

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

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

CC MAIL ROOM

CC Docket No. 96-128

**THIRD REPORT AND ORDER, AND
 ORDER ON RECONSIDERATION
 OF THE SECOND REPORT AND ORDER**

Adopted: January 28, 1999

Released: February 4, 1999

By the Commission:

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I. INTRODUCTION

1. In this proceeding, we continue our efforts to implement the requirements of section 276 of the Telecommunications Act of 1996 ("the 1996 Act").¹ Section 276 directs us to promulgate regulations that will achieve three basic policy objectives with respect to the provision of payphone services: (1) promoting a competitive payphone market; (2) ensuring the widespread deployment of payphones for the benefit of the general public; and (3) ensuring that providers of payphone services receive fair compensation for every call made using their payphones.² The overarching goals of the 1996 Act further instruct us to establish these regulations in a pro-competitive, deregulatory framework that will open up telecommunications services to competitive forces nationwide.³ In this Order, we also respond specifically to issues remanded to us by the Court upon its review of the Commission's previous order.

A. The Commission's Prior Orders.

2. In the prior orders in this proceeding, the Commission has fulfilled much of the congressional mandate embodied in section 276 by creating the structural groundwork necessary for competition to flourish in the provision of payphone services.⁴ For example, the Commission eliminated implicit subsidies to payphones provided by local exchange carriers

¹ Pub. L. No. 104-104, 110 Stat. 56. The 1996 Act amends the Communications Act of 1934, 47 U.S.C. §§ 151 *et seq.* Hereinafter, all citations to the Act and to the 1996 Act will be to the relevant section of the United States Code, unless otherwise noted.

² 47 U.S.C. § 276.

³ Joint Managers' Statement, S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 113 (1996).

⁴ See *Implementation of the 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*); Report and Order, 11 FCC Rcd 20541 (1996) (*First Report and Order*); Order on Reconsideration, 11 FCC Rcd 21233 (1996) (*First Report and Order on Reconsideration*) (together the *First Report and Order* and the *First Report and Order on Reconsideration* are referred to as the *Payphone Orders*). The *Payphone Orders* were affirmed in part and vacated in part. See *Illinois Public Telecomm. Ass'n v. FCC*, 117 F.3d 555 (D.C. Cir. 1997) ("*Illinois Public Telecomm.*"). The Commission addressed the issues remanded by *Illinois Public Telecomm.* in the Second Report and Order, 13 FCC Rcd 1778 (1997) (*Second Report and Order*). The *Second Report and Order* was also appealed. On appeal, the Court remanded certain issues to the Commission. See *MCI Telecomm. Corp. et al. v. FCC*, 143 F.3d 606 (D.C. Cir. 1998) (*MCI v. FCC*). In addition to responding to those issues remanded by the Court, this Order also addresses issues raised by parties that petitioned us to reconsider various decisions made in the *Second Report and Order*.

(LECs) that gave such companies an unfair competitive advantage compared to non-LEC payphone providers. Similarly, the Commission established non-structural safeguards to prevent Bell Operating Companies (BOCs) from discriminating in favor of their own payphones in the provision of local service, as well as other measures designed to place all providers of payphone services on an equal competitive footing. The Commission also deregulated the local coin rate for payphone calls to allow the competitive marketplace to set fair compensation for such calls. None of these actions is implicated by the steps we take in the instant order.

3. The Commission has adopted two prior orders aimed at balancing the policy objectives identified above. In these prior orders, the Commission gave primary importance to Congress's objective of establishing a market-based, deregulatory mechanism for payphone compensation, as required both in section 276 and the generally pro-competitive goals of the 1996 Act.⁵ The Commission recognized, however, that various statutory, technological, and economic factors inhibited the development of a fully deregulated means of providing fair compensation for certain types of calls broadly referred to as "dial-around" calls for which payphone owners were largely uncompensated prior to the 1996 Act. Indeed, the Telephone Operator Consumer Services Improvement Act (TOCSIA) limits the ability of payphone service providers (PSPs) to negotiate with interexchange carriers (IXCs) fair compensation for dial-around calls.⁶ Unlike other aspects of payphone service, such as the local coin rate, the Commission accordingly found it necessary to adopt a more regulatory approach to ensuring that PSPs are fairly compensated for these types of calls.

4. By way of explanation, there are typically three types of calls made from payphones: local calls; long distance calls using the long distance carrier selected by the payphone owner (referred to as the "presubscribed carrier"); and so-called "dial-around" calls, where the caller makes a long distance call using a long distance carrier other than the payphone's presubscribed long distance carrier.

5. Payphone owners receive direct payment for providing the first two categories of calls. For example, a caller making a local call deposits coins (typically \$.35) and is connected to the called party. That \$.35 is paid directly to the payphone owner. A caller making long distance calls using the payphone's presubscribed long distance carrier dials the long distance number, and the payphone owner typically receives payment through its presubscribed carrier.⁷

⁵ See 47 U.S.C. § 276(b). See generally 47 U.S.C. §§ 251-261.

⁶ See Telephone Operator Consumer Services Improvement Act (TOCSIA), Pub. L. No. 101-435, 104 Stat. 986 (1990) (codified at 47 U.S.C. § 226).

⁷ The payphone owner and its presubscribed long distance carrier typically will have negotiated an agreement whereby the long distance carrier pays the payphone owner some agreed-upon amount or "commission" for these types of long distance calls. A related subset of this category of long distance calls

6. The third category, referred to as "dial-around" calls, consists of long distance calls that utilize a long distance carrier other than the payphone's presubscribed carrier. Generally, there are two types of dial-around calls. The first type is where a caller uses a code to access his preferred long distance carrier to make a long distance call, *e.g.*, "1/800/CALL-AT&T" or "10-10-321." The second type of dial-around calls are known as "toll-free" calls, such as 1/800-FLOWERS. In this type of call, the flower company will pay (or "subscribes" to) a long distance carrier for a toll-free number that its customers can use to make long distance calls to the company. Similar to the caller who uses 1/800-CALL-ATT, the flower customer calling from a payphone is making a long distance call using a carrier other than the payphone's presubscribed long distance carrier. This Order addresses the question of how payphone owners should be compensated for "dial around" calls made from their payphones.

7. In its prior two orders, the Commission established a phased-in compensation mechanism to satisfy the statutory mandate to ensure that payphone owners are "fairly" compensated for these dial-around calls. The first phase of the compensation mechanism established a specific, per-call default compensation amount to be paid to a PSP to cover the cost of an access-code call or toll-free subscriber call in the absence of a negotiated agreement between the PSP and the carrier handling the call. In the *Second Report and Order*, the Commission calculated this default amount using what might be described as a "top-down" approach.⁸ That is, the Commission used the typical deregulated coin rate of \$.35 as a starting point and subtracted net avoided cost differences between the provision of these coin calls and the provision of "dial-around" or compensable calls. The second phase used the same "top-down" methodology to determine a default amount but allowed the "starting point" to vary with the deregulated coin price at each individual payphone.

8. As detailed below, both of the Commission's orders establishing a mechanism for setting "fair compensation" for access code and toll-free calls were appealed. While upholding most of the other market-opening undertakings described above, the Court in both instances found fault with the Commission's efforts to tie "fair compensation" for these dial-around or compensable calls to the deregulated prices charged by PSPs for local coin calls. In particular, the Court, in its second remand order, found that the Commission failed to adequately articulate why the price of a local call is an appropriate starting point for deriving a regulated default price for "dial-around" or compensable calls.⁹ The Commission's main rationale for this approach was that it could be viewed as being fair in the sense that the

made using the payphone's presubscribed carrier are the so-called "1+" calls where the caller makes a long distance call from the payphone by dialing "1" plus the long distance number. The payphone's presubscribed carrier carries the call and the payphone owner receives payment directly from the caller, typically through the deposit of coins.

⁸ See *Second Report and Order*, 13 FCC Rcd at 1825, ¶ 111.

⁹ *MCI v. FCC*, 143 F.3d at 608.

margin between price and incremental cost would be the same for all types of calls. Thus all types of calls could be viewed as making the same contribution to covering joint and common costs. Thus our justification for choosing \$.35 as a starting point was simply that it could be viewed as producing a "fair" result.

B. The 1996 Act and Market Constraints.

9. In this Order, we must reevaluate the appropriate means by which to achieve the basic policy objectives expressly set out in section 276.¹⁰ In setting a default compensation amount, the present realizing any of these goals individually will not be the optimal means of satisfying one or more of the other goals. For example, the market for payphone services is characterized by increasing competitive pressures due, in part, to the market-opening directives of our previous orders in this proceeding.¹¹ Additional pressures have arisen from payphone-market substitutes, *i.e.*, the rapidly growing availability of Personal Communications Service (PCS) and cellular technology, which provides some consumers with an economic alternative to payphones. In a competitive payphone market, these factors certainly may lead to a reduction in the deployment of payphones in some areas, particularly in low-volume locations. Moreover, the number of payphones deployed across the country is inexorably related to our determination of a fair compensation amount, as we are directed to do by Congress. Simply stated, a higher default compensation amount will lead to the deployment of more payphones, and a lower default compensation amount will lead to fewer payphones, irrespective of which rate represents "fair compensation." Another example arises from the Congressional mandate that the Commission's compensation methodology be established on a "per call" basis. Because the overwhelming majority of a payphone's costs are fixed, a per call compensation plan results in the following anomaly: A payphone with a low number of calls, *e.g.*, in a rural area where few calls are made from the phone, will just barely recover its costs. Under the same plan, a payphone with a high number of calls, *e.g.*, a payphone in a busy bus station, will recover much more than its costs.

10. We place great weight on Congress's directive to ensure that payphones remain widely deployed and available to the public at large, in part, because we believe that, if we fail to adequately compensate payphone owners for dial-around or compensable calls, the first payphones likely to be eliminated are those payphones located where consumers have the fewest real alternatives, such as in rural areas that generate relatively fewer payphone calls and inner-city areas with low residential subscription rates. We also give primary importance to Congress's objective of widespread deployment because the public benefits from widespread deployment. Furthermore, the accomplishment of the remaining objectives

¹⁰ 47 U.S.C. § 276(b).

¹¹ See *Second Report and Order*, 13 FCC Rcd at 1789, ¶ 24. Prior to the elimination of these subsidies, LECs were able to use revenue from the provision of local telephone service to subsidize their payphone operations, to the detriment of non-LEC payphone providers who had no such subsidy revenues to help support their payphone operations.

necessarily flow from widespread deployment, *e.g.*, to ensure widespread deployment, there must be fair compensation.

11. After considering the record before us and the opinions of the Court, we conclude that the existing statutory, technological, and economic constraints identified in the Commission's prior orders prevent us at this time from relying upon deregulation to determine fair compensation for access-code and toll-free subscriber calls. Nothing in the record before us persuades us that we should reconsider our characterization of the competitiveness of the payphone market in the *First Report and Order*.¹²

12. In contrast to the provision of local coin call service, however, the provision of access-code and toll-free call service is subject to statutory and technological restrictions that presently inhibit the ability of the parties to the transaction to reach a mutually agreeable price, or, alternatively, to decline to transact. In particular, Congress previously mandated in section 226 of the Act that PSPs must provide to consumers using their payphones access to all IXCs.¹³ As a result, PSPs have minimal leverage to negotiate with these IXCs for a fair compensation amount for delivering calls to the IXCs' networks. Indeed, this concern was one of the fundamental reasons why Congress adopted the compensation provisions of section 276.¹⁴ In its previous orders, the Commission sought to overcome this lack of bargaining power by establishing a system where the IXC could choose to "block," or not accept, calls if it determined that the price being demanded by the PSP was more than the IXC was willing to pay. We conclude in this Order, however, that the present ability of carriers to block is not sufficiently developed to ensure that allowing the default rate to float with the PSP's local coin rate will necessarily result in a compensation level that is "fair," as contemplated by the statute.¹⁵

C. Summary of Our Actions in this Order.

13. In this Order, we switch from the top-down methodology of our prior orders to a "bottom-up" methodology to establish the default per-call compensation amount that shall be paid to PSPs for compensable calls¹⁶ that are not otherwise compensated. We refer to the compensation amount as a "default amount" to emphasize that it applies only in the absence

¹² *First Report and Order*, 11 FCC Rcd at 20611, ¶ 142.

¹³ 47 U.S.C. § 226(c)(1)(B).

¹⁴ 47 U.S.C. § 276(b)(1).

¹⁵ See Section IV.A.3.a. below for a more complete explanation of the role of targeted call blocking in moving to a purely market-based mechanism for dial-around compensation.

¹⁶ See Section IV.A.1 below, for the definition of compensable calls. We note here that section 276 specifically provides that 911 emergency and Telecommunications Relay Service (TRS) calls are not entitled to receive compensation. See 47 U.S.C. § 276(b)(1)(A).

of some other price that may be negotiated between the payphone owner and the carrier. Pursuant to the bottom-up methodology adopted in this Order, we calculate an average fully distributed cost for each type of call such that the default price for each type of call is set equal to the fully distributed cost of that type of call. We call this a "bottom-up" approach to connote the idea that the price of dial-around or compensable calls is calculated by "building-up" from a starting point of zero using costs, instead of "building-down" from a starting point of the price of coin calls using avoided costs. In our explanation of the shift to a bottom-up methodology, we respond to the concerns of the Court in *MCI v. FCC*, which remanded the Commission's *Second Report and Order*.

14. We adjust the default per-call compensation amount for dial-around or compensable calls from \$.284 to \$.24. We make this adjustment both as a result of the new methodology we adopt and as a result of our resolution of the petitions for reconsideration of the *Second Report and Order*.¹⁷ Indeed, as detailed below, this reduction in the default amount is more the result of new, more accurate cost data submitted in connection with the petitions for reconsideration than due to the switch from a top-down to bottom-up calculation.¹⁸ In reaching the revised default amount, we consider the cost data submitted (1) for the *Second Report and Order*; (2) in connection with the petitions for reconsideration of the *Second Report and Order*; and (3) in response to our *Public Notice*.¹⁹ Also, we reconsider our treatment of the costs associated with the provision of compensable calls from payphones. The more-developed record assures us that our current calculation of a default compensation amount more accurately reflects the costs of providing payphone service than our previous efforts.

15. Because our bottom-up methodology assures fair compensation for the overwhelming majority of payphones, we conclude that the per-call compensation methodology that we adopt in this Order will not negatively affect the current deployment of payphones and thus will promote Congress's goal of widespread deployment of payphones. In particular, by using a "marginal" payphone location²⁰ for purposes of calculating the default compensation amount, we have sought in this Order to ensure the continued deployment of existing payphones to the greatest practical extent. Furthermore, nothing in our Order affects or jeopardizes the states' ability to ensure that public interest payphone programs are viable and supported in an equitable and fair fashion. We therefore conclude that the per-call

¹⁷ See Section IV.B. below.

¹⁸ As explained in Section IV.B.3.g(8) below, had we retained a top-down approach, the new cost data would have resulted in a default rate of \$.23, which is less than the default compensation amount of \$.24 that we establish in this Order.

¹⁹ See *Pleading Cycle Established for Comment on Remand Issues in the Payphone Proceeding*, CC Docket No. 96-128, DA 98-1198 (rel. June 19, 1998) (*Public Notice*).

²⁰ A marginal payphone location is a location where the payphone operator is able to just recoup its costs, including earning a normal rate of return on the asset, but is unable to make payments to the location owner.

compensation methodology adopted herein is the best option available to implement section 276(b)(2) of the Act in light of existing technological, statutory, and economic constraints.

16. We believe that targeted call blocking ultimately will play a significant role in bridging the gap between Congress's and the Commission's goal of a deregulatory solution and the present state of payphone telephony.²¹ Should the parties that are the principal economic beneficiaries of the payphone market -- the payphone providers, the IXCs, and the subscribers to toll-free lines -- be unable or unwilling to resolve the technological issues regarding targeted call blocking, then their inaction may require us to move to a more regulatory approach. If, however, the parties are able to resolve these technological issues surrounding the availability of targeted call blocking, we believe that a move to a more market-based approach that would comply with both statutory obligations and the Court's concerns is foreseeable. We note that IXCs currently possess the technology and receive the coding digits necessary to implement a targeted call blocking mechanism.²²

17. Until such time, we will monitor the development of call blocking technology and act to ensure that the interests of the public as payphone users are adequately addressed. We emphasize that our finding concerning the current limitations of call blocking technology only restricts our ability to rely upon a carrier-pays system in which different payphones may charge different compensation amounts, such as would be the case in the final phase of the compensation mechanism established in the Commission's previous orders.²³ As stated in those orders, the adoption of a fixed default compensation amount, as we do in this Order, is designed in part to address the existing technological limitations relating to call-blocking.²⁴

18. As of 30 days after publication of this Order in the Federal Register, IXCs must compensate PSPs the default per-call compensation amount for all compensable payphone calls not otherwise compensated pursuant to contract. For purposes of this Order, a compensable call includes toll-free calls, access-code calls, certain 0+, and certain inmate

²¹ See Section IV.A.3.a. (discussing the role of targeted call blocking in any move to a deregulatory solution to dial-around compensation).

²² See *Illinois Public Telecomm.*, 117 F.3d at 564 (recognizing that IXCs possess the necessary technology to implement targeted call blocking). We also note that the vast majority of dial-around calls transmit the appropriate coding digits. We note, however, that a small number of calls do not transmit the appropriate coding digits. See SBC Request to Extend Limited Waiver of Coding Digit Requirements, CC Docket 96-128 (Dec. 9, 1998).

²³ This final phase was scheduled to take effect in October, 1999. See *Second Report and Order*, 13 FCC Rcd at 1828, ¶ 117.

²⁴ *Second Report and Order*, 13 FCC Rcd at 1789-1790, 1796-1809, 1828-1831, ¶¶ 23-28, 41-67, 117-122. See also *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Memorandum Opinion and Order, CC Docket No. 96-128, 13 FCC 4998, 5042-5045, ¶¶ 86-89 (rel. March 9, 1998) (*Coding Digits Order*).

calls.²⁵ The default per-call compensation amount shall be applicable through at least January 31, 2001. We anticipate that, by this time, the parties will have had the opportunity to resolve the impediments that currently inhibit the ability of payphone owners and carriers to negotiate fair compensation for dial-around calls. If, by January 31, 2001, parties have not invested the time, capital, and effort necessary to remove these technological impediments, or we determine that other impediments to a market-based resolution continue to exist, the parties may petition the Commission regarding the default compensation amount, related issues pursuant to technological advances, and the expected resultant market changes.²⁶ Barring an unforeseen change in the market or in the relevant technology, we will look with disfavor upon any petition requesting that we modify, before January 31, 2001, either the compensation amount or compensation mechanism. We find that it will require a significant amount of time for IXCs to fully implement and deploy the necessary technologies and that it is important to provide stability to the parties, the public, and the market concerning the amount of per-call compensation.

II. BACKGROUND

19. Both the states and the Commission historically have regulated the payphone industry.²⁷ At the time of the Bell System break-up, payphones were considered part of basic local telephone service, and thus, under the Modified Final Judgment, were assigned to the BOCs rather than AT&T.²⁸ Soon thereafter, technological advancements resulted in the deployment of "smart" payphones that, through computerization, could perform much of the control and supervision functions previously provided by the local exchange carrier. As a result of this innovation, the Commission recognized that non-LEC providers should be allowed to interconnect smart payphones with the local and interstate network.²⁹ This resulted in the advent of independent payphone providers competing with LECs in the provision of payphone services.³⁰ Payphones, like residential phones, typically have presubscribed long

²⁵ See Section IV.A.1. below, explaining the difference between these types of calls.

²⁶ Two petitioners maintain that the default per-call compensation amount selected on a going-forward basis in this Order should be designated the default per-call compensation amount for the interim period of November 7, 1996 through October 6, 1997. See APCC Recon. Pet. at 18; Peoples Recon. Pet. at 9. This issue will be addressed in a separate order.

²⁷ For a brief history of the regulation of the payphone industry, see *NPRM*, 11 FCC Rcd 6718-6724, ¶¶ 2-12.

²⁸ See *United States v. Western Elec. Co.*, 569 F. Supp. 1057, 1102 n.195 (D.D.C. 1983), *aff'd sub nom. California v. United States*, 464 U.S. 1013 (1983).

²⁹ See *NPRM*, 11 FCC Rcd at 6720, ¶ 5.

³⁰ As a general matter, neither the independent payphone providers nor the LECs own the premises where a particular payphone is located. Instead, the premises owner will select which payphone provider will provide payphone service. In many instances, the payphone provider will pay the premises owner for the right to

distance carriers. In most instances, the presubscribed carrier compensates the PSP for the right to be the 0+ or presubscribed carrier. This compensation typically takes the form of a certain percentage of the revenue derived from long distance traffic from the payphone.

20. Prior to the 1996 Act, the Commission's payphone regulation focused primarily on carriers known as operator service providers (OSPs) that provided operator-assisted long distance service. Specifically, these efforts concerned the implementation of the TOCSIA.³¹ In order to allow consumers to choose their long distance carrier, the Commission implemented additional regulations pursuant to TOCSIA. Under these regulations, a PSP may not prevent consumers from dialing around the PSP's presubscribed operator service provider in order to access their preferred carrier.³² Thus, under TOCSIA, PSPs may not bar outgoing access calls.³³

21. Section 276(b)(1)(A) of the Act specifically directs the Commission to establish a plan to ensure that PSPs are "fairly compensated" for every completed call on a per-call basis.³⁴ The 1996 Act does not prescribe a particular method for achieving these goals, other than to specify that such action shall "promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public[.]"³⁵

22. The Commission determined in the *First Report and Order* that the primary

provide payphone service at that site. This arrangement arises in large part from the compensation that the payphone service provider receives both through local coin calls and for delivering long distance traffic to a long distance service provider.

³¹ See 47 U.S.C. § 226.

³² 47 C.F.R. § 64.704.

³³ In addition, TOCSIA directed the Commission to determine whether independent payphone providers should receive compensation for originating from their payphones interstate calls to non-presubscribed OSPs. 47 U.S.C. § 226(e)(2). At the time TOCSIA was enacted, LEC payphones recovered compensation through the carrier common line (CCL) charge for connecting payphone callers to the long distance network. Thus, the compensation provision of section 226 was directly solely at the independent PSPs. Pursuant to section 276, the Commission removed the LEC payphone subsidization mechanism. See *First Report and Order*, 11 FCC Rcd at 20632-634, ¶¶ 180-187.

³⁴ See 47 U.S.C. § 276(b)(1)(A). The exact language 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, except that emergency calls and telecommunications relay service calls for hearing disabled individuals shall not be subject to such compensation." *Id.*

³⁵ 47 U.S.C. § 276(b)(1). See *First Report and Order*, 11 FCC Rcd at 20566, ¶ 48; *Second Report and Order*, 13 FCC Rcd at 1789, ¶ 24.

economic beneficiaries of access-code and toll-free subscriber calls, the IXCs, should be responsible for compensating the PSPs.³⁶ The Commission determined that because of section 226's prohibition against PSPs barring access calls to IXCs,³⁷ PSPs were deprived of market leverage to negotiate fair compensation for the delivery of such calls to IXCs.³⁸ The Commission, therefore, established a default per-call compensation amount to be paid by IXCs to PSPs, in the absence of individual agreements.³⁹

23. The Commission concluded in the *First Report and Order* that use of a purely incremental or marginal cost standard for all calls would be inadequate, because PSPs would be unable to recover a reasonable share of the joint and common costs of the payphone.⁴⁰ The Commission further determined that, because the payphone market has low entry and exit barriers and likely would become increasingly competitive, the Commission should choose a market-based, rather than a cost-based, methodology to establish a default compensation amount.⁴¹ In setting a default compensation amount, the Commission noted that, over the long term, the payphone market generally will be best equipped to set the appropriate price for payphone calls.⁴² The Commission found that, ultimately, the appropriate per-call compensation amount for compensable calls, in the absence of a negotiated agreement, will be the amount a particular PSP charges for local coin calls.⁴³ The Commission based this conclusion on its belief that the market eventually will determine the fair compensation amount for local coin calls. Because fully competitive conditions did not exist, however, the Commission established an interim compensation plan that would be in effect for two years,

³⁶ *First Report and Order*, 11 FCC Rcd at 20584, ¶ 83. For purposes of this Order, the term "IXC" also includes a LEC when it provides interstate, intraLATA toll service. See *First Report and Order*, 11 FCC Rcd at 20584 n.293.

³⁷ See *Telephone Operator Consumer Services Improvement Act* (TOCSIA), Pub. L. No. 101-435, 104 Stat. 986 (1990) (codified at 47 U.S.C. § 226). The effect of this statutory provision of TOCSIA is to prohibit PSPs from barring outgoing 800 calls, including toll-free calls.

³⁸ *First Report and Order*, 11 FCC Rcd at 20567, ¶ 49.

³⁹ See *First Report and Order*, 11 FCC Rcd at 20567-568, ¶¶ 50-51.

⁴⁰ *First Report and Order*, 11 FCC Rcd at 20576, ¶ 68. Cf. *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, *First Report and Order*, 11 FCC Rcd 15499, 15844-856, ¶¶ 672-703 (rel. Aug. 8, 1996) (*Local Competition Order*) (describing total element long-run incremental cost methodology for pricing interconnection and unbundled network elements).

⁴¹ *First Report and Order*, 11 FCC Rcd at 20541, ¶ 70; *Id.* at 20568, ¶ 52 n.187; *Second Report and Order*, 13 FCC Rcd at 1789, ¶ 24.

⁴² *First Report and Order*, 11 FCC Rcd at 20568, ¶ 52.

⁴³ *First Report and Order*, 11 FCC Rcd at 20577-578, ¶ 70-71.

after which the market would set the amount.⁴⁴

24. In establishing an interim default compensation plan for toll-free and access-code calls, the Commission chose a surrogate market price of \$.35 per call, which was the local coin call price in several states where payphone call prices had been deregulated.⁴⁵ In making its selection, the Commission concluded that the costs of coin calls and dial-around calls were "similar."⁴⁶

25. On appeal, the Court concluded that the Commission had not adequately justified its conclusion that the costs of local coin calls are similar to those of toll-free and access-code calls, and remanded the matter to the Commission.⁴⁷ The Court found evidence in the record that the costs of coin calls exceeded the costs of coinless calls, due to: (1) the equipment and coin-collection costs associated only with coin calls; and (2) the PSP's responsibility to pay for originating and terminating local coin calls, while being responsible for paying only for originating coinless calls.⁴⁸

26. In the *Second Report and Order*, the Commission responded to the Court's remand. The Commission affirmed its decision in the *First Report and Order* to use a market-based, interim compensation amount for compensable calls.⁴⁹ The Commission explained that it found no statement in the Court's decision that would preclude the Commission from relying on market-based surrogates in establishing the per-call compensation amount.⁵⁰ The Commission instead determined that the Court remanded portions of the *Second Report and Order* so that the Commission could more sufficiently address information on the record regarding cost disparities between the cost of providing coin calls and the cost of providing toll-free and access-code calls.

27. Responding to the Court's findings, the Commission concluded that the

⁴⁴ *First Report and Order*, 11 FCC Rcd at 20578, ¶ 72.

⁴⁵ *First Report and Order*, 11 FCC Rcd at 20577-578, ¶¶ 70-72.

⁴⁶ *First Report and Order*, 11 FCC Rcd at 20577, ¶ 70. In the *Second Report and Order*, in which we set a top-down default compensation amount, we calculated, for comparison purposes, a bottom-up set of figures. See *Second Report and Order*, 13 FCC Rcd at 1824, ¶ 108.

⁴⁷ *Illinois Public Telecomm.*, 117 F.3d at 564.

⁴⁸ *Illinois Public Telecomm.*, 117 F.3d at 563-64.

⁴⁹ *Second Report and Order*, 13 FCC Rcd at 1789, ¶ 24.

⁵⁰ *Second Report and Order*, 13 FCC Rcd at 1789, ¶ 23.

appropriate per-call compensation amount for dial-around calls was the market-based local coin price, adjusted for the differences in costs between providing coin calls and compensable calls.⁵¹ The Commission examined the underlying cost components and found that the cost to PSPs of providing compensable calls was \$.066 less than the cost of providing coin calls.⁵² Based on this finding, the Commission determined that the market coin call price of \$.35 should be reduced \$.066 to arrive at a default per-call compensation amount of \$.284.⁵³ The Commission concluded that this default amount would be in effect for two years, until October 6, 1999.⁵⁴ After two years, the per-call default amount would be the market-based local coin price, less \$.066, representing the net avoided costs of a dial-around call.⁵⁵

28. On appeal, the Court remanded portions of the *Second Report and Order*. The Court held that the Commission did not adequately justify the derivation of a compensation amount for coinless payphone calls. In particular, the Court held that the Commission failed to explain why a market-based compensation amount for coinless calls could be derived by subtracting avoided costs from a market price charged for coin calls.⁵⁶ By public notice released June 19, 1998, the Commission sought comment on the issues remanded by the Court.⁵⁷ In addition, several parties filed petitions for reconsideration of the *Second Report and Order*.⁵⁸

III. THE ECONOMICS OF PAYPHONE TELEPHONY

29. In order to explain more clearly our reasons for adopting the compensation methodology we do in this order, we briefly summarize here our understanding of the cost structure of payphones, the nature of competition among payphones, and the problems associated with designing a mechanism for allocating the common costs of payphones.

⁵¹ See *Second Report and Order*, 13 FCC Rcd at 1828, ¶ 117.

⁵² See *Second Report and Order*, 13 FCC Rcd at 1828, ¶ 117.

⁵³ *Second Report and Order*, 13 FCC Rcd at 1828, ¶ 117.

⁵⁴ *Second Report and Order*, 13 FCC Rcd at 1828, ¶ 117.

⁵⁵ *Second Report and Order*, 13 FCC Rcd at 1828, ¶ 117.

⁵⁶ *MCI v. FCC*, 143 F.3d at 608.

⁵⁷ See *Public Notice*.

⁵⁸ See, e.g., American Alpha Dispatch Recon. Pet.; APCC Recon. Pet.; Consumer Business Coalition Recon. Pet. Additional petitioners are listed at Appendix B.

A. Payphone Costs and Revenues.

30. Payphones offer access to a number of different services, including local coin calls, dial-around calls to access a user's preferred long distance company or a toll-free subscriber such as 1-800-FLOWERS, and long distance calls using a particular payphone's presubscribed IXC. For purposes of this discussion, we focus primarily on local coin calls and dial-around and toll-free subscriber calls. We generally will refer to the latter two types of calls as "dial-around or compensable calls."

31. The vast majority of the costs of providing payphone service are *fixed* costs that are *common*⁵⁹ (also referred to as "joint and common") to the provision of all payphone services. These fixed common costs include the capital cost of buying and installing a payphone in a particular location and certain monthly recurring costs, such as the cost of leasing the local line and monthly maintenance and overhead costs, also known as sales, general, and administrative (SG&A) costs. In addition, there are certain additional *incremental* costs⁶⁰ to the payphone provider associated with the provision of coin calls.⁶¹ These incremental coin costs include certain fixed costs, such as the cost of the coin box, and certain variable costs, such as any termination charges for local coin calls⁶² and the costs of collecting the coins from the payphone.⁶³ In contrast to coin calls, the incremental cost of a dial-around or compensable call is virtually zero. This is because the payphone provider is only providing access to the IXC, and the IXC pays any costs associated with transporting and terminating a call to a called party. The fact that payphone service consists of relatively

⁵⁹ The cost of facilities that are used in the production of two or more different goods or services are frequently referred to as "common" or "shared" costs. Alfred E. Kahn, *The Economics of Regulation, Principles and Institutions* 78-80 (1988). Fixed costs are costs that do not vary with the quantity of goods or services produced. Dennis Carlton and Jeffrey Perloff, *Modern Industrial Organization* (2nd ed.) 51.

⁶⁰ The incremental cost of producing a specified quantity of a service is the additional cost that a firm incurs when it expands its output of that service by that specific amount, while maintaining the production levels of all other services. When the quantity of a service equals all of the output of that service (such as coin calls), the incremental cost of that service equals all of the additional costs that are incurred due to that service being offered. In the context of payphones, the costs associated with the coin mechanism are part of the incremental costs of coin calls, because the cost of building the coin mechanism is incurred only because the payphone operator seeks to offer the service of providing coin calls. Similarly, coin collection costs and termination costs are also incremental to coin calls. Baumol, Panzar and Willig, *Contestable Markets and the Theory of Industrial Structure* 67 (1982).

⁶¹ In Section IV.B.3.g below, we explain our classification of these cost components.

⁶² For a more thorough discussion of termination charges, see Section IV.B.3.g(2) below.

⁶³ We explain below in Section IV.B.3.d. why we do not treat the coin mechanism as joint and common, but instead as incremental to coin calls.

high fixed costs and low or zero marginal costs is important in understanding the nature of competition among payphones.

32. The revenue a payphone generates depends upon the volume of each type of call made from the payphone and the price of those calls. Thus, if the number of calls is held constant, an increase in the price for a particular type of call will increase the revenue of the payphone. Similarly, holding the price constant, an increase in the number of calls at a payphone will increase the payphone's revenue.

33. The profit from a payphone is simply the revenue it generates, less the costs associated with the payphone. Because payphones have significant fixed costs that must be recovered, the price for each type of payphone call must exceed the marginal cost of the call⁶⁴ if the payphone is to earn a normal rate of return.⁶⁵ Stated another way, if every call is priced at the marginal cost of that call, the payphone would be unprofitable, because it would fail to recover the predominant fixed costs of providing the payphone. Because the price for each type of call must exceed its marginal cost, it is also clear that an increase in the number of any type of call will increase the payphone's profitability by contributing either to the recovery of the payphone's fixed cost or to the payphone's profitability.⁶⁶

B. Competition Among Payphones.

34. To explain the nature of competition in the payphone market, we begin by assuming that payphones can only provide coin calls. In this case, a PSP will install a payphone only if it believes that the demand for coin calls will be sufficient for it to earn at least a normal rate of return.⁶⁷ A highly profitable payphone typically attracts the entry of

⁶⁴ The marginal cost of a call is the additional cost that the PSP incurs when the payphone is used to make one additional call. G. Stigler, *The Theory of Price*, 4th ed. (1987).

⁶⁵ A payphone earns a normal return when its revenue pays for itself, including the cost of capital used to buy the payphone and all the costs associated with that payphone, *e.g.*, upkeep and the payphone operator's time.

⁶⁶ For purposes of this discussion, we use the term "profit" to refer to profits in excess of a normal return. Such above-normal profits are frequently referred to as "economic profit," "supra-normal profit," or "monopoly profit." Carlton & Perloff, *Modern Industrial Organization*, 2nd ed. 340 (1994).

⁶⁷ It is worth noting here that many payphones currently are located where revenues from local coin calls do not generate a normal rate of return. Many such payphones, particularly those provided by LECs, were installed before the 1996 Act and as a result of subsidies or other regulatory factors that were subsequently eliminated by the 1996 Act. Accordingly, absent sufficient total revenue from coin calls and dial-around or compensable calls, we can expect these payphones to be removed and possibly relocated. See U S West Nov. 19, 1998 *ex parte* letter from B. Nugent to Magalie Roman Salas.

additional payphones.⁶⁸ The resulting competition should reduce the number of calls each payphone receives and possibly reduce the price. The reduction in the number of calls and any reduction in price will reduce the incumbent payphone's profits. Economic theory suggests that entry will continue to occur until the last entrant earns just a normal rate of return.⁶⁹ If we assume that demand for payphone calls is uniform in a particular area and that all payphones are equally efficient, we would expect that entry of new payphones into the area would continue until all payphones earn just a normal return and no supranormal profits.⁷⁰ Moreover, because of the high fixed costs of a payphone, we would expect the price for each coin call to exceed its marginal cost in order for a PSP to recoup its fixed costs.

35. Now, let us add to this analysis the ability of coin payphones also to provide dial-around or compensable calls and the assumption that the payphone is required to charge a set, per-call compensation amount for each dial-around or compensable call. As long as this per-call compensation amount exceeds the marginal cost of providing a dial-around call, we would expect existing payphones to start earning a profit. As stated in the previous paragraph, this profitability will attract more payphone entry and increase the number of payphones in the market. Maintaining our assumptions of uniform demand and equally efficient payphones, we would expect entry to continue until all payphones are just breaking even.

36. This theory is complicated, however, by the diversity of the payphone market. First, demand varies greatly among locations. Not only does the number of calls (*i.e.*, quantity of demand) for particular payphone services vary from location to location, but also the elasticity of demand for particular payphone services may vary. Thus, for example, if we compared a payphone at a busy bus station with a payphone at a corner grocery, we might expect that the bus station payphone would generate a larger total volume of calls and that a higher percentage of those calls would be dial-around calls, compared to the payphone at the

⁶⁸ We note that the Commission previously found that the payphone market exhibits relatively low economic barriers to entry and exit. *See First Report and Order*, 11 FCC Rcd at 20547, 20570 ¶¶ 11-12, 56. We interpret this to mean that there are relatively low sunk costs associated with entry and exit. *See generally First Report and Order*, 11 FCC Rcd at 20547, ¶ 11. *Id.* at 20577, ¶ 70. The sunk cost of entry appears to consist primarily of the costs of installing a payphone, while the sunk cost of exit consists primarily of the cost of removing it. We note that the installation costs of a payphone are less than 10 percent of the cost of an installed payphone. Thus, the sunk costs of a payphone are fairly small. *See, e.g.*, APCC Sept. 16, 1998 *ex parte* letter from R. Aldrich to Magalie Roman Salas. If the payphone is not placed where it can earn a profit, it can be moved.

⁶⁹ Put another way, entry will continue until no payphone can enter the market and earn at least a normal rate of return.

⁷⁰ *See para. 37* for a more thorough discussion of locational monopolies.

local grocery. Where demand is greater than average, it is possible that some payphones might generate a greater than average number of calls and thus positive profits. This might occur in areas where it is not possible for another competing payphone to enter profitably. If this were the case, it is possible for the first payphone to continue to earn positive profits.

37. A second important characteristic of the payphone market is that many of the payphone locations are controlled by owners that can limit the entry of competing payphones. For example, the owner of a busy bus station can limit the number of payphones placed on its property. In such cases, we would not expect entry to reduce the number of calls per payphone (or the price) to the point where each payphone is earning only a normal rate of return. Rather, we would expect the location owner to attempt to limit entry to increase the profitability of payphones and then demand at least a share of the profits in the form of a location rent. This phenomenon is frequently described as a "locational monopoly"⁷¹ that generates location rents. Where demand is higher than average, and the premises owner can limit entry, it is possible that some payphones would generate a higher-than-average number of calls, and thus positive profits. If this were the case, those payphones could continue to earn positive profits. This profit would be split between the owner of the locational monopoly and the payphone provider. Since the owner of a locational monopoly can choose between multiple possible payphone providers, we would generally expect the owner of the locational monopoly to capture the bulk of this profit.⁷²

38. While not perfectly competitive (since some payphones are earning positive

⁷¹ See, e.g., AT&T Recon. Opp. at 3.

⁷² We note that there is a dispute in the record as to whether these commissions, or locational rents, should be treated as a cost of the payphone or a part of profit. Cf. APCC Reply at 14 with MCI Sept. 9, 1998 *ex parte* letter at 10-16. We conclude that these locational rents should be treated as a form of profit rather than a cost. First, the opportunity to demand locational rents occurs only when a particular payphone location generates a number of calls that exceeds the break-even number of calls, given the prices of various types of payphone calls. Second, if the price of a particular type of payphone call increases, this not only would reduce the break-even number of calls and increase the equilibrium number of payphones, but would also increase the profit earned on all payphones already earning a profit. Presumably, the location owner would seek to extract at least part of this additional profit. Thus, it does not seem appropriate to treat locational rent as a fixed cost, since the fixed cost will vary with changes in the price of various types of payphone calls. Finally, we note that, when a payphone earns positive profits, it is not clear exactly how the payphone provider and location owner will negotiate the division of those profits. We do know, however, that an increase in competition among payphones likely will result in a greater proportion of these profits going to the locational owner. Again, it would be odd in such a situation to treat the increase in locational rents resulting from the increased compensation rate as an increase in the fixed cost of a payphone.

profits), this payphone market may still be characterized as workably competitive.⁷³ It is important to recognize that, where different locations have different levels of demand, some payphones will be more profitable than others. Moreover, no level of regulation (except possibly confiscatory taxation) could eliminate these profits. Thus, the existence of some payphones that earn positive profits does not mean that the market necessarily should be regulated. It is also worth noting that, where demand varies among locations, unregulated coin rates may, but need not, vary. Most importantly for purposes of this Order, no per-call method of payphone compensation could eliminate these profits, because that would require creating a unique price for each and every payphone. Indeed, those payphones that are profitable without dial-around calls would still be profitable with a zero price for dial-around calls.

39. In summary, we offer the following observations. First, the cost structure of payphones and the nature of payphone competition suggests that competition will occur primarily through the entry of new payphones (though possibly also through competing reductions in price), which will reduce the number of calls at each payphone (or per-call margin⁷⁴) until the new entrants are just earning normal rates of return. Second, because of the fixed cost of a payphone, the price for each type of payphone call will exceed its marginal cost, even for payphones that are just earning a normal return. Third, because of variations in demand and locational monopolies, we should expect that a significant number of payphones receive larger volumes of calls than a payphone in a marginal location that is earning a normal rate of return. Thus, those payphones with high call volumes will earn positive profits, regardless of the level of compensation for dial-around calls. Fourth, we note that a payphone owner will never install a payphone unless it believes that the payphone will

⁷³ See *First Report and Order*, 11 FCC Rcd at 20611, ¶ 142. Nothing in the record before us convinces us that we should reconsider our finding in the *First Report and Order* concerning competition in the payphone services market. We also note that a number of states examining their payphone markets have concluded that the payphone services market is competitive. See, e.g., Public Service Commission of West Virginia, *In Re General Investigation into the Payphone Market in West Virginia*, Case No. 98-0430-T-GI (Jan. 4, 1999) (concluding that "market failures" were not occurring in the deregulated payphone market in West Virginia at this time); New York Public Service Commission, *Proceeding on Motion of the Commission to Review Regulation of Coin Telephone Services under Revised Federal Regulations Adopted Pursuant to the Telecommunications Act of 1996*, Case 96-C-1174 (July 15, 1998) (stating that the number of payphones available for public use appears to be increasing in New York); Montana Public Service Commission, *In the Matter of the Commission's Inquiry into Payphone Issues Arising out of the Telecommunications Act of 1996 and Subsequent Federal Communications Commission Order to Implement the Payphone Provisions of the Act*, Docket No. D97.2.33, Order No. 6050 (Feb. 26, 1998) (finding that there is no evidence indicating that the payphone marketplace is failing to serve the public interest).

⁷⁴ We use the phrase "per-call margin" to refer to the difference between the price and marginal cost of a particular payphone call.

at least earn a normal rate of return.⁷⁵ Thus, absent regulations that require payphone owners to place phones in locations where they will lose money, we should not expect to see money-losing payphones that offset the profits earned on profitable payphones. Fifth, we observe that because the marginal cost of dial-around calls is virtually zero, any compensation amount will represent some contribution to common fixed costs or profit. Moreover, any dial-around compensation amount both will enable certain marginal payphones just to break even, and contribute positive profits to already profitable payphones. In fact, even if the compensation amount were set at zero, many payphones would earn a profit. Finally, we note that any increase in the compensation amount will not only reduce the break-even number of calls and thus increase the number of payphones, but also increase the profits generated by payphones that are already profitable, (*i.e.*, inframarginal).

C. Possible Market Failures Relating to Dial-Around Compensation.

40. When the Commission deregulated the price of local coin calls in the *First Report and Order*, it based its decision, at least in part, on the low barriers to entry and exit in the payphone market and the ability of customers at a particular payphone to either use another payphone or decline to make the call if the coin price was deemed too high.⁷⁶ These factors, along with the experience of states that had deregulated the price of local coin calls at payphones, persuaded the Commission that it could rely on competition in the market for payphones to constrain the price of these calls. We also note that, since the adoption of the *First Report and Order*, a number of state commissions have concluded that the market for payphone service is competitive.⁷⁷

41. The Commission at that time, however, was unwilling to deregulate immediately compensation for dial-around calls. We continue to believe that it is not yet possible to immediately deregulate the price for dial-around calls. One reason for this is that, under current arrangements, the party receiving the call is unable to ascertain the price that the payphone provider is charging for the call and thus to make an informed decision on whether to accept the call. That is, technology is not currently deployed for IXCs or toll-free subscribers to selectively block calls based on the price that the PSP is charging them. An IXC or toll-free subscriber must simply elect to accept all such calls from payphones or none. Therefore, under current circumstances, a market cannot exist because the person paying the

⁷⁵ This is only true where the payphone is being installed only for its own profitability. Many payphones are installed because they improve the profitability of the premises as a whole. For instance, many restaurants install payphones as a courtesy for their customers. Although the revenue from the calls from these payphones is insufficient to pay for the payphones, the premises owners install them (and pay the PSP) in order to increase the overall profitability of the premises.

⁷⁶ *First Report and Order*, 11 FCC Rcd at 20547, 20570 ¶¶ 11-12, 56.

⁷⁷ See note 73 above.

price is not able to decide whether or not to purchase the call based on the price that is charged.

42. One possible way around this problem would be to switch to a caller-pays system where callers are required to insert coins (or to use a credit card) to place dial-around or toll-free calls. However, as explained in the Commission's prior orders, and again below, this approach appears to contradict congressional directives set forth in other sections of the Act.⁷⁸ Furthermore, a caller-pays system would impose significant extra transactions costs on payphone users because they would have to either insert coins or enter another credit card number in order to make these types of calls. Therefore, it is not clear that a caller-pays system would either be legal under current statutes or desirable.

43. Another more promising solution to this problem would be for IXCs to develop the technological capability to selectively block dial-around calls. That is, the IXC or toll-free subscriber would need the capability to know the price that a payphone provider was charging for a call, and be able to refuse to accept calls above a specified price. It is not yet clear when IXCs will be able to deploy such technology or what such deployment would cost. Therefore, it would not be prudent at this point to announce a firm date at which deregulation might occur based on the assumption that this technology will exist at that time. We are cognizant that problems other than the lack of targeted call blocking technology must be resolved before we can move to a purely market-based mechanism. These additional problems will need to be resolved before such a move. The existence of these additional impediments, however, does not diminish the importance of targeted call blocking technology as a critical element to any such move.

44. A related point concerns the final phase of the scheme established in the Commission's previous orders, in which the default price for dial-around calls at any particular payphone was based upon the price of a coin call at that particular payphone. In these orders, the Commission did not explicitly consider whether or not such an arrangement might create incentives for a payphone provider to raise its coin rate in order to be allowed to raise its dial-around compensation amount. It may be, however, that in the absence of targeted call blocking, tying the default compensation amount to the local coin rate may, in some instances, create an incentive to raise the price of dial-around calls. This is so because the IXC could not respond by selectively refusing to accept calls from that payphone.⁷⁹

⁷⁸ See, e.g., *First Report and Order*, 11 FCC Rcd at 20585, ¶ 85; *Second Report and Order*, 13 FCC Rcd at 1844, ¶ 162. See also 47 U.S.C. §§ 226, 228.

⁷⁹ See Section IV.A.3.a. below (discussing the role of targeted call blocking in any move to a deregulatory solution to dial-around compensation).

D. The Common Cost Allocation Problem.

45. Regulators have long recognized that there is no single correct method for allocating common costs among regulated services.⁸⁰ Except for the general rule that regulated services should not cross-subsidize each other,⁸¹ economic theory provides no guidelines as to how common costs should be allocated. In the absence of such guidance, regulators have generally adopted various fully-distributed cost (FDC) allocators. For example, if the common input were used to produce two separate, regulated services, one simple rule would be to split the common cost equally between the two services. An alternative rule would be to allocate the common cost in proportion to the incremental cost or investment of the two services. In many cases, regulators have allocated costs on the basis of relative usage.⁸² Another approach would be to use Ramsey's-style pricing, which allocates the costs of the firm to the products based on the products' relative marginal cost of production and price elasticities.⁸³

46. These alternatives demonstrate that there is no single correct way for allocating the common costs of payphones. In fact, this difficulty is exacerbated by two additional factors arising in the payphone context that regulators normally do not confront. First, telecommunications regulators are usually asked to allocate the common costs of a network of relatively fixed size designed to serve a relatively fixed number of people. Some parts of the network are unprofitable, and others are profitable. In this scenario, the regulator can choose a price for the regulated company's product such that the regulated company earns a regulated rate of return, accounting for the range of profitability within the individual units. In other words, where there is a range of profitability, and where entry and exit are very difficult, the regulator may set a single price that offsets less-profitable units with the very profitable units. In contrast, PSPs are free to enter the market where it is profitable and to exit where it is not. Thus, we are unable to set a price that accounts for the range of profitability.

47. A second complicating factor is that section 276 of the Act mandates a structure for recovering payphone costs, *i.e.*, per-call compensation, that does not reflect the

⁸⁰ See, e.g., Paul J. Garfield & Wallace F. Lovejoy, *Public Utility Economics* 140-41 (1964) ("[T]he allocation of joint costs to customer classes or classes of service . . . has no universal or even generally satisfactory solution, because joint costs are incapable of 'accurate' or 'certain' allocation among the respective types of service.").

⁸¹ As long as each type of call recovers its incremental costs, but no more than its stand-alone costs, there is no cross-subsidy. See also 47 U.S.C. § 276.

⁸² See 47 C.F.R. § 36.2(a).

⁸³ See Section IV.B.2.b. where we explain our basis for rejecting the RBOC Coalition's Ramsey's-style pricing mechanism.

manner in which most costs are incurred by payphone owners. As previously indicated, most common costs of payphones are fixed -- that is, they do not vary with the volume of calls. Section 276, however, requires that PSPs be compensated on a per-call basis. Because a per-call compensation mechanism is traffic-sensitive, in order to assure that the fixed costs are covered at a low traffic area, a fixed per-call compensation amount necessarily results in over-recovery of common costs for payphones in high traffic locations. It is this requirement of a per-call compensation mechanism that increases the profits at the payphones that are already profitable, as discussed above.

IV. DISCUSSION

A. Remand Issues.

48. In this section, we respond to the Court's remand of the Commission's *Second Report and Order*. We explain our basis for deciding on the appropriate compensation methodology, in light of the statutory requirements of the Act, the underlying economic structure of payphone telephony, current technological constraints, and the Court's findings in *MCI v. FCC*.

49. We first define the scope of our compensation methodology by specifically identifying the calls that are compensable under our rules. We then explain the factors that guide our selection of a compensation methodology. Specifically, we define, for purposes of this Order, "fair compensation" in terms of the economic constructs of payphone telephony.⁸⁴ Applying our definition of fair compensation within the confines of the Act's directives and the Court's findings in *MCI v. FCC*, we decline to adopt, for now, a top-down methodology to calculate the default compensation amount that uses the deregulated local coin rate as the starting point.

50. We then explain our return to the Commission's initial view that a bottom-up methodology should be used to establish a default compensation amount.⁸⁵ We explain our finding that a bottom-up methodology is currently the most equitable means of ensuring fair compensation for PSPs in light of the very real statutory, technological, and economic constraints within which we must make our decision. We emphasize again that our preference would be to rely on a fully deregulated solution for setting compensation for coinless payphone calls. As we explain, however, we conclude that there is no such solution available to us that is workable at this time. Accordingly, we examine the most appropriate methodology for calculating the cost of providing the service. We conclude that a bottom-up cost calculation is most reliable in light of the Court's concerns in *MCI v. FCC* and our reexamination of the manner in which PSPs allocate joint and common costs between local

⁸⁴ See Section IV.A.2 below.

⁸⁵ *NPRM*, 11 FCC Rcd at 6736, ¶ 38.

coin calls and compensable calls. Finally, we set forth the manner in which we apply our bottom-up approach to establish a fair default compensation amount.

1. Definition of Compensable Call.

51. As an initial matter, we specify the types of calls for which PSPs may receive the default per-call compensation amount that we establish in this Order. "Compensable calls" for purposes of this Order are calls from payphones for which the payphone owner cannot receive compensation from another source.

52. Section 276 specifically provides that PSPs are not entitled to compensation for 911 emergency and TRS calls.⁸⁶ Consequently, when entering the payphone business, PSPs assume the legal obligation of allowing 911 emergency and TRS calls to be made from their payphones without receiving per-call compensation.⁸⁷ The term "compensable call" applies, as does this rulemaking proceeding, to intrastate as well as interstate calls, by virtue of specific provisions of section 276(b)(1)(A).

53. Specifically, we establish for purposes of this Order that the term "compensable call" includes: (1) access-code calls;⁸⁸ (2) toll-free calls;⁸⁹ (3) certain 0+ calls (e.g., 0+ calls

⁸⁶ The TRS enables individuals with hearing or speech disabilities to communicate with individuals who do not have hearing or speech disabilities. The Public Switched Telephone Network (PSTN) processes TRS calls as toll-free, which means the receiving TRS center pays for the call, and not the TRS subscriber. When state public utility commissions introduce 711 as a replacement for the current toll-free numbers used by the TRS centers, the PSTN will be programmed to translate 711 so that the call is routed to the state's TRS center, designated by the TRS carrier to receive calls from the calling party's location. Calls placed by the TRS center to the party desired by the TRS user, however, are charged to the TRS user by the interexchange carrier selected by the TRS user. See generally 47 C.F.R. § 64.603.

⁸⁷ 47 C.F.R. § 64.1300(a), (b), (c). See 47 U.S.C. § 276(b)(1)(A) (exempting TRS and 911 calls from compensation requirement). Cf. *Telecommunications Relay Services, and the Americans with Disabilities Act of 1990*, Memorandum Opinion and Order, CC Docket No. 90-571, 1998 WL 45806 (Com. Car. Bur. 1998) (continuing suspension of enforcement of TRS coin sent-paid service requirements until August 26, 1999, and the interim plan wherein, inter alia, TRS users may make local TRS payphone calls free of charge and TRS users may make toll calls that connect the TRS center with the desired party using calling cards or debit cards at rates equivalent to or less than those that would apply to coin sent-paid calls made by non-TRS users).

⁸⁸ An "access-code call" is a call made using a sequence of numbers that, when dialed, connects the caller to the OSP associated with that sequence, rather than the OSP presubscribed to the originating line. Access-code calls include toll-free calls (e.g., 1-800-CALL-ATT, 1-800-COLLECT), 101XXXX calls in equal access areas, and "950" Feature Group B dialing (e.g., 950-0XXX or 950-1XXX) anywhere, where the three-digit XXX is assigned to a particular IXC. See *Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation*, 7 FCC Rcd 3251, 3251 n.1 (1992) (*OSP Second Report and Order*).

made from a payphone where the PSP serve as an aggregator);⁹⁰ (4) certain 0- calls (e.g., 0-calls in states that, with FCC permission, prohibit blocking of such calls);⁹¹ (5) certain inmate calls⁹² (to be specifically addressed in a separate proceeding); and (6) certain toll-free Government Emergency Telecommunications Systems (GETS) 710 calls.⁹³ "Compensable calls," in the context of this Order, do not include: (1) coin calls or other calls, such as directory assistance calls, for which the payphone provider can otherwise charge; (2) presubscribed 0+ calls; and (3) 0- calls in states that do not prohibit blocking of 0- calls. We reiterate that, for purposes of this Order, calls that receive compensation from some other source, e.g., as part of an individual contract between a PSP and an IXC, are not entitled to per-call compensation under this Order.

2. Definition of Fair Compensation.

54. In relevant part, section 276(b)(1)(A) requires that PSPs be "fairly compensated for each and every completed . . . call." Neither the statute nor the legislative history makes clear, however, what Congress meant by the phrase "fairly compensated." At the same time, section 276(b)(1) directs the Commission to achieve this goal in a manner that will "promote competition among PSPs and promote the widespread deployment of payphone services to the benefit of the general public." The legislative history again provides little guidance. It would appear, however, that section 276 was enacted, in part, in recognition of the limitation on the ability of PSPs and carriers to negotiate a mutually agreeable amount as a result of TOCSIA's prohibition on barring IXC-access calls by PSPs.

55. In light of the above, we find that PSPs will be fairly compensated if, at a minimum, we: (1) balance the interest of PSPs and those parties that will ultimately pay the

⁸⁹ "Toll-free calls" consist of calls to a toll free number assigned to a particular subscriber (e.g., 1-800-FLOWERS). See *Notice*, 11 FCC Rcd 6716, 6723, ¶ 11, n.37. In this Order, the term "subscriber 800 calls" encompasses all toll-free subscriber calls, including calls to 888 and 877 numbers. See *Toll Free Service Access Codes*, 11 FCC Rcd 2496, ¶ 1 (1996).

⁹⁰ A 0+ call occurs when the caller dials "0" and then the desired telephone number. 0+ calls include credit card, collect, and third-number-billing calls. *OSP Second Report and Order*, 7 FCC Rcd at 3251 n.4. If, however, a PSP has chosen not to enter into a contract for payment for 0+ calls, any 0+ calls from that payphone are not compensable.

⁹¹ 0- calls occur when a caller dials 0 and then waits for operator intervention. 0- calls are made possible by LECs offering to OSPs a call transfer service under which LECs transfer calls to the OSP requested by the calling party. *OSP Second Report and Order*, 7 FCC Rcd at 3255 n.44.

⁹² "Inmate calls" are calls made by inmates using payphones located in the prison or penitentiary.

⁹³ GETS calls are toll-free calls that certain government employees may make in the case of a national emergency by dialing 710 plus the appropriate number.

default compensation amount; and (2) ensure that the default compensation amount is sufficient to support the continued widespread availability of payphones for use by consumers.

56. We recognize that, because most payphone costs are fixed and each type of call has a relatively small marginal cost, a wide range of compensation amounts may be considered "fair." As we discussed above, the vast majority of the costs of providing payphone service are fixed and common costs, and there is no one economically correct way to allocate such costs among the different types of calls that may be made from a payphone.⁹⁴ Economic theory does suggest, however, that the costs of one service should not be cross-subsidized by another service. That is, consumers making one type of call, such as a local coin call, should not pay a higher amount to subsidize consumers that make other types of calls, such as dial-around or toll-free calls. In order to avoid a cross-subsidy between two such services that are provided over a common facility, each service must recover at least its incremental cost, and neither service should recover more than its stand-alone cost.⁹⁵ Within these parameters, many different compensation amounts may be considered fair.

57. In its prior orders, the Commission defined "fair compensation" as the amount to which a willing seller (*i.e.*, PSP) and a willing buyer (*i.e.*, customer, or IXC) would agree to pay for the completion of a payphone call.⁹⁶ In the *Second Report and Order*, the Commission, in establishing a default compensation amount, found that fair compensation required that dial-around calls contribute a proportionate share of the common costs of payphone service.⁹⁷ We continue to believe that this is an essential element of our determination of "fair compensation" in this context. We find that any other approach would unfairly require one segment of payphone users to disproportionately support the availability of payphones to the benefit of another segment of payphone users. Such subsidies distort competition and appear inconsistent with Congress's directive to eliminate other types of subsidies.⁹⁸

58. As we have also recognized in previous orders, the default compensation

⁹⁴ See Section III.A. above.

⁹⁵ In the context of payphones, "stand-alone costs" are the costs associated with building a payphone capable of handling a certain type of call.

⁹⁶ *First Report and Order*, 11 FCC Rcd at 20568, ¶ 52 n. 187. See also *Second Report and Order*, 13 FCC Rcd at 1783, ¶ 8.

⁹⁷ *Second Report and Order*, 13 FCC Rcd at 1796, ¶ 42.

⁹⁸ See 47 U.S.C. § 276(a)(1) and (b)(1)(B).

amount will have a very real impact on the deployment of payphones.⁹⁹ The default compensation amount will not simply affect the total number of payphones, but also the deployment of payphones in locations with comparatively lower volumes of traffic. MCI asserts that, in light of the compensation amount of \$.284, the increase in profitable locations will be minimal, but the increase in profits at existing payphones will be large. While we agree with MCI that the effect of \$.284 amount could be significant for certain high volume payphones, we believe MCI's concern is addressed in large measure by our reduction in the dial-around amount from \$.284 to \$.24 per call. Moreover, and perhaps more importantly, the statute requires us to develop a per-call compensation plan. The default compensation amount that we establish below seeks to ensure that the current number of payphones is maintained.¹⁰⁰

59. In light of the above considerations, we conclude that the default per-call compensation amount we establish should ensure that each call at a marginal payphone location¹⁰¹ recovers the marginal cost of that call plus a proportionate share of the joint and common costs of providing the payphone. We find such an approach satisfies the first condition set forth above of providing a per-call amount that is fair to both payphone owners and the beneficiaries of these calls (*e.g.*, IXCs and toll-free subscribers). We believe that the \$.24 compensation amount is fair, because it will allow PSPs to recover more than the marginal cost of providing payphone service for dial-around calls and thus contribute to the common costs of the payphone. We also find that basing this calculation on the marginal payphone location satisfies Congress's directive that we ensure the widespread deployment of payphones. As opposed to a calculation based on the average payphone location, use of a marginal payphone location should promote the continued existence of the vast majority of payphones. Thus, payphone owners will benefit because they will receive the compensation necessary to profitably provide service. Consumers and long distance carriers will benefit because payphones will remain widespread, which will ensure that consumers have ready access to make payphone calls using the long distance carrier of their choice.¹⁰²

⁹⁹ See *Second Report and Order*, 13 FCC Rcd at 1829-1830, ¶ 119.

¹⁰⁰ We note that some LEC-owned payphones were not placed with profitability in mind, and may cease to exist even when provided with a reasonable compensation amount. We emphasize, however, that the Commission took steps in the *First Report and Order* to ensure that public interest payphones are deployed, to the extent necessary. *First Report and Order*, 11 FCC Rcd at 20677-86, ¶¶ 277-286.

¹⁰¹ See para. 15 above for the definition of "marginal payphone location."

¹⁰² See Section IV.B.3.b. below, explaining how the use of a marginal payphone location will result in the continued widespread deployment of payphones.

3. Reconsideration of the *Second Report and Order's* Top-Down Methodology.

60. In this section, we explain the *Second Report and Order's* compensation methodology that the Court remanded in *MCI v. FCC* and the manner in which the statutory constraints associated with TOCSIA and technological constraints limiting the availability of targeted call blocking affect the viability of such a compensation methodology.¹⁰³ In light of these constraints, and mindful of the Court's findings in *MCI v. FCC*, we find that a compensation methodology based on the market rate for local coin calls currently will not ensure fair compensation for coinless calls from payphones. Additionally, upon reconsideration, we find that our prior assumption regarding recovery of joint and common costs was incorrect. This incorrect assumption undermines an important basis for a top-down methodology for determining the cost to PSPs of providing coinless calls, because such a methodology assigns an equal proportion of joint and common costs to both types of calls.¹⁰⁴ Therefore, upon reconsideration, we conclude that a bottom-up approach is more appropriate than the top-down approach adopted in the Commission's previous orders, in which the Commission set the compensation amount for coinless calls from each payphone according to that payphone's deregulated local coin call rate.¹⁰⁵ Although we do not adopt a top-down approach for calculating the compensation amount for coinless calls, we use a top-down calculation to test the reasonableness of our bottom-up calculation.¹⁰⁶

61. In the *Second Report and Order*, the Commission established a two-phase compensation system.¹⁰⁷ Under the first phase, PSPs would receive, for a two-year period ending in October 1999, a default compensation amount of \$.284 for each compensable call, absent an agreement between the PSP and IXC on a different rate. The Commission arrived at this figure by using a top-down approach for determining the costs to the PSP of making available coinless calls from their payphone. The Commission's top-down approach started with what the Commission determined was the most prevalent price of a deregulated local coin call (*i.e.*, \$.35). From this starting point, and consistent with the Commission's understanding of the Court's statements in *Illinois Public Telecomm.*, the Commission subtracted the costs of providing coin calls that are not incurred for providing coinless calls,

¹⁰³ For purposes of this Order, targeted call blocking refers to the technological ability of an IXC to not accept (or "block") a dial-around access call from one payphone while accepting calls from another payphone.

¹⁰⁴ *Second Report and Order*, 13 FCC Rcd at 1797, ¶ 44.

¹⁰⁵ *See Second Report and Order*, 13 FCC Rcd at 1825, ¶ 111.

¹⁰⁶ We make this calculation below in Section IV.B.3.g.

¹⁰⁷ *Second Report and Order*, 13 FCC Rcd at 1828-29, ¶ 117. The Commission established this two-phase system as an alternative to the preferred option that IXCs and PSPs negotiate with each other to set a fair compensation amount.

an amount calculated to be \$.066.¹⁰⁸ Thus, for two years, an IXC would be required to pay the PSP \$.284 for every compensable call.¹⁰⁹

62. The *Second Report and Order* required that, after October 1999, compensation for dial-around calls would be established by subtracting the net avoided costs of the dial-around call (\$.066) from the deregulated local coin price charged by each payphone.¹¹⁰ Thus, under the second phase of the compensation system, compensation to PSPs for compensable calls would vary in relation to the local coin call price of the payphone being used.

63. In *MCI v. FCC*, the Court concluded that the Commission failed to adequately explain the underlying premise for the top-down approach in setting a default compensation amount. Specifically, the Court found that the Commission did not explain "why a market-based rate for coinless calls could be derived by subtracting costs from a rate charged for coin calls."¹¹¹ The Court found that if "costs and rates depend on different factors, as they sometimes do, then [the Commission's] procedure would resemble subtracting apples from oranges."¹¹² The Court posited that the Commission's conclusion might have depended on the premise that the market rate for coin calls generally reflects the cost of coin calls. Although the Court reasoned that such a premise could hold true in a competitive market in which costs and rates converge, the Court found that the Commission failed to explain its reliance on such a premise. The Court also cited the Commission's *First Report and Order*, in which, according to the Court, the Commission acknowledged that the coin call rate might potentially diverge from the cost of coin calls.¹¹³ Based on the finding that the Commission failed to adequately explain why the market-based method did not equate to "subtracting apples from oranges," the Court remanded the matter to the Commission.

¹⁰⁸ *Second Report and Order*, 13 FCC Rcd at 1807, ¶ 63. "Avoided costs" in the context of this Order refers to cost elements that are avoided, as well as cost elements that are added, such as interest (because payments are delayed several months) and a FLEX ANI element, because PSPs were not being charged for FLEX ANI at the time the *Second Report and Order* was released.

¹⁰⁹ *Second Report and Order*, 13 FCC Rcd at 1796, ¶ 42.

¹¹⁰ *Second Report and Order*, 13 FCC Rcd at 1828-29, ¶ 117. Accordingly, if the local coin price from a particular payphone were \$.40, the default amount would be \$.334. If the local coin price were \$.30, the default amount would be \$.234, etc.

¹¹¹ *MCI v. FCC*, 143 F.3d at 608.

¹¹² *Id.*

¹¹³ *Id.*

a. TOCSIA and Targeted Call Blocking.

64. Because of TOCSIA and the present lack of targeted call blocking, we conclude that the compensation system established in the *Second Report and Order* is currently unworkable. First, under TOCSIA, the PSP (or seller) must connect (or sell) all calls to the IXC.¹¹⁴ Under the Commission's prior approach, and after the two-year phase-in period, each PSP would be allowed to set the price for compensable calls at whatever level it chose by raising or lowering the local coin rate at a particular payphone. Accordingly, the PSP would be able to receive a greater compensation amount by raising the local coin price. At a minimum, this relationship creates a non-cost based incentive on the part of the PSPs to raise the local coin rate from a payphone, not to make more money from coin calls but to increase the level of compensation from dial-around calls. In most instances, we believe that the ability of a PSP to raise its local rate in this manner will be constrained by competitive forces. As the Court pointed out, however, we also have previously recognized that locational monopolies allow PSPs to set some payphones' rates above cost. Additionally, where a payphone generates few local coin calls relative to the number of coinless calls, *e.g.*, a payphone located in an airport, linking the coinless rate to the coin rate potentially could create instances where a PSP seeks to maximize its total revenue by raising the local coin rate, even if doing so deterred customers from making coin calls. In this situation, a PSP may be able to more than offset lost revenues from local coin calls with the compensation it would receive from coinless calls.

65. Second, because the IXCs' current call-blocking technology only allows for an all-or-nothing approach to blocking dial-around calls from a payphone, the IXC (or buyer) is unable to choose whether or not to accept (or buy) a particular call. In other words, the IXC must either buy every call from every payphone, regardless of the amount it must compensate the PSP for the calls, or buy no payphone calls at all. In this scenario -- where the seller must sell and the buyer must buy every call or none at all -- market forces are rendered ineffective as a means of achieving an efficient price. We therefore conclude that a default compensation amount that varies according to the deregulated local coin price does not ensure a fair compensation level, unless carriers have some ability to reject a call based upon the compensation amount for that call. Parties contend that such call blocking technology presently is not readily available in the network and will take some time for carriers to implement.¹¹⁵

66. In providing for a default compensation amount that was allowed to vary according to the deregulated local coin price, the Commission stated that, under deregulation, competitive pressures would constrain the amount PSPs could charge consumers for such

¹¹⁴ 47 U.S.C. § 226(e)(1)(A) and (B).

¹¹⁵ See, *e.g.*, Sprint Reply at 25.

calls. Similarly, in an unrestricted market where IXCs compensate payphone owners based on an amount that varies according to the local coin price, IXCs ideally should be able to decline calls from payphones they believe to be excessively priced. Without targeted call blocking, however, IXCs cannot do this. All-or-nothing call blocking may provide some downward pressure on high dial-around prices charged by PSPs, but it is insufficient to reach a wholly competitive outcome under the circumstances surrounding the Commission's previous compensation mechanism.¹¹⁶

67. We note that the lack of targeted call blocking is a temporary phenomenon. The overwhelming majority of payphones are, or soon will be, on payphone lines that transmit the appropriate coding digits, as required in the Commission's prior orders in this proceeding. Therefore, the ability to develop targeted call blocking technology rests largely with the IXCs.¹¹⁷ We strongly encourage the IXCs to develop targeted call blocking. Targeted call blocking is an essential element to an IXC's ability to negotiate with PSPs in a true market setting.

68. As we stated above, we are aware that targeted call blocking is not the *only* problem that must be resolved in order to move to a deregulated resolution.¹¹⁸ Targeted call blocking is, however, a critical element to real-time, wide-spread negotiations between payphone owners and carriers.¹¹⁹ It is the threat that a PSP may have its dial-around calls blocked that brings PSPs and IXCs into equal bargaining positions. Because it is in the interests of both the PSP and the IXC to negotiate a mutually acceptable compensation amount, we do not desire, nor do we foresee the need for, the widespread use of targeted call blocking once the technology is implemented and deployed. We also note that, although the default compensation amount that we establish in this Order is reasonable and fair to all parties, an IXC that finds the default compensation amount to be excessive may help remedy that situation by developing targeted call blocking capability.

¹¹⁶ We reiterate that the unavailability of targeted call blocking does not undermine the use of a single default rate, either here or as required to date by our previous orders. As we have previously stated, the adoption of a default amount was specifically designed, in part, to address the absence of a well-developed call blocking technology to allow for a regulated rate. See Section I above. Thus, even without any blocking ability, the default amount is intended to ensure fair compensation. Moreover, existing call blocking technology provides carriers with a reasonable, additional level of protection, because they can decide whether to accept or reject calls from payphones at the single default amount.

¹¹⁷ See *Illinois Public Telecomm.*, 117 F.3d at 564 (recognizing that IXCs possess the necessary technology to implement targeted call blocking).

¹¹⁸ See Section III.C., para. 43.

¹¹⁹ In this regard, we note the existence of several thousand PSPs and more than one thousand carriers that may wish to negotiate agreements for dial-around compensation.

b. Recovery of Joint and Common Costs.

69. In establishing a compensation amount based on the price of a local call, the Commission in the *Second Report and Order* sought to equalize the contribution that each call made to the joint and common costs of each call.¹²⁰ In adopting a top-down derivation of the coinless default compensation amount based on the price of a local coin call, the Commission assumed that PSPs set prices so that each type of call contributes an equal amount to joint and common costs.¹²¹ Upon reconsideration, and based upon the additional information in the record, we reassess the Commission's prior assumption regarding recovery of joint and common costs, finding that our assumption is not necessarily valid. This reassessment undermines an important basis for the Commission's top-down methodology.¹²²

70. We find insufficient evidence in the record to ascertain the method by which PSPs set prices for a various types of calls in order to recover the common costs of providing payphone service. The error in the Commission's assumption that each call contributes equally to joint and common costs may be demonstrated by examining the revenue that PSPs receive for 0+ and 1+ calls.¹²³ Although coinless calls (such as 0+ calls) cost less than coin calls, some PSPs receive more than \$.70 per 0+ call.¹²⁴ This is more than twice as much as the prevailing \$.35 local coin price.¹²⁵ Also, the RBOC Coalition states that for many payphones, the 1+ sent-paid charges (*i.e.*, the coin price for a long distance call) exceeds basic long distance charges by an average of \$1.45 per call.¹²⁶ Clearly, some PSPs do not price their calls such that each call makes an equal contribution to joint and common costs.

¹²⁰ *Second Report and Order*, 13 FCC Rcd at 1796, ¶ 42.

¹²¹ *Second Report and Order*, 13 FCC Rcd at 1796, ¶ 42 ("The majority of the costs associated with a payphone are joint and common costs that are shared by the different types of calls made by means of the payphone. These costs do not increase or decrease as the number or composition of calls changes at a particular location. By making no adjustment to the coin rate for these costs, we conclude that each call placed at a payphone should bear an equal share of joint and common costs.").

¹²² *Second Report and Order*, 13 FCC Rcd at 1797, ¶ 44.

¹²³ See Section IV.B. above, explaining various types of calls.

¹²⁴ See *Illinois Public Telecomm.*, 117 F.3d at 563 (recognizing that costs of local coin calls are higher than coinless calls). See also APCC Recon. Opp. at 28 (stating that 0+ commissions range from \$.45 to \$.80 per call).

¹²⁵ *First Report and Order*, 11 FCC Rcd at 20578, ¶ 72.

¹²⁶ RBOC Coalition Comments at 10. A "sent-paid" call is a long distance call made from a payphone, where the caller pays the long distance fees up front, typically by depositing coins or by inserting a credit card into a magnetic reader.