administering per-call compensation.[313] Furthermore, CWI argues that because not all carriers can block calls, the Commission should not create a situation where carriers must block calls because they are unaware of the rate to be charged.[314] MCI argues that if the Commission does not adopt one uniform rate, then it should set parameters such as notifying carriers of the coin rate in advance and changing the coin rate not more than once per year.[315] APCC argues that the Commission should not adopt a uniform compensation rate, and although the costs associated with a non-uniform rate may be higher, the benefits of directly market-based compensation are worth the extra costs.[316]

2. *Discussion*

117. We conclude from our analysis in Section B, that the market-based rate for access code and subscriber 800 calls, adjusted for cost differences is $0.284.[317] We further conclude that the market-based rate we establish herein as a default rate for per-call compensation promotes the goals of Section 276 of the Act, fair compensation, the deployment of payphones, and competition, and is a rate that is reasonably related to the market-based local coin rate. As discussed below, we conclude that the $0.284 default rate for per-call compensation rate, absent negotiations, should be in effect for two years to enable LECs, PSPs and IXCs additional time to transition efficiently and without disruptions to the deregulated payphone market structure created in the *Payphone Orders*.[318] Furthermore, we conclude that after the two year per-call compensation rate period, "fair compensation" for access code and subscriber 800 calls pursuant to Section 276 and an analysis of the record is the deregulated market rate for the local

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

[314] CWI Comments at 10-11; CWI Reply at 12.

[315] MCI Comments at 5; MCI Reply at 12.

[316] APCC Reply at 32.

[317] The Commission has the authority to employ different methodologies and/ or regulatory models to arrive at a particular rate. *See Permian Basin Area Rate Cases*, 390 U.S. 747, 767 (1968). We note that as discussed above, parties have argued for a range of from $0.03 to $0.63. While determining an appropriate rate, we have kept in mind that Congress specifically stated that "[c]arriers and customers that benefit from the availability of a payphone should pay for the service they receive when a payphone is used to place a call." House Report at 88. *See supra* paras. 105-06.

[318] *See infra* para. 121.

coin call adjusted for costs as discussed herein. Accordingly, the default rate for the first two years of per-call compensation is $0.284; after the first two years, the default rate is the market-based local coin rate minus $0.066 per call. We conclude that the default per-call rate falls within a zone of reasonableness that will provide fair compensation for subscriber 800 and access code calls as required by Section 276, while allowing the market to develop, and PSPs who desire, to negotiate a different rate.[319]

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

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

---

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

[320] *FCC v. WNCN Listeners Guild*, 450 U.S. 582, 593, 596 (1981).

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

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

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

120. We deny requests that we should mandate a uniform and fixed per-call compensation rate for each compensable call. A fixed rate would not promote the statutory goals of Section 276, because it would not encourage negotiations between IXCs and PSPs. It is our expectation that IXCs and PSPs will build business relationships and create operating procedures to provide compensation in an efficient manner. Given that we have adopted a deregulatory approach in this order, we conclude that we should not establish those procedures. Under the approach we established in the *Report and Order*, the market is allowed to set the compensation amount for calls originated by each payphone. The court did not vacate that part of the *Report and Order*. For market-based pricing to function effectively, it is not unreasonable that there be some variation in compensation amounts from location to location. We also decline to delay the effective date of this order as requested by CWI. As we discussed previously, we conclude that it is in the public interest to make this order effective immediately.[324]

121. In this order, we extend the per-call interim compensation period subject to a default rate established in the *Payphone Orders* for an additional year. Thus, the per-call compensation period during which the default rate is $0.284 begins on October 7, 1997, and ends on October 6, 1999. We established the interim compensation plan in the *Payphone Orders* in order to ease the transition to market-based rates. We stated that it was necessary to observe over time how the payphone marketplace would function in the absence of regulation. We noted that market imperfections had led us to establish a default rate. On this record, we conclude that additional time is required to ease the transition to market-based rates and that continuing the applicability of the default rate for an additional year is in the public interest. As we have summarized in this order, we have received comments from LECs, PSPs, and

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

[324] *See supra* para. 3.

IXCs regarding the problems and issues they face in transitioning to the payphone market compensation structure we established in the *Payphone Orders*. For example, IXCs and their customers allege that after the first year of per-call compensation established in the *Payphone Orders*, when the default rate will be the deregulated coin rate adjusted for cost differences, PSPs will raise the coin rate in a manner that will raise substantially the per-call rate for access code and subscriber 800 calls. They indicate that their systems are not adequately prepared to respond to such situations. In addition, LECs have indicated problems in providing the payphone-specific coding digits required to respond to calls from payphones on a real-time basis for some payphones in their serving areas.

122. Although we conclude in this order that the marketplace, based on negotiations between IXCs and PSPs, is where compensation decisions should be determined and that the default rate after the per-call transition period should be the market-based local coin rate adjusted for cost difference, we believe that this two year per-call compensation period subject to the default rate is necessary to afford IXCs, PSPs and LECs the opportunity to adjust to and adequately prepare for the deregulatory market-based structure we adopted pursuant to Section 276.[325]

E. *Other*

1. *Comments*

123. AirTouch Plan. AirTouch suggests that the Commission explore a new method to resolve the compensation issue due to the wide divergence of views expressed in the replies, and its concern that call blocking options do not exist. AirTouch argues that the Commission should adopt a method that does not rely on call tracking or call blocking to place checks on the imposition of excessive charges by payphone service providers.[326] AirTouch proposes that the Commission adopt a unique 8XX approach that would be toll-free for long distance charges, but could be accessed from a payphone only if the caller deposits coins (presumably at a fraction of the local coin rate). PageNet and PCIA support AirTouch's unique 8XX approach and state that it merits further investigation.[327] PageMart argues that if the Commission does not adopt a caller-pays approach, then it should consider AirTouch's modified

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

[326] AirTouch Reply at 5.

[327] PageNet Reply at 10; PCIA Reply at 7.

approach.[328] Several of the paging companies argue that they should pay less than other carriers due to the short duration of the calls used to initiate pages.[329]

124. Reconsider Use of Caller Pays. AirTouch, PageNet, PageMart, Arch, and PCIA argue that the Commission should adopt a caller-pays system, because such a system, they argue, is the only true surrogate for market-based compensation.[330] PCIA argues that the Commission should reconsider the caller-pays system because IXCs have a limited ability to block calls and thus have a check on excessive payphone rates.[331]

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

126. Call Blocking. AirTouch reiterates its concern that call blocking options do not exist, and therefore suggests the proposal enumerated above, because the proposal does not rely on call tracking or call blocking to place checks on the imposition of excessive charges by payphone service providers.[335] AirTouch further states that paging companies should not have to pass through the $0.35 charge until targeted call blocking is available for payphone calls,[336] and PageMart contends that call

[328] PageMart Reply 8.

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

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

[331] PCIA Reply at 2.

[332] APCC Reply at 23-32.

[333] *Id.* at 30.

[334] *Id.*

[335] AirTouch Reply at 5.

[336] AirTouch Comments at 8; AirTouch Reply at 4.

blocking technology is an integral part of the development of a competitive PSP market.[337] MCI argues that Congress did not intend for carriers to have to block calls, and furthermore, carriers will not be able to selectively block calls until the third quarter of 1998.[338]

127. PageNet, PageMart, and PCIA contend that without call blocking capability, the 800 subscriber does not have any leverage to negotiate for lower rates for calls placed from payphones, therefore, these carriers argue, a market-based compensation scheme cannot work.[339] GCI contends that as a small carrier operating primarily in Alaska, it is not in a position to negotiate with payphone providers around the country to get a better rate and furthermore, it does not want to block calls from payphone locations.[340]

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

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

---

[337] PageMart Comments at 2.

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

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

[340] GCI Comments at 3.

[341] Arch Reply at 5.

[342] CPI Reply at 4.

[343] Sprint Comments at 6; AT&T Comments at 17; CWI Comments at 10-11.

[344] Coalition Reply at 8-9.

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

131. ACTA argues that pass-through billing of an IXCs reseller customer should not be permitted until a new compensation scheme is in place.[346]

2. *Discussion*

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

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

IV. PROCEDURAL MATTERS

A. Final Paperwork Reduction Act Analysis

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

B. Final Regulatory Flexibility Act Analysis

[345] CWI Reply at 14-15.

[346] ACTA Comments at 4 (stating that if pass through billing is permitted, then requirements need to be established to ensure fair and accurate billing).

[347] *Bureau Waiver Order*, DA 97-2162 (rel. Oct. 7, 1997).

135. As required by the Regulatory Flexibility Act (RFA),[348] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking*.[349] The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[350]

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

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

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

137. Summary of the Initial Regulatory Flexibility Analysis (IRFA). In the IRFA, the Commission solicited comment on alternatives to our proposed rules that would minimize the potential impact on small entities consistent with the objectives of this proceeding. The Commission received one comment on the potential impact on small business entities, which the Commission considered in promulgating the rules in this Order. Frontier commented generally that the compensation scheme advanced in the NPRM was "unnecessarily onerous and inefficient" and "in conflict with the goals of the .... Regulatory Flexibility Act."[352] Frontier did not comment specifically on what aspect of the compensation scheme would have economic impact on small business entities. We disagree with Frontier's general assertion that the compensation scheme is in conflict with the Regulatory Flexibility Act. Our rules are designed to facilitate the development of competition, which benefits many small business entities. The rules will ensure that payphone services providers, many of whom may be small business entities, receive fair compensation. Our rules provide significant flexibility to permit the affected parties, including small business entities, to structure procedures that would minimize their burdens. For example, the rules require IXCs and intraLATA carriers, as primary economic beneficiaries of payphone calls, to track the calls they receive from payphones. These carriers have the option of performing these functions themselves or contracting out these functions to another party, such a LEC or clearinghouse. We also provide a transition period. We believe that our rules are designed to effectively optimize the efficiency

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

[349] Implementation of Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, *Notice of Proposed Rulemaking*, 11 FCC Rcd 6716 (1996) ("*NPRM*").

[350] *See* 5 U.S.C. § 604.

[351] 47 U.S.C. § 276(b)(1).

[352] Frontier Comments in response to the IRFA at 2.

and minimize the burdens of the compensation scheme on all parties, including small entities.

3. *Description and Estimate of the Number of Small Entities to which Rules will Apply.*

138. For the purposes of this order, the RFA defines a "small business" to be the same as a "small business concern" under the Small Business Act, 15 U.S.C. § 632, unless the Commission has developed one or more definitions that are appropriate to its activities.[353] Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).[354] SBA has defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, Except Radiotelephone) to be a small entity when it has no more than 1,500 employees.[355]

139. We have found incumbent LECs to be "dominant in their field of operation" since the early 1980s, and we consistently have certified under the RFA[356] that incumbent LECs are not subject to regulatory flexibility analyses because they are not small businesses.[357] We have made similar determinations in other areas.[358] However, in the *Local Competition* proceeding, several parties, including the SBA, commented that we should have included small incumbent LECs in the IRFA pertaining to that order.[359] We recognize SBA's special role and expertise with regard to the RFA, and intend to continue to consult with SBA outside the context of this proceeding to ensure that the Commission is fully implementing the RFA. Although we are not fully persuaded that our prior practice has been incorrect, we will include small incumbent LECs in this FRFA, while continuing to hold that the terms "small

---

[353] *See* 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. § 632).

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

[355] 13 C.F.R. § 121.201.

[356] *See* 5 U.S.C. § 605(b).

[357] *See, e.g.*, Expanded Interconnection with Local Telephone Company Facilities, *Supplemental Notice of Proposed Rulemaking*, 6 FCC Rcd 5809 (1991); MTS and WATS Market Structure, *Report and Order*, 2 FCC Rcd 2953, 2959 (1987) (citing MTS and WATS Market Structure, *Third Report and Order*, 93 F.C.C.2d 241, 338-39 (1983)).

[358] *See, e.g.*, Implementation of Sections of the Cable Television Consumer Protection Act of 1992: Rate Regulation, *Sixth Report and Order and Eleventh Order on Reconsideration*, 10 FCC Rcd 7393, 7418 (1995).

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

entities" and "small businesses" does not encompass "small incumbent LECs." We use the term "small incumbent LECs" to refer to any incumbent LECs that arguably might be defined by SBA as "small business concerns."[360]

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

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

142. Local Exchange Carriers. Neither the Commission nor SBA has developed a definition of small providers of local exchange services (LECs). The closest applicable definition under

---

[360] *See* 13 C.F.R. § 121.210 (SIC 4813).

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

[362] 15 U.S.C. § 632(a)(1).

[363] 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4812.

[364] 1992 Census, *supra*, at Firm Size 1-123.

SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4813). The most reliable source of information regarding the number of LECs nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS).[365] According to our most recent data, 1,347 companies reported that they were engaged in the provision of local exchange services.[366] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,347 small incumbent LECs that may be affected by the decisions and rules adopted in this Order.

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

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

---

[365] All carriers that provide interstate service are required to pay into the TRS Fund, which provides access to Telecommunications Device for the Deaf (TDD). *See generally* 47 C.F.R. §§ 64.601 et seq.

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

[367] *Id.*

[368] *Id.*

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

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

147. Resellers (including debit card providers). Neither the Commission nor SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable definition under SBA rules is for all telephone communications companies (SIC 4812 and 4813). The most reliable source of information regarding the number of resellers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 206 companies reported that they were engaged in the resale of telephone services.[371] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 206 small entity resellers that may be affected by the decisions and rules adopted in this Order.

148. 800-Subscribers. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to 800-subscribers. The most reliable source of information

[369] *Id.*

[370] *Id.*

[371] *Id.*

regarding the number of 800-subscribers of which we are aware appears to be the data we collect on the number of 800-numbers in use.[372] According to our most recent data, at the end of 1995, the number of 800-numbers in use was 6,987,063. Although it seems certain that some of these subscribers are not independently owned and operated businesses, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of 800-subscribers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 6,987,063 small entity 800-subscribers that may be affected by the decisions and rules adopted in this Order.

149. Location Providers. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to location providers. A location provider is the entity that is responsible for maintaining the premises upon which the payphone is physically located. Due to the fact that location providers do not fall into any specific category of business entity, it is impossible to estimate with any accuracy the number of location providers. Using several sources, however, we have derived a figure of 1,850,000 payphones in existence.[373] Although it seems certain that some of these payphones are not located on property owned by location providers that are small business entities, nor does the figure take into account the possibility of multiple payphones at a single location, we are unable at this time to estimate with greater precision the number of location providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,850,000 small entity location providers that may be affected by the decisions and rules adopted in this Order.

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

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

[373] There are approximately 1.5 million LEC payphones. Statistics of Communications Common Carriers, 1994/1995 edition, Common Carrier Bureau, FCC at 159, Table 2.10 (1995). There are approximately 350,000 competitively provided payphones. *See Ex Parte* Letter to Michael Carowitz, Attorney, Common Carrier Bureau, FCC from Michael Benson, Senior Product Manager, PPO Compensation Clearinghouse, Cincinnati Bell (Apr. 24, 1996). Cincinnati Bell, as the payphone compensation paying agent for three interexchange carriers, states that it receives quarterly bills from PPOs for more than 350,000 competitively provided payphones. *Id.*

[374] 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4812.

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

radiotelephone companies that may be affected by the decisions and rules adopted in this Order.

151. Cellular Service Carriers (including paging services). Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of cellular services. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4813). The most reliable source of information regarding the number of cellular service carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 789 companies reported that they were engaged in the provision of cellular services.[376] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 789 small entity cellular service carriers that may be affected by the decisions and rules adopted in this Order.

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

153. Broadband PCS Licensees (including paging services). The broadband PCS spectrum is divided into six frequency blocks designated A through F. As set forth in 47 C.F.R. § 24.720(b), the Commission has defined "small entity" in the auctions for Blocks C and F as a firm that had average gross revenues of less than $40 million in the three previous calendar years. Our definition of a "small entity" in the context of broadband PCS auctions has been approved by SBA.[378] The Commission has auctioned broadband PCS licenses in Blocks A, B, and C. We do not have sufficient data to determine how many small businesses bid successfully for licenses in Blocks A and B. There were

[376] *Id.*

[377] *Id.*

[378] *See* Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, PP Docket No. 93-253, *Fifth Report and Order*, 9 FCC Rcd 5532, 5581-84 (1994).

90 winning bidders that qualified as small entities in the Block C auctions.[379] Based on this information, we conclude that the number of broadband PCS licensees affected by the decisions in this Order includes, at a minimum, the 90 winning bidders that qualified as small entities in the Block C broadband PCS auction.

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

155. SMR Licensees (including paging services). Pursuant to 47 C.F.R. § 90.814(b)(1), the Commission has defined "small entity" in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than $15 million in the three previous calendar years. This definition of a "small entity" in the context of 800 MHz and 900 MHz SMR has been approved by the SBA.[384] The rules adopted in this Order may apply to SMR providers in the 800

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

[380] *See* Auction of Broadband Personal Communications Service (D, E, and F Blocks), *Public Notice*, DA 96-1400 (rel. Aug. 20, 1996).

[381] Amendment of Parts 20 and 24 of the Commission's Rules -- Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, WT Docket No. 96-59, Amendment of the Commission's Cellular/PCS Cross-Ownership Rule, *Report and Order*, GN Docket No. 90-314, 11 FCC Rcd 7874 (1996).

[382] *See* Auction of Broadband Personal Communications Service (D, E, and F Blocks), *Public Notice*, DA 96-1400 (rel. Aug. 20, 1996).

[383] *1992 Census*, Table 5, Employment Size of Firms: 1992, SIC Code 4812.

[384] *See* Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, PR Docket No. 89-583, *Second Order on Reconsideration and Seventh Report and Order*, 11 FCC Rcd 2639, 2693-702 (1995); Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, *First Report and Order, Eighth Report and Order*,

MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than $15 million. We assume, for purposes of this FRFA, that all of the extended implementation authorizations may be held by small entities, which may be affected by the decisions and rules adopted in this Order.

156. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we conclude that the number of geographic area SMR licensees affected by the rule adopted in this Order includes these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. However, the Commission has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis, moreover, on which to estimate how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we assume, for purposes of this FRFA, that all of the licenses may be awarded to small entities who, thus, may be affected by the decisions in this Order.

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

157. This order results in no additional filing requirements.

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

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

159. Amount of compensation: By adopting a market-based local coin rate adjusted

and Second Further Notice of Proposed Rulemaking, 11 FCC Rcd 1463 (1995).

[385] 47 U.S.C. § 276(b)(1)(A).

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

160. Many commentators, notably the IXCs, contend that marginal cost of originating a payphone call should be used as the basis for compensating PSPs. We conclude that use of a marginal cost standard or any closely related TSLRIC standard would leave PSPs under compensated, because such cost standards do not permit the recovery of any of a PSPs' fixed costs, which make up the bulk of a PSP's costs. We also reject, for similar reasons, suggestions that current local coin rates be used as a surrogate for per-call compensation. Local coin rates are not necessarily fairly compensatory. Local coin rates in some jurisdictions may not cover the marginal cost of service and therefore, would not fairly compensate the PSPs.

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

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

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

164. Report to Congress. The Commission will send a copy of the *Second Report and*

[386] Additionally, by adopting a rate that is less than the $0.35 initially proposed, we are mindful of the concerns of small businesses that the $0.35 rate is too high.

[387] *See supra* paras. 118-19, 126.

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

V. CONCLUSION

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

VI. ORDERING CLAUSES

166. Accordingly, pursuant to authority contained in Sections 1, 4, 201-205, 226, and 276 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 201-205, 215, 218, 219, 220, 226, and 276, IT IS ORDERED that the policies, rules, and requirements set forth herein ARE ADOPTED.

167. IT IS FURTHER ORDERED that this order is effective upon publication in the Federal Register.

168. IT IS FURTHER ORDERED, that the September 10, 1997 Motion of the American Public Communications Council For Leave To File Reply Comments One Day Late, and the September 10, 1997 Motion of MCI For Leave To File An Erratum ARE GRANTED.

169. IT IS FURTHER ORDERED that the September 16, 1997 Motion of Sprint Corporation to Require Production of A Cost Study IS DENIED.

170. IT IS FURTHER ORDERED, that 47 C.F.R. Part 64 IS AMENDED as set forth in Appendix C, effective upon publication in the Federal Register.[388]

[388] The Commission finds, for the reasons set forth in para .3, *supra*, that good cause exists for the effective date to be less than 30 days after publication in the Federal Register.

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

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton

William F. Caton
Acting Secretary

Appendix A

PARTIES FILING COMMENTS IN RESPONSE TO PAYPHONE REMAND PUBLIC NOTICE

1. Air Touch Paging ("AirTouch")
2. American Public Communications Council ("APCC")
3. America's Carriers Telecommunications Association ("ACTA")
4. AT&T Corp. ("AT&T")
5. Cable and Wireless, Inc. ("CWI")
6. Communications Central, Inc. ("CCI")
7. Competition Policy Institute ("CPI")
8. Competitive Telecommunications Association ("CompTel")
9. Excel Telecommunications, Inc. ("Excel")
10. Frontier Corporation ("Frontier")
11. General Communication, Inc. ("GCI")
12. Inmate Calling Services Providers Coalition ("Inmate")
13. International Telecard Association ("ITA")
14. LCI International Telecom Corp. ("LCI")
15. MCI Telecommunications Corporation ("MCI")
16. MIDCOM Communication, Inc. ("MIDCOM")
17. NATSO, Inc. ("NATSO")
18. PageMart Wireless, Inc. ("PageMart")
19. Paging Network, Inc. ("PageNet")
20. Peoples Telephone Company, Inc. ("Peoples")
21. Personal Communications Industry Association ("PCIA")
22. RBOC/GTE/SNET Payphone Coalition ("RBOC")
23. RCN Telecom Services, Inc. ("RCN")
24. Software Defined Network Users Association ("SDN")
25. Sprint Corporation ("Sprint")
26. Telaleasing Enterprises, Inc. ("TEI")
27. Telecommunications Resellers Association ("TRA")
28. Teleport Communications Group Inc. ("Teleport")
29. United States Telephone Association ("USTA")
30. WorldCom, Inc. d/b/a LDDS WorldCom ("WorldCom")

Appendix B

PARTIES FILING REPLY COMMENTS TO PAYPHONE REMAND PUBLIC NOTICE[389]

1. Air Touch Paging ("AirTouch")
2. American Public Communications Council ("APCC")
3. America's Carriers Telecommunications Association ("ACTA")
4. Arch Communications Group ("Arch")
5. AT&T Corp. ("AT&T")
6. Cable and Wireless, Inc. ("CWI")
7. Competition Policy Institute ("CPI")
8. Competitive Telecommunications Association ("CompTel")
9. Consumer Federation of American and Consumer Action ("CFA")
10. Excel Telecommunications, Inc. and Telco Communications Group, Inc. ("Excel")
11. Frontier Corporation ("Frontier")
12. GE Capital Communications Services Corporation ("GECCS")
13. General Communication, Inc. ("GCI")
14. Illinois Public Telecommunications Association ("IPTA")
15. Inmate Calling Services Providers Coalition ("Inmate")
16. International Telecard Association ("ITA")
17. IPSP Ad Hoc Committee for Consumer Choice ("IPSP")
18. MCI Telecommunications Corporation ("MCI")
19. MIDCOM Communication, Inc. (MIDCOM)
20. Oncor Communications ("Oncor")
21. PageMart Wireless, Inc. ("PageMart")
22. Paging Network, Inc. ("PageNet")
23. Peoples Telephone Company, Inc. and Communications Central, Inc. ("Peoples")
24. Personal Communications Industry Association ("PCIA")
25. RBOC/GTE/SNET Payphone Coalition ("Coalition")
26. RCN Telecom Services, Inc. ("RCN")
27. Sprint Corporation ("Sprint")
28. Telaleasing Enterprises, Inc. ("TEI")
29. United States Telephone Association ("USTA")
30. WorldCom, Inc. d/b/a LDDS WorldCom ("WorldCom")

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

APPENDIX C

RULES ADDED

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

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

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

3. Section 64.1300 (c) and (d) are added to read as follows:

64.1300 Payphone Compensation Obligation.

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

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

Separate Statement of Commissioner James Quello

In Re Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996

While I support today's Report and Order on payphone compensation, I am concerned that the Commission has not received additional information from the industry on the ability of interexchange carriers (IXCs) to block calls from individual payphone service providers (PSPs). As discussed in our payphone orders last year, the Commission will rely primarily on private negotiation to set rates that IXCs will pay PSPs for dial-around and toll-free calls. Fundamental to the success of private negotiations is the threat that an IXC will block calls coming from a PSP that proposes to charge the IXC an excessive per-call rate. The record developed following the court's remand of this proceeding regrettably contains little information on progress toward the deployment of call-blocking technology.

At this point, I do not second guess our judgment that call-blocking technology will be deployed and more balanced private negotiations will be possible. As payphone deregulation moves forward, however, I urge the Commission to carefully monitor the progress of IXCs in deploying call-blocking technology. If it becomes clear that IXCs are making insufficient progress toward this goal, the Commission should revisit its decision to rely on market forces to set per-call compensation rates.

Finally, I would hope that the Commission will assess the impact of the flat per-call approach on parties that may ultimately bear a disproportionate share of payphone costs, such as paging carriers and their subscribers. Congress directed the Commission to adopt a per-call compensation plan for certain types of payphone calls, and we have done that. If the present plan has the effect of diminishing the availability of paging services to the public, I hope the Commission will consider modifying its rules to maximize the availability of both payphones and paging services.

# # #

Separate Statement of Commissioner Susan Ness

Re: *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*

The Telecommunications Act of 1996 charts a course that is "pro-competitive" and "deregulatory." These principles are reflected, to varying degrees, in numerous provisions of the law. They have been front and center throughout our proceedings on payphone compensation.

Beginning October 7, 1997, and consistent with the goals of competition and deregulation, the rates charged for coin calls at payphones throughout the nation were deregulated. The expectation is that deregulation of coin rates will promote widespread deployment of payphones, while competition will put downward pressure on prices.

I hope marketplace forces will ensure that the rates charged are fair, both to consumers and to payphone service providers. But it is entirely foreseeable that there will be abuses in some locations, such as at airports or highway rest stops where the choice is not between one pay phone provider and another, but between using the pay phone that is available and foregoing (or delaying) the opportunity to communicate. Location owners may choose to prevent the payphone service providers from imposing excessive charges in these situations, but in any case the state commissions and the FCC are prepared to take corrective action if necessary. In fact, we have asked the states to review the status of the payphone markets during this next year of transition and to identify any situations that may require corrective measures.

As the statute clearly specifies, payphone service providers are entitled to be fairly compensated not only for coin calls, but also for coinless calls (i.e., access card calls and 800-subscriber calls). I support our determination today regarding the rate to be charged to interexchange carriers for coinless calls. This rate represents our best possible judgment, based on the record evidence, of the difference in the costs incurred by payphone service providers as between coin and coinless calls. But, importantly, the reasonableness of the rate is also demonstrated by a "bottom-up" analysis of costs.

I am concerned, however, that the price charged for coinless payphone calls may rise precipitously once that charge is permitted to "float" in relation to the coin rate charged at any particular phone. Therefore, I am pleased that we have extended the period during which the coinless compensation rate will be frozen at the level we are setting today. The additional period is needed because the results of our experiment with deregulation with coin phone rates will not be known for some time, and the ability of the "market" to discipline the compensation rates for coinless calls is even less certain.

In the case of coinless calls, the calling party does not directly pay -- indeed, has no immediate knowledge of -- the payphone compensation. The "marketplace" solution to excessive payphone charges is for interexchange carriers to block calls from all payphones, or to block all calls for which payphone charges exceed a predetermined rate. That, unfortunately, can leave the consumer unable to complete a needed call, or compelled to use the operator service provider with whom the payphone service provider

has contracted. Clearly, neither approach optimally meets the immediate needs of the consumer.

Nor is the public interest served by establishing a coinless call compensation system that creates artificial incentives for payphone service providers to raise the coin rates that consumers pay, so as to enable them to extract higher compensation rates from interexchange carriers for coinless calls. Workable marketplace solutions to such situations may well be devised, but at present I am more comfortable with keeping the coinless rates in check for two years, while experience is gained with (1) the evolution of a competitive, deregulated market for coin phones and (2) the emergence of new relationships between callers, payphone service providers, interexchange carriers, and subscribers to 800 service.

Our actions in this proceeding affect many parties -- payphone service providers, location owners, interexchange carriers, 800 service subscribers, and their customers. We owe fair treatment to all of them. But the ultimate measure of our success is how well our decisions serve the interests of consumers. I intend to monitor marketplace developments carefully over the coming months and years to ensure that their interests are safeguarded.