

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

In the Matter of	)	
	)	
Implementation of the	)	CC Docket No. 96-128 ✓
Pay Telephone Reclassification	)	
and Compensation Provisions of the	)	
Telecommunications Act of 1996	)	
	)	
Policies and Rules Concerning	)	CC Docket. No. 91-35
Operator Service Access and	)	
Pay Telephone Compensation	)	
	)	
Petition of the Public Telephone	)	
Council to Treat Bell Operating Company	)	
Payphones as Customer Premises	)	
Equipment	)	
	)	
Petition of Oncor Communications	)	
Requesting Compensation for	)	
Competitive Payphone Premises	)	
Owners and Presubscribed Operator	)	
Services Providers	)	
	)	
Petition of the California Payphone	)	
Association to Amend and Clarify	)	
Section 68.2(a) of the	)	
Commission's Rules	)	
	)	
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	)	

**ORDER ON RECONSIDERATION**

Adopted: November 8, 1996

Released: November 8, 1996

By the Commission:

## Table of Contents

Topic	Paragraph No.
I. Introduction	1
II. Issues	4
A. Compensation for Each and Every Completed Intrastate and Interstate Call Originated by Payphones	4
1. Payphone Calls Subject to this Rulemaking and Compensation Amount	4
2. Entities Required to Pay Compensation	74
3. Ability of Carriers to Track Calls from Payphones	93
4. Administration of Per-Call Compensation	100
5. Interim Compensation Mechanism	114
6. Barriers to Entry and Exit	133
B. Reclassification of LEC-Owned Payphones	142
1. Classification of LEC Payphones as CPE	143
2. Transfer of Payphone Equipment to Unregulated Status	169
3. Termination of Access Charge Compensation and Other Subsidies	188
C. Nonstructural Safeguards for BOC Provision of Payphone Service	209
D. Ability of BOCs to Negotiate with Location Providers on the Presubscribed InterLATA Carrier	221
E. Ability of Payphone Service Providers to Negotiate with Location Providers on the Presubscribed IntraLATA Carrier	238
F. Establishment of Public Interest Payphones	244
IV. Procedural Matters	257
A. Final Paperwork Reduction Act Analysis	257
B. Final Regulatory Flexibility Analysis on Reconsideration	258
V. Conclusion	268
VI. Ordering Clauses	269
Appendix A List of Parties Filing Petitions	
Appendix B List of Parties Filing Comments	
Appendix C Amended Rules Adopted by This Order	

I. INTRODUCTION

1. On September 20, 1996, the Commission adopted a Report and Order implementing Section 276 of the Communications Act of 1934, as amended by the

Telecommunications Act of 1996 ("1996 Act").<sup>1</sup> In the Report and Order, the Commission adopted new rules and policies governing the payphone industry that: (1) establish a plan to ensure fair compensation for "each and every completed intrastate and interstate call using [a] payphone[;]"<sup>2</sup> (2) discontinue intrastate and interstate carrier access charge payphone service elements and payments and intrastate and interstate payphone subsidies from basic exchange services;<sup>3</sup> (3) prescribe nonstructural safeguards for Bell Operating Company ("BOC") payphones;<sup>4</sup> (4) permit the BOCs to negotiate with payphone location providers on the interLATA carrier presubscribed to their payphones;<sup>5</sup> (5) permit all payphone service providers to negotiate with location providers on the intraLATA carrier presubscribed to their payphones;<sup>6</sup> and (6) adopt guidelines for use by the states in establishing public interest payphones to be located "where there would otherwise not be a payphone[.]"<sup>7</sup>

2. In the Report and Order, we noted that Telecommunications Act of 1996 fundamentally changes telecommunications regulation. We stated that the 1996 Act erects a "pro-competitive deregulatory national framework designed to accelerate rapid private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."<sup>8</sup> To this end, we advanced the twin goals of Section 276 of the Act of "promot[ing] competition among payphone service providers and promot[ing] the widespread deployment of payphone services to the benefit of the general public..."<sup>9</sup> We sought to eliminate those regulatory constraints that inhibit the ability both to enter and exit the payphone marketplace, and to compete for the right to provide services to customers through payphones. At the same time, we recognized that a transition period is necessary to eliminate the effects of some long-standing barriers to full competition in the payphone market. For this reason, we concluded that we would continue, for a limited time,

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<sup>1</sup> Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Report and Order, FCC 96-388 (rel. Sept. 20, 1996) ("Report and Order"), appeal docketed sub nom. Illinois Public Telecommunications Assn. v. FCC and United States, Case No. 96-1394 (D.C. Cir., filed Oct. 17, 1996); Notice of Proposed Rulemaking, 11 FCC Rcd 6716 (1996) ("Notice").

<sup>2</sup> 47 U.S.C. § 276(b)(1)(A).

<sup>3</sup> 47 U.S.C. § 276(b)(1)(B).

<sup>4</sup> 47 U.S.C. § 276(b)(1)(C).

<sup>5</sup> 47 U.S.C. § 276(b)(1)(D).

<sup>6</sup> 47 U.S.C. § 276(b)(1)(E).

<sup>7</sup> 47 U.S.C. § 276(b)(2).

<sup>8</sup> S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 1 (1996).

<sup>9</sup> 47 U.S.C. § 276(b)(1).

to regulate certain aspects of the payphone market, but only until such time as the market evolves to erase these sources of market distortions.

3. On October 21, 1996, a number of parties filed petitions requesting that the Commission reconsider or clarify the rules we adopted in the Report and Order.<sup>10</sup> These petitions have as their general focus the Commission's conclusions regarding all of the following: the status of competition in the payphone marketplace; the use of market-based compensation for payphone calls; the appropriate per-call compensation amount for various types of calls; the Commission's authority to let the market set local coin rates; state entry and exit regulations; who should pay the per-call compensation; how calls should be tracked; how per-call compensation payments should be administered; the amount and appropriate payors of the interim flat-rate compensation; the valuation of local exchange carriers ("LECs") payphone assets; federal tariffing for payphone-related services; and various other requirements relating to payphones. In this Order on Reconsideration, we address each of these issues and conclude that the petitions for reconsideration should be denied, with two limited exceptions, because we find, as discussed more fully in this Order, that the petitions contain no new evidence or arguments not contemplated by our conclusions in the Report and Order.<sup>11</sup> On two issues, we grant requests for reconsideration and modify: (1) the requirements for LEC tariffing of payphone services and unbundled network functionalities; and (2) the requirements for LECs to remove unregulated payphone costs from the carrier common line charge and to reflect the application of multiline subscriber line charges to payphone lines. We also make a number of clarifications throughout this Order on Reconsideration.

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<sup>10</sup> A list of the parties filing petitions, along with the abbreviated names this Order uses to refer to the parties, is included as Appendix A. Similarly, Appendix B lists those parties that filed oppositions or comments on the petitions.

<sup>11</sup> Section 405 of the Act states, in relevant part, that:

Reconsiderations shall be governed by such general rules as the Commission may establish, except that no evidence other than newly discovered evidence, evidence which has become available only since the original taking of evidence, or evidence which the Commission or designated authority within the Commission believes should have been taken in the original proceeding shall be taken on any reconsideration.

47 U.S.C. Section 405(a).

## II. ISSUES

### A. COMPENSATION FOR EACH AND EVERY COMPLETED INTRASTATE AND INTERSTATE CALL ORIGINATED BY PAYPHONES

#### 1. Payphone Calls Subject to this Rulemaking and Compensation Amount

##### a. Report and Order

4. Defining Fair Compensation. The Commission concluded that, once competitive market conditions exist, the most appropriate way to ensure that payphone service providers ("PSPs") receive fair compensation for each call is to let the market set the price for individual calls originated on payphones.<sup>12</sup> We concluded that it is only in cases where the market does not or cannot function properly that the Commission needs to take affirmative steps to ensure fair compensation.<sup>13</sup>

5. The Commission concluded that the transition to market-based rates should occur in two phases. Because LECs will terminate, pursuant to Section 276(b)(1)(b), subsidies for their payphones within one year of the effective date of the rules adopted in this proceeding, LECs will not be eligible to receive compensation under Section 276(b)(1)(a) until that termination date.<sup>14</sup> The period before per-call compensation becomes effective will be the first phase of implementing the rules adopted in this proceeding. During this first phase, states may continue to set the local coin rate in the same manner as they currently do. States may, however, move to market-based local coin rates anytime during this period. In addition, the states must conduct their examination of payphone regulations during this period to review and remove, if necessary, those regulations that affect competition, such as entry and exit restrictions.<sup>15</sup> Interexchange carriers ("IXCs") will pay compensation for access code calls and subscriber 800 calls on a flat-rate basis.<sup>16</sup> In addition, under the Report and Order, all payphones must provide free access to dialtone, emergency calls, and telecommunications relay service ("TRS") calls for the hearing disabled.<sup>17</sup>

6. The Commission stated in the Report and Order that, in the second phase,

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<sup>12</sup> Report and Order at para. 49.

<sup>13</sup> Id.

<sup>14</sup> Id. at para. 50.

<sup>15</sup> Id.

<sup>16</sup> Id.

<sup>17</sup> Id.

which will begin on October 7, 1997, LECs will have already terminated the subsidies prohibited by Section 276(b)(1)(B), and per-call tracking capabilities will be in place.<sup>18</sup> The carriers to whom payphone calls are routed will be responsible for tracking each compensable call and remitting per-call compensation to the PSP. During this second year, which is the first year of per-call compensation (as opposed to flat-rate compensation), the market will be allowed to set the rate for local coin calls, unless the state can show that there are market failures that would not allow market-based rates. In addition, during the second phase, to allow us to ascertain the status of competition in the payphone marketplace, we concluded that IXCs must pay PSPs a default rate of \$.35 for each compensable call, which may be changed by mutual agreement.<sup>19</sup> PSPs will be required to post the local coin rate they choose to charge at each payphone.<sup>20</sup> During the second phase, the Commission may review, at our option, the deregulation of local coin rates nationwide and determine whether marketplace disfunctions exist, such as locational monopolies caused by the size of the location with an exclusive PSP contract or the caller's lack of time to identify potential substitute payphones, and should be addressed by the Commission.<sup>21</sup>

7. Ensuring Fair Compensation. To ensure fair compensation, we concluded in the Report and Order that we must provide for compensation for access code calls and subscriber 800 and other toll-free number calls, whether they are intrastate or interstate in destination.<sup>22</sup> We concluded that we must ensure fair compensation for 0+ calls that use BOC payphones.<sup>23</sup> We concluded further that once the BOCs reclassify their payphones and terminate all subsidies, pursuant to Section 276(b)(1)(B), they may receive the compensation established by the Report and Order, so long as they do not otherwise receive compensation for use of their payphones in originating 0+ calls.<sup>24</sup> We also concluded that, in the absence of a contract providing compensation to the PSP for intraLATA 0+ calls, the PSP shall be eligible to collect per-call compensation from the carrier to whom the call is routed.<sup>25</sup> In addition, the Commission concluded that PSPs should receive compensation for international calls. We found that we have authority under Sections 4(i) and 201(b) of the Communications Act of 1934, as amended, to ensure that PSPs are fairly compensated for international as well as interstate and intrastate calls

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<sup>18</sup> Id. at para. 51.

<sup>19</sup> Id.

<sup>20</sup> Id.

<sup>21</sup> Id.

<sup>22</sup> Id. at para. 52.

<sup>23</sup> Id. at para. 53.

<sup>24</sup> Id.

<sup>25</sup> Id.

using their payphones in the United States.<sup>26</sup> Further, we found no evidence of congressional intent to leave international calls uncompensated under Section 276.<sup>27</sup>

8. Local Coin Calls. The Commission concluded in the Report and Order that the market should be allowed to set the price for all compensable calls, including a local coin call.<sup>28</sup> The Commission concluded that competition and a deregulatory, market-based approach to setting local coin rates is appropriate, because existing local coin rates are not "necessarily fairly compensatory."<sup>29</sup> We recognized, however, that the competitive conditions, which are a prerequisite to a deregulatory, market-based approach, do not currently exist and cannot be achieved immediately.<sup>30</sup> Many states impose regulations on PSPs, including certain requirements that must be fulfilled before a PSP can enter or exit the payphone marketplace. In addition, in some locations, because of the size of the location with an exclusive PSP contract or the caller's lack of time to identify potential substitute payphones, the PSP may be able to charge an inflated rate for local calls based on its monopoly, pursuant to an exclusive contract with the location provider, on all payphones at certain types of locations.<sup>31</sup> We concluded that such monopoly location arrangements, in the absence of regulatory oversight, could impair competition.<sup>32</sup>

9. Based on these concerns, the Commission concluded that the overall transition to market-based local coin rates should not occur immediately.<sup>33</sup> During the first phase, the states will be responsible for both ensuring that PSPs are fairly compensated for local coin calls and protecting consumers from excessive rates. Eventually, when fully competitive conditions exist, the marketplace will address both concerns. We concluded that, during this period before per-call, as opposed to flat-rate, compensation becomes effective, states may continue to set the local coin rate in the same manner as they currently do.<sup>34</sup> States may, however, move to market-based local coin rates anytime during this period, and are encouraged to do so. In addition, each state should examine and modify its regulations applicable to payphones and PSPs, removing, in particular, those rules that impose market entry or exit

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<sup>26</sup> Id. at para. 54.

<sup>27</sup> Id.

<sup>28</sup> Id. at para. 56.

<sup>29</sup> Id. at para. 58.

<sup>30</sup> Id. at para. 59.

<sup>31</sup> Id.

<sup>32</sup> Id.

<sup>33</sup> Id. at para. 60.

<sup>34</sup> Id.

requirements.<sup>35</sup> We concluded that, for purposes of ensuring fair compensation through a competitive marketplace, the states should remove only those regulations that affect payphone competition; the states remain free at all times to impose regulations, on a competitively neutral basis, to provide consumers with information and price disclosure.<sup>36</sup> In addition, the states at all times must ensure that access to dialtone, emergency calls, and telecommunications relay service calls for the hearing disabled are available from all payphones at no charge to the caller.<sup>37</sup>

10. Pursuant to the Report and Order, at the conclusion of this first period, the market will be allowed to set the price for a local coin call. The Commission concluded that it should make an exception to the market-based approach, however, for states that are able to demonstrate with specificity that market failures exist within the state that would not allow market-based rates. Such a detailed showing could consist of, for example, a detailed summary of the record of a state proceeding that examines the costs of providing payphone service within that state and the reasons why the public interest is served by having the state set rates within that market.<sup>38</sup> The Commission concluded that, during the second phase, after the initial period of flat-rate compensation, we have the discretion to review market-based local coin rates nationwide and determine whether marketplace disfunctions, such as locational monopolies where the size of the location or the caller's lack of time to identify any potential substitute payphones, exist and should be addressed by the Commission. If, at that point, we find that the deregulation of local coin rates warrants modification due to market failures, we may choose, for example, to set a cap on the number of calls subject to compensation from particular payphones to limit the exercise of locational market power.<sup>39</sup> Absent such a finding, at the conclusion of the second phase, the market-based local coin rate at these payphones will be the default compensation rate for all compensable calls in absence of an agreement between the PSP and the carrier-payor.<sup>40</sup>

11. We concluded in the Report and Order that we must ensure fair compensation for "411" and other directory assistance calls from payphones by permitting the PSP to charge a market-based rate for this service, although a PSP may decline to charge for this service if it chooses.<sup>41</sup> In addition, to help ensure that a LEC does not discriminate in favor of its own payphones, we concluded that if the incumbent LEC imposes a fee on independent payphone providers for "411" calls, then the LEC must impute the same fee to its own payphones

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<sup>35</sup> Id.

<sup>36</sup> Id.

<sup>37</sup> Id.

<sup>38</sup> Id. at para. 61.

<sup>39</sup> Id.

<sup>40</sup> Id.

<sup>41</sup> Id. at para. 62.

for this service.<sup>42</sup>

12. Payphone Fraud. The Commission has recognized, since it first addressed the issue of compensation for subscriber 800 calls in 1991, that a PSP "could attach an autodialer to a payphone and have it place repeated 800 calls ... to increase the amount of compensation [it] receives."<sup>43</sup> Section 227(b)(1) of the Act states that it is unlawful for any person to use an autodialer to call "any service for which the called party is charged for the call[.]" We concluded in the Report and Order that this provision bars the use of autodialers to generate payphone compensation by calling toll-free 800 numbers, which are billed to the called party.<sup>44</sup> We noted that the Commission will aggressively take action against those involved in such fraud. The Commission has the authority under the 1996 Act and its rules to take civil enforcement action against a PSP who deliberately violates our compensation rules by placing toll free calls simply to obtain compensation from the carriers. More importantly, we noted that such activity may be fraud by wire and subject to criminal penalties.<sup>45</sup>

13. The Commission has previously adopted a definition of "payphone" in the access code call compensation proceeding, although the definition is used only for purposes of the billing and collection of the compensation in that proceeding.<sup>46</sup> We concluded in that proceeding that payphones appearing on the LEC-provided customer-owned, coin-operated telephone ("COCOT") lists were payphones that are eligible for compensation.<sup>47</sup> If a payphone provider does not subscribe to an identifiable payphone service, or if its payphone is omitted from the COCOT list in error, the provider is required to provide alternative verification information to the IXC paying compensation. We concluded in the Report and Order that this definition of "payphone," regardless if the payphone in question is independently- or LEC-provided, will be sufficient for the payment of compensation as mandated by Section 276 and the instant proceeding.<sup>48</sup> In addition, all payphones will be required to transmit specific payphone coding digits as a part of their automatic number identification ("ANI"), which will assist in identifying them to compensation payors. Beyond the immediate purposes of paying compensation, we concluded that a payphone is any telephone made available to the public on a fee-per-call basis, independent of any other commercial transaction, for the purpose of making telephone calls, whether the telephone is coin-operated or is activated either by calling collect or using a calling

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<sup>42</sup> Id.

<sup>43</sup> Id. at para. 65.

<sup>44</sup> Id.

<sup>45</sup> Id.

<sup>46</sup> Reconsideration Order, 8 FCC Rcd at 7156-57.

<sup>47</sup> Id.

<sup>48</sup> Report and Order at para. 66.

card.<sup>49</sup>

14. Completed Calls. The Commission concluded that a "completed call" is a call that is answered by the called party.<sup>50</sup> To comply with the mandate of Section 276, we concluded that multiple sequential calls made through the use of a payphone's "#" button should be counted as separate calls for compensation purposes.<sup>51</sup> We concluded further that Section 276(b)(1)(A) was not intended to apply to both incoming and outgoing calls.<sup>52</sup> Because PSPs may block incoming calls, they are able to restrict use of their payphones if they are concerned about a lack of compensation. For this reason, we concluded that incoming calls are not within the purview of Section 276, and it is not required, as a result, to address them in the order.<sup>53</sup>

15. Compensation Amount. Because we established in the Report and Order that the payphone marketplace has low entry and exit barriers and will likely become increasingly competitive, we concluded that the market (or the states, where there are special circumstances) is best able to set the appropriate price for payphone calls in the long term.<sup>54</sup> We concluded further that the appropriate per-call compensation amount ultimately is the amount the particular payphone charges for a local coin call, because the market will determine the fair compensation rate for those calls.<sup>55</sup> If a rate is compensatory for local coin calls, then it is an appropriate compensation amount for other calls as well, because the cost of originating the various types of payphone calls are similar. We concluded that the per-call compensation amount equal to the local coin rate is a default rate that will apply only in the absence of a negotiated agreement between the parties. PSPs, IXCs, subscriber 800 carriers, and intraLATA carriers may agree on an amount for some or all compensable calls that is either higher or lower than the local coin rate at a given payphone.<sup>56</sup>

16. To allow us to ascertain the status of competition in the payphone marketplace, we concluded that we should establish the default per-call rate for two years before

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<sup>49</sup> Id.

<sup>50</sup> Id. at para. 63.

<sup>51</sup> Id.

<sup>52</sup> Id. at para. 64.

<sup>53</sup> Id.

<sup>54</sup> Id. at paras. 11-19.

<sup>55</sup> Id. at para. 70.

<sup>56</sup> Id. at para. 71.

leaving it to the market to set the rate, absent any changes in our rules.<sup>57</sup> More specifically, until October 7, 1997, IXCs will pay flat-rate compensation to PSPs.<sup>58</sup> After the initial period, when per-call tracking capabilities will be in place, we conclude that IXCs will be required to pay a default rate of \$.35 per call, which is currently the local coin rate in four of the five states that have deregulated their local calling rates. The carrier-payor and the PSP may agree to a compensation rate that is different, and, therefore, the default rate would not apply.<sup>59</sup> For coinless payphones, which by definition do not have a local coin rate, the default rate will remain \$.35 per call for as long as this rate is fairly compensable under Section 276(b)(1)(A).<sup>60</sup> We concluded that mandating a per-call amount for inmate payphones, which do not allow local coin calls, could possibly lead to a double recovery of costs already included in higher-than-average operator service rates and special surcharges on end-user phone bills for calls made on these payphones.<sup>61</sup> We concluded further that semi-public payphones are entitled to receive per-call compensation in the same manner as public payphones.<sup>62</sup>

#### b. Petitions

17. Defining Fair Compensation. AT&T argues that the Commission's assumption regarding the ability of the market to set a fair compensation amount is unfounded, because the requisite competition in the market does not exist.<sup>63</sup> DC People's Counsel contends that the Report and Order is based on the faulty premise that local coin calling is competitive, and that by encouraging states to identify possible market failures, the Commission inappropriately shifts the burdens to the states to rebut the Commission's premise.<sup>64</sup> California PUC argues that the Report and Order makes no showing that market forces can develop fair and reasonable rates.<sup>65</sup>

18. California PUC contends that the Report and Order both creates the potential of a system of unregulated single-owner monopolies in the payphone business and fails

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<sup>57</sup> Id. at para. 72.

<sup>58</sup> Id.

<sup>59</sup> Id.

<sup>60</sup> Id.

<sup>61</sup> Id. at para. 74.

<sup>62</sup> Id. at para. 75.

<sup>63</sup> AT&T Petition at 11.

<sup>64</sup> DC People's Counsel Petition at 8-9.

<sup>65</sup> California PUC Petition at 4.

to address the exercise of monopoly power at payphone locations with respect to individual consumers.<sup>66</sup> Maine argues that a proper record in this proceeding would likely show that locational monopolies constitute virtually the entire payphone services market.<sup>67</sup> New York DPS contends that competition among PSPs will continue to be for prime locations, not for lower local coin rates. According to New York DPS, this competition will lead, in turn, to locational monopolies, where PSPs can charge high rates to maximize profits.<sup>68</sup> MCI contends that market-based rates will allow callers to become captive to higher payphone calling rates.<sup>69</sup> LDDS contends further that PSPs will have an incentive to mark up the local coin rate as a means of recovering locational monopoly profits.<sup>70</sup>

19. Ensuring Fair Compensation. The RBOCs request that the Commission clarify that the BOCs are able to collect per-call compensation for 0+ calls on inmate payphones when the BOCs do not otherwise receive compensation pursuant to a contract.<sup>71</sup> MCI contends that the Commission should reconsider its conclusion to provide compensation to BOCs for any 0+ calls when they do not otherwise receive compensation pursuant to a contract.<sup>72</sup> MCI contends further that, because IXC have existing contractual relationships with location providers for an established amount of compensation, the Commission's conclusion impermissibly interferes with the pre-existing contract in contravention of Section 276(b)(3).<sup>73</sup>

20. MCI argues that the Commission should reconsider its conclusion to provide per-call compensation for international calls, because the domestic carrier would not have the information necessary to bill the consumer and the settlements process would preclude carriers from recovering the cost of compensation through their rates.<sup>74</sup> Similarly, Sprint argues that the Commission should reconsider its conclusion to provide per-call compensation for international calls, because there is no basis for the assumption that Congress intended to include international

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<sup>66</sup> Id. at 5.

<sup>67</sup> Maine Petition at 11.

<sup>68</sup> New York DPS Petition at 9.

<sup>69</sup> MCI Petition at 2-4.

<sup>70</sup> LDDS Petition at 9-10.

<sup>71</sup> RBOC Petition at 3-5. Use of the term "RBOCs" in this Order on Reconsideration refers to the RBOC Payphone Coalition, which includes six of the seven Bell Operating Companies, but does not include Ameritech.

<sup>72</sup> MCI Petition at 5.

<sup>73</sup> Id. at 5-6.

<sup>74</sup> Id. at 6.

calls in the class of compensable calls.<sup>75</sup> In addition, Sprint argues that, with regard to compensation for international calls, the Commission does not sufficiently articulate its reliance on Sections 4(i) and 201(b) of the Act.<sup>76</sup>

21. Cable & Wireless contends that the Commission should allow carriers to treat calls re-originated within the carrier's platform as a single compensable call.<sup>77</sup> It contends further that the Commission has required carriers to treat such calls as multiple calls because it does not understand the technical difficulties in identifying call sequences. Cable & Wireless maintains that its ISDN-based platform cannot generate records of payphone-originated calls to allow it to track re-originated calls for purposes of compensation.<sup>78</sup>

22. APCC requests that the Commission require any carrier that blocks calls originating from payphones to notify the respective PSP and provide an announcement to the caller that the carrier, not the PSP, is blocking the call.<sup>79</sup> In support of its request, APCC argues that a carrier's blocking of calls without such a notification could lead to consumer confusion about why the call was not completed and possible injury to the PSP's business.<sup>80</sup> AirTouch contends that IXCs should not be permitted to block calls originated by payphones.<sup>81</sup> If the Commission continues to allow such blocking, AirTouch and PageNet argue, PSPs should be required to provide a coin deposit mechanism that allows callers to continue placing subscriber 800 calls.<sup>82</sup>

23. MCI argues that, because PSPs have the option of blocking subscriber 800 calls, the Commission should reconsider its decision to establish a per-call compensation rate for subscriber 800 calls.<sup>83</sup> According to MCI, PSPs can block subscriber 800 calls if they are

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<sup>75</sup> Sprint Petition at 13.

<sup>76</sup> Id.

<sup>77</sup> Cable & Wireless Petition at 15-16. As we stated in the Report and Order, "[s]ome IXCs allow a caller to make successive calls, once she dials her calling card information, by pushing the '#' button at the conclusion of each call to regenerate the dialtone." Report and Order at n.220.

<sup>78</sup> Id.

<sup>79</sup> APCC Petition at 2-3.

<sup>80</sup> Id.

<sup>81</sup> AirTouch Petition at 14-15.

<sup>82</sup> Id. at 15; PageNet Petition at 23.

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

concerned about a lack of compensation.<sup>84</sup>

24. Local Coin Calls. California PUC, New York DPS, Ohio PUC, Oklahoma CC, Texas PUC, DC People's Counsel, and Consumer's Union argue that the Commission's conclusions concerning local coin rates in the Report and Order constitutes unwarranted preemption of state authority over intrastate telecommunications and is inconsistent with Section 2(b) of the Act.<sup>85</sup> Maine contends further that if Congress had intended the Commission's rulemaking authority under Section 276(b)(1)(A) to extend to local coin rates, it would have referred to "rates" or "charges," not merely "compensation."<sup>86</sup> In addition, Maine argues that the Commission's action is not justified by the present record, and that its preemption authority is limited to removing only inconsistent state regulations.<sup>87</sup> Maine also contends that the Commission's decision not to regulate the local coin rate is a decision to forbear under Section 10 of the Act, and that the Commission failed to make the specified findings required in that section.<sup>88</sup>

25. Maine and New York DPS argue that the Commission failed to give adequate notice, in violation of the Administrative Procedures Act, that it was contemplating deregulation.<sup>89</sup> Maine argues further that commenters were not afforded an opportunity to address the merits of deregulation, because they did not know that it was a possible outcome of the proceeding.<sup>90</sup>

26. Maine and Oklahoma contend that there is no evidence that local coin rates are not fairly compensatory.<sup>91</sup> In addition, Maine argues that deregulated local coin rates could allow PSPs to over-recover their costs and lead to rates that exceed economic costs.<sup>92</sup> Texas PUC and Consumer's Union argue further that unrestricted local coin rates are not in the public interest

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<sup>84</sup> Id.

<sup>85</sup> California PUC Petition at 2; Consumer's Union Petition at 2; DC People's Counsel Petition at 5-7; New York DPS Petition at 2, 4-6; Ohio PUC Petition at 7; Oklahoma CC Petition at 2; Texas PUC Petition at 2-3.

<sup>86</sup> Maine Petition at 7-8.

<sup>87</sup> Id. at 10.

<sup>88</sup> Id. at 9-10.

<sup>89</sup> Maine Petition at 16-17; New York DPS Petition at 2, 4-6.

<sup>90</sup> Maine Petition at 16-17.

<sup>91</sup> Maine Petition at 4-6; Oklahoma CC Petition at 2.

<sup>92</sup> Maine Petition at 14.

because they will lead to "price gouging" of payphone callers.<sup>93</sup> New York DPS contends that the deregulation of local coin rates is contrary to the public interest. New York DPS argues that increases in local coin rates are likely to be met with "extreme customer reaction and antagonism."<sup>94</sup>

27. Ohio PUC argues that market-based rates do not always lead to reasonably priced payphone services to callers, particularly where a single PSP has a monopoly over the provision of payphones in a particular location, such as an airport.<sup>95</sup> For this reason, Ohio PUC requests that the Commission modify its rules to permit state commissions to place an end-user rate cap on the price of a local call when PSPs "are realizing extraordinarily high profits because customers are still, in effect, in a monopoly situation."<sup>96</sup> Oklahoma CC requests that the Commission permit the states to identify immediately payphone market failures that justify state regulation instead of recommending the market failures to the Commission for investigation after the failures persist.<sup>97</sup> Oklahoma CC and Texas PUC also request that the Commission allow states to establish a rate ceiling for local coin rates during the first year in which per-call compensation is in effect.<sup>98</sup>

28. Maine argues that the Commission lacks jurisdiction to impose market-based rates for intrastate directory assistance calls from payphones.<sup>99</sup> New York DPS contends that directory assistance calls are a uniquely local issue that should not be subject to a market-based rate.<sup>100</sup> MCI requests that the Commission clarify that PSPs are entitled to require consumers to deposit coins into the phone for directory assistance calls, as with any other local call, and that carrier is not required to compensate the PSP.<sup>101</sup>

29. SW Bell requests that the Commission clarify that OSPs may be compensated for non-revenue producing "0-" general assistance calls where a caller asks for calling rates or dialing instructions.<sup>102</sup> In addition, SW Bell argues that PSPs may choose to

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<sup>93</sup> Consumer's Union Petition at 3; Texas PUC Petition at 4-5.

<sup>94</sup> New York DPS Petition at 8.

<sup>95</sup> Ohio PUC Petition at 5-7.

<sup>96</sup> *Id.* at 8.

<sup>97</sup> Oklahoma CC Petition at 3-4.

<sup>98</sup> Oklahoma CC Petition at 4; Texas PUC petition at 5-6.

<sup>99</sup> Maine Petition at 12.

<sup>100</sup> New York DPS Petition at 9-10.

<sup>101</sup> MCI Petition at 7.

<sup>102</sup> SW Bell Petition at 5.

obtain compensation for these calls through a coin deposit.<sup>103</sup>

30. Payphone Fraud. MCI argues that the Commission should reconsider its conclusions regarding payphone compensation fraud.<sup>104</sup> According to MCI, the Commission has not taken effective steps to reduce the risk of fraud faced by IXCs.<sup>105</sup> Sprint and PageNet argue that the Commission should take additional steps to prevent unscrupulous callers from calling subscriber 800 numbers for the express purpose of increasing compensation.<sup>106</sup>

31. MCI argues that the Commission should reconsider the Report and Order's conclusions about the definition of "payphone."<sup>107</sup> According to MCI, the Report and Order provides two definitions of payphone.<sup>108</sup> MCI requests that the Commission adopt one definition of "payphone" that, at a minimum, states that the payphone should be compliance with the information digit requirement to be entitled to compensation.<sup>109</sup> MCI requests further that the Commission clarify that phones in hotels, dormitory rooms, or hospital rooms are not entitled to compensation.<sup>110</sup> Sprint argues that the Commission must require LECs to provide, free of charge, a list of emergency numbers, because calls to such numbers from payphones are exempt from compensation.<sup>111</sup>

32. The RBOCs, AT&T, and Sprint request that the Commission clarify that PSPs must transmit payphone information digits within the payphone ANI to be eligible to receive compensation.<sup>112</sup> MCI requests, more specifically, that the Commission order all non-LEC payphones to transmit the 70 code as part of the ANI, and all LEC payphones to transmit the "27" code as part of the ANI to assist in detecting potential payphone fraud.<sup>113</sup> According

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<sup>103</sup> Id.

<sup>104</sup> MCI Petition at 7.

<sup>105</sup> Id.

<sup>106</sup> PageNet Petition at 21-23; Sprint Petition at 12.

<sup>107</sup> MCI Petition at 8-10.

<sup>108</sup> Id. at 8.

<sup>109</sup> Id. at 9.

<sup>110</sup> Id. at 10.

<sup>111</sup> Sprint Petition at 18-19.

<sup>112</sup> AT&T Petition at 23; RBOC Petition at 6-7; Sprint Petition at 18.

<sup>113</sup> MCI Petition at 8.

to MCI, the "07" code does not identify a payphone, but merely indicates that a line is restricted.<sup>114</sup>

33. Compensation Amount. AT&T, MCI, PCIA, and PageNet contend that the Commission should reconsider the per-call compensation amount, as established in the Report and Order, because it is inconsistent with the Commission's approach in the local competition proceeding.<sup>115</sup> According to AT&T, the Commission proposed in the Notice a cost-based compensation method for determining per-call compensation, but ultimately rejected all cost-based proposals, including a proposal that would have used the same type of long-run incremental cost analysis the Commission found appropriate in the local competition proceeding.<sup>116</sup> Similarly, LDDS, Cable & Wireless, and AirTouch argue that the Commission must base its compensation amount on the costs PSPs incur in originating compensable calls.<sup>117</sup> AirTouch argues that the compensation rate adopted by the Commission improperly compensates PSPs for customer premises equipment ("CPE") rather than for services that the payphone provides.<sup>118</sup> MCI and PCIA argue that the Commission should reconsider its adoption of market-based rates for PSPs for subscriber 800 messaging calls, because such compensation does not result in fair compensation, and PSPs will receive a windfall for use of their payphones.<sup>119</sup> Sprint requests that the Commission rescind the Report and Order in toto, or, in the alternative, establish a compensation rate of \$0, unless there is evidence that such a rate is not fair.<sup>120</sup>

34. WPTA contends that the Commission must reconsider the compensation mechanism adopted in the Report and Order, because the Commission has not carried out its statutory mandate to provide a uniform per-call compensation rate that fairly compensates PSPs.<sup>121</sup> WPTA argues that the Commission must prescribe a uniform per-call rate of approximately \$.90 to \$1.50 for each compensable call.<sup>122</sup> WPTA further argues that the compensation provided by the Report and Order covers only the marginal costs of originating compensable calls and is, therefore, inadequate and not "fair."<sup>123</sup> In addition, WPTA argues that compensable dial-around

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<sup>114</sup> Id. at 14.

<sup>115</sup> AT&T Petition at 5-8; MCI Petition at 2-4; PageNet Petition at 3; PCIA Petition at 8.

<sup>116</sup> AT&T Petition at 5-6.

<sup>117</sup> AirTouch Petition at 11; Cable & Wireless Petition at 3-6; LDDS Petition at 10-11.

<sup>118</sup> AirTouch Petition at 13-14.

<sup>119</sup> MCI Petition at 2-4; PCIA Petition at 7-8.

<sup>120</sup> Sprint Petition at 1-2.

<sup>121</sup> WPTA Petition at i.

<sup>122</sup> Id. at 11.

<sup>123</sup> Id. at 6-8.

calls should be treated "as a 'taking' under the framework of Article V of the Amendments to the Constitution of the United States and 'just compensation' paid accordingly."<sup>124</sup>

35. AT&T and Sprint argue that the Report and Order ignores evidence in the record that local coin rates are both excessive and an inappropriate surrogate upon which to base per-call compensation.<sup>125</sup> To support its argument, AT&T cites to comments that argue that the local coin rate should be higher than a coinless call because of coin collection and other costs associated with the former.<sup>126</sup> Similarly, MCI, LDDS, Cable & Wireless, PageNet contend that use of the local coin rate is an improper basis for evaluating the costs of all payphone-originated calls, because costs vary for each type of payphone call.<sup>127</sup> In addition, AT&T argues that there is little basis to use \$.35 as a default market rate for the first two years of the compensation mechanism.<sup>128</sup> LDDS contends that the \$.35 default rate is based on an insufficient factual record and relies only on data from rural, Western states.<sup>129</sup> Sprint argues that the \$.35 per-call default rate exceeds the IXC's revenue on a typical toll-free call.<sup>130</sup> If it continues to use local coin rates as a surrogate, LDDS argues, the Commission must adjust the rate downward to reflect the cost savings the PSP experiences and to account for the potential for strategic pricing by PSPs.<sup>131</sup> AT&T contends that, because of wide differentials in revenues, it is impossible to develop a unitary market price that would be applicable to both access code and 800 subscriber calls.<sup>132</sup>

36. The Inmate Coalition and Invision request that the Commission reconsider its conclusion that inmate providers not be entitled to receive a special \$.90 per-call compensation amount for their payphones.<sup>133</sup> They argue that a special per-call compensation amount is warranted because inmate providers have higher service costs than other PSPs and that the intrastate 0+ calls they carry are frequently capped by the states at AT&T's standard collect rate

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<sup>124</sup> Id. at 10. WPTA contends that, under a "takings" analysis, the appropriate per-call compensation rate would be close to \$1.50 per call. Id. at 11.

<sup>125</sup> AT&T Petition at 8-13; Sprint Petition at 3.

<sup>126</sup> AT&T Petition at 9-10.

<sup>127</sup> Cable & Wireless Petition at 4-6; LDDS Petition at 8-9; MCI Petition 9-16.

<sup>128</sup> AT&T Petition at 10-11.

<sup>129</sup> LDDS Petition at 10.

<sup>130</sup> Sprint Petition at 6.

<sup>131</sup> LDDS Petition at 11.

<sup>132</sup> AT&T Petition at 13.

<sup>133</sup> Inmate Coalition Petition at 2-5; Invision Petition at 2.

for interLATA calls.<sup>134</sup> Invision argues further that the \$.90 per call rate that it requests would be in lieu of, not in addition to, the higher-than-average operator services rates often charged at inmate payphones.<sup>135</sup> In addition, the Inmate Coalition argues that in most states, an addition of \$.90 per call would not raise the inmate payphone surcharge above that imposed by the three largest IXCs.<sup>136</sup>

37. AT&T and MCI request that the Commission clarify that state compensation requirements for intrastate access code calls are preempted by the compensation mechanism adopted in the Report and Order, as of the effective date of interim compensation.<sup>137</sup>

**c. Comments**

38. The RBOCs argue that the Commission was required by Section 276 to mandate per-call compensation, because the BOC PSPs would not receive any compensation for 0+ calls absent Commission intervention.<sup>138</sup> They argue further that MCI's contention that such a mandate impermissibly interferes with existing contracts is not convincing, because MCI argues essentially that the contracts will be less profitable, not nullified or void.<sup>139</sup> WorldCom and MCI oppose any attempt by the BOCs to obtain compensation for 0+ calls.<sup>140</sup> WorldCom argues that so long as the BOC receives payphone subsidies or usage fees, they already are "fairly compensated" for each and every call made using their payphones. WorldCom also asserts that the Commission has already incorrectly compensated the BOCs by arbitrarily excluding them from paying compensation during the interim period.<sup>141</sup> CompTel argues that the Commission should apply an incremental cost compensation rate limited to those calls that the PSP is not allowed to block, while market rates should be used for 0+ and local coin calls for which the PSP has discretion to establish the appropriate rate.<sup>142</sup> APCC and the RBOCs argue that international calls should be compensated because Congress intended to include those calls and principles of

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<sup>134</sup> Inmate Coalition Petition at iii; Invision Petition at 3-5.

<sup>135</sup> Inmate Coalition Petition at 5-6; Invision Petition at 7-8.

<sup>136</sup> Inmate Coalition Petition at 10.

<sup>137</sup> AT&T Petition at 23; MCI Petition at 22.

<sup>138</sup> RBOC Comments at 1.

<sup>139</sup> Id. at 2.

<sup>140</sup> WorldCom Comments at 7-8; MCI Comments at 4-5.

<sup>141</sup> WorldCom Petition at 7-8.

<sup>142</sup> CompTel Comments at 6-7.

equity require such compensation.<sup>143</sup>

39. Peoples argues that if the Commission allows IXCs to block subscriber 800 calls from payphones, then it must require these carriers to inform the caller that the blocked call is not due to a payphone equipment malfunction.<sup>144</sup> AT&T opposes APCC's request that carriers who block 800 subscriber calls be required to play an announcement for the benefit of the PSP, asserting that PSPs have the ability to protect themselves by placing signs at their payphones which inform consumers that some calls may be blocked at the request of the carrier or 800 subscriber.<sup>145</sup> CompTel also opposes APCC's request, asserting that the PSP is in the best position both to prevent blockage by negotiating with carriers, and to explain to their own customers the reason such blockage occurs.<sup>146</sup> CompTel argues that signage at the payphone could fully explain to end-users the reasons for potential blockage, while it would be expensive and technically difficult for carriers to provide such an audible message.<sup>147</sup>

40. The RBOCs argue that no special rules -- favoring or disfavoring inmate PSPs -- are required, and that review of state pricing regulation of inmate payphones would be premature, because many state payphone rules will be subject to review at the state level over the next few months.<sup>148</sup> MCI urges the Commission to reject the request of Inmate Coalition for compensation of \$.90 per call to be paid to PSPs providing phones for inmates in prisons.<sup>149</sup> MCI argues that, while inmate phones involve special circumstances, the PSP has the opportunity to contract for fair compensation for all calls from such phones. Therefore, as with 0+ calls, according to MCI, there is no need for the Commission to prescribe any compensation for calls from inmate phones.<sup>150</sup> On the other hand, Peoples agrees with petitioners that the Commission should fairly compensate PSPs for services rendered on inmate payphones.<sup>151</sup> The Inmate Coalition argues that the BOC PSPs should not receive per-call compensation on 0+ calls from

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<sup>143</sup> APCC Comments at 21; RBOC Comments at 3.

<sup>144</sup> Peoples Comments at 10. Peoples states that frustrated callers may vent their anger in the payphone itself, causing severe damage to the equipment. *Id.*

<sup>145</sup> AT&T Comments at 14. See also Sprint Comments at 8.

<sup>146</sup> CompTel Opposition at 2-3. See also LCI Comments at 5.

<sup>147</sup> *Id.*

<sup>148</sup> RBOC Comments at 3.

<sup>149</sup> MCI Comments at 3.

<sup>150</sup> *Id.* at 3-4.

<sup>151</sup> Peoples Comments on 12.

their inmate payphones as long as they otherwise receive compensation for these calls.<sup>152</sup> It argues further that because the interim compensation amount applies only to access code and subscriber 800 calls, and that all calls from BOC inmate payphones are 0+ calls, the BOCs' inmate payphones are not eligible to receive interim compensation.<sup>153</sup> The Inmate Coalition contends that the RBOC petition's reference to the higher cost of providing inmate services makes clear the need for a special compensation rate for inmate payphones.<sup>154</sup>

41. The RBOCs, APCC, and Peoples support the Commission's market-based approach to setting the compensation amount for compensable calls.<sup>155</sup> The RBOCs argue that a cost-based approach should be avoided for the following reasons: (1) cost-based measures are inappropriate for payphones, where the market is structured to function effectively; (2) cost-based compensation will lead to a severe reduction in the number of payphones available for public use; and (3) market-based pricing will not lead to overcompensation, and could possibly lead to artificially low compensation rates.<sup>156</sup> The RBOCs also argue that the cost-based approach relied upon by the Commission in the local competition proceeding is inapplicable to the payphone proceeding because Section 276 calls for "fair compensation," while Section 252 requires interconnection and network elements charges to be "based on cost."<sup>157</sup> In addition, the RBOCs and APCC contend that cost-based pricing methodologies may be appropriate to regulated industries, but not to competitive ones, like the payphone industry.<sup>158</sup> On the other hand, several commenters, including Arch, AT&T, and LCI, restate the position that reliance on actual market rates or fully distributed costs is inconsistent with the compensation methodology adopted by the Commission in the Local Competition proceeding, which adopted TELRIC as an appropriate methodology for carriers to recover their interconnection costs of origination and termination.<sup>159</sup>

42. APCC contends that market-based compensation mandated by the Report and Order does not constitute a "windfall" for PSPs.<sup>160</sup> It contends further that the IXCs are

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<sup>152</sup> Inmate Coalition Comments at 2-5.

<sup>153</sup> Id. at 5.

<sup>154</sup> Id. at 6-7.

<sup>155</sup> APCC Comments at 8-10; Peoples Comments at 4-5; RBOC Comments at 4.

<sup>156</sup> RBOC Comments at 4.

<sup>157</sup> Id. at 5.

<sup>158</sup> Id.; APCC Comments at 5.

<sup>159</sup> Arch Comments at 3-4. Also AT&T Comments at 7; LCI Comments at 6-7; WorldCom Comments at 3; TRA Comments at 14; Touch 1 Comments at 4-6.

<sup>160</sup> APCC Comments at 4.

beginning to pay compensation fees that they should have been paying all along, if not for government-mandated "unblocking" requirements.<sup>161</sup> APCC argues that the \$.35 per-call default compensation rate is within the range of reasonable cost estimates established on the record.<sup>162</sup> On the other hand, TRA and Touch 1 assert that the Commission's market-based approach is inappropriate because the real competition in the payphone market is for access to prime locations, which tends to increase commission payments to location providers, rather than reduce rates charged to payphone users.<sup>163</sup> They argue that this encourages PSPs to charge higher rates in order to compete for prime locations.<sup>164</sup> AirTouch argues that the compensation rate established by the Commission is excessive, and should instead be based upon the PSPs' costs for making a payphone available.<sup>165</sup> AirTouch and PCIA assert that the Commission has improperly compensated PSPs for their customer premises equipment, and not for the limited network access they offer.<sup>166</sup> Similarly, Arch asserts that the Commission's market-based approach will result in an inappropriate windfall to PSPs, which will undercut effective compensation in both the payphone and messaging industries.<sup>167</sup>

43. Several commenters argue that local coin rates are not an appropriate surrogate for a per-call compensation rate for 800 subscriber and access code calls.<sup>168</sup> AT&T, for example, argues that there is no current "market" for local coin calls and that, in any event, local coin calls are an excessive measure of the costs incurred in making a payphone available for an 800 subscriber or access code call.<sup>169</sup> CompTel adds that local coin rates include costs, such as coin collection and monitoring, not associated with access code calls.<sup>170</sup> AT&T and CompTel assert that the use of the local coin rate as a surrogate will lead to strategic pricing by PSPs, because lost revenues from high local coin rates would be recouped through higher per call

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<sup>161</sup> Id.

<sup>162</sup> Id. at 13.

<sup>163</sup> TRA Comments at 14; Touch 1 Comments at 3-4.

<sup>164</sup> Id.

<sup>165</sup> AirTouch Comments at 4-5.

<sup>166</sup> Id. at 5-6; PCIA Comments at 7.

<sup>167</sup> Arch Comments at 4-5. Also CompTel Comments at 6-8.

<sup>168</sup> See, e.g., Arch Comments at 3-4; AT&T Comments at 2-7; CompTel Comments at 8-10; LCI Comments at 2, 5-7; Sprint Comments at 3; TRA Comments at 16-18; Touch 1 Comments at 6-8.

<sup>169</sup> AT&T Comments at 3.

<sup>170</sup> CompTel Comments at 8-9. See also LCI Comments at 5-6.

compensation on 0+ and access code calls.<sup>171</sup> These commenters add that consumers will be harmed by such a system because it will impose hidden surcharges on access code and subscriber 800 calls.<sup>172</sup> LCI comments that it is unaware of any source for determining what local coin rate a PSP is charging for a particular payphone, which would allow unscrupulous PSPs to inflate their claims to compensation.<sup>173</sup> LCI concludes that the only way for carriers to respond to these problems may be to block all calls from payphones.<sup>174</sup>

44. The Commission received a number of letters from a subscriber 800 end-users in which they expressed concerns that the rules adopted in the Report and Order could adversely affect their costs of doing business.<sup>175</sup> Most of these letters recommend that the Commission either adopt a per-call compensation amount lower than the \$.35 interim rate adopted in the Report and Order, or adopt a user-pays system.<sup>176</sup> These commenters argue that a \$.35 rate is significantly above the cost incurred for such calls, and so constitutes a subsidy to PSPs.<sup>177</sup> Many of these letters also recommend that the Commission adopt a simple, non-complex means for ensuring that payphone owners receive compensation.<sup>178</sup> Other commenters argue that the Commission should not adopt a "coin-deposit" system that would interfere with the ability of end-users to obtain toll-free access to subscriber applications and credit card calling.<sup>179</sup>

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<sup>171</sup> CompTel Comments at 9; AT&T Comments at 6; LCI Comments at 3. See also TRA Comments at 14-15.

<sup>172</sup> Id.

<sup>173</sup> LCI Comments at 4.

<sup>174</sup> Id. at 4.

<sup>175</sup> See, e.g., Letter from John Lee, Budget Rent a Car Corp. to Regina Keeney, Chief, Common Carrier Bureau, dated October 18, 1996; Letter from Chris McCann, 1-800-FLOWERS, to The Honorable Reed E. Hundt, Chairman, FCC, dated October 21, 1996. See generally Appendix C for a list of those parties filing informal comments.

<sup>176</sup> See, e.g., Letter for Thomas P. Jones, Jr., Access Health, Inc., to Regina Keeney, Chief, Common Carrier Bureau, dated October 18, 1996; Letter from Hideo Hasui, Japan Airlines, to Regina Keeney, Chief, Common Carrier Bureau, dated October 21, 1996.

<sup>177</sup> See, e.g., Letter from Elizabeth O'Hara, United Airlines, to Regina Keeney, Chief, Common Carrier Bureau, dated October 18, 1996.

<sup>178</sup> See, e.g., Letter from David A. Taylor, Delta Air Lines, to Regina Keeney, Chief, Common Carrier Bureau, dated October 18, 1996; Letter from David Kreinberg, Converse Technology, Inc., to Regina Keeney, Chief, Common Carrier Bureau, dated October 21, 1996.

<sup>179</sup> Letter (with attachment) from Deborah Mauldin, Hertz Corp, to Regina Keeney, Chief, Common Carrier Bureau, dated October 17, 1996; Letter from Terry Martin, Reynolds Metals Co., to Regina Keeney, Chief, Common Carrier Bureau, dated October 21, 1996.

45. APCC disputes arguments by petitioners that all payphones should be treated as locational monopolies, and it argues that the price of a local call is susceptible to numerous market influences, including (1) the ability of callers to use another nearby payphone; (2) the ability of customers to use wireless phones; and (3) the ability of customers to complain to a location provider about excessive local coin rates.<sup>180</sup> In addition, APCC argues that the IXCs have not refuted the Commission's conclusion that the ability of the IXCs to block calls from payphones provides an additional market check on excessive local coin rates.<sup>181</sup>

46. The RBOCs argue that by requiring in Section 276 that the Commission must provide for compensation for all calls originated by a payphone, Congress intended that the Commission would adopt regulations affecting local coin rates. Therefore, the RBOCs argue, the Commission did not lack jurisdiction to deregulate local coin rates.<sup>182</sup> Similarly, NJPA contends that Section 276 provides a straightforward, unambiguous grant of intrastate jurisdiction, and that the Commission would have contravened the clear purpose of that provision if it had failed to address compensation for local coin calls.<sup>183</sup> The RBOCs contend that if the local coin rate is not deregulated, then, contrary to the intent of Congress, the entire payphone industry will continue to be subject to pervasive regulation.<sup>184</sup> NJPA and Peoples argue that, by deferring regulation for one year to allow the states to prepare for the change, the Commission's approach to local coin call deregulation has been characterized by caution and restraint.<sup>185</sup> NJPA argues that the Commission expressly concluded that competitively-neutral state regulations were not vulnerable to preemption.<sup>186</sup> Peoples contends that unless the states have the burden of demonstrating market failures before the Commission, the states will enact rate ceilings and other regulations in situations where the market is fully functioning.<sup>187</sup> The RBOCs contend that because the Commission promulgated regulations that will apply to payphones, pursuant to Section 276, the forbearance provision of the Act has no relevance.<sup>188</sup>

47. The RBOCs and NJPA contend that there is no basis to arguments that the

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<sup>180</sup> APCC Comments at 9.

<sup>181</sup> Id. at 10-11.

<sup>182</sup> RBOC Comments at 12-14.

<sup>183</sup> NJPA Comments at 3-7.

<sup>184</sup> Id. at 14.

<sup>185</sup> NJPA Comments at 10; Peoples Comments at 5.

<sup>186</sup> NJPA Comments at 11.

<sup>187</sup> Peoples Comments at 5.

<sup>188</sup> Id. at 15-16.

Commission failed to give adequate notice that it was considering deregulating the local coin rate.<sup>189</sup> They argue that Section 553(b)(13) of the APA requires that the notice of proposed rulemaking provide notice of "either the terms or substance of the proposed rule or a description of the subject and issues involved"<sup>190</sup> The RBOCs argue that the Commission requested comment on how it should exercise its jurisdiction under Section 276 with respect to local coin calls, and outlined a range of options that included setting a nationwide local coin rate or providing guidelines for the states. The RBOCs contend further that the Commission was under no obligation to adopt the precise proposals contained in the Notice, and that the deregulation of local coin rates was a logical outgrowth of the Commission's obligation to provide for compensation for local calls and its tentative conclusions in the Notice.<sup>191</sup> They note that numerous parties, including some of the states that petitioned for reconsideration of the Report and Order, addressed the issue of local coin deregulation in their comments.<sup>192</sup>

48. The RBOCs contend that, because it is the LEC that must provide special ANI payphone coding digits and that it cannot provide such codes unless PSPs use COCOT lines, the Commission should clarify that if a PSP does not use a COCOT line, then the PSP should not be eligible for compensation.<sup>193</sup> APCC does not object to the RBOCs request that a PSP's eligibility for compensation be contingent on transmission of coding digits, but it opposes the request that PSPs be forced to subscribe to COCOT lines, because COCOT service (or a reasonable equivalent) is not available in some jurisdictions.<sup>194</sup> Ameritech argues that the Commission should not require PSPs to transmit payphone coding digits within the ANI, because it is the LEC that will have to transmit such digits, and Section 276 envisions a degree of separation between the telephone network and a LEC's payphone operations.<sup>195</sup> Touch 1 supports MCI's request that the Commission direct all non-LEC PSPs to transmit the "70" coding digits and all LEC payphones to transmit the "27" coding digits in order to receive per-call compensation for toll-free and access code calls.<sup>196</sup>

49. APCC does not oppose the IXC's request that the Commission clarify that state compensation requirements for intrastate access code calls are preempted by the

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<sup>189</sup> NJPA Comments at 11-12; RBOC Comments at 14-15.

<sup>190</sup> Id. at 14.

<sup>191</sup> Id. at 15. See also NJPA Comments at 12.

<sup>192</sup> Id.

<sup>193</sup> RBOC Comments at 18.

<sup>194</sup> APCC Comments at 19-20.

<sup>195</sup> Ameritech Comments at 5.

<sup>196</sup> Touch 1 Comments at 8-9.