sup>202</sup> we seek comment on whether it would be in the public interest to maintain payphones provided in the interest of public health, safety, and welfare, in locations where there would otherwise not be a payphone.<sup>203</sup>

78. If we determine that public interest payphones should be maintained, then Section 276(b)(2) gives the Commission statutory authority to determine further how public interest payphones should be regulated. As with our jurisdiction over local call rates, we seek comment on a range of options for maintaining public interest payphones. One option would be for the Commission to prescribe federal regulations for the maintenance of these payphones. We seek comment on whether and how this approach would serve the public interest, and on whether Section 276 requires the Commission to assume this responsibility.

79. A second option would be for us to establish national guidelines for public interest payphones. We seek comment on whether there are any state initiatives or programs concerning public interest payphones that the Commission could use as a model for national guidelines. For example, California has established an extensive statewide program for the designation and funding of public interest payphones.<sup>204</sup> Commenters supporting national guidelines should specify what factors the guidelines should consider and how the guidelines should be applied on a nationwide basis.

80. In the event that the Commission establishes national guidelines for public interest payphones, we seek comment on what is to be considered a "public interest payphone." The Joint Explanatory Statement for Section 276 clarifies that the term "public interest payphones" refers to payphones where payphone service would not otherwise be available as a result of the operation of the market.<sup>205</sup> "Thus, the term does not apply to a payphone located near other payphones, or to a payphone that, even though unprofitable by itself, is provided for a location provider with whom the payphone provider has a contract."<sup>206</sup> The Commission has previously examined, in the context of the PTC petition,<sup>207</sup> the availability of payphones in

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<sup>202</sup> 47 U.S.C. § 276(b)(2).

<sup>203</sup> Id.

<sup>204</sup> See California Public Utilities Commission, Workshop Report on Customer Owned Pay Telephone Service in Response to Commission Decision 90-06-018 (rel Dec. 21, 1993).

<sup>205</sup> Conference Report at 43.

<sup>206</sup> Id. (emphasis in original).

<sup>207</sup> See para. 43, above.

unprofitable locations where public policy objectives would call for such availability. In proposing a definition of public interest payphones, several commenters in that proceeding would include certain payphones that generate very little revenue or that operate at a financial loss. They note that these payphones are generally in isolated locations or in areas with a high incidence of vandalism.<sup>208</sup> This definition from commenters does not take into account the congressional directive that one must look to whether a particular payphone is part of a "package" of payphones in determining whether a payphone is a public interest payphone. We seek comment, therefore, on whether a "public interest payphone" should be defined as a payphone (1) that operates at a financial loss, but also fulfills some public policy objective, such as emergency access; and (2) even though unprofitable by itself, is not provided for a location provider with whom the PSP has a contract.<sup>209</sup> Under this definition, many payphones that fulfill important public policy objectives would not be included because they would be paid for, in the form of lower commission payments, by the entity that is requesting that a payphone be placed in a particular location to fulfill a public policy objective. This proposed definition would not necessarily decrease the number of payphones in existence fulfilling public policy objectives, but would require the entities that most directly benefit from these low profitability payphones to assume the cost of their availability. We seek comment generally on this possible definition. Parties may specify whether the definition should be narrower, broader, or more specific.

**81.** A third option for maintaining public interest payphones would be to defer to the states to determine, pursuant to their own statutes and regulations, which payphones should be treated as "public interest payphones." This approach would treat the provision of "public interest payphones" as primarily a matter of state concern. We seek comment on whether it would be consistent with the statute and better serve the public interest to allow the states to develop their own guidelines regarding which payphones are "public interest payphones."

**82.** With regard to a funding mechanism to support public interest payphones "fairly and equitably,"<sup>210</sup> we seek comment on whether such a mechanism should be handled in conjunction with how public interest payphones are maintained, whether through federal regulations, federal guidelines for the states, or by the states themselves. In the alternative, would it serve the public interest for the Commission and the states to administer different portions of a public interest payphone program? For example, should the states determine which payphones are "public interest payphones," yet have the FCC prescribe guidelines to govern the funding mechanism for those payphones?<sup>211</sup> Commenters that support a Commission-mandated funding mechanism should detail how the mechanism would function, including who would be eligible

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<sup>208</sup> See, e.g., NYNEX Reply to PTC Petition at 4

<sup>209</sup> See Conference Report at 43

<sup>210</sup> 47 U.S.C. § 276(b)(2).

<sup>211</sup> As one example, providers of public interest payphones could be eligible to draw support from a fund similar to that used to support Telephone Relay Service

to receive funding, who would be responsible for paying into the fund, and who would administer the funding mechanism.

## **G. OTHER ISSUES**

**83.** In this section, we address a number of issues that, while not specifically mandated by the 1996 Act, are ancillary to the new rules proposed in this NPRM.

### **1. Dialing Parity**

**84.** Section 251(b)(3) states that all LECs have the duty to "provide dialing parity to competing providers of telephone exchange service and telephone toll service."<sup>212</sup> We tentatively conclude that the benefits of dialing parity requirements that we adopt pursuant to Section 251(b)(3) of the Act should extend to all payphone location providers.<sup>213</sup> We seek comment on this tentative conclusion and on other methods for achieving dialing parity for payphone location providers, and users, of payphones that are consistent with the definition of dialing parity under Section 3(15) of the 1934 Act, as amended. As a related matter, we seek comment on whether the Commission should extend the type of intraLATA carrier unblocking requirements established in TOCSIA to all local and long distance calls.<sup>214</sup>

### **2. Letterless Keypads**

**85.** At least two distributors of payphone equipment have been promoting letterless keypads. Such keypads defeat callers' attempts to reach their OSP of choice through a "vanity" access number, such as MCI's "1-800-COLLECT" or AT&T's "1-800-CALL-ATT" and "10ATT," that can be easily remembered by callers. Standard payphone keypads contain certain letters of the alphabet that correspond to each digit (e.g., A, B, and C correspond to the digit "2"). A "letterless" keypad does not include any letters associated with the requisite digits. We are concerned that use of letterless keypads may frustrate the intent of Congress, as expressed in TOCSIA, to permit callers to reach the OSP of their choice from payphones. In addition, we are concerned that these keypads ultimately frustrates congressional intent, as expressed in the 1996 Act, "to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public[.]"<sup>215</sup>

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<sup>212</sup> 47 U.S.C. § 251(b)(3).

<sup>213</sup> See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Notice of Proposed Rulemaking, CC Docket No. 96-98 FCC No. 96-182, paras. 202-219 (rel. April 19, 1996) (discussion of dialing parity requirements).

<sup>214</sup> See generally 47 U.S.C. § 226

<sup>215</sup> 47 U.S.C. § 276(b)

86. To promote consumer access to OSPs, TOCSIA required the unblocking of 800 and 950 access numbers at aggregator locations and directed the Commission to mandate the unblocking of 10XXX access codes and/or the establishment of 800/950 access numbers by each OSP.<sup>216</sup> In the succeeding years, some OSPs have chosen to use "vanity" dialing sequences for access numbers. While we previously have found that the Commission does not have conclusive data showing a net change in the average number of access code calls (both 10XXX and 800/950 access calls) originated by each competitive payphone each month,<sup>217</sup> payphone industry representatives have argued that use of "vanity" dialing sequences by payphone users has grown since their introduction.<sup>218</sup>

87. The Common Carrier Bureau staff has reviewed advertisements for letterless keypads that specifically refer to a "by-pass keypad" that "prevents dial around [calls]." We tentatively conclude that the use of letterless keypads violates both TOCSIA and the 1996 Act by preventing callers from accessing their OSP of choice. We seek comment on how the Commission should take action to prohibit use of these "by-pass" letterless keypads to restrict the availability of "vanity" access numbers.

### 3. Other Pending Payphone Proceedings

88. Several proceedings pending before the Commission concern the rules governing the payphone industry. We tentatively conclude that it would further the public interest to consolidate and address those proceedings within this rulemaking. The pending proceedings are as follows: (1) Petition of the Public Telephone Council to Treat BOC Payphones as CPE, DA 88-2055; (2) Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, CC Docket. No. 91-35 (payphone compensation issues only); (3) Petition of Oncor Communications, Inc. Requesting Compensation for Competitive Payphone Premises Owners and Presubscribed Operator Services Providers, DA 95-1921; and (4) Amendment of Section 69.2(m) and (ee) of the Commission's Rules to Include Independent Public Payphones Within the "Public Telephone" Exemption from End User Common Line Access Charges, RM 8723. Each of these proceedings addresses issues covered by Section 276 of the Act. We seek comment on the implications of our tentative conclusion. Specifically, we wish to know which proceedings on the list commenters believe may be resolved here, and reasons for such opinions, and which proceedings should continue separately from this

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<sup>216</sup> 47 U.S.C. § 226(e).

<sup>217</sup> Second Further Notice at n. 123.

<sup>218</sup> See generally Petition for Expedited Relief by the American Public Communications Council, CC Docket No. 91-35, filed September 2, 1993.

rulemaking, and the reasons for those opinions.<sup>219</sup> We also conclude in this Notice that the Commission need not address the Florida Payphone remand in a separate proceeding because the rules adopted in this proceeding will address the remand by ensuring that PSPs are compensated, pursuant to the 1996 Act, for all intrastate and interstate calls, including subscriber 800 calls.

#### **4. Comments and Ex Parte Presentations**

**89.** All interested may file comments on the issues set forth in this NPRM, on which comment is specifically sought, by June 27, 1996, and reply comments by July 8, 1996. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, which involves issues concerning the Commission's expedited implementation of the 1996 Act, participants must file an original, ten copies, and the electronic version on disk of all comments and reply comments.<sup>220</sup> Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. If participants want each Commissioner to have a personal copy of their comments, an original plus fourteen copies must be filed. In addition, participants should submit two additional copies directly to the Common Carrier Bureau, Enforcement Division, Room 6008, 2025 M Street NW, Washington, D.C. 20554. The petition, comments, and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 230) of the Federal Communications Commission, 1919 M Street, NW, Washington, DC 20554. Copies of the petition and any subsequently filed documents in this matter may be obtained from ITS, Inc., 2100 M Street, NW, Suite 140, Washington, DC 20037, (202) 857-3800.

**90.** To facilitate review of comments and replies, both by parties and by Commission staff, we require that comments be no longer than seventy-five (75) pages and replies be no longer than thirty-five (35) pages, including exhibits, appendices, and affidavits of expert witnesses. Empirical economic studies and copies of relevant state orders will not be counted against these page limits. The page limits will not be waived and will be strictly enforced. Comments and replies must include a short and concise summary of the substantive arguments raised in the pleading. Comments and replies must also comply with Section 1.49 and

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<sup>219</sup> Comments filed in the proceedings listed above will be incorporated into the record of the instant proceeding. Therefore, to avoid redundancy, we advise commenters not to resubmit their past comments in response to this NPRM.

<sup>220</sup> Each disk must be a standard 3½", labeled magnetic disk, formatted to be readable by high-density 1.44 MB floppy drives operating under MS-DOS (3.X or later versions). Participants are encouraged to submit documents formatted in WordPerfect 5.1 for Windows. Otherwise, parties must submit the documents formatted in both ASCII and any word processing program. Parties should submit clearly labelled disks, along with cover letters, directly to the Common Carrier Bureau, Enforcement Division

all other applicable sections of the Commission's rules.<sup>221</sup> We also direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and replies. Comments and replies also must clearly identify the specific portion of this Notice to which a particular comment or set of comments is responsive. If a portion of a party's comments does not fall under a particular topic listed in the outline of this Notice, such comments must be included in a clearly labelled section at the beginning or end of the filing. Parties may not file more than a total of ten (10) pages of ex parte submissions, excluding cover letters. This 10 page limit does not include: (1) written ex parte filings made solely to disclose an oral ex parte contact; (2) written material submitted at the time of an oral presentation to Commission staff that provides a brief outline of the presentation; or (3) written material filed in response to direct requests from Commission staff. Ex parte filings in excess of this limit will not be considered as part of the record in this proceeding.

**91.** Parties are invited to submit, in conjunction with their comments or replies, proposed text for rules that the Commission could adopt in this proceeding. Specific rule proposals should be filed as an appendix to a party's comments or reply, and will not be counted against the page limits set forth in the preceding paragraph. Such appendices may include only proposed text for rules that would implement proposals set forth in the parties' comments and replies in this proceeding, and may not include any comments or arguments.

**92.** This is a non-restricted notice and comment rule making proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules.<sup>222</sup>

## **5. Initial Paperwork Reduction Act Analysis**

**93.** This NPRM contains both proposed and modified information collections. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Public and agency comments are due at the same time as other comments on this NPRM; OMB comments are due 60 days from the date of publication of this NPRM in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on

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<sup>221</sup> See 47 C.F.R. § 1.49. However, we require here that a summary be included with all comments and replies, although a summary that does not exceed three pages will not count toward the page limits. The summary may be paginated separately from the rest of the pleading (e.g., as "i.i") [d].

<sup>222</sup> See generally 47 C.F.R. §§ 1.1202, 1.1203, and 1.1206(a).

the respondents, including the use of automated collection techniques or other forms of information technology.

94. Written comments by the public on the proposed and/or modified information collections are due June 26, 1996. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before 60 days after date of publication in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20554, or via the Internet to dconway@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 - 17th Street, N.W., Washington, D.C. 20503 or via the Internet to fain\_t@al.eop.gov.

## 6. Initial Regulatory Flexibility Act Analysis

95. Reason for Action: The Commission is issuing this NPRM to seek comment on various issues concerning the deregulation of payphones owned by LECs, as mandated by Section 276 of the Telecommunications Act of 1996.

96. Objectives: To provide an opportunity for public comment and to provide a record for a Commission decision on the issues discussed in the NPRM.

97. Legal Basis: The NPRM is adopted pursuant to Section 276 of the 1996 Act; Sections 1, 2, 4(i), and 226 of the Communications Act of 1934, as amended.

98. Description, potential impact, and number of small entities affected: Any rule changes that might occur as a result of this proceeding could impact entities which are small business entities, as defined in Section 601(3) of the Regulatory Flexibility Act. After evaluating the comments in this proceeding, the Commission will further examine the impact of any rule changes on small entities and set forth findings in the Final Regulatory Flexibility Analysis. The Secretary shall send a copy of this Notice of Proposed Rulemaking to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. § 601, et seq. (1981).

99. Reporting, recordkeeping, and other compliance requirements: The NPRM proposes to require the BOCs to follow nonstructural safeguards that include reporting requirements. However, the BOCs are not small business entities as defined in Section 601(3) of the Regulatory Flexibility Act.

100. Federal rules which overlap, duplicate, or conflict with the Commission's proposal: None.

101. Significant alternatives minimizing the impact on small entities consistent with the stated objectives: The NPRM solicits comments on a variety of alternatives.

**102. IRFA Comments:** Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act<sup>223</sup>

#### IV. CONCLUSION

**103.** This Notice proposes rules that would accomplish the goals mandated by Congress in Section 276 of the Telecommunications Act of 1996: (1) compensation for "each and every completed intrastate and interstate call using [a] payphone[;]"<sup>224</sup> (2) reclassification of LEC payphones and a termination of all subsidies, including "access charge payphone service elements[;]"<sup>225</sup> (3) prescription of safeguards for Bell Operating Company ("BOC") payphones,<sup>226</sup> (4) promulgation of rules permitting the BOCs to negotiate with the payphone location provider about a payphone's presubscribed interLATA carrier;<sup>227</sup> (5) promulgation of rules permitting all payphone providers to negotiate with the location provider about a payphone's presubscribed intraLATA carrier;<sup>228</sup> and (6) establishment of a class of public interest payphones to be located "where there would otherwise not be a payphone."<sup>229</sup> We seek comment on our tentative conclusions detailed throughout this Notice.

#### V. ORDERING CLAUSES

**104.** Accordingly, IT IS FURTHER ORDERED, pursuant to Sections 1, 4(i)-4(j), 201-205, 226, and 276 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201-205, 226, and 276 that a Notice of Proposed Rulemaking is ADOPTED.

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<sup>223</sup> Pub.L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.* (1980).

<sup>224</sup> 47 U.S.C. § 276(b)(1)(A).

<sup>225</sup> 47 U.S.C. § 276(b)(1)(B).

<sup>226</sup> 47 U.S.C. § 276(b)(1)(C).

<sup>227</sup> 47 U.S.C. § 276(b)(1)(E).

<sup>228</sup> 47 U.S.C. § 276(b)(1)(E).

<sup>229</sup> 47 U.S.C. § 276(b)(2).

**105.** IT IS FURTHER ORDERED that the Chief of the Common Carrier Bureau is delegated authority to require the submission of additional information, make further inquiries, and modify the dates and procedures, if necessary, to provide for a fuller record and a more efficient proceeding.

**106.** IT IS FURTHER ORDERED that this Notice of Proposed Rulemaking is the Commission's disposition of all matters remanded by the U.S. Court of Appeals for the District of Columbia Circuit in Florida Public Telecommunications Ass'n. v. FCC, 54 F.3d 857 (D.C. Cir. 1995).

**107.** IT IS FURTHER ORDERED that the Secretary shall send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. §§ 601, et seq. (1981).

FEDERAL COMMUNICATIONS COMMISSION

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

**SEPARATE STATEMENT OF  
CHAIRMAN REED E. HUNDT**

*Re: In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Notice of Proposed Rulemaking*

In this Notice, the Commission seeks comment on a variety of ways to discharge its responsibilities under section 276 of the Communications Act of 1934. The Act gives us clear direction that we must ensure that payphone providers receive fair compensation for each call generated by a payphone. The Act does not, however, specify how the Commission is to carry out this mandate. As is appropriate for a Notice of Proposed Rulemaking, we seek comment on a range of alternatives, some of which involve more significant federal involvement in the first instance, and some of which rely more heavily in the first instance on state action.

I write separately, however, to emphasize that commenters seeking aggressive federal intervention in areas of clear local concern must make a strong case as to why such intervention is necessary. This is especially true with respect to local coin rates and public interest payphones.

As the Notice points out, while local coin calls account for a high percentage of payphone call volume, they account for only a small minority of payphone revenues. The vast majority of payphone revenues are generated from other calls. Furthermore, at this point, payphone providers do not now receive any compensation for some significant types of calls from payphones, such as subscriber-800 calls, which upon completion of this proceeding will provide yet another source of revenue.

Proponents of federal intervention with respect to local coin rates must demonstrate why fair compensation cannot be achieved through the combination of their current coin rates, operator service-related revenues, and per-call-compensation for access code and 800 number calls. And even where a particular state's local phone rate may result in a lower overall level of payphone revenues, proponents must demonstrate why such a lower rate of revenues should be a matter of federal, rather than state, concern. This is especially true if the impact of a lower revenue stream is primarily local, such as a reduction in the number of general payphones. In the absence of a strong showing by proponents, I would be extremely reluctant to disturb state decisions on local coin rates.

A related issue is public interest payphones. As stated in the Notice, the Commission will determine whether public interest payphones should be maintained. In the event we decide to maintain public interest payphones, the Act does not specify how those payphones should be defined and designated. I believe that the states in the first instance should define and designate public interest payphones. Proponents of a uniform national rule on this subject should clearly articulate why the public interest demands that we not rely on local decisionmaking.