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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
	)	CC Docket No. 96-128
Implementation of the	)	
Pay Telephone Reclassification	)	
and Compensation Provisions of the	)	
Telecommunications Act of 1996	)	

COMMENTS OF PEOPLES TELEPHONE COMPANY, INC.

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SUMMARY

Congress has directed the Commission to revamp completely its existing payphone regulatory structure and to implement a comprehensive new system designed to foster the competitive offering of payphone services from numerous payphone service providers ("PSPs"). Congress has established, as a key foundation for this new regulatory paradigm, the fundamental principal that all PSPs will be able to receive "fair" compensation "for each and every completed intrastate and interstate call" (excepting "911" and "deaf relay" calls) originating from PSP paystation equipment.

The resolution of two specific issues identified in the *Notice* will especially affect the financial underpinnings for payphone service at stake in this proceeding. First, it is vital that the Commission adopt an immediate, interim compensation plan that includes, as its two primary components, implementation of: (1) compensation for "1-800 subscriber" calls (*e.g.*, 1-800-FLOWERS) at a flat rate of $38.70 per payphone per month; and (2) increased flat/message rates for "carrier access" calls (*e.g.*, 1-800/950/10XXX/etc. to reach a local/intraLATA/interLATA carrier network) from $6.00 to $19.35 per payphone per month.

Second, the Commission should adopt a nationwide Station Access Fee ("SAFE") charge of at least $0.45 per call, for each and every call completed from any PSP station equipment. The SAFE charge should be universally applied at the same rate for both LEC and non-LEC PSPs; coin and non-coin calls; local-intraLATA-interLATA calls and all other originating access methodologies. End users would pay the SAFE charge directly for all coin calls and the appropriate intra- or interLATA carrier would pay the PSP the SAFE charge for all other completed calls eligible for compensation.

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COMMENTS OF PEOPLES TELEPHONE COMPANY, INC.

Peoples Telephone Company, Inc. submits these Comments in response to the Commission's Notice of Proposed Rulemaking ("*Notice*") to establish a new national regulatory structure for domestic public payphone telephone ("payphone") services and to implement the explicit Congressional directives contained in Section 276 of the Communications Act of 1934, as added by the Telecommunications Act of 1996 (the "1996 Act").

I. SUMMARY OF POSITION

Congress has directed the Commission to revamp completely its existing payphone regulatory structure and to implement a comprehensive new system designed to foster the competitive offering of payphone services from numerous payphone service providers ("PSPs"). Congress has established, as a key foundation for this new regulatory paradigm, the fundamental principal that all PSPs will be able to receive "fair" compensation "for each and every completed intrastate and interstate call" (excepting "911" and "deaf relay" calls) originating from PSP paystation equipment.[1] To this end, Peoples, the largest

[1] 47 U.S.C. § 276(b)(1)(A).

non-local exchange company ("non-LEC") PSP in the United States, is submitting these company-specific comments in addition to ratifying and adopting by reference those filed by the American Public Communications Council ("APCC") on behalf of the public communications industry.

The resolution of two specific issues identified in the *Notice* will especially affect the financial underpinnings for payphone service at stake in this proceeding. These two issues are critical to the prospective vitality of responsible, public-spirited PSPs such as Peoples -- and to the important public interest services provided by Peoples to consumers in the many and diverse communities served across the Nation.

First, it is vital that the Commission adopt an immediate, interim compensation plan that includes, as its two primary components, implementation of: (1) compensation for "1-800 subscriber" calls (*e.g.*, 1-800-FLOWERS); and (2) increased flat-rates for "carrier access" calls (*e.g.*, 1-800/950/10XXX/etc. dialed to reach a local/intraLATA/interLATA carrier's network).

In the first instance, non-LEC PSPs, such as Peoples, have been waiting for some type of compensation for 800 subscriber calls since the Company began providing service over 10 years ago, and more recently, since Congress enacted the Telephone Operator Services Consumers Services Improvement Act of 1990,[2] mandating the provision of open 1-800 and other code call access methodologies. This compensation is absolutely necessary to help address the severe financial constraints facing non-LEC PSPs such as Peoples in light of

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[2] 47 U.S.C. § 226 ("TOCSIA").

"the growing number of dial-around calls" currently provided free of charge at Peoples' paystations.[3] To put this need in context, based on a representative sample of per paystation calling data, a typical Peoples' payphone, for the six-month period ending in April, 1996, completed an average of 86 uncompensated 800 subscriber calls per month. With a cost of providing these calls at $0.45 per call, Peoples will continue to give away over $38.70 per payphone per month in free calling if this situation is not remedied.

The interim compensation plan should also adjust the existing carrier access code flat-rate "dial-around" compensation rate from $6.00 per payphone per month (which was based on a monthly average of 15 access code calls at $0.40 per call) to $19.35 per month. This upward adjustment is necessary because, based on Peoples' recent experience, a typical payphone has completed an average of 43 access code calls per month. At a per call cost of $0.45, Peoples should be compensated $19.35 per payphone per month for these calls. Consistent with this adjustment, the flat rate paid by AT&T and Sprint should be increased from $0.25 to $0.45 per call, in light of the actual costs incurred to originate these calls.

Second, and equally as critical, the Commission should adopt, as part of its new "per call" compensation scheme mandated by Section 276(b)(1)(A), a nationwide Station Access Fee ("SAFE") charge of at least $0.45 per call, for each and every call completed from any PSP paystation equipment set, indexed for future economic changes. The SAFE charge should be universally applied at the same rate for both LEC and non-LEC PSPs; coin and non-coin calls; local-intraLATA-interLATA calls and all other originating access methodologies. For coin calls, the $0.45 SAFE charge would be the rate ceiling for local calls

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[3] *See Notice* at ¶ 39.

and it would be paid by end users. For calls other than local coin calls, the $0.45 SAFE charge would be a fixed charge assessed on the appropriate intra- or interLATA carrier and paid to the PSP. The carrier would then have the discretion as to how to recover its cost for the SAFE charges. This type of system is the fairest to all parties concerned, the most easily understood by the public and the simplest to administer. Under this regime, both the traveling public and people who do not travel, but nevertheless use pay telephones as their universal access link, will have the type of predictability and rationality that reflects a firm and fair price in 1996 for the use of paystation equipment and the services involved -- on all calls -- on a nondiscriminatory, noncross-subsidized basis, as contemplated by Section 276 of the 1996 Act.

II. AS THE LARGEST DOMESTIC NON-LEC PSP, PEOPLES IS UNIQUELY QUALIFIED TO PROVIDE THE COMMISSION WITH KEY DATA ON WHICH TO SET INTERIM AND PERMANENT COMPENSATION RATES.

Peoples is the largest independent operator of public payphones in the United States, and is a publicly traded company on the NASDAQ (symbol: PTEL). Since installing its first public payphone in 1985, the Company's core payphone business has evolved to a current installed base of approximately 38,500 paystations in 41 states and the District of Columbia. Much of this growth has occurred through acquisitions of independent operators. To help finance these acquisitions, Peoples has turned to the public equity and private debt markets; Peoples is now one of only four operators in this nascent industry that are publicly-held.

Peoples is proud of its position as the leading national independent PSP. Despite the many challenges the Company has faced along with the rest of the non-LEC PSP industry because of the skewed economic and regulatory environment in which Peoples and others have been operating, Peoples has pursued an aggressive strategy that seeks to offer fair

and reasonable end user charges for 0+ interstate calls made from its public paystations. In this vein, in the first half of 1995, Peoples contracted with AT&T to utilize AT&T as the key national interLATA operator services provider from all of the Company's payphones. Peoples has also contracted with various of the major LECs for the provision of intraLATA/local operator services at "dominant carrier" rate levels under this same pricing strategy. As a result, Peoples has significantly reduced its interstate and intrastate non-coin revenue streams -- along with providing a significant rate reduction to consumers on 0+/0- calls made from Peoples' payphones.

Peoples feels strongly that an end to "rate gouging" practices will not only provide for a more favorable perception of the public payphone industry by consumers, but will ultimately lead to greater profitability and industry growth. It is, however, equally clear that the downward pressure on "primary carrier" rates at payphones must also be accompanied by upward movement on local coin and "non-primary carrier" rates, if a solid and realistic economic foundation is to be created for the public communications industry of today and tomorrow.

Peoples believes that it can serve as a useful model for the Commission to use in formulating a real-world solution in this proceeding. Because of People's unique size and operating characteristics, Peoples should be a benchmark upon which the establishment of a fair and rational compensation system can be structured -- to allow efficient and innovative PSPs to compete on the bases of service quality and customer satisfaction throughout the Nation.

III. IT IS IMPERATIVE THAT THE COMMISSION ORDER IMMEDIATE INTERIM COMPENSATION FOR 800 SUBSCRIBER CALLS AND INCREASE CARRIER ACCESS CODE COMPENSATION.

Integral to the Commission's mandate under Section 276 to develop a comprehensive federal payphone compensation plan, the Commission should order: (1) immediate interim compensation for subscriber 800 calls, for which non-LEC PSPs have never received compensation, and (2) an upward adjustment of the current carrier access code compensation flat-rate, and per call rates, that are based on outdated call volumes and costs.

For as long as the Commission has recognized the public-interest value in creating diversified ownership and operation of public paystations,[4] the use of public payphones has been in a state of rapid change. Specifically, the growth and consumer acceptance of "dial-around" methodologies have combined, ironically, to make payphones even more valuable to the consumer. Yet, at the same time, this growth and acceptance has resulted in ever-increasing circumvention of any viable compensation stream for non-LEC PSPs, reflective of the consumer's use of the payphone equipment as an access point to these network services. The result has been a serious squeeze on revenues and profits for all non-LEC PSPs and the ongoing attempt to offset this financial squeeze by higher than justified rates elsewhere on the part of a number of PSPs in the industry.

In not succumbing to this tactical response of charging excessive rate charging on certain calls, Peoples, within the last year, has taken over 1,000 payphones out of service because of a combination of factors including: (1) noncompensatory local coin charges; (2) the use of AT&T's rates, which do not fully compensate Peoples for the costs of providing high-

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[4] *See* Memorandum Opinion and Order, Registration of Coin Operated Telephones, 49 Fed. Reg. 27763 (1984).

quality payphone origination services; (3) inflated LEC line and usage charges for basic interconnection to the public switched telephone network and other LEC discriminatory practices (including, for example, in Maryland where Bell Atlantic charges non-LEC PSPs for LOCAL directory assistance service (411) calls that PSPs cannot pass on to end users); (4) high premises owner commission expenses to compete with LEC PSPs; and (5) the lack of 800 subscriber call compensation/inadequate carrier access code compensation. This trend must be reversed immediately if the public interest is to be served by quality non-LEC PSPs such as Peoples. Adoption of full and fair interim compensation is an important key in this transition to effective competition for the provision of payphone services.

A. PSPs Have Been Waiting Over 10 Years for 800 Subscriber Call Compensation.

Peoples has traditionally fostered "open access" for 800 subscriber calls at its paystations, but has never been compensated for these calls. Moreover, in 1990, Congress enacted TOCSIA, which required all operator service providers ("OSPs") to (1) identify themselves to consumers and to quote their rates upon request, and (2) provide open access for carrier access code and 800 subscriber calls. When the Commission implemented the compensation provisions of TOCSIA, it considered whether PSPs were entitled to compensation for originating access code calls (*i.e.*, calls that go to an OSP other than the one chosen by the PSP for that payphone). The Commission concluded that it was appropriate for the OSP associated with the access code to compensate the PSP for originating the call and that per call compensation was the preferred means of compensation.[5] But because the

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[5] *See* Second Report and Order, *Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation*, 7 FCC Rcd 3251, 3252-53 (1991) ("*Second Report and Order*").

Commission concluded that per call compensation was technically infeasible at that time, it adopted an interim aggregate flat rate of $6.00 per payphone per month (15 calls per payphone per month x $0.40 per call).[6] Subsequent to that time, two carriers (AT&T and Sprint) have elected to pay PSPs $0.25 per access code call, leaving MCI and other carriers to pay their proportionate share of the $6.00 per payphone access code flat-rate six years since the enactment of TOCSIA). As a result, PSPs are faced with a balkanized system of compensation that does not yield any semblance of "fair" compensation for the services provided.

The Commission also concluded that, under TOCSIA, PSPs should not be compensated for 800 subscriber calls originated through their payphones.[7] The United States Court of Appeals for the District of Columbia Circuit overturned this decision in May 1995, holding that the Commission's TOCSIA jurisdiction was broader, encompassing compensation for all interstate calls originating from a payphone and carried by any OSP other than the presubscribed OSP.[8] Although the Commission has been considering how to address this situation since then,[9] the time is now for the Commission to act and to order fair compensation for PSPs' provision of these services.

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6 *Id.* at 3255.

7 *See* Report and Order and Further Notice of Proposed Rulemaking, *Policies and Rules Concerning Operator Service and Pay Telephone Compensation*, 6 FCC Rcd 4736, 4746 (1991).

8 *Florida Public Telecommunications Ass'n. v. FCC*, 54 F.3d 857 (D.C. Cir. 1995) ("*Florida Payphone*").

9 *See* Second Further Notice of Proposed Rulemaking, *Policies and Rules Concerning Operator Service and Pay Telephone Compensation*, 10 FCC Rcd 11457, 11464-67 (1995).

B. A Typical Peoples' Payphone Originates 86 Uncompensated 800 Subscriber Calls and 43 Access Code Calls per Month.

Since November 1995, Peoples has collected data from a representative sample of over 500 payphones in its nationwide operations to determine the completed call profile of a typical Peoples' payphone. The payphones were selected randomly and contain a wide range of locations, including truck stops, convenience stores, public facilities and hospitals.

Although the vast majority of completed calls are coin calls (over 70 percent), 13 percent of the calls originated by a typical Peoples' payphone are 800 subscriber calls for which Peoples receives no revenue. This translates into 86 calls out of 665 calls per month, which totals nearly 3.5 million uncompensated calls per month across Peoples' over 38,000 plus payphone base nationwide. Even more telling, 800 subscriber calls represent almost 50 percent of the non-coin calls that are entitled to compensation (86 of 180 calls).

Table 1 -- Typical Payphone Profile:
Percentage of Call Types

Type of Call	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	Avg.
0+/00/0-	5.4%	5.3%	4.9%	4.8%	4.9%	4.9%	5.0%
Access Code	**6.7%**	**6.4%**	**6.3%**	**6.3%**	**6.8%**	**6.6%**	**6.5%**
Subscriber	**12.5%**	**11.4%**	**13.0%**	**13.1%**	**13.2%**	**13.9%**	**12.9%**
DA	2.3%	2.2%	2.2%	2.3%	2.2%	2.2%	2.2%
Emergency	0.3%	0.3%	0.3%	0.3%	0.3%	0.3%	0.3%
All Coin	72.5%	74.3%	73.2%	73.0%	72.5%	72.0%	72.9%
Other	0.2%	0.2%	0.2%	0.2%	0.1%	0.1%	0.2%
Grand Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Table 2 -- Typical Payphone Profile:
Number of Calls

Type of Call	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	Avg.
0+/00/0-	30	38	32	31	34	36	33
Access Code	**37**	**45**	**41**	**41**	**47**	**49**	**43**
Subscriber	**69**	**81**	**84**	**85**	**92**	**103**	**86**
DA	12	16	15	15	15	16	15
Emergency	2	2	2	2	2	2	2
All Coin	402	527	477	473	506	531	485
Other	1	1	1	1	1	1	1
Grand Total	**554**	**709**	**652**	**649**	**698**	**738**	**665**

In addition, the number of carrier access code calls that a typical Peoples' payphone completes is 43 calls per month -- nearly a threefold increase over the 15 access code calls per month on which the Commission based its flat-rate access code compensation rate in the *Second Report and Order*. Accordingly, not only is Peoples *not* receiving compensation for its 800 subscriber calls, *but the Company is also not receiving compensation for over two-thirds of its non-coin access code calls*. Tables 1 and 2 illustrate that these two call types, combined, represent *nearly 20 percent* of the total number of calls originating through Peoples' payphones and almost 50 percent of Peoples' TOTAL non-coin calls.

C. The Commission Should Implement/Maintain a Flat-Rate, per Month, per Phone Compensation System until the Commission's New Rules under Section 276 are Fully Implemented.

To provide immediate interim compensation to non-LEC PSPs for 800 subscriber calls, the Commission should establish a flat-rate per payphone compensation plan modeled after the flat-rate established for interstate access code calls in the *Second Report and Order*. In addition, the Commission should increase the current flat-rate for carrier access code calls to account for the increase in access code call volumes that PSPs like Peoples have experienced. Although Peoples would prefer to have a per call scheme established in the final

rules in this proceeding, this may simply not be feasible, given the scope of the undertaking necessary and the need to expedite immediate interim compensation effective with the adoption of this *Notice*. The Commission should instead considering building upon the existing compensation structures already in place, rather than reinventing the wheel at this stage in this process.

This interim compensation plan is both feasible and necessary. The 1996 Act requires the Commission to have final rules in place by November 1996. Although there will be a transition period to be covered by this interim compensation mechanism, Peoples urges that the Commission's new final rules be effective no later than January 1, 1997. As a result, the interim compensation ordered here should be effective for at least seven months, from June through December 1996. This interim compensation will provide a safety net for PSPs if procedural problems arise in extending per call compensation to 800 subscriber calls in the Commission's new rules. Moreover, by basing the interim compensation system on established interexchange carrier ("IXC") allocations and payment norms, this compensation system can be readily implemented. Indeed, it is in the public interest to expedite the establishment of this interim compensation mechanism, to ensure continued quality public payphone service.

Based on its experience, Peoples recommends a flat-rate, monthly amount of $38.70 per payphone (86 calls per payphone per month x $0.45 per call) for interim subscriber 800 call compensation. In addition, the carrier access code flat-rate should be increased to $19.35 per month, per payphone (43 calls x $0.45 per call). As described more fully below, $0.45 provides compensation to cover the per call costs, including a reasonable rate of return, for providing 800 subscriber and access code calls. Indeed, because Section 276 requires the

Commission to provide "fair" compensation, the Commission is not expressly limited in establishing this interim compensation to only covering the direct and overhead costs of providing these calls. As part of the increase in the access code flat-rate pool, the Commission also should order AT&T and Sprint, which currently compensate PSPs for access code calls on a per call basis, to increase the rate of such compensation from $0.25 to $0.45 per call, to properly reflect the present costs of providing these services.

IV. PEOPLES URGES THE COMMISSION TO ADOPT A PER-CALL COMPENSATION MECHANISM FOR EACH AND EVERY COMPLETED INTRASTATE AND INTERSTATE CALL ORIGINATED FROM PAYPHONES.

Section 276(b)(1)(A) requires 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" (emphasis added).[10] The Commission's tentative conclusion to prescribe compensation only when PSPs are not otherwise "fairly compensated," does not appear to be supported by the plain language of the statute.[11] Section 276(b)(1)(A) requires the Commission to establish a "per call compensation plan . . . for each and every" call (except 911 and TRS calls), not a **selective** per call compensation plan, where the Commission does not actually implement fair compensation for certain calls (such as 0+ calls or DA).

The Commission's tentative conclusion that certain contractual payments made to PSPs from OSPs already ensure fair compensation for 0+ calls is misplaced for several

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10 47 U.S.C. § 276(b)(1)(A).

11 *Notice* at ¶ 16.

reasons.[12] First, non-LEC PSPs enter into arrangements with OSPs to provide 0+/0- operator services and, as a result, the payments that OSPs make to PSPs typically represent a percentage of the call's payment stream based upon the length of the call. The OSP payment and/or its underlying rate structure does not, in the case of dominant carrier rates, contain a rate element to compensate the PSP for use of the payphone equipment.

Second, many OSPs now contract directly with premises owners, who use LEC or non-LEC payphones, to be the premises owner's primary OSP. The Commission's rules, implemented as a part of the AT&T Consent Decree,[13] prohibit PSPs formerly associated with AT&T from directly choosing their payphones' presubscribed carrier. The commissions that OSPs pay directly to these premises owners are comparable to those paid to PSPs. Peoples similarly serves a number of accounts where the interLATA OSP relationship is direct with the premises owner. Moreover, for cases where Peoples selects the OSP, because of the competitive nature of providing payphone services, Peoples must pay a commission to the premises owner that leaves an amount that does not cover the pro rata costs associated with these services.

Third, market conditions demand that PSPs contract with location providers for the use of the premises upon which to install the payphone. Often the commissions demanded by the premises owner meet or exceed the amounts Peoples receives from OSP/IXC payments. As a result, these payments cannot be said to "fairly compensate" PSPs for each and every

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12 *Id.*

13 *United States v. AT&T*, 552 F. Supp. 131 (D.D.C. 1982) (the "MFJ").

completed call originating from the payphone. OSP payments are similarly not a replacement for the per call compensation scheme envisioned by Congress in Section 276.

A. The Commission Should Use a "Top-Down" Approach to Defining the Universe of Calls Eligible for Compensation.

Section 276 (b)(1)(A) requires the definition of "each and every call" entitled to compensation to be the universe of calls, except for only two types of calls: 911 calls and telecommunications relay service ("TRS") calls.[14] Because the language used in Section 276 is clear, no additional Commission interpretation is appropriate. The Commission's regulations should utilize the language "each and every" to mean just that -- with only the two limited exceptions provided in the statute. As a result, the rules would have an all-inclusive, "top-down" definition, with two limited exceptions, rather than to define those calls entitled to compensation from the "bottom-up." The major flaw with the latter method is that, as technology develops, there will be future types of dial-around calls that are not yet in use. As a result, if the Commission uses a "bottom-up" definition, it will be required once again in a later proceeding to update the definition of those calls entitled to compensation. The Commission's resources are too limited to have to continually reevaluate the payphone compensation system in this manner.

B. The Commission Should Implement a SAFE Charge to Compensate PSPs for Each and Every Completed Call.

Section 276 mandates that the Commission establish a federal uniform, nationwide compensation rate. To implement this directive, the Commission should establish a Station Access Fee (SAFE) for all calls eligible for compensation. For local calls, the

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[14] 47 U.S.C. § 276(b)(1)(A).

Commission should set the SAFE charge at $0.45 as a rate ceiling for local coin calls. For all other calls eligible for compensation, the SAFE charge would be a fixed rate of $0.45 for each completed call. Establishing a uniform national rate in both instances, which is indexed for economic changes, is the most efficient, comprehensive and least regulatory means to fulfill Section 276's mandate of a single, federal per call compensation plan.

The plain language of Section 276(b)(1)(A) undeniably and indisputably requires the Commission to "establish a per call compensation plan to ensure all payphone service providers are fairly compensated for each and every completed **intrastate** and interstate call using their payphone, . . (emphasis added)." Congress's mandate is loud and clear. In order to comply with Section 276, it is imperative that the Commission prescribe a nationwide rate for local calls as part of its "per call compensation plan" to ensure that PSPs are fairly compensated. The need for a uniform, nationwide local coin rate is especially important to fulfill this mandate in Peoples' case because, as noted in Table 2 above, over 70 percent of the calls that a typical Peoples' payphone originates are coin calls, more than six times the number of access code and O+ calls made from Peoples' payphones. Moreover, revenues derived from local coin calls represent approximately 56 percent of Peoples' revenues attributable to its payphone operations, not 16 percent as identified in the *Notice*.[15]

Setting a nationwide local coin rate will go far to eliminate the problem of inconsistent state and federal regulation of the payphone industry. Specifically, both state and federal regulators to date have only regulated those aspects of the payphone industry over which they have jurisdiction. This has resulted in neither regulatory authority having the full

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[15] *Notice* at ¶ 19, n.58.

picture upon which to establish a comprehensive structure. For example, each state regulates the local coin rates for calls originating in their jurisdiction and many of these local coin rates have been unchanged for over 10 years or have been capped at rates as little as $0.10 per call (which has limited the extent to which competition has developed in these states).[16]

This bifurcated and incomplete regulatory system has led many PSPs to try to make up for lost revenues for uncompensated calls or below cost coin calls through cost-shifting means and other quality of service reductions. For example, some PSPs have charged excessive operator service or transmission service rates. Indeed, the Commission has recognized this fact in its Billed Party Preference Notice,[17] in which it is considering establishing benchmarks for operator services rates and charges to reflect consumer expectations. Other PSPs have reportedly installed "letterless" keypads as an attempt to prevent consumers from dialing certain types of "vanity" 800 subscriber calls for which the PSP does not receive compensation.[18] Still others have been forced to only place their payphones in high-volume locations in an attempt to make up for lost revenue through high traffic volumes, thus opening themselves up to charges of "cream-skimming." If the public is to be truly served, the incomplete and inconsistent state and federal regulatory scheme that perpetuates these perverse incentives must end.

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16 *Id.*

17 *See* Second Further Notice of Proposed Rulemaking, *In the Matter of Billed Party Preference for InterLATA 0+ Calls*, CC Docket No. 92-77, FCC 96-253 (released June 4, 1996).

18 Notice at ¶¶ 85-87.

Congress has provided the Commission with a unique opportunity to establish, once and for all, a comprehensive and rational regulatory structure where PSPs will be fairly compensated for each and every completed call that originates from their payphones. This structure will remove the incentives to charge excessive rates, "cream-skim" certain locations and implement other methods to make up for subsidized individual call rates. These problems can be eliminated by establishing a fair and equitable per call compensation scheme that eliminates todays underlying negative incentives and ensures fair compensation on *each* call going forward.

Moreover, by having a different rate in each state in which a PSP operates, PSPs are required to participate in each state's regulatory proceedings to establish local coin rates and rate structures. This requirement imposes additional costs and inefficiencies that significantly raise a multistate PSP's costs of doing business. Further, uniform local coin rates will help ensure predictability and certainty among consumers across the Nation, because every time a call is placed from a payphone, the cost will be known, no matter where in the country the call is placed or what payment form is chosen.

A nationwide cost-based local coin rate is especially vital to PSPs like Peoples that seek to use dominant carrier rates for toll calls. As discussed above, Peoples currently charges consumers AT&T's federally tariffed rates for all of its 0+ interstate services. These underlying rates do not fully compensate Peoples for the large volumes of calls that are originated from its payphones because these rates typically only have two elements: (1) the transmission element (call duration) and (2) the operator services element. These are the same two elements a customer would be charged if the call were placed from a residential or business telephone, rather than from a payphone. AT&T's 0+ rates do not include an element

for the use of the payphone equipment. As a result, Peoples and other PSPs are not being compensated for this vital service element if they use AT&T's rates. Although some states, for example Florida and California, have recognized the importance of compensating PSPs for the use of their payphone equipment, in an amount above the current carrier rate, the vast majority have not. The Commission is now obligated under Section 276 to remedy this situation.

A nationwide per call rate that compensates payphone providers fairly in 1996 and beyond for the use of their equipment also is consistent with other Commission policies used to promote the nationwide use of telecommunications services. For example, the Universal Service Fund represents a uniform national charge assessed on carriers that they then decide how to recover from their customers. These payments ensure reasonable and affordable access to telecommunications services. In light of these charges, a nationwide, uniform federal SAFE charge for payphone calls is certainly within the scope of actions the Commission has previously utilized to promote and foster nationwide public access to telecommunications services.

By analogy, setting a single nationwide rate for payphone usage is akin to having one nationwide stamp rate for first class mail. Post offices are located in every local jurisdiction, and much mail moves just across town. Still, the price of stamps is the same everywhere. Specifically, each time a consumer accesses the postal service, the same service is provided at the same price whether the consumer is in Tacoma or Miami. This uniformity promotes intra- and interstate commerce and provides consumer certainty. The same public interest benefits can also be promoted with a uniform, nationwide local coin call rate for payphones.

C. Options 2 and 3 For Local Coin Rates Fail to Adequately Address Section 276's Mandate.

As an alternative to covering local coin calls by a uniform nationwide SAFE charge, the Commission has proposed two additional options.[19] Under Option 2, the Commission would prescribe national guidelines that states would then use to establish local rates that would presumably ensure that all PSPs are fairly compensated.[20] Under Option 3, states would continue to set the local coin rates payphones accordin, to factors within their discretion, but PSPs could petition the Commission if a state's rate did not provide fair compensation. Both of these options, however, are unworkable because they do not consider Section 276's requirement that LECs remove their payphone operations from their regulated intra/interstate rate bases.[21] Therefore, in order to determine appropriate payphone costs, each state will be required to devise new regulatory procedures to examine a PSP's competitive local coin service offering. In light of this requirement, PSPs will be forced to expend additional resources within each state to participate in numerous, duplicative ratemaking proceedings and to develop data on a state-by-state basis to meet varying regulatory demands.

In addition to not having the resources to participate in these various rate proceedings, non-LEC PSPs do not have the resources that incumbent LECs have to petition the Commission if a state is not meeting whatever federal guidelines are established under Option 2 to ensure fair compensation. Nor should PSPs be required to petition the

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19 *Notice* at ¶¶ 21-22.

20 *Id.* at ¶ 21.

21 47 U.S.C. § 276 (b)(1)(B).

Commission every time a particular state's local coin rate is inconsistent with Section 276, as contemplated under Option 3. This would be an extraordinary burden on Peoples, and other non-LEC PSPs, which certainly was not contemplated by Section 276's mandate for the Commission to establish a universal, federal per call compensation system.

Moreover, both options impose additional burdens on Commission resources at a time when they already are scarce. For example, it has been 14 months since the remand of *Florida Payphone* and the Commission has yet to develop a plan to compensate PSPs for 800 subscriber calls. PSPs should not have to continue to wait even longer if a state's action results in an unfair local coin call rate. This type of *ad hoc* decision making is not what was contemplated by Congress when it enacted Section 276, nor is it in the public interest.

D. The Commission's Per Call Compensation Amount Should Provide PSPs with a Reasonable Rate of Return on their Payphone Operations.

The Commission is correct to conclude that PSPs should be compensated for their costs in originating all types of calls entitled to compensation when determining what is "fair" compensation.[22] Peoples suggests that the Commission use reliable cost data where this data is available, in addition to proxies in the absence of "reliable PSP cost data," to determine "appropriate cost-based surrogates."[23]

Peoples is a publicly-traded company and, thus, its financial statements are easily available to, and obtainable by, the public. Accordingly, reliable cost data is available for the Commission to test its hypotheses for various per-call compensation amounts. Peoples

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22 *Notice* at ¶ 38.

23 *Id.*

believes that its cost structure is representative of the cost structure that the industry faces in general.

Table 3 summarizes Peoples' average monthly costs on a per payphone basis, normalized to eliminate extraordinary, non-recurring charges. These unaudited costs are based on average costs of operations between July and December, 1995 and are representative of the costs during the November 1995 through April, 1996 period on which the call data illustrated in Tables 1 and 2 above is based. Peoples has expended great efforts to present a conservative picture of its costs and to reflect costs that solely relate to its payphone operations. For example, depreciation expense is calculated based on an average asset life of 10 years and interest expense relates only to that portion of Peoples' outstanding debt related to its payphone assets.

Table 3 -- Direct Costs

Cost Category	Per Payphone Basis	Per Call Basis*
Direct Costs per Month:		
LEC Line Charges	$60.35	$0.09
Premises Owners Commissions	62.17	0.09
Field Service/ Collection Costs	44.20	0.07
Other Costs	10.38	0.02
Total Direct Costs	$177.10	$0.27
Overhead (SG&A)	26.90	0.04
Depreciation/Interest**	61.06	0.09
Total Costs -- PreTax	$265.06	$0.40
10% Return on Assets***	27.93	0.04
Income Taxes	16.76	0.02
Total Costs + Reasonable Return	$309.75	$0.46

* Assumes an average call volume of 665 calls per month.

** Only includes depreciation and interest expense that relate to Peoples' payphone assets.

*** Peoples' payphone net asset base is $129,031,557; the 10% rate of return approximates a reasonable cost of capital.