was granting the limited waiver for the provision of payphone-specific coding digits.[281] In that order, the Commission addressed concerns, among other things, that there may be market imperfections in the negotiation process among IXCs, LECs, and PSPs with regard to the transition to unregulated market-based per-call compensation. The Commission stated that it "recognized that competitive conditions, which are a prerequisite to a deregulatory market-based approach, did not exist yet, and would not be achieved instantaneously."[282] The Commission indicated that over time the market-based approach would not overcompensate PSPs because carriers have significant leverage, including the ability to block calls, and to negotiate for lower rates.[283] The establishment of a default compensation rate was itself intended, in part, to compensate for any unequal bargaining power arising out of the inability of carriers to block payphone calls.[284] Additionally, recognizing problems that some carriers are having in providing payphone-specific coding digits and concerns due to potential unequal bargaining power, the Commission extended the one year per-call default rate time period established in the *Payphone Orders* to two years in the *Second Report and Order*.[285] Moreover, in the *Payphone Orders* the Commission required that LECs and PSPs provide payphone-specific coding digits to "assist in identifying them to compensation payors," not because they also can be used for blocking calls from payphones during the interim period while the default per-call rate is in effect.[286]

95. In the *Second Report and Order*, the Commission stated that it established a default per-call 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."[287] Thus, the establishment of a default per-call compensation rate was itself intended to address the possibility of unequal bargaining power between PSPs and carriers. In the *Payphone Orders*, the Commission 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.[288] It is only in cases where the market does not or cannot function properly that the Commission needs to

281 *Second Report and Order* at para. 121.

282 *Id.* at para. 11. The Commission noted that imperfections in the marketplace had led it to establish a default rate and acknowledged that additional time is necessary to transition to market-based rates. On the record, IXCs expressed concerns about deregulated per-call rates after the default rate period, and LECs claimed that there were problems in providing coding digits as required by the *Payphone Orders*. *Second Report and Order* at para. 121.

283 *Id.* at para. 97.

284 *Second Report and Order* at paras. 23-28, 41-67, 117-122.

285 *Second Report and Order* at para. 121.

286 *See Report and Order*, 11 FCC Rcd at 20,591, paras. 98-99; *Order on Reconsideration*, 11 FCC Rcd at 21,265-66, para. 64, and 21,278-80, paras. 93-99.

287 *Second Report and Order* at para. 122, n.325.

288 *See Report and Order*, 11 FCC Rcd at 20,577, para 70; *see also Second Report and Order* at paras. 23-28.

take affirmative steps to ensure fair compensation.[289] For example, because TOCSIA requires all payphones to unblock access to OSPs through the use of access codes (including 800 access numbers), PSPs cannot block access to 800 numbers generally. TOCSIA does not, however, 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.[290] Payphones that are not capable of transmitting payphone-specific coding digits must maintain the default rate established in the *Second Report and Order* for the waiver period until FLEX ANI coding digits are available.[291]

96. In addition, the waiver of the payphone-specific coding digits requirements is limited. The *Bureau Waiver Order* stated that at most 40 percent of the payphones were affected by the waiver.[292] As of March 9, 1998, the payphones not receiving payphone-specific coding digits will be reduced to almost 20 percent.[293] Moreover, as discussed above, pursuant to the waiver, LECs and PSPs that are capable of transmitting coding digits are obligated to do so.[294] AirTouch and ITA argue that they are unable to block certain calls for which its customers must pay compensation. As discussed above, however, due to statutory constraints, LECs and PSPs are unable to block the use of their payphones by their customers,[295] and absent a negotiated agreement, the PSPs would not receive compensation without the requirements of the *Payphone Orders* and the *Second Report and Order*.[296] We concluded in the *Bureau Waiver Order* that, on balance, the public interest warranted granting the waiver.[297] We similarly conclude here that the equities under the circumstances and the goals of Section 276 make it clear that the substantive grounds in support of the ITA and AirTouch petitions do not justify a delay in per-call compensation for subscriber 800 and access code calls.

97. The waivers granted in the *Bureau Waiver Order* and this order to the LECs and PSPs will, we recognize, require AirTouch, ITA and IXCs to pay compensation for certain calls without the ability to block those calls on a real-time basis. We find that it is nonetheless in the public interest to grant the waiver because the mandate of Section 276 is that the Commission adopt rules that provide PSPs with per-call compensation, and the waiver will most expeditiously lead to this result. In light of this mandate, we conclude that the potential harm from the absence of compensation to PSPs would be

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289 *Second Report and Order* at para. 122 n.325.

290 *Id.*

291 *See id.* at para. 121.

292 *See Bureau Waiver Order*, 12 FCC Rcd 16,390, para. 10 n. 22.

293 *See supra* para. 56.

294 *Id.* at para. 3. Thus, we anticipate that over the waiver period the number of payphones affected by the waiver will continue to decrease as LECs are able to provide the coding digits.

295 *See supra* para. 95.

296 *Report and Order*, 11 FCC Rcd at 20,567, para. 49.

297 *Bureau Waiver Order*, 12 FCC Rcd 16,390-91, para. 11-13.

greater than the potential harm to AirTouch, ITA, IXCs, and other payors from the inability to block certain payphone calls.

98. We conclude consistent with our decisions in the *MCI Order* and the *PCIA Order*, that delaying per-call compensation for AirTouch and ITA would be harmful to other parties and adverse to the public interest because it would deprive PSPs of compensation for subscriber 800 and access code calls.[298] IXCs that provide interexchange service to payors such as AirTouch and ITA already have been relieved of part of their burden of paying carrier common line access charges to LECs insofar as those charges previously subsidized LEC payphone operations.[299] Additionally, IXCs already have increased interstate rates and implemented per-call charges for payphone compensation.[300] Moreover, considering the access charge reduction, delaying per-call compensation requirements, in addition to the access charge reduction, would aggravate the immediate revenue loss to LEC providers of payphone services.[301] Thus, balancing the equities, the public interest is best served by the immediate implementation of the Commission's compensation rules. Congress specifically provided for setting an expedited deadline for Commission action.[302] In the long term, of course, depriving PSPs of fair compensation would discourage them from deploying their payphones widely, which would be inconsistent with an express congressional purpose.[303]

VII. CONCLUSION

99. In this order, we clarify that LECs must implement FLEX ANI to transmit payphone-specific coding digits that are not already provided as part of ANI ii. We grant waivers to LECs, PSPs, and IXCs and conclude that the waivers are in the public interest to facilitate the transition to per-call compensation. We find that special circumstances with regard to the provision of FLEX ANI and the identification of calls coming from payphones justify these waivers. We conclude that the waivers we grant in this order are necessary to facilitate the identification of calls coming from payphones in order for IXCs to pay payphone compensation consistent with Section 276 and are in the public interest.

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298 *See Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, MO&O, DA 97-2565 (Com. Car. Bur. Dec. 5, 1997) ("*MCI Order*"); MO&O, DA 97-2622 (Com. Car. Bur. Dec. 17, 1997) ("*PCIA Order*"). *See* LEC Coalition at 7. In contrast, Congress expressly required the Commission to adopt rules "within 9 months" after the enactment of the 1996 Act "to ensure that all payphone service providers are fairly compensated for each and every" payphone call. 47 U.S.C. § 276(b)(1)(A).

299 *MCI Order* at para. 8 n. 28, para. 12.

300 *See ex parte* from Michael Kellogg, LEC Coalition to Magalie Salas, Attachment at 1 (Feb. 10, 1998)

301 *See* LEC Coalition Opposition at 7.

302 Congress made clear that time was of the essence by requiring the Commission to take all actions necessary to implement Section 276 within 9 months "[i]n order to promote competition among payphone service providers to the benefit of the general public." 47 U.S.C. § 276(b)(1).

303 A purpose of the payphone provision of the Act is to "promote the widespread deployment of payphone services to the benefit of the general public . . . ." 47 U.S.C. § 276(b)(1).

VIII. ORDERING CLAUSES

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

101. IT IS FURTHER ORDERED that this Order is effective immediately upon release thereof, and that the waivers included in this order are effective March 9, 1998.[304]

102. IT IS FURTHER ORDERED that pursuant to Section 203 of the Communications Act, 47 U.S.C. § 203, each of the LECs, absent a waiver, SHALL FILE tariff revisions to their interstate access tariffs to reflect the availability of FLEX ANI for IXCs for the purpose of payphone compensation no later than March 31, 1998, with a scheduled effective date of April 15, 1998, if FLEX ANI is available for 25% or more of the smart payphones in its service area. Thereafter, within the waiver period it is granted in this order, a LEC must file its tariff revision to provide FLEX ANI to IXCs no later than when it provides FLEX ANI to 25% or more of the smart payphones in its service area.

103. IT IS FURTHER ORDERED that pursuant to Section 203 of the Communications Act, 47 U.S.C. § 203, each of the LECs providing FLEX ANI SHALL FILE tariffs to recover the cost of implementing FLEX ANI as required herein no later than 30 days after full implementation of FLEX ANI.

104. IT IS FURTHER ORDERED that LECs are granted a waiver of Part 69 of the Commission's rules to develop a rate element for recovery of costs incurred to implement FLEX ANI from PSPs for the requirements of this order to provide FLEX ANI to IXCs.

105. IT IS FURTHER ORDERED that the ITA Petition for Reconsideration and the AirTouch Petition for Waiver of the *Bureau Waiver Order* ARE DENIED.

106. IT IS FURTHER ORDERED that the waiver requests of USTA, the LEC Coalition, and TDS ARE GRANTED to the extent described herein, and otherwise ARE DENIED.

A. Richard Metzger, Jr. JDS

A. Richard Metzger, Jr.
Chief, Common Carrier Bureau

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304 We find, for the reasons set forth in paragraphs 1-5 *supra*, that good cause exists for these waivers to be effective immediately.

Bureau Waiver Order

Comments

AT&T Corporation (AT&T)
Ameritech (Ameritech)
American Communications Council (APCC)
Bell Atlantic (Bell Atlantic)
Competitive Telecommunications Association (CompTel)
Frontier Corporation (Frontier)
MCI Telecommunications Corporation (MCI)
National Exchange Carrier Association, Inc. (NECA)
RBOC/GTE/SNET Payphone Coalition (LEC Coalition)
RCN Telecom Services, Inc. (RCN)
Southern New England Telephone Company (SNET)
Southwestern Bell Telephone Company (SWBT)
Pacific Bell (Pacific)
Nevada Bell (Nevada)
Sprint Corporation (Sprint)
TDS Telecommunications Corporation (TDS)
US West
WorldCom

Replies

American Public Communications Council (APCC)
AT&T Corporation (AT&T)
Excel
International Telecard Association (ITA)
LCI International Telecommunications, Inc. (LCI)
MCI
NTCA
Peoples
RBOC/GTE/SNET Payphone Coalition (LEC Coalition)
RCN Telecom Services, Inc. (RCN)
Southern New England Telephone Company (SNET)
Sprint
TDS Telecommunications Corporation (TDS)
USTA
U.S. West (US West)
WorldCom, Inc. (WorldCom)

ITA Petition

Comments

AirTouch Paging (AirTouch)
American Public Communications Council (APCC)
RBOC/GTE/SNET Payphone Coalition (LEC Coalition)
SmarTalk Teleservices, Inc.
Telecommunications Resellers Association (TRA)
WorldCom, Inc. (WorldCom)

Replies
LEC Coalition
ITA

AirTouch Petition

Comments

American Communications Council (APCC)
AirTouch Paging (AirTouch)
American Alpha Dispatch Services, Inc.
Dispatchers:
- Absolute Best Monitoring, Inc. Affordable Message Center, Inc. Procommunications, Inc.
- National Dispatch Center, Inc.
- Abacus, Inc.
- United Cellular Paging, Inc.
- Dispatch America, Inc.
- All Office Support

Mobile Telecommunications Technologies Corp. (Mtel)
PageMart Wireless, Inc. (PageMart)
RBOC/GTE/SNET Payphone Coalition (LEC Coalition)
Telecommunications Resellers Association (TRA)

Replies

LEC Coaltition
AirTouch