of on a quarterly basis, with a penalty for late payments.[340] It contends that IXCs have and will delay payments for as many as seven months, as long as there is no fear of penalty.[341]

107. MCI contends that the Commission should reconsider its conclusion that PSPs may submit bills for compensation for one year after the end of the compensation period in question.[342] MCI contends further that this arrangement will significantly increase the administrative burden and cost associated with paying compensation.[343] In addition, MCI argues that the Commission should reconsider its decision that the time for a PSP to file a complaint with the Commission will not begin to accrue until the carrier-payor issues a final denial of the claim.[344] MCI argues further that the period within which complaints must be filed is set forth in the Act and cannot be changed by the Commission.[345]

c. Comments

108. CompTel argues that the use of local coin rates as a surrogate will mean that the compensation rate will fluctuate from payphone to payphone and over time, subjecting carriers to significant unknowable and unrecoverable costs.[346] CompTel explains that carriers will be unable to identify in advance with any accuracy which PSP owns a payphone originating a particular call or determine the rate that PSP charges for local coin calls, preventing the carrier from selectively blocking calls from payphones with high local coin -- and thus, per-call -- rates.[347] APCC contends that those petitioners who argue that a fluctuating per-call compensation amount is unadministerable overlook the finding in the Report and Order that negotiations about the compensation amount and administrative details are likely to occur "because both parties have an interest in making the compensation system a manageable one."[348]

109. CompTel states that the Commission must define more precisely which carriers are "facilities-based" and therefore required to track compensable calls, and which carriers

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340 WPTA Petition at 13-14.

341 Id.

342 MCI Petition at 20.

343 Id. at 20-21.

344 Id. at 21.

345 Id. at 22.

346 CompTel Comments at 10.

347 Id. at 10-11.

348 APCC Comments at 16-17.

are "resellers for whom the tracking will be provided by their underlying carrier.[349] WorldCom adds that even the largest IXCs are resellers to the extent that they rely on termination services provided by other carriers.[350]

110. APCC argues that the Commission should adhere to its conclusion that the statute of limitations does not begin running until a carrier issues a final denial of a compensation claim, or carriers would have an incentive to hold up the processing of compensation claims indefinitely.[351] APCC also argues that the Commission should not reconsider its conclusion that a PSP can request compensation from a carrier any time within a year after the close of a compensation period, because such a one-year period is reasonable and will not adversely affect any legitimate interest.[352] On the other hand, Touch 1 supports MCI's request that the Commission require PSPs to submit ANIs for payment of compensation within three, rather than twelve, months.[353] Touch 1 states that the longer period would significantly increase administrative burdens and costs for IXCs and reduce their opportunities for collection from end users.[354] Sprint argues that PSPs should be required to notify IXCs at least 30 days before the beginning of a quarterly compensation period that they are going to seek compensation for particular payphones. Sprint contends that this is the only way by which the IXC will be able to recoup the per-call charge from their customers or choose to block calls from particular payphones.[355] Sprint opposes the request of WPTA that the Commission should require payment of compensation on a monthly basis, because such a requirement would lead to increased administrative costs and may not be technically feasible.[356]

d. Discussion

111. Some IXCs argue that the differing per-call compensation amounts make the per-call compensation rules adopted in the Report and Order unadministerable for the carrier-payors. We disagree. While there are expenses associated with administering our compensation rules, we conclude that these expenses are unavoidable and must be borne by the entity that receives the primary economic benefit of the payphone calls and is best able to administer a

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349 CompTel Comments at 14.

350 WorldCom Comments at 5.

351 APCC Comments at 20.

352 Id.

353 Touch 1 Comments at 9.

354 Id.

355 Sprint Comments at 8.

356 Sprint Comments at 9.

compensation system between it and those that receive the compensation. While varying per-call compensation amounts will eventually result from our decision to let the market set the appropriate per-call compensation amount for compensable calls, we note that for the first two years of the compensation mechanism established by our rules, the carrier-payors will not be required to pay per-call compensation in varying amounts.[357] Carrier-payors should use this two-year period to make the requisite adjustments to their internal payphone compensation paying systems to prepare for variable per-call compensation amounts. Therefore, we decline to modify our per-call compensation rules as requested. We conclude further that compensation carrier-payors have an ability, however, to insulate themselves against potential costs that may be associated with differing compensation amounts by negotiating their own compensation arrangements, including compensation amounts, with PSPs.

112. In the Report and Order, we concluded, in response to an argument that we require compensation to be paid on a monthly basis, that we should "leave the details associated with the administration of this compensation mechanism to the parties to determine for themselves through mutual agreement."[358] Therefore, we decline to mandate a particular period for paying compensation, including penalties for late payments, and conclude here that if a party believes that compensation should be paid more or less frequently than is currently the industry norm, that party should negotiate that particular issue with the other parties as a part of its total compensation contract.

113. With regard to MCI's argument that we reconsider our conclusion that PSPs may submit bills for compensation for one year after the end of the compensation period in questions, we conclude here, as we did in the Report and Order,[359] that the carrier should remain liable for these claims for that period, although the parties (i.e., the carrier-payor and the PSP) can reduce this period of time through a contractual provision. MCI also argues that we should reconsider our conclusion that the time for a PSP to file a complaint with the Commission will not begin to accrue until the carrier-payor issues a final denial of the claim. We conclude here that while the statute of limitations for bringing a complaint before the Commission is set by the Act, it is within our discretion to define the point at which the compensation claim becomes ripe for a complaint. Therefore, as we concluded in the Report and Order, we find that

> the time period for the statute of limitations does not begin to run until after the carrier-payor considers a compensation claim and issues a final denial of that claim. To conclude otherwise, as suggested by MCI, would permit a carrier-payor to delay a denial of the claim to preclude a PSP's complaint remedy before the

[357] More specifically, for the first year, carrier-payors will pay flat-rate compensation. For the second year, they will pay per-call compensation at the default rate.

[358] Report and Order at para. 115.

[359] Id.

Commission.[360]

5. Interim Compensation Mechanism

a. Report and Order

114. Because the IXCs required to pay compensation to PSPs are not required to track individual compensable calls until October 7, 1997, the Commission concluded that PSPs should be paid monthly compensation on a flat rate by IXCs with annual toll revenues in excess of $100 million, beginning on the effective date of the rules adopted in this proceeding.[361] Unlike the per-call compensation mechanism adopted in the Report and Order, the interim flat-rate compensation obligation applies to both facilities-based IXCs and resellers that have respective toll revenues of $100 million per year.[362] This flat-rate monthly compensation will apply proportionally to individual IXCs, based on their respective annual toll revenues. For reasons of administrative convenience of the parties, the Commission concluded that it should model the interim mechanism adopted in the Report and Order on that set forth in the access code call compensation proceeding.[363] In the access code compensation proceeding, CC Docket No. 91-35, the Commission excused several carriers from the obligation to pay flat-rate compensation for originating access code calls, because they certified that they were not providers of "operator services," as defined by TOCSIA.[364] We noted that Section 276's requirement that we ensure fair compensation for "each and every completed intrastate and interstate call," including access code calls, supersedes the compensation obligations established in CC Docket No. 91-35, including the waivers granted to AT&T and Sprint.[365] Because Section 276 is the statutory authority for mandating per-call compensation for all compensable calls, including access code calls, the statutory exclusion in TOCSIA for those carriers that are not providers of "operator services" is no longer a basis for being excused from the obligation to pay either the total flat-rate compensation amount established in the instant proceeding, or a portion thereof.[366]

115. For the limited purpose of calculating compensation for PSPs on a flat-rate basis until per-call compensation becomes mandatory, the Commission relied on a rate of $.35 per call, which is the rate in the majority of states that have allowed the market to determine the

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360 Id. at para. 114.

361 Report and Order at para. 119.

362 Id.

363 Id.

364 See, generally, Second Further Notice.

365 Report and Order at para. 119.

366 Report and Order at para. 119.

appropriate local coin rate.[367] Based on the call volume data provided by the PSPs, we concluded that, for purposes of calculating flat-rate compensation, the average payphone originates a combined total of 131 access code calls and subscriber 800 calls per month. When 131 calls per month is multiplied by the $.35 compensation amount, the monthly flat-rate compensation amount is $45.85.[368] We concluded that this $45.85 flat-rate amount must be paid by carriers, proportionally to their annual toll revenues, to PSPs. This flat-rate obligation applies to access code calls and subscriber 800 calls originated on or after the effective date of the rules adopted in this proceeding.[369] PSPs that are affiliated with LECs will not be eligible for this interim compensation until the first day following their reclassification and transfer of payment equipment along with the termination of subsidies.[370]

b. Petitions

116. AT&T, MCI, Sprint LDDS, and Cable & Wireless argue that the interim compensation rules are discriminatory because they exclude LECs and small IXCs at the expense of the large IXCs.[371] AT&T argues that all carriers, large and small, whether a LEC or an IXC, should be required to pay compensation, and no carrier should be required to pay for calls handled by other carriers.[372] According to LDDS, the data the Commission relied upon to calculate the interim compensation amount includes calls routed to both LECs and small IXCs.[373] LDDS argues further that nothing in Section 276 permits the Commission to exclude carriers from paying their share of compensation for compensable calls on the grounds of administrative convenience.[374]

117. AT&T argues that the interim compensation mechanism should not apply to low usage and semi-public payphones.[375] AT&T argues further that, because the record in the proceeding shows that there are hundreds of thousands of semi-public and public interest

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367 Id. at para. 122.

368 Id. at para. 124.

369 Id.

370 Id. at para. 126.

371 See, e.g., AT&T Petition at 15-18; Cable & Wireless Petition at 10-13; LDDS Petition at 4-5; MCI Petition at 22; Sprint Petition at 8-9.

372 AT&T Petition at 16.

373 LDDS Petition at 7.

374 Id. at 6.

375 AT&T Petition at 17-18

payphones that generate few calls and low revenues, it is unreasonable to include these payphones in the interim compensation mechanism.[376]

118. In a separately-filed motion for a temporary waiver, Cable & Wireless requests permission to pay its share of the flat-rate interim compensation amount into an interest-bearing escrow account until March 31, 1997.[377] Cable & Wireless states that because it is exempt from paying compensation for interstate access code calls from payphones, it currently does not have a system in place for paying such compensation to PSPs.[378] Cable & Wireless argues that without such a waiver, it risks overpayment of compensation with no practical recourse to recover any overpayments that may occur.[379] Cable & Wireless states that it risks substantial and irreparable harm if it is required to issue compensation payments to PSPs on the effective date of the rules.[380]

119. WPTA argues that those IXCs that are currently able to pay per-call compensation should begin to do so immediately, rather than paying a portion of the flat-rate compensation for one year.[381]

120. The RBOCs, BellSouth, and Ameritech request that the Commission clarify that the LECs be allowed to eliminate subsidies and reclassify their assets, and, as a result, be eligible to receive payphone compensation, by April 15, 1997, as opposed to on that date.[382] They argue that allowing LECs to take action before that date would be a more flexible approach that would avoid mid-month tariff and cost-accounting manual changes.[383]

c. Comments

121. The RBOCs contend that there is no reason for the Commission to alter its calculation or allocation of interim compensation.[384] They contend further that the Commission

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376 Id. at 17-18.

377 Cable & Wireless Motion at 1.

378 Id. at 2.

379 Id.

380 Id. at 4.

381 WPTA Petition at 11-13.

382 Ameritech Petition at 4-10; BellSouth Petition at 4-6; RBOC Petition at 2.

383 Id.

384 RBOC Petition at 10-11.

is entitled to make distinctions among carriers where doing so makes sense, such as where the volume of 800 subscriber and access code payphone traffic carried by small IXCs and LECs does not justify the administrative expense of requiring them to pay interim compensation.[385] Ameritech argues that LECs should not be included as interim compensation payors, because the interim flat rate represents compensation only for access code and subscriber 800 calls, and that a BOC's toll traffic is "primarily intraLATA and primarily within the presubscribed '0+' category."[386] It argues further that BOCs and other LECs have not sought to promote their dial-around intraLATA traffic, and that IXCs have captured the vast majority of both interLATA and intraLATA subscriber 800 traffic, because of past restrictions, except to the extent that there were BOC customers that needed only intraLATA 800 service.[387] APCC contends that there is no evidence that the market share of small IXCs is significant enough to warrant their inclusion in the interim compensation mechanism.[388]

122. Several commenters, including LCI, WorldCom and AT&T, assert that LECs and smaller IXCs should not be excluded from paying interim compensation.[389] LCI explains that the proposed interim compensation amount is flawed because it is based upon a volume of calls which include the payphone-originated portion of the intraLATA 800 toll calls completed by LECs, as well as inter and intraLATA 800, and inter and intraLATA access code calls completed by small IXCs. LCI argues that it is irrational to include these calls in calculating the amount of compensation, but to exclude the beneficiaries of these calls when allocating the compensation obligation.[390]

123. TRA argues that the exemption for small resale IXCs from the interim compensation and tracking requirements is consistent with prior Commission actions and furthers congressional intent to increase opportunities for entrepreneurs and other small businesses in the telecommunications industry.[391] TRA states that small resale IXCs are least able to bear the burden of administrative costs, in part because they have less flexibility to pass these costs on to their own customers.[392]

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385 Id. at 11.

386 Ameritech Comments at 3.

387 Id.

388 APCC Comments at 21-22.

389 LCI Comments at 8; AT&T Comments at 2; WorldCom Comments at 2.

390 LCI Comments at 8-9.

391 Id. at 5-6.

392 Id. at 6-8

124. The RBOCs argue that AT&T's contention that the interim compensation rate will overcompensate low-usage and semi-public payphones is "both true and irrelevant."[393] The RBOCs argue further that the interim will tend to overcompensate some payphones, while it simultaneously undercompensates other payphones, which is precisely the trade-off that can be expected from an average flat-rate compensation system.[394] Ameritech argues that the Commission's obligation to provide compensation for all calls includes those originated by semi-public and low-usage payphones during the interim period, and that such payphones should not be excluded from compensation.[395] APCC supports AT&T's contention that no interim compensation be provided for semi-public and low-usage payphones, because of the "negligible call volume from such payphones."[396]

125. NJPA states that it opposes the request of the RBOCs that LEC payphones be eligible for payphone compensation prior to April 15, 1997 for the following reasons: (1) All intrastate and interstate subsidies must be terminated, not merely the removal of costs from interstate access charges; (2) BOC CEI plans should be approved by the Commission; and (3) because of the potential for contentious accounting and discrimination issues, the Commission should adhere to existing deadlines and not permit early removal of LEC payphones from regulation.[397] AT&T also opposes allowing LECs to receive compensation before the date established in the Report and Order, because LECs must remove all intrastate subsidies from both exchange and exchange access services and because 90 days will be required to review the interstate tariffs. [398] Sprint opposes allowing the LECs to receive compensation earlier than the dates established in the Report and Order. [399]

d. Discussion

126. A number of IXCs argue that the interim compensation rules are discriminatory because they exclude LECs and small IXCs at the expense of the large IXCs. We note that once per-call compensation becomes effective, all carriers, including small IXCs and LECs, will be required to pay compensation for all calls deemed compensable by the Report and Order. The interim flat-rate compensation mechanism, however, was adopted for a specific, limited transitional period, and thus applies to those carriers that carry the large majority of

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393 RBOC Comments at 11.

394 Id.

395 Ameritech Comments at 4.

396 APCC Comments at 21.

397 NJPA Comments at 12-13.

398 AT&T Opposition at 10-11.

399 Sprint Opposition at 14.

compensable calls. To extend interim compensation obligations to all carriers would significantly increase the administrative costs of the compensation mechanism. As we did in the access code compensation proceeding, we exclude small carriers with annual toll revenues under $100 million, because:

> IXCs earning less than $100 million in toll revenues per year collectively account for less than five percent of long-distance carrier toll revenues. Individually, they account for a much smaller percentage. Therefore, the payment obligations of these carriers, had they been included, would have been quite low in any case.[400]

We also excluded LECs from the interim flat-rate compensation obligation for similar reasons of administrative practicability and because LECs, on an individual basis, currently do not carry a significant volume of compensable calls.[401] Thus, because the interim flat-rate compensation mechanism was adopted for a finite, transitional period, we decline to modify our rule to include additional carriers, as suggested by the IXCs. If a party, in the course of the year during which the interim flat-rate compensation applies, has evidence that the LECs' carrying of compensable calls has increased significantly above current levels, it may petition the Commission to adjust the interim flat-rate to include some LECs as carrier-payors to account for the increase. We delegate authority to the Chief, Common Carrier Bureau, to make any necessary adjustments to the list of compensation-payors for the interim flat-rate compensation period.

127. With regard to AT&T's argument that interim compensation should not apply to low-usage and semi-public payphones, we note that we concluded in the Report and Order that PSPs will be allowed to receive per-call compensation for calls originated by semi-public payphones:

> Section 276(d) states, however, that "in this section, the term 'payphone service' means the provision of public or semi-public pay telephones...." Pursuant to this definition, all subsidies for semi-public payphones are terminated under Section 276(b)(1)(B), just as they are for public payphones, "in favor of a compensation plan as specified in subparagraph (A)[.]" Therefore, we conclude that ... semi-public payphones are entitled to receive per-call compensation in the same manner as public payphones.[402]

For the reasons indicated in the Report and Order, we conclude that PSPs are able to collect flat-

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400 Second Report and Order, 7 FCC Rcd at 3259.

401 See Report and Order at n.293: "Currently, because LECs are not the primary carrier for subscriber 800 calls, the relevant toll calls for which LECs will be obligated to pay compensation are those made with use of a LEC-specific access code. As LECs (both incumbent and non-incumbent) begin to carry additional toll calls originated by payphones, they will be required to pay per-call compensation on those calls." Id.

402 Id. at para. 75.

rate interim compensation for semi-public payphones. In addition, because Section 276 of the Act neither defines nor directs us to treat so-called "low-usage" payphones differently than other payphones, we conclude that flat-rate interim compensation applies to all payphones, regardless if they are considered to be "low-usage" payphones.[403] We note that the call volume data upon which we calculated the flat-rate interim compensation in the Report and Order is based on average call volumes from a variety of payphones maintained by independent providers and the BOCs.[404] Our estimate of 131 compensable calls originated by each payphone each month is an average for each payphone;[405] some payphones will originate more than 131 calls, while others will originate less. In sum, we conclude that the level of interim compensation already takes into account the varying call volumes from payphones.

128. We deny the motion filed by Cable & Wireless that requests permission to pay its share of the flat-rate interim compensation amount into an interest-bearing escrow account until March 31, 1997.[406] Although Cable & Wireless argues that it currently does not have a system in place for paying such compensation to PSPs, we note that this is true for a significant number of carriers obligated to pay the flat-rate interim compensation. Carriers that receive calls from payphones, however, have been on notice since February 8, 1996, the date the Telecommunications Act of 1996 was enacted, that they would be obligated to pay for such calls in the near future. In addition, many carriers, including Cable & Wireless for a time, have been required to pay flat-rate compensation for access code calls, pursuant to CC Docket No. 91-35.[407] Because our rules adopted in the instant proceeding did not become effective until thirty days after publication in the Federal Register, at which time the compensation period commences, carriers had an adequate time to devise a means of paying compensation. The carriers will have additional time beyond this thirty-day period in light of the fact that the actual compensation payments will not be due until after the compensation period has ended. Therefore, because it has not pleaded circumstances of a unique nature, we deny Cable & Wireless's motion.

129. We deny WPTA's request that we require those IXCs that are currently able to pay per-call compensation to begin to do so immediately. We have provided IXCs with a one-year period to implement a per-call tracking and compensation mechanism. In the interim, we mandated a flat-rate compensation amount for PSPs. To ensure a relatively easy administration for all parties and to allow them to prepare for the per-call mechanism, we decline to modify our rules to require some IXCs to pay per-call compensation for all or some calls under the interim

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403 LEC payphones are not eligible to receive the flat-rate interim compensation until all subsidies are terminated, pursuant to Section 276(b)(1)(B).

404 Report and Order at paras. 124-125.

405 Id. at para. 125.

406 Cable & Wireless Motion at 1.

407 See, generally, Second Report and Order.

compensation mechanism. We conclude that the requested modification would impose greater transaction costs for all parties that outweigh its benefits, particularly because the flat-rate compensation mechanism is a interim mechanism that is scheduled to terminate in one year. Individual carrier-payors and the PSPs have the option, however, of mutually agreeing to pay per-call compensation for all or a portion of a particular carrier's share of the interim flat rate. Such a carrier-payor would have to petition us for waiver and receive an approval before implementing such an arrangement. The Common Carrier Bureau granted similar waivers from the obligation to pay flat-rate compensation for access code calls in two cases.[408] We delegate the requisite authority to the Chief, Common Carrier Bureau, to determine whether any such waivers from our interim flat-rate compensation mechanism in the instant proceeding should be granted.

130. The RBOCs, BellSouth, and Ameritech request that the Commission clarify that the LECs be allowed to eliminate subsidies and reclassify their assets, and, as a result, be eligible to receive payphone compensation, by April 15, 1997, as opposed to on that date. We clarify that the LECs may complete all of the steps necessary to receive compensation by April 15, 1997.

131. In this regard, we recognize that LECs may be in different positions with regard to the actions required to comply with the requirements established in the Report and Order. We also recognize that there are benefits to moving quickly to the more competitive payphone market structure that we have established. We must be cautious, however, to ensure that LECs comply with the requirements we set forth in the Report and Order. Accordingly, we conclude that LECs will be eligible for compensation like other PSPs when they have completed the requirements for implementing our payphone regulatory scheme to implement Section 276. LECs may file and obtain approval of these requirements earlier than the dates included in the Report and Order, as revised herein, but no later than those required dates. To receive compensation a LEC must be able to certify the following: 1) it has an effective cost accounting manual ("CAM") filing; 2) it has an effective interstate CCL tariff reflecting a reduction for deregulated payphone costs and reflecting additional multiline subscriber line charge ("SLC") revenue; 3) it has effective interstate tariffs reflecting the removal of charges that recover the costs of payphones and any intrastate subsidies; 4) it has deregulated and reclassified or transferred the value of payphone customer premises equipment ("CPE") and related costs as required in the Report and Order; 5) it has in effect intrastate tariffs for basic payphone services (for "dumb" and "smart" payphones); and 6) it has in effect intrastate and interstate tariffs for unbundled functionalities associated with those lines. We clarify that the requirements of the Report and Order apply to inmate payphones that were deregulated in an earlier order.[409] As the

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[408] See Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, Memorandum Opinion and Order, 10 FCC Rcd 1590 (Com. Car. Bur. 1994) ("AT&T Waiver"); Memorandum Opinion and Order, 10 FCC Rcd 5490 (Com. Car. Bur. 1995) ("Sprint Waiver").

[409] Petition for Declaratory Ruling by the Inmate Calling Services Providers Task Force, Declaratory Ruling, 11 FCC Rcd 7362 (1996) (Inmate Service Order); Petitions for Waiver and Partial Reconsideration or Stay of Inmate-Only Payphones Declaratory Ruling, Order, 11 FCC Rcd 8013 (Com. Car. Bur. 1996) (Inmate Services

requirements of the Report and Order become due, LECs must comply with those requirements for all payphones, including inmate payphones.

132. In addition to the requirements for all other LECs, BOCs must also have approved CEI plans for basic payphone services and unbundled functionalities prior to receiving compensation. Similarly, prior to the approval of its comparably efficient interconnection ("CEI") plan, a BOC may not negotiate with location providers on the location provider's selecting and contracting with the carriers that carry interLATA calls from their payphones. We delegate authority to the Chief, Common Carrier Bureau, to make any necessary determination as to whether a LEC has complied with all requirements as set forth above.

6. Barriers to Entry and Exit

a. Report and Order

133. As part of the transition to market rates, we directed in the Report and Order that the states should take steps to ease entry and exit from the payphone market in order to ensure that competition is promoted.[410] We concluded that ease of entry and exit in this market will foster competition and allow the market, rather than regulation, to dictate the behavior of the various parties in the payphone industry. To this end, we directed the states to examine and modify regulations applicable to payphones and PSPs, and remove regulations that affect payphone competition. We emphasized that the states remain free at all times to impose regulations, on a competitively neutral basis, to provide consumers with information and price disclosure.[411]

b. Petitions

134. California PUC argues that the directive in the Report and Order to eliminate entry and exit barriers may interfere with the proper exercise of the states' police powers, such as prohibiting them from removing or limiting the placement of payphones in areas where illicit activities are facilitated by the presence of payphones.[412] California PUC explains that if such actions are construed as a barrier to entry, it would prevent state and local governments from taking action necessary to protect public safety. It asserts that local jurisdictions should be able to exercise police powers, such as zoning restrictions, in order to

Waiver Order).

[410] Report and Order at para 60.

[411] Id.

[412] California PUC Petition at 2-3.

remove payphones used in illegal activities.[413] California PUC also notes that it has a program for oversight of payphone services, known as the Coin Operated Pay Telephone Enforcement Program, responsible for oversight and compliance with LEC tariffs as well as for education of PSPs and consumers.[414] This program has instituted customer safeguard programs to enforce rules concerning pricing and service issues, and to limit anticompetitive behavior by PSPs and carriers, which California PUC asserts would be invalid barriers to entry under the Report and Order.[415]

135. California PUC also asserts that if an area is not served with payphones because the location is not profitable, the state should have the authority to require the placement of a payphone at a reasonable cost where persons would otherwise have no recourse to private, or even public policy payphones.[416] California PUC argues that the Report and Order would limit the states' ability to provide for the welfare of their residents.[417]

136. Maine PUC asserts that the Commission does not have jurisdiction to preempt local regulation of payphone entry and exit requirements.[418] It specifically notes that the preemption language of Section 276(c) only applies to state regulations that are inconsistent with the Commission's regulations lawfully enacted pursuant to Section 276(b).[419] Maine PUC expresses the concern that this directive would preempt state efforts to prohibit payphones, for example, in areas known for a high levels of drug trafficking.[420]

137. Oklahoma CC and Texas PUC request clarification on the scope of the preemption standards in the Report and Order concerning elimination of state barriers to entry and exit.[421] Oklahoma CC states that it requires certification of PSPs based upon the PSP's managerial, technical, and financial abilities to provide reliable service; signage/postage requirements; minimum service standards; and other safeguards in order for a PSP to operate in

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[413] Id.

[414] Id. at 3.

[415] Id.

[416] Id. at 5.

[417] Id.

[418] Maine PUC Petition at 15.

[419] Id.

[420] Id. at 15-16.

[421] Oklahoma CC Petition at 3-4; Texas PUC Petition at 6.

the state.[422] Oklahoma CC also notes that it has already implemented emergency rules (following release of the Report and Order) designed to open the payphone industry in the state to competition. Texas PUC states that it has adopted rules that require registration (not certification) that must be fulfilled in order for a PSP to operate.[423]

c. **Comments**

138. The RBOC Coalition agrees that states retain the right, pursuant to their police powers, to forbid payphones in certain high crime areas where they may promote drug traffic.[424] The RBOCs, however, oppose California PUC's argument that states should have the right to order the placement of non-public interest payphones.[425] The RBOCs argue that such action would be contrary to the Commission's decision to deregulate the industry and let market forces determine entry and exit and the location of payphones, adding that the elimination of such barriers are critical to the development of a competitive payphone industry. The RBOCs assert that a state can order as many payphones as it wants as long as it is willing to pay for them, but it cannot otherwise compel the placement of payphones.[426]

d. **Discussion**

139. As we stated in the Report and Order, our ultimate goal in this proceeding is to ensure the wide deployment of payphones through the development of a competitive, deregulatory payphone industry.[427] To achieve this goal, we found that it would be necessary to eliminate certain vestiges of a long-standing regulatory approach to payphones. To this end, the Report and Order directs the removal of subsidies to payphones, provides for nondiscriminatory access to bottleneck facilities, ensures compensation for all calls from payphones, and allows all competitors an equal opportunity to compete for essential aspects of the payphone business.[428] In particular, we directed each state to examine its regulations applicable to payphones and PSPs, removing or modifying those that erect barriers to entry or exit and thereby affect the ability of

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[422] Id.

[423] Texas PUC Petition at 6.

[424] RBOC Comments at 24.

[425] Id. at 24.

[426] Id. at 24-25.

[427] Report and Order at para. 1-8.

[428] Id. at para. 3.

companies to compete in the payphone industry on an equal footing.[429] We conclude here that these actions are essential to implementing the congressional directive to establish 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."[430] We also conclude that they are necessary in order to implement the stated goals of Section 276 "of promot[ing] competition among payphone service providers and promot[ing] the widespread deployment of payphone services to the benefit of the general public..."[431] In short, burdensome state entry and exit requirements would be inconsistent with the rules we have adopted to implement the congressional mandate embedded generally in Section 276 of the Act, and, more specifically, in the requirements of Section 276(b)(1)(A) to ensure fair compensation for each and every call using a payphone. For these reasons, we are satisfied that our directive to the states to eliminate such burdens is within the preemption authority granted to us by Congress in Section 276(c).[432] Accordingly, we deny requests by the states that we reconsider our conclusions in this regard.

140. While we recognize the concerns expressed by the states, we find that none of the actions we have taken to ensure a competitive payphone industry is inconsistent with, or infringes upon, their traditional police powers. Rather, the Report and Order takes the initial steps necessary to move payphone services from a regulated industry to an unregulated one. As with any business, however, states retain authority to impose certain requirements without competitive effect that are designed to protect the health, safety and welfare of its citizens. For example, reasonable zoning requirements restricting the placement of payphones for public safety purposes are a legitimate exercise of a state's police power, just as a state may designate areas within its jurisdiction where restaurants and other competitive businesses may or may not be located.[433] Similarly, a state may require a PSP to register as a prerequisite to doing business within that state, just as many require such registration of other nonregulated businesses. Indeed, we stated in the Report and Order that states need remove or modify only "those regulations that affect payphone competition[.]"[434] We noted, as one example, that "the states remain free at all

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[429] Id. at para. 60.

[430] Conference Report at 1.

[431] 47 U.S.C. § 276(b)(1).

[432] 47 U.S.C. § 276(c).

[433] See, e.g., 47 U.S.C. § 253(b). While not directly applicable, this section makes clear that the statutory directive to remove state and local barriers to entry into the provision of interstate and intrastate telecommunications services does not affect the ability of a state or local government to impose, on a competitively neutral basis and consistent with section 254 of the Communications Act, requirements necessary to protect the public safety and welfare.

[434] Report and Order at para. 60.

times to impose regulations, on a competitively neutral basis, to provide consumers with information and price disclosure."[435] We emphasize that any state regulations must treat all competitors in a nondiscriminatory and equal manner, and not involve the state in evaluating the subjective qualifications of competitors to provide payphone services. Thus, a state can identify, for public safety reasons, areas where no competitor can place a payphone; but it cannot draw distinctions that allow some class of competitors to enter the payphone market and not others. In this way, the market will determine who is best equipped to provide these services, while at the same time encouraging the development of advanced technology and the wide deployment of payphones.

141. California also expresses the concern that the Commission's direction that states eliminate barriers to entry would prevent a state from requiring the placement of payphones in unprofitable locations, including densely populated urban areas, where persons would otherwise have no recourse to payphones.[436] It concludes that these restrictions would limit the states' ability to provide for the welfare of their residents.[437] We disagree. There are at least two means by which a state could address the problem described by California. First, a location where a payphone does not exist because it is unprofitable, but which serves the public welfare, satisfies the requirements for placement of a public interest payphone.[438] To this extent, a state may rely upon the public interest payphone funding mechanisms to arrange for the placement of a payphone at such location. Where a location does not satisfy the criteria for placement of a public interest payphone, the state may still contract with a PSP for provision of payphone service, in its role as a location provider, in locations over which it has such authority. It simply may not rely upon the funding mechanism for public interest payphones to support such payphones. Of course, a state may not, as suggested in the RBOCs comments, require that a PSP place a payphone at a particular location.[439] Such a requirement would neither be competitively neutral, nor ensure fair compensation to the PSP as required by the 1996 Act.[440] A state may, however, enter into a voluntary agreement with a PSP at mutually agreeable terms for the provision of such service.

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[435] Id.

[436] California PUC Petition at 5.

[437] Id.

[438] See Report and Order at paras. 264-286.

[439] RBOC Comments at 23-24.

[440] 47 U.S.C. § 276(b)(1)(A).

B. RECLASSIFICATION OF INCUMBENT LEC-OWNED PAYPHONES

142. Currently, incumbent LEC payphones, classified as part of the network, recover their costs from CCL charges assessed on those carriers that connect with the incumbent LEC. In order to comply with Section 276(b)(1)(B)[441] by removing payphone costs from the CCL charge and all intrastate and interstate payphone subsidies from basic exchange and exchange access revenues, the Report and Order established requirements for: 1) the termination of access charge compensation and all other subsidies for incumbent LEC payphones; (2) the prospective classification of incumbent LEC and AT&T payphones as CPE; (3) tariffing of basic payphone services and functionalities; and (4) the reclassification and transfer of incumbent LEC payphone equipment assets from regulated to nonregulated status.

1. Classification of LEC Payphones as CPE

a. Report and Order

i. CPE Deregulation

143. In the Report and Order, we concluded that to best effectuate the 1996 Act's mandate that access charge payphone service elements and payphone subsidies from basic exchange and exchange access revenues be discontinued, incumbent LEC payphones should be treated as deregulated and detariffed CPE. In Computer II, the Commission concluded that CPE should be unbundled from its underlying transmission service in order to prevent improper cross-subsidization.[442] Consistent with this prior finding, we concluded that LEC payphones must be treated as unregulated, detariffed CPE in order to ensure that no subsidies are provided from basic exchange and exchange access revenues or access charge payphone service elements as required by the Act. In addition, we concluded that AT&T payphones must be deregulated, detariffed, and treated as CPE. We required that AT&T follow the same procedures as the LECs for valuing payphone assets and transferring them to nonregulated status. After deregulation, AT&T payphones are subject to the same requirements as independent payphone provider payphones.

144. We declined to limit the deregulation of payphones to those owned by larger LECs, because Section 276 is not limited in application to larger LECs, the benefits the Commission observed in CPE deregulation apply to payphones, and those benefits apply regardless of the size of the LEC.[443]

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[441] 47 U.S.C. § 276(b)(1)(B).

[442] Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), 77 FCC 2d 384, 445 (1980) (Computer II), modified on recon., 84 FCC 2d 50 (1981), modified on further recon., 88 FCC 2d 512 (1981), aff'd sub nom. Computer and Communications Industry Ass'n v. FCC, 693 F.2d 198 (D.C. Cir. 1982), cert denied, 462 U.S. 938 (1983).

[443] Report and Order at para. 144.

145. We also declined to require the BOCs or other incumbent LECs to provide their payphone CPE through a structurally separated affiliate.[444] The Report and Order established nonstructural safeguards for BOCs to provide payphone CPE on an integrated basis and declined to require that other incumbent LECs be required to provide CPE through structurally separate affiliates. We preempted states' ability to impose structural separation requirements on the payphone operations of the BOCs or other LECs.[445] The Commission did not, however, preempt the states from imposing on nonBOC LECs nonstructural safeguards that are no more stringent than those we imposed on the BOCs.

ii. Unbundling of Payphone Services

146. In the Report and Order, we concluded, pursuant to Computer II, Sections 201, 202, and 276 of the Act, and previous CPE decisions, that incumbent LECs must offer individual central office coin transmission services to PSPs under nondiscriminatory, public, tariffed offerings if the LECs provide those services for their own operations.[446] We concluded that incumbent LECs must provide coin service so competitive payphone providers can offer payphone services using either instrument-implemented "smart payphones" or "dumb" payphones that utilize central office coin services, or some combination of the two in a manner similar to the LECs. We also required that incumbent LEC provision of coin transmission services on an unbundled basis be treated as a new service under the Commission's price cap rules. The Report and Order required that incumbent LECs not currently subject to price cap regulation must submit cost support for their central office coin services, pursuant to Sections 61.38, 61.39, or 61.50(i) of the Commission's rules.[447] The Report and Order requires that incumbent LECs must file tariffs with the Commission for these services no later than January 15, 1997. To the extent that this requirement precludes the BOCs from complying with the Computer II, Computer III,[448]

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[444] See Report and Order at paras. 192-207, for a discussion of the statutory mandate that we "prescribe a set of nonstructural safeguards for [BOC] payphone service ... which safeguards shall, at a minimum, include the nonstructural safeguards equal to those adopted in the Computer Inquiry-III ... proceeding." 47 U.S.C. § 276(b)(1)(C).

[445] BOC CPE Relief Order, 2 FCC Rcd at 143. See 47 U.S.C. § 276(c).

[446] Computer II, 77 FCC 2d at 387-9; 47 U.S.C. §§ 201, 202, and 276; BOC CPE Relief Order, 2 FCC Rcd at 143.

[447] Report and Order at 146. 47 C.F.R. § § 61.38, 61.39, 61.50(i).

[448] See Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer III), CC Docket No. 85-229, Phase I, 104 FCC 2d 958 (1986) (Phase I Order), recon., 2 FCC Rcd 3035 (1987) (Phase I Reconsideration Order), further recon., 3 FCC Rcd 1135 (1988) (Phase I Further Reconsideration Order), second further recon., 4 FCC Rcd 5927 (1989) (Phase I Second Further Reconsideration Order); Phase I Order and Phase I Reconsideration Order vacated California v. FCC, 905 F.2d 1217 (9th Cir. 1990) (California I); Phase II, 2 FCC Rcd 3072 (1987) (Computer III Phase II Order), recon., 3 FCC Rcd 1150 (1988) (Phase II Reconsideration Order),

and ONA[449] network information disclosure requirements, the Commission waived the notice period in order to ensure that these services are provided on a timely basis consistent with the other deregulatory requirements of the order.[450] Pursuant to this waiver, network information disclosure notification on the basic network payphone services must be made by the BOCs by January 15, 1997 for services to be provided by April 15, 1997.

147. The Report and Order required that tariffs for payphone services must be filed with the Commission as part of the LECs' access services to ensure that the services are reasonably priced and do not include subsidies. Because, Section 276 specifically refers to the application of Computer III and ONA requirements, at a minimum for BOC provision of payphone services, we concluded that Computer III tariff procedures and pricing are appropriate for basic payphone services provided by LECs to other payphone providers. Pursuant to Section 276(c), any inconsistent state requirements with regard to this matter are preempted.

148. The Report and Order declined to require additional unbundling of network elements for payphone service for all LECs. We found that such unbundling is not necessary to provide payphone services and that some features require substantial costs to make switch changes. Moreover, the Report and Order noted that, pursuant to Computer III and ONA requirements, BOCs must unbundle additional network elements when requested by payphone

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further recon., 4 FCC Rcd 5927 (1989) (Phase II Further Reconsideration Order); Phase II Order vacated, California I, 905 F.2d 1217 (9th Cir. 1990); Computer III Remand Proceeding, 5 FCC Rcd 7719 (1990) (ONA Remand Order), recon., 7 FCC Rcd 909 (1992), pets. for review denied, California v. FCC, 4 F.3d 1505 (9th Cir. 1993) (California II); Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards, 6 FCC Rcd 7571 (1991) (BOC Safeguards Order), BOC Safeguards Order vacated in part and remanded, California v. FCC, 39 F.3d 919 (9th Cir. 1994) (California III), cert. denied, 115 S.Ct. 1427 (1995). See also Bell Operating Companies' Joint Petition for Waiver of Computer II Rules, Memorandum Opinion and Order, 10 FCC Rcd 1724 (1995); Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services, 10 FCC Rcd 8360 (1995).

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

[450] Network disclosure requirements are discussed in Computer II, 2 FCC Rcd at 150-151; 3 FCC at 23-24; and Computer III at 3 FCC Rcd at 1164-65. The Commission may waive a rule for good cause shown, in whole or in part, on the Commission's own motion or petition. 47 C.F.R. § 1.3. Regarding the waiver standard, see Wait Radio v. Federal Communications Commission, 418 F.2d 1153 (D.C. Cir. 1969); Northeast Cellular Telephone Co. v. Federal Communications Commission, 897 F.2d 1164 (D.C. Cir. 1990). See also Inmate Services Waiver Order 11 FCC Rcd at 8013 (granting a waiver of the network disclosure notice period to enable the provision of payphone services for inmate payphones before the required notice period).

providers based on specific criteria established in the Computer III and ONA proceedings.[451] We noted, however, that any basic transmission services provided by a LEC to its own payphone operations must be available under tariff to other payphone providers pursuant to Computer II.[452] In addition, the Report and Order provides that states may impose on LECs further nondiscriminatory payphone service unbundling requirements that are not inconsistent with Section 276 requirements and requirements established in the Report and Order.[453]

iii. Other LEC Payphone Services

149. The Report and Order concluded that incumbent LECs should provide certain other services to payphone providers if they provide those services to their own payphone operations. These services must be made available by the LEC or its affiliate to other payphone providers on a comparable basis in order to ensure that other payphone providers do not receive discriminatory service from the LECs once LEC payphones are deregulated, and to ensure that other payphone providers can compete with LEC payphone operations. Specifically, the Report and Order required LECs to provide other payphone providers the following services on a nondiscriminatory basis to enable them to compete effectively for the provision of payphones: fraud protection, special number assignments, and installation and maintenance of basic services.[454] Regarding billing and collection services, we concluded that if a LEC provides basic, tariffed payphone services that will only function in conjunction with billing and collection services from the LEC, the LEC must provide the billing and collection services it provides to its own payphone operations for these services to independent payphone providers on a nondiscriminatory basis. The Report and Order stated that we expect this requirement to apply, for example, in situations where coin services require the LEC to monitor coin deposits and such information is not otherwise available to third parties for billing and collection.

iv. Registration and Demarcation Point for Payphones

150. In the Report and Order, we amended our Part 68 rules to provide for the registration of central-office-implemented coin payphones to enable independent payphone

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[451] Report and Order at para. 148. See Computer III Phase II Order at 3101. Congress did not require that Computer III safeguards, at a minimum be applied to other LECs. See 47 U.S.C. § 276(b)(1)(C).

[452] Computer II, 77 FCC 2d at 387-9; 47 C.F.R. 64.702.

[453] Report and Order at para. 148.

[454] The Report and Order noted that validation services were required pursuant to Policies and rules concerning Local Exchange Carrier Validation and Billing Information for "Joint Use Calling Cards," Report and Order and Request for Supplemental Comment, CC Docket 91-115, 7 FCC Rcd 3528 (1992); Second Report and Order, 8 FCC Rcd 4478 (1993). The Report and Order discussed the requirements for per-call tracking at paras. 96-101.

providers as well as the LECs to utilize "dumb" payphones.[455] Accordingly, we adopted amendments to Section 68.2(a)(1) and Section 68.3 of the Commission's rules to facilitate registration of both instrument-implemented and central-office-implemented payphones. We grandfathered existing LEC payphones from our revised Part 68 requirements, unless the basic functionality in the payphones is changed.[456] We required incumbent LECs to submit proposed interconnection requirements to effectuate such interconnection within 90 days of the effective date of the Report and Order.

151. Consistent with our objective of treating incumbent LEC and independent payphone providers' payphones in a similar manner, we concluded in the Report and Order that the demarcation point for LEC payphones must be the same as incumbent LECs use for independent payphone providers today. Accordingly, we required that the demarcation for all new LEC payphones must be consistent with the minimum point of entry, demarcation point standards for other wireline services.[457] We also grandfathered the location of all existing LEC payphones in place on the effective date of the order. Similarly, we did not require that network interfaces be placed for existing LEC payphones, unless these payphones are substantially refurbished, for example, upgraded from dumb to smart payphones or replaced.

b. Petitions

i. Unbundling of Payphone Services

152. BellSouth requests reconsideration of the requirement for federal tariffing of LEC payphone services, and argues that payphone service tariffs should only be filed in the state jurisdiction.[458] BellSouth argues that coin services are local exchange services and the Commission lacks jurisdiction over these services. BellSouth also asserts that federal tariffing is unnecessary to assure protection from discrimination. [459]

153. Ohio PUC requests reconsideration of the federal tariffing of LEC central office coin services arguing that such tariffs have been the jurisdiction of the states. Ohio PUC suggests that instead the Commission should set guidelines for the states or provide cost review

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

[456] The Commission has previously exempted existing CPE from Part 68 registration requirements. See 47 C.F.R. § 68 (b)-(h).

[457] 47 C.F.R. § 68.3.

[458] BellSouth Petition at 6.

[459] BellSouth Petition at 13 .

of tariffs that the states could use.[460] Ohio argues that states should retain control over tariffing of payphone services because the Report and Order allows them to require additional unbundling.[461]

154. NTCA requests that the Commission clarify that the requirement that LECs file coin transmission services in their access service tariffs may be satisfied by small LECs through participation in a national tariff filed by NECA and recover its costs through a NECA administered pool.[462] If not, NTCA asks for reconsideration of the decision to require federal tariffing. Moreover, NTCA requests that the Commission clarify that the tariff provisions to be filed are limited to services added to enable payphone services, such as counting and control of coins and fraud protection, but not loops and switching functions, and clarify the costing methodology.[463]

ii. Other Payphone Services

155. The Inmate Coalition requests that BOCs be required to provide nondiscriminatory access to account and fraud control information, billing and collection services, and terms under which independent payphone providers and BOCs purchase basic service offerings.[464] NJPA seeks reconsideration of the nondiscrimination and nonstructural safeguards for LEC provision of payphone services. NJPA requests that the Commission require access to call rating capabilities, answer supervision, call tracking, joint marketing, installation and maintenance, and billing and collection.[465] NJPA argues that independent payphone providers require call rating capabilities because otherwise they must use the rates selected by the LEC.[466] It argues that answer supervision is necessary to allow payphone providers to more precisely tell when a call is answered.[467] NJPA requests that LECs be required to make network-based call tracking available for calls made from independent payphones if it is available for calls made

[460] Ohio Petition at 2-5 .

[461] Id.

[462] NTCA Petition at 2-3 .

[463] Id. at 4.

[464] Inmate Coalition Petition at 18.

[465] NJPA Comments at ii-iii.

[466] Id. at 3.

[467] Id. at 7.

from their own payphones.[468] NJPA states that network-based call tracking is necessary in order to check on call volumes on which they are paid by each carrier. Finally, NJPA argues that joint marketing, installation and maintenance, and billing and collection should be available on a cost allocated basis and on a nondiscriminatory basis even for those functions that the Commission has deregulated.[469] Sprint requests clarification that installation and maintenance services only apply to the "basic" payphone lines and not to the deregulated equipment.[470]

iii. Registration and Demarcation Point for Payphones

156. The RBOCs ask for clarification that the minimum point of entry demarcation point standards are flexible enough to allow for placement of payphones at the nearer and most cost-effective drop point in unique circumstances, such as service stations.[471]

c. Comments

i. Unbundling of Payphone Services

157. NJPA argues that Computer III provides precedent supporting the federal tariffing of coin line functionalities and if not the Commission could establish additional requirements consistent with the Act such as federal tariffing. [472] NJPA asserts that coin lines are used for both intrastate and interstate services. NJPA also notes that recent Commission decisions have required federal tariffing of other types of payphone functionalities, including originating line screening and billed number screening, as well as international call blocking.[473] NJPA argues that federal tariffing of coin functionalities is in the public interest to ensure that payphone service providers are not overcharged for network functions and to ensure that LECs do not use tariffs for coin line functions. AT&T supports NJPA's request that LECs be required to provide independent payphone providers the ability to obtain coin rating capabilities so that the independent payphone providers can establish their own rates, and unbundled answer supervision if it is provided to the LEC payphone provider.[474]

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[468] Id. at 9.

[469] NJPA Petition at 12.

[470] Sprint Petition at 19.

[471] RBOC Coalition at 7.

[472] NJPA Comments at 16.

[473] NJPA Comments at 17.

[474] AT&T Comments at 14-15.

158. NJPA argues that if the Commission does not retain a federal tariffing requirement for coin line functionalities, it should retain continuing oversight of the methodology states use to price these services, and require LECs to file copies of their coin line tariffs and updates with the Commission.[475] BellSouth argues that the payphone line tariffs are local exchange service, not access services, and should therefore not be tariffed in the federal jurisdiction.[476] BellSouth contends that the Commission could impose requirements for nondiscrimination, and the same terms, conditions, rates and charges for the services. BellSouth contends that the Commission does not have the authority to establish specific prices and costs or costing methodologies associated with such services.[477] BellSouth argues that the Commission does not have authority to require any unbundling of other services except a requirement for nondiscriminatory treatment.[478] Most of the RBOC Coalition supports BellSouth in requesting that the Commission reconsider LEC tariffing of coin transmission services in the interstate access tariffs.[479]

159. Puerto Rico Telephone requests that the Commission clarify that LECs must only provide central office functionalities to independent payphone providers that they provide to their own payphone operations.[480] It does not disagree with NJPA's request that the Commission clarify that network-based call tracking available to the LEC payphone operations is also available to independent payphone providers.[481] AT&T argues that if a LEC offers network-based call tracking services or installation and maintenance service to its payphone operations it should make them available at comparable prices.[482]

ii. Other Payphone Services

160. Sprint urges the Commission to clarify that the requirement for LECs to provide installation and maintenance services applies only to the payphone transmission lines not

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[475] NJPA Comments at 17-18.

[476] See also SNET contends that coin transmission services and functionalities should not be tariffed with the Commission. SNET Comments at 2.

[477] BellSouth Comments at 2.

[478] Id.

[479] NYNEX, Pacific Telesis, SBC, and US West support BellSouth on this issue. RBOC Coalition Comments at 24.

[480] Puerto Rico Telephone Comments at 7-8.

[481] Id.

[482] AT&T Comments at 15.

the payphone equipment.[483] The RBOC Coalition argues that no additional safeguards requested by petitioners should be required. The RBOC Coalition contends that requests for unbundling should be resolved according to Computer III and ONA criteria. It also argues that the Commission should not require nondiscriminatory access to joint marketing, installation and maintenance, and billing and collection because LECs do not have a competitive advantage in these unregulated markets.[484] The RBOC Coalition asserts that the Commission should not extend the nondiscrimination requirement to the LEC installation and maintenance of payphones.[485]

iii. Registration and Demarcation Point for Payphones

161. NJPA and AT&T do not object to a flexible demarcation point for payphones as long as LECs must treat independent payphone providers in a nondiscriminatory manner with regard to the demarcation point.[486]

d. Discussion

i. Unbundling of Payphone Services

162. Section 276 requires that the Commission take all actions necessary to "discontinue ... all intrastate and interstate payphone subsidies from basic exchange and exchange access revenues." [487] To implement this requirement we have deregulated payphone equipment and established a requirement that LECs provide tariffed payphone services to independent payphone providers that they provide to their own payphone operations.[488] Federal tariffing enables the Commission to directly ensure that payphone services comply with Section 276. In Computer III and ONA, the Commission included both state and federal tariffing requirements.[489] Our requirement in the Report and Order for federal tariffing was consistent with Section 276, Computer III and ONA. We did not in the Report and Order preclude states from requiring the tariffing of payphone services. Consistent with this conclusion, we provided that states could require further unbundling of payphone services than those required in the Report and Order. Although we disagree with BellSouth and Ohio PUC regarding our authority to require federal

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[483] Sprint Comments at 16.

[484] RBOC Coalition Comments at 23.

[485] Id. at 23.

[486] NJPA Comments at 13; AT&T Comments at 13, n. 31.

[487] 47 U.S.C. § 276(b)(1)(B).

[488] See 47 U.S.C. § 276(c) and §§210-205 regarding authority to require tariffing of basic payphone services.

[489] BOC ONA Order, 4FCC Rcd at paras. 224-341.