public.[288] Realizing that many payphones with below average call volumes will disappear if we use the average payphone location to establish a default compensation amount, we instead conclude that the use of marginal payphone location best satisfies Congress's goal of widespread deployment by ensuring the profitability of most existing payphones.

144. We note that some parties advocating the use of an average payphone location do not use an average payphone location in their cost studies, but instead submit cost studies using a high volume location. MCI's cost study assumes the average payphone is used 700 times per month.[289] The evidence on the record indicates that the average call volume of a payphone is not nearly this high. For example, the payphones of RBOC Coalition members experience, on average, 478 calls per month.[290] APCC reports that payphones experience an average of 588 calls per month.[291] The national average call volume is only 517,[292] which is much closer to the 439 calls per month that are made from a marginal payphone location.

145. In the *Second Report and Order,* the Commission determined that a payphone in a location where it originates 542 calls per month would earn just enough revenue to recover its costs, but not enough to pay the premises owner a commission.[293] This number was derived using data largely collected in 1996. After those data were collected, the price of local coin calls was deregulated and payphone owners began receiving per-call compensation. Because payphone owners may now receive per-call compensation, payphones can be sustained with fewer calls being made. Before the establishment of per-call compensation, payphones required an artificially high number of calls to be profitable. We thus conclude

[288] *See* para. 141, note 281, above. For example, the Maine Commission states that a "public interest payphone program is unnecessary due to the wide availability of payphones in Maine, and the Montana Commission found no indication that the payphone market is failing to serve the public interest. Similarly, the West Virginia Commission found no need to take any additional regulatory actions to address "market failures" in the deregulated payphone market.

[289] MCI Comments, Exhibit 2.

[290] RBOC Coalition Sept. 3 *ex parte* letter from M. Kellogg to Craig Stroup at 2. The 478 calls per month figure is a weighted average from the RBOC Coalition member's payphones.

[291] APCC Sept. 28 *ex parte* letter from R. Aldrich to Magalie Roman Salas.

[292] National Payphone Clearinghouse Oct. 22, 1998 *ex parte* letter from D. Reuss to Craig Stroup (stating that, at the end of 1997, LECs reported a total of 2,139,511 LEC and non-LEC payphones). *See also* RBOC Coalition Reply, Andersen at 10 (stating that there were 1,381,800 RBOC payphones). Thus, 64.585 percent of payphones are RBOC payphones, and the remaining 35.415 percent of payphones are non-RBOC payphones. The national average call volume of 517 was calculated as follows: (478 x .64585) + (588 x .35415) = 517.

[293] *Second Report and Order*, 13 FCC Rcd at 1799-1800, ¶ 50.

that we should re-estimate the number of calls at a marginal payphone location to account for the effects of deregulation of the local coin call and per-call compensation.

146. In order to determine the number of calls at a marginal location, we consider three basic scenarios. In the first scenario, a premises owner is willing to pay its LEC PSP to install a payphone on its property, even though the payphone does not generate sufficient revenue to pay for itself.[294] In the second scenario, the payphone on the premises owner's property generates sufficient revenue to pay for itself. This premises owner need not pay the LEC PSP for the operation of the payphone, but the LEC PSP may not generate enough revenue from the payphone operation to pay the premises owner a location payment. In the third scenario, the payphone generates revenue sufficient for the premises owner to require the LEC PSP to pay a location rent.

147. We asked the RBOC Coalition to submit: (1) the number of payphone calls that must be placed in order for the premises owner to not have to pay the LEC PSP for the payphone; and (2) the number of payphone calls that must be placed in order for the LEC PSP to begin paying a location payment to the premises owner. The RBOC Coalition found that, on average, if the payphone had 414 calls per month, the premises owner would not have to pay for the payphone. The RBOC Coalition states that it does not base these decisions on call counts, but on daily revenues, or margins. The RBOC Coalition estimated the call counts from their revenue or margin requirements. We find this to be acceptable, because call counts correlate to revenues. The RBOC Coalition also found that, on average, the LEC PSP would have to pay location rents to a premises owner that had a payphone with 464 calls or more per month.[295] The midpoint between these two numbers is 439. The RBOC Coalition notes that its member-LECs do not decide to pay a location payment or require payment from the premises owner based solely on monthly call volume, but also consider the mixture of call-types and upkeep costs of the payphone.[296] Because we are examining costs of all payphones, we find that the average call volume that the RBOC Coalition reported for these two locations is reasonable and appropriate. We further conclude that we will use in our calculation of the default compensation amount the midpoint between 414 and 464, *i.e.*, 439.

148. MCI alternatively argues that the cost of the payphone that a PSP installs will

[294] In this context, "pay for itself" refers to the money generated from calls being placed, not the increased profitability of the premises due to the addition of a payphone.

[295] APCC Dec. 8, 1998 *ex parte* letter from A. Panner to Craig Stroup at 4.

[296] APCC Dec. 8, 1998 *ex parte* letter from A. Panner to Craig Stroup at 2.

be related to the call volume at that location.[297] MCI suggests that a PSP operating in a marginal payphone location may install a less expensive payphone unit than a PSP operating in an average payphone location.[298] MCI therefore concludes that if we use the average cost of a payphone location, we should use the call volume from the average payphone location.[299]

149. Payphone unit requirements vary from site to site.[300] Accordingly, the costs of operating payphones at differing locations also vary. We believe it is theoretically possible that some payphone elements commonly used at high volume locations, such as a pedestal or enclosure, will not be used at marginal payphone locations. There is nothing in the record, however, indicating the extent to which this might be true. MCI's assertion that low volume locations use less expensive payphone units is unsupported by evidence from its own or any other payphone operation. If, as MCI suggests, a payphone in a marginal payphone location can operate successfully without some payphone elements, such as a pedestal or enclosure, it is unclear why a PSP at an average location would install these elements. Furthermore, other costs, such as increased maintenance costs, may be incurred when a PSP declines to install these same elements. For example, pedestals and enclosures provide some protection for a payphone. We find it plausible that a payphone without these elements would require greater maintenance costs. MCI's rationale, however, makes no allocation for these additional costs. Because we are establishing a compensation amount for all payphones, we use the average cost of a typical PSP. For the reasons stated previously, however, we do not use the average call volume. In sum, there is no support in the record for MCI's assertion that the fixed costs at a marginal payphone location will be significantly different from the fixed costs at an average payphone location.

150. Finally, in light of MCI's concern, we verify that a marginal location can support an average payphone. We conclude that the costs of the average payphone nearly matches the monthly revenue from a marginal payphone. We explain the basis of our conclusion below.

151. The RBOC Coalition states that its average payphone has 478 payphone calls

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[297] MCI Dec. 2, 1998 *ex parte* letter from G. Ford to Magalie Roman Salas at 2.

[298] *Id.* (stating that a PSP at a marginal payphone location may not purchase a pedestal and enclosure, but instead may place the payphone on a table).

[299] *Id.*

[300] Some payphone locations need more extensive enclosures than others. Others may need more maintenance, while others may have higher line costs than others.

per month.[301] The RBOC Coalition also states that these 478 calls consist of: 155 dial-around calls per month, 280 local coin calls per month, and 43 other calls per month.[302] We assume that two thirds of the 43 "other" calls (*i.e.*, 29 calls) are operator-assisted calls (*e.g.*, 0+, 0-, 00- calls) and that the remaining one third (*i.e.*, 14 calls) are coin calls, such as directory assistance and 1+ calls.[303] Thus, we conclude that 61.5 percent of the average RBOC payphone's calls are coin calls;[304] 32.4 percent of the payphone's calls are dial-around calls;[305] and the remaining calls 6.0 percent of calls are operator assisted calls.[306]

152. Next, we determine that the monthly costs of a coin payphone in a marginal payphone location is $140.17. We reach this figure by adding the monthly joint and common costs of $101.29[307] to the coin-related costs of $38.87. The monthly coin-related costs are comprised of the monthly cost of the coin mechanism,[308] the monthly termination charges,[309] and the monthly coin collection costs.[310]

153. Assuming that a payphone receives $.35 for each of the 270 coin calls at a

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301 RBOC Coalition Sept. 3, 1998 *ex parte* from M. Kellogg to Craig Stroup at 2.

302 *Id.* We assume that these call ratios are the same at the marginal location. Thus, the call break down at the marginal location is as follows: coin calls make up 61.5 percent of 439 marginal calls, which equals 270 calls, coinless calls make up 32.4 percent of 439 calls, which equals 142 calls, and operator assisted calls make up 6 percent of 439 calls, which is 26 calls, totalling 438 calls. This is one less than the 439 calls, and the difference is due to rounding. The effect, however, is not significant for purposes of these calculations.

303 For simplicity, we assume that the costs and revenues for the directory assistance and 1+ calls are similar to the costs and revenues for local coin calls.

304 280 coin calls + 14 "other" calls divided by 478 calls equals 61.2 percent.

305 155 dial-around calls divided by 478 calls equals 32.4 percent.

306 29 "other" calls divided by 478 total calls equals 6.0 percent.

307 *See* Section IV.B.3.g.

308 The monthly cost of the coin mechanism of $17.02. *See* Section IV.B.3.g.

309 The RBOC Coalition states that the average call termination charge is $.038. RBOC Coalition Oct. 1, 1998 *ex parte* letter from M. Kellogg to Craig Stroup at 2. We calculate the monthly termination charge as $10.26 by multiplying $.038 per call by 270 calls at a marginal payphone location.

310 The monthly coin collection costs are $11.59. *See* Section IV.B.3.g.

marginal location,[311] $.231 for each dial-around call (the amount before interest for the four month delay) for each of the 142 dial-around calls at a marginal payphone location,[312] and $.50 per call for each of the 26 operator assisted calls at a marginal payphone location,[313] the payphone would generate $140.30 in revenue. Thus, we find that the marginal payphone location can support the costs of a typical payphone. We therefore find MCI's argument unconvincing.

c. Location Rents.

154. In the *Second Report and Order*, the Commission calculated an estimate of the avoided cost of a dial-around call by dividing the joint and common costs by the number of calls at a marginal payphone location.[314] Because the marginal payphone location cannot generate revenue sufficient to pay the premises owner a location rent, the Commission concluded that location rents should not be included in the costs covered by a payphone at a marginal location. The Commission declined to include location rents, believing that a payphone at a marginal location should generate revenue sufficient to cover only the payphone's installation and upkeep, plus a reasonable return on investment.

155. The RBOC Coalition alleges that location rents are "real, unavoidable expenses" affecting all calls made from any location, including calls from marginal locations.[315] The RBOC Coalition asserts that some measure of these rents should have been included in the Commission's computation of costs incurred at a marginal payphone location.[316] The RBOC Coalition argues that, on average, LECs pay $29.22 per month per payphone for location rents, while an independent payphone owner pays $45 per month.[317]

156. It is axiomatic that, at a marginal payphone location, the payphone earns just

311 We use the prevailing local coin rate of $.35.

312 *See* line 7 of the table in Section IV.B.3.g(8), below.

313 We have record evidence demonstrating charges for operator-assisted calls exceeding $.70 per call. *See* Section IV.A.3.b. We purposefully choose a low number to show that even with a very low revenue figure for operator-assisted calls, a payphone at a marginal location may still recover the costs of an average payphone.

314 *Second Report and Order*, 13 FCC Rcd at 1797-1798, ¶¶ 46-47.

315 RBOC Coalition Comments at 23.

316 RBOC Coalition Recon. Pet. at 23-24.

317 *Id.* (*citing Second Report and Order*, 13 FCC Rcd at 1799-1801, ¶ 50).

enough revenue to warrant its placement, but not enough to pay anything to the premises owner. We further find that a marginal payphone location is a viable payphone location, because the payphone provides increased value to the premises. Many premises owners find payphones to be sufficiently valuable to warrant paying for the installation of a payphone where a payphone would not otherwise exist. The Project Quintet data shows that SBC estimated that 14 percent of its payphones are semi-public payphones. These are payphones that the premises owner pays the LEC to install and operate, because the payphone location does not generate enough traffic to support a payphone.[318] We therefore decline to reconsider the Commission's determination in the *Second Report and Order* to not include location rents in our cost calculation. We note that if we were to consider rental payments, we would have to use a higher number of calls than the marginal payphone location.

d. Coin Mechanism.

157. In the *Second Report and Order*, the Commission determined that the per-call cost of the coin mechanism was \$.031.[319] PSPs argue that the cost of a coin mechanism should not have been deducted, because the cost cannot be avoided.[320] They state that the revenue generated from most coinless payphones would not justify the installation of the payphone.[321] According to these petitioners, a PSP considering payphone installation will install a coin payphone if the combined revenue from both coin and coinless calls will cover the cost of the payphone.[322] They argue that the choice is not between a coin payphone and coinless payphone, but between a coin payphone or no payphone at all.[323] These PSPs argue that our policy should reflect this market reality.[324] The RBOC Coalition further contends that if we allocate FLEX ANI costs to all calls, we should also attribute the cost of the coin

318 AT&T Recon. Pet., Attachment 2.

319 *Second Report and Order*, 13 FCC Rcd at 1801-1802, ¶¶ 52-53 (avoided cost of \$.031 per coin call should be deducted from the market coin price, to reflect the cost of the coin mechanism installed solely for the benefit of coin calls).

320 APCC Recon. Pet. at 6 n.8, 9; Peoples Recon. Pet. at 4; RBOC Coalition Recon. Pet. at 8.

321 RBOC Coalition Petition at 11 ("[O]f all the Coalition's public payphones, only 1.6% are coinless....And the one place where coinless phones are most commonly found is the exception that proves the rule: prisons.").

322 APCC Recon. Pet. at 9; Peoples Recon. Pet. at 4; RBOC Coalition Recon. Pet. at 8.

323 RBOC Coalition Recon. Pet. at 10.

324 APCC Recon. Pet. at 12; RBOC Coalition Recon. Pet. at 9.

mechanism to all calls.[325] The RBOC Coalition also asserts that the Commission overestimated the coin mechanism costs by failing to use a coinless payphone model that is sufficiently durable to accommodate outdoor use, and overstated the 10-year estimated useful life of the coinless payphone.[326] AT&T, in contrast, states that the coinless payphone model selected by the Commission is representative of a PSP's options, both in cost and in estimated useful life.[327]

158. On reconsideration, we reaffirm our treatment of the payphone coin mechanism in the *Second Report and Order*. We find the actual deployment of numerous coinless payphones is convincing evidence that undermines the assertion that such payphones are not economically viable. Even the RBOC Coalition apparently admits that more than 20,000 of its members' payphones are coinless.[328] While the record does not appear to include similar data for independent PSPs, we would expect that, given the historic differences in the manner in which RBOCs and independent payphone owners have deployed their payphones, the percentage of coinless payphones deployed by independent PSPs is even higher that the RBOC Coalition members.[329] This conclusion is consistent with reports that nearly six percent of all installed payphones in 1997 were coinless.[330] Moreover, the RBOC data and this latter information reflect industry deployment as of year end 1997, at which time per call dial-around compensation had only recently been implemented. Needless to say, the availability of dial-around compensation greatly increases the economic viability of coinless payphones. Such viability should be even further enhanced by the continuing (and apparently

[325] RBOC Coalition Recon. Pet. at 19.

[326] The RBOC Coalition alleges the per-payphone cost difference is $200, not $710. RBOC Coalition Recon. Pet. at 13.

[327] AT&T Recon. Opp. at 13.

[328] The RBOC Coalition states that 1.6 percent of its payphones are coinless payphones. RBOC Coalition Recon. Pet. at 11. Of 1,381,300 payphones, 1.6 percent amounts to more than 22,000 coinless payphones owned by the RBOC Coalition alone. RBOC Coalition Comments, Andersen at 10 (stating that in 1997 there were 1,381,800 RBOC Coalition payphones).

[329] For example, as a result of the previous regulatory treatment of RBOC payphones, and the subsidies they received from other services, RBOC payphones were often deployed in low traffic areas. Independent PSPs on the other hand, have been free to target higher traffic areas, where a payphone could be profitable relying solely on coinless revenues.

[330] *See* Frost & Sullivan, *U.S. Payphone Equipment Markets*, 1998 at 1-4.

rapid) growth of dial-around calls and simultaneous decrease in the number of coin calls.[331] Indeed, as the percentage of dial-around calls increases relative to all calls from payphones, the coin mechanism becomes increasingly unnecessary. In fact, a coin mechanism is likely to be installed only where the coin traffic warrants the expense. For these reasons we are convinced that the previous treatment of the payphone coin mechanism is correct.[332]

159. We also find that the Commission correctly found that a typical coinless payphone without a coin mechanism is similar to the 11A-type payphone. We further conclude that it is proper for us to use the cost of a 11A-type payphone in our current calculations underlying our default compensation amount. AT&T states that it has operated the 11A-type payphone in outdoor locations for many years and that it has a useful life of 10 years.[333] We find that, based on AT&T's evidence and our own expertise, the 11A-type payphone would be materially similar to the coinless payphone that PSPs would purchase today.

e. **Bad Debt.**

160. In the *Second Report and Order*, the Commission found insufficient information on the record to account for the costs relating to bad debt.[334] Peoples Telephone maintains that, based on its 1997 data, we should add $.012 to the per-call cost to account for bad debt.[335] The RBOC Coalition argues that the Commission erred in the *Second Report and*

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[331] APCC Sept. 28, 1998 *ex parte* from R. Aldrich to Magalie Roman Salas, reporting that in 1996 payphones were used to make 509 coin calls per month, and that in 1997 payphones were used to make 396 coin calls per month. In contrast, the number of dial-around calls per payphone increased from 152 calls per month in 1996 to 159 dial-around calls per month in 1997.

[332] In its comparison of the coin mechanism and FLEX ANI costs, it is apparent that the RBOC Coalition misunderstands our analysis. We consider FLEX ANI costs to be joint and common -- and thus the costs are attributable to all calls -- because FLEX ANI costs cannot be avoided by a payphone owner. Regardless of the number of dial-around calls that a payphone owner expects to be made from its payphone, the payphone owner will pay the same amount for FLEX ANI. As explained herein, the coin mechanism is an optional piece of the payphone, and is therefore, avoidable. Thus, the coin mechanism is an incremental cost to coin calls and is not a joint and common cost.

[333] AT&T Recon. Opp. at 13.

[334] *Second Report and Order*, 13 FCC Rcd at 1804, ¶ 56.

[335] Peoples Telephone Recon. Pet. at 7. *See also* APCC Recon. Pet. at 6 n.8, 15 (asserting that previously submitted data from five years of experience justifies additional $.043 for costs associated with bad debt and collection for dial-around calls). The RBOC Coalition states that it did not provide cost figures relating to bad debt because its members were not even permitted to charge for dial-around calls until payphones were

Order by not considering data submitted by Peoples Telephone and APCC.[336] The RBOC Coalition also contends that PSP-costs relating to bad debt from dial-around calls will increase as the number of IXCs increases.[337] APCC and Peoples Telephone contend that, as the industry moves toward per-call compensation, bad debt costs will increase due to the complexities of call tracking and billing.[338]

161. AT&T and Sprint, by contrast, maintain that many of the current independent PSPs' collection problems are of their own making, and that coinless call debt and collection costs will decrease as per-call compensation is instituted.[339] AT&T and Sprint state that some of the alleged uncollectibles reported in the record actually are legitimate billing disputes arising during the per-call compensation interim period -- a period in which payment obligations remain unsettled.[340]

162. We conclude that the recent history of per-call compensation payments is not an accurate guide for future levels of bad debt. We do not know the percentage of uncollected per-call compensation that is due to billing errors of the PSPs, as opposed to unscrupulous carriers. We also note that the RBOC Coalition asks us to clarify our rules regarding the entity that is required to pay per-call compensation.[341] Although we were unable to generate a sufficient record on this question before issuing this Order, parties may file a petition for clarification on this issue. It appears that if we were to grant such a petition, uncollectibles would be significantly reduced. An additional reason why we decline to establish a cost element for bad debt is that, in doing so, PSPs that ultimately recover their uncollectibles from delinquent carriers would then double-recover: once from the debtor and once from the consumer, *i.e.*, through the cost element included in the compensation amount. Furthermore, as discussed below, we ensure that PSPs will receive interest on late payments for as long as such payments are overdue.[342] For these reasons, we find that it would be unwise to establish a cost element for bad debt at this time. We note that, in a forthcoming

deregulated. RBOC Coalition Recon. Pet. at 9.

336 RBOC Coalition Recon Pet. at 17.

337 RBOC Coalition Recon Pet. at 16.

338 APCC Recon Pet. at 14; Peoples Recon Pet. at 8. *See also* CCI Comments at 5.

339 Sprint Recon. Opp. at 10; AT&T Recon. Opp. at 16.

340 AT&T Recon. Opp. at 15; Sprint Recon Opp. at 9. *See also* CCI Comments at 5.

341 RBOC Coalition Nov. 17, 1998 *ex parte* letter from M. Kellogg to Larry Strickling.

342 *See* para. 189 below.

order, we will determine the amount that IXCs owe PSPs for the period before October 7, 1997 and the way in which IXCs may recover overpayments that result from the default compensation amount established herein. If a petition for clarification is resolved prior to the adoption of our order addressing IXCs payments prior to October, 1997, we may visit the issue of uncollectibles in that order.

f. Dial-Around Collection Costs.

163. In the *Second Report and Order*, the Commission found insufficient information on the record to adjust the default compensation amount to account for billing and collection costs.[343] APCC asserts that it costs $.005 per call to collect dial-around compensation.[344] The RBOC Coalition maintains that its members have had to hire additional employees to administer invoicing and collections at a cost of between $.005 and $.008 per call. Sprint contends that PSPs should absorb the costs of clearinghouses or other tools used in billing and collection efforts.[345]

164. On reconsideration, we find that the Commission's treatment of billing expenses was appropriate. We are still faced with insufficient information on the record to determine the extent to which administration costs vary when the number of coinless calls increases relative to coin calls. Given that both types of calls utilize specialized positions within a company, we find it fair to assume that the amount that coin-related SG&A positions contribute to SG&A expenses approximate the same expense that billing and collection positions contribute to SG&A. Finally, we find unpersuasive the RBOC Coalition's argument concerning the need for additional employees to perform duties related to administering per-call dial-around compensation. We note that, if the RBOC Coalition members were just now receiving compensation for local coin calls, as they are for dial-around calls, the RBOC Coalition also would be in the process of hiring employees for coin-related positions.

g. Components of the Cost Calculation.

(1) Payphone Capital Expense.

165. In the *Second Report and Order*, the Commission recognized the need for a

[343] *Second Report and Order*, 13 FCC Rcd at 1804, ¶ 56.

[344] APCC Recon. Pet. at 15.

[345] Sprint Recon. Opp. at 10.

PSP to recover depreciation costs and earn a return on its investment.[346] The Commission concluded in the *Second Report and Order* that the record did not provide sufficient detail regarding the cost of capital. The Commission therefore estimated capital costs by examining the 1996 SEC form 10-K data for two non-LEC PSPs, CCI and Peoples Telephone.[347] The Commission concluded that the amount of capital per new payphone, including the coin mechanism, was between $2,799 and $3,234.[348]

166. MCI argues that the Commission's estimate overcompensates PSPs. MCI cites Peoples Telephone's 1997 10-K, which states that a new payphone, including installation, costs $1,950.[349] MCI also asserts that a newly installed payphone should cost only $1,650.[350] APCC counters that MCI omitted certain payphone operation costs, such as spare parts, furniture, vehicles, tools, and building and improvements.[351] APCC states that these costs range from $474 to $486 per payphone.[352] APCC further states that the price of a newly installed payphone ranges from $2,387 to $2,523.[353] APCC explains that part of the difference between the $2,387-$2,523 estimate and the $2,799-$3,234 estimate reported in the companies' SEC forms 10-K stems from intangible assets, such as location contracts, signing bonuses, line deposits, and deferred sales commissions.[354] Upon reconsideration, we find that the cost of capital used in the *Second Report and Order* included some costs that are not necessary to run a payphone operation. Accordingly, we recalculate the cost of capital.

167. In the *Second Report and Order*, the Commission used the highest federal tax

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346 *Second Report and Order*, 13 FCC Rcd at 1822-1823, ¶ 104.

347 *Second Report and Order*, 13 FCC Rcd at 1823-1824, ¶ 106.

348 *Second Report and Order*, 13 FCC Rcd at 1823-1824, ¶ 106.

349 MCI Comments at 8 (*citing* Peoples Telephone 10-K, at 9).

350 MCI Comments, Exhibit 2 at 7. MCI states the independent PSPs may use more functional or durable payphones than MCI assumed. *Id.*

351 APCC Reply at 29.

352 APCC Sept. 16, 1998 *ex parte* from R. Aldrich to Magalie Roman Salas at 2 (estimating that these payphone station expenses cost $474). *See also* APCC Aug. 21, 1998 *ex parte* letter from R. Aldrich to Magalie Roman Salas at Exhibit at 2 (estimating that these payphone station expenses cost $486).

353 *See* APCC Sept. 16, 1998 *ex parte* letter from R. Aldrich to Magalie Roman Salas at 2 (estimating price of newly installed payphone at $2,387). *See also* APCC Aug. 21, 1998 *ex parte* letter from R. Aldrich to Magalie Roman Salas (estimating price of newly installed payphone at $2,523).

354 APCC Aug. 21, 1998 *ex parte* letter from R. Aldrich to Magalie Roman Salas.

rate of 34 percent when calculating the levelized monthly payments that represent the monthly cost of an installed payphone.[355] Although no party explicitly petitioned us for reconsideration on the tax rate, the record demonstrates that MCI used a tax rate of 39.25 percent in its payphone cost study, which accounted for state and local taxes, in addition to federal taxes.[356] Upon reconsideration, we find that the Commission should have included state and local taxes in its calculation. Thus, we now use a tax rate of 39.25 percent to calculate the monthly payments that a payphone owner would make to pay for a payphone.

168. A working payphone unit consists of a payphone, enclosure, pedestal, associated spare parts, and other associated capital costs.[357] We find above that the coin mechanism is not a joint and common cost. Because there is no credible information on the record indicating that the remainder of the costs associated with a payphone vary as the number of coin calls increases relative to coinless calls, however, we find that the remainder of the payphone unit is a joint and common cost. We estimate the capital cost of a payphone in three steps. We estimate the cost of a coinless payphone. We then estimate the cost of the rest of the payphone unit (*e.g.*, the enclosure, pedestal, installation, and the associated parts) using data submitted by Davel and Peoples Telephone. We then calculate the monthly payments that would cover the costs of the payphone unit over a 10-year period, including taxes and interest. This payment is analogous to a mortgage payment, except that taxes are included in the calculation.

169. We conclude above that a coinless payphone is similar to the 11A-type payphone. AT&T states that the cost of a 11A-type coinless payphone is $225.[358] The median estimates provided by Peoples Telephone and Davel for the remainder of the payphone unit (*e.g.*, the enclosure, pedestal, installation, and the associated parts) is $1,362.50.[359] Consistent with the Commission's determination in the *Second Report and Order*, we agree with AT&T that we should subtract the $60 of installation costs that are

355 *Second Report and Order*, 13 FCC Rcd at 1801-02, ¶ 53, n.139.

356 MCI Comments, Exhibit 2 at 3 (estimating federal, state, and local taxes at 39.25 percent).

357 *See* APCC Sept. 16, 1998 *ex parte* letter from R. Aldrich to Magalie Roman Salas at 2. *See also* APCC Aug. 21, 1998 *ex parte* letter from R. Aldrich to Magalie Roman Salas.

358 AT&T Second R&O Comments, Appendix 1.

359 In the APCC Aug. 21, 1998 *ex parte* letter to Magalie Roman Salas, Peoples Telephone reported that a new payphone, with installation and pedestal/enclosure cost $2,523. We subtracted the $1,050 attributable to the payphone instrument, resulting in a cost of $1,473. In the APCC Sept. 16, 1998 *ex parte* letter from R. Aldrich to Magalie Roman Salas, Davel reported that a newly installed payphone costs $2,387. We subtracted the $1,021 payphone instrument and $114 for sales costs. The remaining portion of the payphone costs $1,252. The median of $1,473 and $1,252 is $1,363.

associated with the coin mechanism.[360] We thus conclude that a coinless payphone unit costs $1,527.50.[361] We find that $1,527.50 in capital costs amounts to a monthly payment of $28.04.[362] We arrive at the $28.04 monthly figure by determining the monthly payments necessary to depreciate the $1,527.50 investment over ten years, while earning a return of 11.25 percent on net investment, and allowing for federal, state and local taxes at a rate of 39.25 percent.

(2) Line Charge Costs.

170. In the *Second Report and Order*, the Commission noted that PSPs pay LECs for payphone lines under a variety of tariffs that range from measured rates (*e.g.*, per message or per minute) to flat, monthly (*i.e.*,unmeasured) rates. The Commission concluded that the average line cost for a coinless call ranged from $.065 to $.075 per call.[363] The Commission calculated this cost by subtracting the average per-call measured service charges from the average line cost data reported by PSPs. AT&T avers that instead of subtracting the average measured service charge for all payphones, the Commission should have subtracted the average measured service charges for those phones that actually paid measured service charges.[364] The RBOC Coalition argues that the Commission overstated the line savings of a coinless call.[365] In order to resolve the question, we asked the RBOC Coalition to supply us with additional payphone line cost data.

171. To understand how these costs are attributed, we will explain the way in which LECs price payphone lines. LECs use three different methods of charging for payphone lines. Some LECs charge only a flat fee for a payphone line, regardless of actual usage. Payphone owners in areas served by these LECs must pay this fee to install a payphone. Other LECs offer payphone operators only "measured service," which constitutes a somewhat lower flat fee, plus a per-call or per-minute charge for local calls. Other LECs offer payphone owners a choice between unlimited service for a relatively high monthly fee or a

360 *Second Report and Order*, 13 FCC Rcd at 1801-1802, ¶ 53.

361 That is, $225 + $1,362.50 - $60 = $1,527.50.

362 *See* line 1 on the table in Section IV.B.3.g(8) below.

363 *Second Report and Order*, 13 FCC Rcd at 1821-22, ¶ 102.

364 AT&T Recon. Pet. at 18.

365 RBOC Recon. Pet. at 15.

relatively low monthly fee plus a per-call or per-minute charge.[366]

172. In areas with only unlimited service, the entire line charge is a joint and common cost, because the amount the payphone owner pays does not change as the number of coin calls increases relative to coinless calls.[367] In areas where LECs offer only measured service, only the flat monthly fee is a joint and common cost, because the flat fee does not change as the mix of calls moves from coinless calls towards coin calls. The measured service charges, however, which apply to only certain local coin calls, are attributable to those coin calls. Coinless calls are always connected to a long distance company, and therefore the payphone operator does not pay any termination charges for them. In contrast, certain local coin calls incur measured service charges.[368] Accordingly, an increasing number of coin calls will result in more measured service charges. Because measured service charges are not joint and common, we do not include them in the average line cost calculation.

173. Calculating the joint and common portion of the payphone line is more difficult where LECs offer payphone owners a choice between unlimited service and measured service. LECs generally charge a higher fixed price for unlimited service than for measured service. Thus, payphone owners with mostly coinless call traffic accept the measured service option, because coinless calls do not incur termination charges. As the number of coin calls increases relative to coinless calls, the payphone owner will benefit by switching to unlimited service to avoid the termination charges. Due to the call volumes generated by payphones, most payphone owners with a coin mechanism will select unlimited service. Thus, where payphone owners have a choice between unlimited and measured service, the fixed fee that payphone owners pay for a measured service line would be joint and common. This is true even if the payphone owner selects the unlimited service line. Thus, if the flat fee for a measured service line is $25 per month, but an unlimited service line is $45 per month, the joint and common portion of the payphone line will be $25 per month, even if the payphone operator subscribed to the unlimited $45 per month line.

174. In the *Second Report and Order,* the Commission found the data in the record to be insufficient to distinguish among these different types of costs. The RBOC Coalition subsequently submitted evidence demonstrating the correct calculation of the joint and

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366 Typically, PSPs are not usually given a choice between per-minute charges and per-call charges.

367 *See* Section III.A. above.

368 Depending on the LEC's billing practices and tariffs, PSPs may incur measured service charges for local calls.

common cost of the payphone line.[369] In its calculation, the RBOC Coalition used the monthly line charge where only unlimited service was available, the fixed monthly charge where only measured service was available, and the fixed monthly charge associated with measured service where the PSP had the choice of unlimited service or measured service. The RBOC Coalition calculated a weighted average joint and common line cost based on the total number of payphones, including both BOC and independent payphones, in each member's territory. The national average joint and common line cost is $33.65.[370]

(3) Maintenance Costs.

175. In the *Second Report and Order*, the Commission treated maintenance as a joint and common expense, but treated coin collection costs as attributable to coin calls.[371] Upon reconsideration, we conclude that the Commission properly assigned maintenance costs as joint and common. Much of a payphone's maintenance is performed during regularly scheduled visits, meaning a technician will visit a payphone whether or not the payphone requires immediate maintenance.[372] To the extent that maintenance is performed on a periodic basis, maintenance costs will change very little in response to an increasing number of coin calls. We conclude, therefore, that maintenance costs are properly designated as joint and common. In the *Second Report and Order*, the Commission found that maintenance costs, other than coin collection costs, ranged from $21.68 to $27.10 per month.[373]

176. We find that the new SBC maintenance data submitted by the RBOC Coalition reasonably reflects the maintenance costs of SBC and probably other RBOCs, as well. We therefore create a weighted average of the SBC data and the Peoples Telephone data. We use the Peoples Telephone data to estimate the maintenance costs of a large non-LEC PSP, because it was the only data consisting of monthly cost figures that was submitted by a PSP. In addition, we find that the Peoples Telephone data provides the most detail regarding the

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369 RBOC Coalition Sept. 14, 1998 *ex parte* letter from M. Kellogg to Craig Stroup at 2.

370 The $33.65 figure equals the local line charge of $28.54 plus the Subscriber Line Charge of $5.11. This is line 2 on the table in Section IV.B.3.g(8). below.

371 *Second Report and Order*, 13 FCC Rcd at 1803, ¶ 55.

372 Peoples Telephone Second R&O Comments at 12.

373 *Second Report and Order*, 13 FCC Rcd at 1821, ¶ 101. The Commission concluded that maintenance costs ranged from $.04 to $.05 per call. Multiplied by 542 calls, the monthly costs ranged from $21.68 to $27.10.

number of maintenance visits and the portion of those visits that were strictly coin-related.[374]

177. SBC estimates that monthly per-phone maintenance costs amount to $24.37. Peoples Telephone reports that maintenance costs amount to $41.66. Because most payphones are RBOC payphones, we calculate the weighted average as $30.49 per month.[375] Peoples Telephone reports that 38 percent of its maintenance visits were strictly coin related.[376] We therefore subtracted 38 percent of $30.49 ($11.59) to reflect coin collection costs and costs associated with maintenance of coin payphones. We thus conclude that a payphone owner spends $18.90 per payphone per month for maintenance.[377]

(4) Sales, General, and Administrative Costs.

178. Payphone owners incur overhead costs, such as legal fees, administrative costs, salaries, and management costs, all commonly referred to as Sales, General, and Administrative (SG&A) costs. As the proportion of coin calls increases relative to coinless calls, some employees in the payphone company likely will assume more duties related to coin calls, rather than coinless calls. We find no credible evidence in the record that total SG&A costs change as the number of coin calls increases relative to coinless calls. We therefore conclude that SG&A is a joint and common cost that should be attributed to all types of calls.

179. In the *Second Report and Order*, the Commission concluded that per-call SG&A costs ranged from $28.80 to $29.27.[378] Newly submitted data suggests that SG&A costs are lower, however.[379] We find that the new SBC cost data, as supplemented by the

[374] Peoples Telephone Second R&O Comments at 12-13.

[375] At the end of 1997, 1,381,800 RBOC Coalition payphones existed. RBOC Comments, Andersen at 10. The National Payphone Clearinghouse states that LECs reported a total of 2,139,511 LEC and non-LEC payphones in the fourth quarter of 1997. National Payphone Clearinghouse Oct. 22, 1998 *ex parte* letter from D. Reuss to Craig Stroup. Dividing 1,381,800 by 2,139,511 equals 64.585 percent. We thus calculate the weighted average cost by multiplying the SBC estimate of $24.37 by .64585 and adding this sum to the factor of $41.66 and .35415, which equals $30.49.

[376] Peoples Telephone Second R&O Comments at 13.

[377] This is line 3 on the table in Section IV.B.3.g(8), below.

[378] *Second Report and Order*, 13 FCC Rcd at 1822, ¶ 103.

[379] AT&T Recon. Pet., Attachment III; RBOC Coalition Nov. 12, 1998 *ex parte* letter from M. Kellogg to Craig Stroup.

RBOC Coalition, provides a reasonable estimate of the maintenance costs of an RBOC payphone operation. We also find that the Peoples Telephone data represents a reasonable estimate of a non-LEC payphone operation.[380] The new data suggests that, on a per-phone, per-month basis, SG&A costs amount to $16.52 for RBOCs. In its comments submitted in 1997, Peoples Telephone suggested that SG&A amounted to $25.27. In the *Second Report and Order*, the Commission added $4.02 to SG&A costs to account for bad debt.[381] Because we consider bad debt elsewhere in this Order, we do not add here the bad debt costs provided by Peoples Telephone. Because there are more RBOC Coalition payphones than independent payphones, we calculate a weighted average SG&A cost of $19.62 per month.[382]

(5) Coding Digit Costs (FLEX ANI Costs).

180. In the *Second Report and Order*, the Commission added $.01 per call to the compensation amount to reflect the costs that PSPs must pay LECs for the implementation of FLEX ANI,[383] a coding digit technology that allows IXCs to identify payphone-originated calls for per-call compensation purposes. Under the market-based methodology, the Commission determined that charges that recover FLEX ANI costs were joint and common costs attributed to all types of calls.

181. We based the $.01 FLEX ANI cost estimate, in part, on evidence filed by USTA, in which it stated that the costs associated with LECs providing coding digits would be $600 million. Subsequent to the adoption and release of the *Second Report and Order*, USTA filed a revised coding digit estimated cost of $61.2 million,[384] prompting some parties to petition for reconsideration of our FLEX ANI cost estimate. In addition to the updated USTA information, many LECs have since filed their actual FLEX ANI tariffs, which

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380 We do not use here CCI's estimate of SG&A. *See* CCI Second R&O Comments at 10. Different firms likely use different accounting methods to separate maintenance and SG&A costs. Although the sum of maintenance costs and SG&A costs likely is comparable across firms, the two costs categories, taken separately, may not be. Because we rely on Peoples Telephone's data to estimate the maintenance cost of a large PSP, we also rely on Peoples Telephone's SG&A estimate for the SG&A cost of a large PSP.

381 *See Second Report and Order* at 1822, ¶ 103, n.273.

382 RBOC Coalition payphones comprise 64.585 percent of the payphones in the United States. *See* Section IV.B.3.g(3). We therefore calculate the weighted average as: $16.52 x .64585 + $25.27 x .35415 = $19.62. This is line 4 on the table in Section IV.B.3.g(8), below.

383 *Second Report and Order*, 13 FCC Rcd at 1804-1805, ¶¶ 57-58. *See Coding Digits Order*, 13 FCC Rcd at 5000, ¶ 2 and n.8 (defining FLEX ANI).

384 USTA Oct. 24, 1997 *ex parte* letter from K. Townsend to John Muleta.

establish with specificity the costs to be recovered in relation to FLEX ANI. In light of this new information, several parties have filed petitions requesting that our decision reflect the revised coding digit cost estimates. [385]

182. AT&T reasserts that coding digit costs are *de minimis*, should be borne by the PSPs alone, and therefore should not be used as a factor in calculating the default compensation amount.[386] APCC and the RBOC Coalition contend that FLEX ANI is installed solely because of dial-around calls, and therefore the cost should be apportioned only to dial-around calls.[387] The RBOC Coalition further contends that in the same way we allocate the cost of the coin mechanism only to coin calls, FLEX ANI costs similarly must be attributed only to dial-around calls.[388]

183. Upon reconsideration, we find that our treatment of the coding digit costs in the *Second Report and Order* was correct. The coding digit rate element that LECs apply to each payphone line to recover the costs of FLEX ANI is not conditional on the amount of, or even the presence of, dial-around traffic. Most PSPs are required by state law to install payphones on payphone lines, where they are subject to the FLEX ANI cost recovery tariff.[389] We therefore conclude that the coding digit rate element is an unavoidable cost of operating a payphone that does not vary as the number of coin calls increases relative to coinless calls. As such, we find that FLEX ANI costs are joint and common and should be attributed to all calls.

184. We disagree with AT&T's assertion that the coding digit charge is *de minimis*. When the LECs tariff their FLEX ANI cost recovery charge, we estimate that PSPs will pay

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[385] *See, e.g.*, AT&T Recon. Pet. at 19-20; AirTouch Recon. Opp. at 8. *See also* APCC Recon. Pet. at 17; RBOC Coalition Recon. Pet. at 20; Arch Reply Comments at 2.

[386] AT&T Recon. Pet. at 2, 20 (citing AT&T Reply Comments).

[387] APCC Recon. Pet. at 16, 19-20; RBOC Coalition Recon. Pet. at 19.

[388] RBOC Coalition Recon. Pet. at 19.

[389] In fact, it appears that only Minnesota and Iowa allow payphones to be installed on business lines. *See Coding Digits Order*, 13 FCC Rcd at 5016-5017, ¶ 32. Some parties may argue that a PSP wishing to avoid paying the FLEX ANI cost recovery tariff (presumably because the PSP expects very little dial-around traffic) could avoid it by simply connecting the payphone to a normal business line. For PSPs in the majority of states, however, such an action is prohibited by law.

more than $2.5 million per month.[390] We also note that APCC challenged several LEC FLEX ANI tariffs.[391] We believe that APCC would not expend resources challenging these tariffs if payphone owners considered the charges *de minimis*. We also find that IXCs should bear the dial-around call's share of FLEX ANI costs and that we should add that cost to the default compensation amount. This finding is consistent with the Commission's previous determination that IXCs, as the primary beneficiaries of dial-around calls, should pay the costs of these calls.[392] We agree with petitioners, however, that urge us to recalculate the costs of FLEX ANI.

185. We adjust the default compensation amount to reflect the updated USTA coding digit cost estimate and the recently filed FLEX ANI tariffs. We find that the average payphone owner would pay $1.08 per payphone line for 36 months because of FLEX ANI. We describe our calculation here. Pursuant to the *Coding Digit Waiver Order*, LECs may account for the recovery of the cost of implementing FLEX ANI over a variable length of time. The RBOC Coalition submitted data showing that several RBOCs chose to recover their FLEX ANI costs over a 24-month-period, while BellSouth chose to recover its costs over a 12-month-period. Because this Order establishes a three-year-period for default compensation payments, we find that the amount PSPs are paid for FLEX ANI should be calculated as if the RBOCs tariffed the FLEX ANI cost-recovery element for 36 months.[393]

186. Using the data that the RBOC Coalition submitted,[394] we calculate the present value of the payments that a payphone owner in each RBOC[395] territory would pay.[396] We

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[390] We arrive at this figure by multiplying the product of $1.63 (which represents the current weighted average of monthly FLEX ANI payments) (*see* RBOC Coalition Sept. 3, 1998 *ex parte* letter from M. Kellogg to Craig Stroup at 1) and 2.15 million (the number of payphones) by 80 percent (representing our conservative estimate of the percentage of these payphones in territories that offer FLEX ANI).

[391] *See, e.g.*, In the Matter of Pacific Bell Telephone Company Revision of Tariff FCC No. 128, *Petition of the American Public Communications Council to Suspend and Investigate*, Transmittal No. 1994 (July 16, 1998).

[392] *First Report and Order*, 11 FCC Rcd at 20584, ¶ 83.

[393] After three years, if parties petition us to extend the application of the default compensation amount, they can ask for the discontinuation of the $.002 for FLEX ANI at that time.

[394] RBOC Coalition Sept. 3, 1998 *ex parte* letter from M. Kellogg to Craig Stroup.

[395] This figure is calculated by examining the FLEX ANI tariffs filed by the RBOC Coalition members that filed coding digit charges for PSPs.

[396] We used a discount rate of 11.25 percent. *See Second Report and Order*, 13 FCC Rcd at 1801-02, ¶ 53, n.139.

then calculate the amount that a PSP would pay over a 36-month-period while maintaining the same present value of payments. We then calculate the weighted average of these payments based on the total number of payphones, including BOC and non-BOC payphones, in each BOC's territory. We conclude that the average PSP would pay $1.08 per month for 36 months, if that were how the LECs had decided to tariff their coding digit cost recovery elements.[397]

(6) Interest.

187. In the *Second Report and Order*, the Commission found that, because payments are made several months after the dial-around call is made, PSPs should receive three months of interest calculated at 11.25 percent annually. The RBOC Coalition argues that although the Commission provided for three months of interest in the *Second Report and Order*, dial-around payments are actually made an average of at least four months after the call is completed. The RBOC Coalition therefore asks that we adjust our findings to reflect this difference.[398]

188. AT&T counters the RBOC Coalition's argument, stating that dial-around compensation is not a cash business. As such, AT&T argues, PSPs must "take into account the reasonable operations of a commercial market."[399] AT&T offers the following example in support of a three month interest figure for delayed compensation: An IXC is billed in April for calls made during the first quarter of the year, and the IXC issues a check to the PSP by July 1. The median phone call made during the first quarter will be made in the middle of February. AT&T avers that bills for calls made in February would be rendered in March and due April 1. AT&T asserts that interest would begin accruing after April 1. Because payments are made by July 1, there are three months of interest due.[400]

189. We are not persuaded by AT&T's argument. We find that firms that expect a one-month delay before receiving payment will price their goods accordingly, with the interest already built into the quoted price. The calculations so far have not considered a built-in 30-day delay in payment. Further, at the time the *Second Report and Order* was released, the Commission anticipated a three-month delay, not a four-month delay, in receiving payments. In light of the average delay in payments of four months, we conclude

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397 This is line 5 on the table in Section IV.B.3.g(8), below.

398 RBOC Coalition Comments, Andersen at 5.

399 AT&T Sept. 13 1998 *ex parte* letter from B. Masterson to Magalie Roman Salas.

400 *Id.*, Attachment at 2.

that we should add to the compensation amount a total of four months of interest at 11.25 percent per year. The above default price will therefore be raised by $.009 to reflect four months of interest on the base amount of $.231. If IXCs are late in making their payments to PSPs, interest on the principal will continue to accrue at 11.25 percent per year.

(7) Marginal Cost of a Payphone Call.

190. As stated earlier, our pricing strategy seeks to establish a default amount for dial-around calls so that the calls recover their marginal cost plus a share of joint and common costs (line 6). There is no credible evidence on the record indicating that the process of picking up a handset and dialing numbers imparts any measurable costs to the PSP.[401] To the extent that these costs exist, we find that they would be insignificant on a per call basis and are already accounted for in the depreciation and maintenance costs outlined above. We therefore conclude that we do not need to add an element for the marginal cost of a dial-around call.

[401] *See* Section IV.B.2.a.

(8) Default Compensation Amount.

191. The new default price for compensable calls is $.24. We arrived at this amount by adding the joint and common costs (lines 1-5) and dividing the sum of the joint and common costs by the number of calls at a marginal location (line 7). We then add to this number four months of interest at 11.25 percent (line 8). These calculations result in a default compensation amount of $.24 (line 9).

Line	Cost Element	Amount (in dollars)
Line 1	Costs Excluding Coin Mechanism	$28.04
Line 2	Line Costs	$33.65
Line 3	Maintenance Costs	$18.90
Line 4	SG&A Costs	$19.62
Line 5	FLEX ANI Costs	$ 1.08
Line 6	Subtotal of Costs	$ 101.29
Line 7	Divided by 439 calls at the marginal payphone location:	$.231
Line 8	Interest for four months	$.009
Line 9	Total	$.24

(9) Top-down Calculation.

192. Although we decline in the Order to adopt a top-down methodology, we have performed a top-down calculation to validate that our bottom-up methodology is reasonable. Similarly, the Commission in the *Second Report and Order* undertook a bottom-up calculation to validate the reasonableness of a top-down methodology.[402] In performing this calculation, we start with what commenters agree is the predominant local coin calling price in the United

[402] *Second Report and Order*, 13 FCC Rcd at 1809, ¶ 68.

States, \$.35.[403] We subtract from this amount the cost of the coin mechanism, termination charges, and coin collection charges.

193. We find that the installation of a coin mechanism costs a PSP \$17.02 per month.[404] Dividing \$17.02 by the 318 coin calls made at an average payphone location,[405] we conclude that we would subtract \$.054 for the coin mechanism. We would also subtract \$.038 for local termination charges,[406] and subtract \$.036 for coin collection charges.[407] We do not include coding digit cost recovery charges here because most PSPs are now paying these charges. Further, because FLEX ANI costs are joint and common, they are already reflected in the \$.35 starting price.[408] We thus conclude that, under this approach, the default

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[403] MCI states that some payphones impose charges for additional minutes on local coin calls and argues that the price for a local coin call is not always \$.35. MCI Nov. 17 *ex parte* letter from G. Ford to Magalie Roman Salas. While some payphone owners may charge more for longer coin calls, the predominant cost for the initial three-minute coin call is \$.35. *See, e.g.*, APCC Reply at 20; AT&T Comments at 2; RBOC Coalition Reply at 10.

[404] The average price of a new payphone, without installation, pedestal, enclosure, etc, is \$1,092. *See* APCC Sept. 16, 1998 *ex parte* letter from R. Aldrich to Magalie Roman Salas at 2 (estimating that the price of a new payphone, without installation, enclosure, pedestal, etc., costs \$1,050). *See also* APCC Aug. 21, 1998 *ex parte* letter from R. Aldrich to Magalie Roman Salas (estimating price of a new payphone is \$1,135). The average of \$1,050 and \$1,135 is \$1,092.50. Payphones with coin mechanisms incur an extra \$60 of installation costs (*see* para. 169 above), which brings the total to \$1152.50. From this we subtract the cost of a payphone without a coin mechanism, which is \$225. As we explain above, we establish that the cost of a type 11A payphone is consistent with the cost of the average coinless payphone. *See* paras. 159, 169 above. Thus, the decision to install a coin mechanism costs the PSP \$927.50 (\$1,152.50 - \$225). The \$927.50 it costs to install a coin mechanism would equal a monthly payment of \$17.02. We arrive at the \$17.02 monthly figure by determining the monthly payments necessary to depreciate the \$927.50 investment over ten years, while earning a return of 11.25 percent on net investment, and allowing for federal, state, and local taxes at a rate of 39.25 percent.

[405] As stated in para. 151 above, on average, 61.5 percent of an RBOC's payphone calls are coin calls. Multiplying 61.5 percent by the 517 calls at an average payphone location yields 318 coin calls. In the *Second Report and Order*, the Commission's top-down calculation was based on the marginal number of calls. If we use a marginal location in the top-down approach, the default compensation amount would be even lower.

[406] *See* RBOC Coalition Oct. 1, 1998 *ex parte* letter from M. Kellogg to Craig Stroup at 2, where the RBOC Coalition states that the average call termination charge is \$.038.

[407] In para. 177 above, we establish that a PSP's coin collection cost amounts to \$11.59 per month. Thus, coin collection costs, divided by the 318 coin call at an average payphone location, result in a figure of \$.036 per call.

[408] In the *Second Report and Order*, we included the cost of FLEX ANI, because no PSPs were paying the coding digit cost recovery tariffs when the Order was issued. *See* Section IV.B.3.g.(5).

amount, before interest, would be \$.222.[409] To this amount, we would add \$.008 for interest,[410] resulting in a total of \$.23. Thus, using the same data with a top-down methodology, the default amount is within a penny of the default amount arrived at under our bottom-up approach. We believe this similarity supports the reasonableness of the default compensation amount we adopt in this Order.

194. In the *Second Report and Order*, the Commission concluded that a top-down approach yielded a default compensation amount of \$.284[411] and the bottom-up approach yielded a default amount of \$.264.[412] We now conclude that a bottom-up approach yields a default amount of \$.24,[413] and a top-down approach yields a compensation amount of \$.23.[414] These differences arise from our use of the more accurate data submitted in conjunction with the petitions for review of the *Second Report and Order*. For instance, in the *Second Report and Order*, the Commission estimated that the capital cost of a coin payphone was between \$2,799 and \$3,234.[415] In this Order, we estimate that the capital cost is between \$2,387 and \$2,523, based on the filings by PSPs.[416] We also received better data regarding the average termination costs that a PSP incurs, from which we conclude that the proper estimate should be \$.038,[417] instead of \$.0275.[418] We also amend our estimate of maintenance costs, based on new LEC data.[419] We also lower our estimate of FLEX ANI costs from \$.01[420] to \$.002,[421]

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409 \$.222 equals \$.35 (the starting price), less \$.054 for the coin mechanism, less \$.038 for termination, less \$.036 for coin collection.

410 \$.008 equals four months of interest on \$.222 at an annual rate of 11.25%.

411 *See Second Report and Order*, 13 FCC Rcd at 1807, ¶ 63 (arriving at an adjusted market range of \$.277 to \$.291, the midpoint of which is \$.284).

412 *See Second Report and Order*, 13 FCC Rcd at 1824, ¶ 108, n.289.

413 *See* para. 191.

414 *See* para. 193.

415 *Second Report and Order*, 13 FCC Rcd at 1823-1824, ¶ 106.

416 *See* APCC Sept. 16, 1998 *ex parte* letter from R. Aldrich to Magalie Roman Salas, at 2 (estimating price of newly installed payphone at \$2,387). *See also* APCC Aug. 21, 1998 *ex parte* letter from R. Aldrich to Magalie Roman Salas (estimating price of newly installed payphone at \$2,523).

417 RBOC Coalition Oct. 1, 1998 *ex parte* letter from M. Kellogg to Craig Stroup at 2.

418 We note that \$.0275 is the midpoint of the \$.025-\$.03 range established in the *Second Report and Order*. *Second Report and Order*, 13 FCC Rcd at 1802-03, ¶ 54.

419 *See* Section IV.B.3.g.(3).

based on actual tariffs filed by RBOCs. Based on this new data and our decision to use a bottom-up approach, we conclude that the default compensation amount will be $.24.

4. Compensation for October 7, 1997 to Present.

195. In deciding to remand, rather than vacate, the *Second Report and Order*, the Court explained that its decision was based, in part, on "the clear understanding that if and when on remand the Commission establishes some different rate of fair compensation for coinless payphone calls, the Commission may order payphone service providers to refund to their customers any excess charges for coinless calls collected pursuant to the current [$.284] rate."[422] The Court noted that the Commission has authority to order such refunds pursuant to section 4(1) of the Act, which authorizes the Commission to take such actions "as may be necessary in the execution of its functions,"[423] as well as pursuant to the provisions of section 276, which directs the Commission to "take all actions necessary to promulgate regulations to insure fair compensation."[424]

196. We conclude that the current default compensation amount should apply, subject to the following minor adjustment, retroactively to the period between October 7, 1997 and the effective date of this Order (the October 1997 period). This Order, which sets a default compensation amount of $.24, establishes a cost element of $.002 to compensate PSPs for each dial-around call's share of FLEX ANI costs. As explained above, we find that, over the next three years, the $.002 cost element will fully compensate PSPs for each dial-around call's share of FLEX ANI costs.[425] Therefore, in calculating the default compensation amount for the October 1997 period, we deduct the $.002 cost element from the default compensation amount established in this order. Thus, the default compensation amount for the October 1997 period, is $.238.

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[420] *Second Report and Order*, 13 FCC Rcd at 1804-05, ¶ 57.

[421] *See* Section IV.B.3.g.(5).

[422] *MCI v. FCC*, 143 F.3d at 609.

[423] *Id. See* 47 U.S.C. § 154(i).

[424] 47 U.S.C. § 276(b).

[425] *See* Section IV.B.3.g(5). above, explaining the recovery of FLEX ANI costs.

5. Method of IXC Overpayment Recovery.

197. As noted above, PSPs will be obligated to refund overpayments for the October 1997 period. In addition, in an upcoming order, we will address the compensation amount for the period between November 7, 1996 and October 6, 1997 (Interim Period).[426] In establishing a compensation amount for the Interim Period, we anticipate using as a starting point the default compensation amount established herein. We also anticipate adjusting the default compensation amount for the Interim Period to account for FLEX ANI costs and interest.[427] The upcoming order also will address the method that IXCs should use to calculate payments owed PSPs.

198. This Order reduces the per-call compensation amount established in the *Second Report and Order* for the period of October 7, 1997 to the effective date of this Order. Accordingly, we address the way that IXCs which have made payments consistent with our prior order may recover this overpayment. We note that, because most IXCs already have collected money from their customers to cover the cost of compensating PSPs, the IXCs will not be substantially harmed by a delay in recovering their overpayment.[428] At the same time, PSPs may be severely harmed if they are required to immediately refund substantial overpayment amounts to the IXCs. Indeed, most PSPs have not yet received the majority of their payments for the Interim Period and do not necessarily have the resources to issue refunds to the IXCs. We therefore conclude that IXCs may recover their overpayments to the PSPs at the same time as the PSPs receive payment from the IXCs for the Interim Period. In other words, when an IXC calculates the amount owed to each PSP for the Interim Period, it should deduct from that amount any overpayment that it made to that PSP. Just as IXCs will be required to compensate PSPs for interest on the money due the PSPs for the Interim Period, IXCs will be allowed to recoup interest for overpayments to the PSPs for the October 1997 Period. The same rate of interest shall apply for both the Interim Period and October 1997 Period. In the event that the amount the IXC overpaid is larger than the amount it owes to the PSP for the Interim Period, the IXC may deduct the remaining overpayment from

[426] *See Second Report and Order*, 13 FCC Rcd at 1828-1829, ¶ 117 (addressing Interim Period compensation). *See also Public Notice*.

[427] Because we have accounted for the entire amount of FLEX ANI costs in our default compensation amount, and because no FLEX ANI costs accrued during the interim period, we will reduce the default compensation amount accordingly. Because PSPs have not received full compensation for this period, we will allow the recovery of interest on the unpaid amount. *See* March 4, 1998 APCC *ex parte* letter from A. Kramer to Magalie Roman Salas, Attachment at 12-13.

[428] *See, e.g.*, tariff section 3.02120 filed by AT&T recovering payphone charge (effective on June 11, 1997 and moved to 3.1.1.D. on November 1, 1997). *See also* tariff filed by MCI on January 20, 1998, recovering the cost of the payphone charge.

future payments to PSPs.

199. We also note that IXCs have recovered from their customers the cost of compensating PSPs at a rate of $.284 per call. Although we do not require IXCs to issue refunds to their customers, we believe that doing so would serve the public interest. We therefore encourage IXCs to issue refunds to their customers and to notify their customers of any such refunds. We also encourage IXCs to publicly disclose the manner in which they utilize any such refunds from PSPs.

6. Other Issues.

200. *TRA's Motion to Accept Late-Filed Comments.* On July 14, 1998, Telecommunications Resellers Association ("TRA") filed a Motion requesting the Commission to accept its late-filed pleading. In its motion, TRA states that it experienced logistical difficulties beyond its control related to the filing of the pleading and was unable to deliver the pleading on the due date. No parties opposed TRA's motion. We find that no parties suffered harm as a result of TRA's late-filed pleading. We conclude that accepting TRA's comments will serve the public interest and we therefore grant their motion.

V. PROCEDURAL MATTERS

A. Final Paperwork Reduction Act Analysis

201. The decision herein has been analyzed with respect to the Paperwork Reduction Act of 1995, Pub. L. 104-13 and does not contain new and/or modified information collections subject to Office of Management and Budget review.

B. Supplemental Final Regulatory Flexibility Analysis

202. As required by the Regulatory Flexibility Act (RFA),[429] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *NPRM*.[430] The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. The Commission conducted a Final Regulatory Flexibility Analysis (FRFA) in the *Second Report*

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[429] 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[430] *NPRM*, 11 FCC Rcd at 6761-6763.

and Order.[431] The Commission's Supplemental Final Regulatory Flexibility Analysis (SFRFA) in this Order conforms to the RFA.[432]

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

203. The objective of the rules adopted in this *Reconsideration of the Second Report and Order* is "to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public."[433] In this order, we adjust the per-call default rate for coinless calls that the Commission set in the *Second Report and Order*. We adjust the rate from \$0.284 to \$0.24, making the difference between the market-based local coin rate and the coinless per-call default rate \$0.11, instead of \$0.066. In doing so, the Commission is mindful of the balance that Congress struck between this goal of bringing the benefits of competition to consumers and its concern for the impact of the 1996 Telecommunications Act on small businesses.

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

204. We received no comments in direct response to the FRFA in the *Second Report and Order*. In the IRFA, the Commission solicited comment on alternatives to our proposed rules that would minimize the potential impact on small entities, consistent with the objectives of this proceeding. At that time, the Commission received one comment on the potential impact on small business entities, which the Commission addressed in the FRFA in the *Second Report and Order*[434] and considered in promulgating the rules in the *Second Report and Order*. We believe that our rules, as adopted in the *Second Report and Order*, and as modified in this Order increase the efficiency of, and minimize the burdens of, the compensation scheme to the benefit of all parties, including small entities.

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431 *Second Report and Order*, 13 FCC Rcd at 1834-1845, ¶¶ 134-165.

432 *See* 5 U.S.C. § 604. In the *Second Report and Order*, we conducted a FRFA and received no petitions for reconsideration of that FRFA. In this present Report and Order, the Commission promulgates no additional final rules, and our action does not affect the previous analysis.

433 47 U.S.C. § 276(b)(1).

434 *Second Report and Order*, 13 FCC Rcd at 1835-1836, ¶ 137.

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

205. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[435] The RFA generally defines the term "small entity " as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[436] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[437] A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). [438] A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[439] As of 1992, there were approximately 275,800 small organizations nationwide.[440] "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."[441] As of 1992, there were approximately 85,000 such jurisdictions in the United States.[442] This number includes 38,978 counties, cities, and towns, of which 37,566 (96 percent) have populations of fewer than 50,000.[443] The Census Bureau estimates that this ratio is basically accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities. Below, we further describe and estimate the number of small entity licensees and

435 5 U.S.C. § 603(b)(3).

436 *Id.* at § 601(6).

437 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

438 Small Business Act, 15 U.S.C. § 632 (1996).

439 5 U.S.C. § 601(4).

440 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

441 5 U.S.C. § 601(5).

442 U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

443 *Id.*

regulatees that may be affected by the rule change.

a. Common Carrier Services and Related Entities

206. The most reliable source of information regarding the total numbers of certain common carriers and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Telecommunications Industry Revenue* report, regarding the TRS.[444] According to data in the most recent report, there are 3,459 interstate carriers.[445] These carriers include, *inter alia,* local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

207. The SBA has designated companies engaged in providing "Radiotelephone Communications" and "Telephone Communications, Except Radiotelephone" as small businesses if they employ no more than 1,500 employees.[446] Below, we discuss the total estimated number of telephone companies falling within the two categories and the number of small businesses in each, and we then attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

208. Although some incumbent local exchange carriers (ILECs) may have no more than 1,500 employees, we do not believe that such entities should be considered small entities within the meaning of the RFA. These ILECs are either dominant in their field of operations or are not independently owned and operated. Therefore, by definition, they are not "small entities" or "small business concerns" under the RFA. Accordingly, our use of the terms "small entities" and "small businesses" does not encompass small ILECs. Out of an abundance of caution, however, we will separately consider small ILECs within this analysis. We will use the term "small ILECs" to refer to any ILECs that arguably might be defined by the SBA as "small business concerns."[447]

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[444] FCC, Telecommunications Industry Revenue: TRS Fund Worksheet Data, Figure 2 (Number of Carriers Paying Into the TRS Fund by Type of Carrier) (Nov. 1997) (*Telecommunications Industry Revenue*).

[445] *Id.*

[446] 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) codes 4812 and 4813. *See also* Executive Office of the President, Office of Management and Budget, *Standard Industrial Classification Manual* (1987).

[447] *See* 13 C.F.R. § 121.201, SIC code 4813. Since the time of the Commission's 1996 decision, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, 16144-45 (1996), 61 FR 45476 (August 29, 1996), the Commission has consistently

209. **Total Number of Telephone Companies Affected.** The U.S. Bureau of the Census ("Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.[448] This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, personal communications services providers, covered specialized mobile radio providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small ILECs because they are not "independently owned and operated."[449] For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It is reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small ILECs that may be affected by the rule change.

210. **Wireline Carriers and Service Providers.** The SBA has developed a definition of small entities for telephone communications companies, except radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 telephone companies in operation for at least one year at the end of 1992.[450] According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons.[451] All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small ILECs. We do not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 2,295 small telephone communications companies other than radiotelephone companies are small entities or small ILECs that may be affected by the rule change.

211. **Local Exchange Carriers.** Neither the Commission nor the SBA has defined

addressed in its regulatory flexibility analyses the impact of its rules on such ILECs.

448 U.S. Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size,* at Firm Size 1-123 (1995) (*1992 Census*).

449 *See generally* 15 U.S.C. § 632(a)(1).

450 *1992 Census, supra,* at Firm Size 1-123.

451 13 C.F.R. § 121.201, SIC code 4813.

small local exchange carriers (LECs). The best available definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[452] According to the most recent *Telecommunications Industry Revenue* data, 1,371 carriers reported that they were engaged in the provision of local exchange services.[453] We do not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees. Thus, we are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 1,371 providers of local exchange service are small entities or small ILECs that may be affected by the rule change.

212. **Interexchange Carriers**. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[454] According to the most recent *Telecommunications Industry Revenue* data, 143 carriers reported that they were engaged in the provision of interexchange services.[455] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees. Thus, we are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 143 small entity IXCs that may be affected by the rule changes herein.

213. **Competitive Access Providers.** Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access services providers (CAPs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[456] According to the most recent *Telecommunications Industry Revenue* data, 109 carriers reported that they were engaged in the provision of competitive access services.[457] We do not have data specifying the number of these carriers that are not independently owned and operated or that

[452] *Id.*

[453] *Telecommunications Industry Revenue*, Figure 2.

[454] 13 C.F.R. § 121.201, SIC code 4813.

[455] *Telecommunications Industry Revenue*, Figure 2.

[456] 13 C.F.R. § 121.201, SIC code 4813.

[457] *Telecommunications Industry Revenue*, Figure 2.

have more than 1,500 employees. Thus, we are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 109 small entity CAPs that may be affected by the rule changes herein.

214. **Operator Service Providers.** Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[458] According to the most recent *Telecommunications Industry Revenue* data, 27 carriers reported that they were engaged in the provision of operator services.[459] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 27 small entity operator service providers that may be affected by the rule changes herein.

215. **Pay Telephone Operators.** Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[460] According to the most recent *Telecommunications Industry Revenue* data, 441 carriers reported that they were engaged in the provision of pay telephone services.[461] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 441 small entity pay telephone operators that may be affected by the rule changes herein.

216. **Resellers (including debit card providers).** Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable SBA definition for a reseller is a telephone communications company other

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458 13 C.F.R. § 121.201, SIC code 4813.

459 *Telecommunications Industry Revenue*, Figure 2.

460 13 C.F.R. § 121.201, SIC code 4813.

461 *Telecommunications Industry Revenue*, Figure 2.

than radiotelephone (wireless) companies.[462] According to the most recent *Telecommunications Industry Revenue* data, 339 reported that they were engaged in the resale of telephone service.[463] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 339 small entity resellers that may be affected by the rule changes herein.

217. **Toll Free Service Subscribers.**[464] We voluntarily describe here toll free service subscribers, even though they are not affected by the rules adopted herein such that they are within the scope of our regulatory flexibilty analysis. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to toll free service subscribers. The most reliable source of information regarding the number of 800 service subscribers appears to be data the Commission collects on the toll free numbers in use.[465] According to our most recent data, 6,987,063 800 numbers were in use at the end of 1995. Similarly, the most reliable source of information regarding the number of 888 service subscribers appears to be data the Commission collects on the 888 numbers in use.[466] According to our most recent data, 2,014,059 888 numbers had been assigned at the end of 1996. We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 6,987,063 small entity 800 subscribers and fewer than 2,014,059 small entity 888 subscribers that may be affected by the rule changes herein. In response to the Consumer-Business Coalition's concerns about the effect that the compensation amount will have on small businesses that subscribe to toll free numbers,[467] we find that small businesses that subscribe to toll free numbers are likely to benefit by our reduction of the compensation amount in this Order. In this Order, we reduce to $.24 the compensation

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462 13 C.F.R. § 121.201, SIC code 4813.

463 *Telecommunications Industry Revenue*, Figure 2.

464 We include all toll-free number subscribers in this category, including 888 numbers.

465 FCC, CCB Industry Analysis Division, *FCC Releases, Study on Telephone Trends,* Tbl. 20 (May 16, 1996).

466 FCC, CCB Industry Analysis Division, *Long Distance Carrier Code Assignments*, p. 80, Tbl. 10B (Oct. 18, 1996).

467 Consumer-Business Coalition Petition at 16-17.

amount that must be paid to payphone service providers for compensable calls.

b. Wireless and Commercial Mobile Service.

218. **Rural Radiotelephone Service.** The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.[468] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).[469] We will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.[470] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

219. **Air-Ground Radiotelephone Service.** The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service.[471] Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.[472] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

220. **Offshore Radiotelephone Service.** This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico.[473] At present, there are approximately 55 licensees in this service. We are unable at this time to estimate the number of licensees that would qualify as small under the SBA's definition for radiotelephone communications.

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[468] The service is defined in Section 22.99 of the Commission's Rules, 47 C.F.R. § 22.99.

[469] BETRS is defined in Sections 22.757 and 22.759 of the Commission's Rules, 47 C.F.R. §§ 22.757, 22.759.

[470] 13 C.F.R. § 121.201, SIC code 4812.

[471] The service is defined in Section 22.99 of the Commission's Rules, 47 C.F.R. §§ 22.99.

[472] 13 C.F.R. § 121.201, SIC code 4812.

[473] This service is governed by Subpart I of Part 22 of the Commission's Rules. *See* 47 C.F.R. §§ 22.1001 - 22.1037.

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

221. This Order results in no additional filing requirements.

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

222. In the *Second Report and Order*, we addressed steps taken to minimize the economic impact on small entities.[474] In particular, we addressed the potential economic impact on small businesses and small incumbent LECs from (1) the amount of compensation paid to PSPs, and (2) the administration of per-call compensation.[475]

223. In this Order, we adjust the per-call default compensation amount from $0.284 to $.24. This downward adjustment means that PSPs, many of whom may be small business entities, will receive less call revenue from coinless calls than they might have received under the *Second Report and Order*. However, by this action, we ensure that PSPs are more likely receive "fair compensation" for subscriber 800 and access code calls. This measure also helps PSPs receive fair compensation for each and every completed call made from a payphone, as required by the Act.

224. The downward adjustment also means that IXCs, some of which may be small businesses, will have lower per-call payphone expenses than they would have under the *Second Report and Order*. Since many IXCs pass on this expense directly to their 800 subscribers, many of which are small businesses, the downward adjustment means that these entities will experience lower 800 subscriber expenses.

225. Like the comments to the *Second Report and Order*,[476] several parties commented on alternatives to a market-based default rate, and on alternatives to the approach selected by the Commission in which IXCs are obligated to compensate PSPs for dial-around calls. The Commission has responded to these comments.[477]

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474 *Second Report and Order* at 13 FCC Rcd 1843-1844, ¶¶ 158-161.

475 *Id.*

476 *Second Report and Order*, 13 FCC Rcd at 1844, ¶¶ 160-161.

477 *See* paras. 60-70, 191 above (where we adopt a bottom-up methodology for determining the per-call compensation amount and set that amount at $.24).

226. Some of these commenters also charge that the Commission's approach is significantly increasing the cost of the many small businesses and public interest "hot lines" that depend on affordable 800 call rates.[478] Our rules do not require IXCs to pass on the expense of payphone dial-around call compensation, but neither do our rules prohibit this.[479] The Commission rejected proposals that IXCs be restricted from passing on the per-call costs to at least some 800 subscribers.[480] We reiterate that IXCs should be given maximum flexibility to determine what, if any, per-call costs are passed on to their 800 subscribers.[481]

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

VI. CONCLUSION

228. We conclude that the default price for coinless calls should be adjusted from $.284 to $.24. In addition, we note that PSPs will not be compensated for 911 and TRS calls.

229. In setting the default compensation amount, we shift to a cost-based method from the market-based method used in the *Second Report and Order* because of technological impediments that currently inhibit the market as well as the present unreliability of certain assumptions underlying the market-based method. In setting the cost-based default amount, we incorporated our reconsideration of our prior treatment of certain payphone costs as well as our examination of new estimates of payphone costs submitted as part of this proceeding.

230. The $.24 default price will be the price that, beginning thirty days after this order is published in the Federal Register, IXCs must compensate PSPs for all coinless payphone calls not otherwise compensated pursuant to contract, or advance consumer payment, including subscriber 800 and access code calls, certain 0+ and certain inmate calls. The $.24 price will serve as the default per-call compensation price for coinless payphone

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[478] Consumer-Business Coalition Petition at 14-15.

[479] *Report and Order*, 11 FCC Rcd at 20584, ¶ 83. The Commission rejected proposals that end-user 800 subscribers be required to compensate PSPs for the dial-around calls these 800-subscribers receive from payphones. *Id.*

[480] *Id.*

[481] *Id.*

calls through January 31, 2002. At the conclusion of the three year period, if parties have not invested the time, capital, and effort necessary to move these issues to a market-based resolution, parties may petition the Commission regarding the default amount, related issues pursuant to technological advances, and the expected resultant market changes.

231. We conclude that the default price, adjusted for certain items, should be effective retroactive to October 7, 1997, and that IXCs will recover their overpayments to PSPs by deducting the amount of their overpayments, along with interest, from the payments the IXCs will make to PSPs for calls made during the November 7, 1996 to October 6, 1997 period.

VII. ORDERING CLAUSES

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

233. IT IS FURTHER ORDERED that this order IS EFFECTIVE thirty days after publication in the Federal Register.

234. IT IS FURTHER ORDERED, that 47 C.F.R. Part 64 IS AMENDED as set forth in Appendix A, effective 30 days after publication of the text thereof in the Federal Register.

235. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this *Third Report and Order* and *Order on Reconsideration of the Second Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

236. IT IS FURTHER ORDERED that the July 14, 1998 Motion of Telecommunications Resellers Association to accept late-filed pleading IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas

Magalie Roman Salas
Secretary

APPENDIX A

RULES AMENDED

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

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

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

2. Section 64.1300 (c) is amended to read as follows:

64.1300 Payphone Compensation Obligation.

(c) In the absence of an agreement as required by subsection (a) herein, the carrier is obligated to compensate the payphone service provider at a per-call rate of $.24.

3. Section 64.1300 (d) is deleted.

APPENDIX B

LIST OF PARTIES

A. PARTIES FILING PETITIONS FOR RECONSIDERATION[482]

1. American Alpha Dispatch Services, Inc., et al (American Alpha Dispatch)
2. American Public Communications Council (APCC)
3. Consumer-Business Coalition for Fair Payphone-800 Fees (Consumer-Business Coalition)
4. AT&T Corp. (AT&T)
5. Direct Marketing Association (DMA)
6. Mobile Telecommunication Technologies Corp. (MTTC)
7. Paging Network, Inc. (Paging Network)
8. PageMart Wireless, Inc. (PageMart)
9. Peoples Telephone Company, Inc. (Peoples)
10. RBOC/GTE/SNET Payphone Coalition (RBOC Coalition)
11. Source One Wireless II, L.L.C (Source One)

B. PARTIES FILING OPPOSITIONS AND COMMENTS TO PETITIONS

1. Ad Hoc Telecommunications Users Committee
2. Airtouch Paging
3. APCC
4. AT&T
5. Communications Central, Inc.
6. Consumer-Business Coalition for Fair Payphone-800 Fees
7. MCI
8. Metrocall, Inc.
9. Mobile Telecommunications Technologies Corp.
10. Peoples Telephone Company, Inc.
11. RBOC/GTE/SNET Payphone Coalition
12. RCN Telecom Services and US Xchange, L.L.C (RNC)

[482] In addition, a number of informal comments and letters were filed.

13. Sprint
14. Telecommunications Resellers Association
15. John Yoggerst

C. PARTIES FILING REPLIES TO OPPOSITIONS AND COMMENTS

1. Air Touch Paging
2. American Alpha Dispatch Services, Inc., et al
3. APCC
4. Arch Communications Group
5. AT&T
6. Consumer-Business Coalition for Fair Payphone-800 Fees
7. Metrocall, Inc.
8. Mobile Telecommunications Technologies Corp.
9. PageMart Wireless, Inc.
10. Paging Network, Inc.
11. Peoples Telephone Company, Inc.
12. RBOC/GTE/SNET Payphone Coalition
13. Source One Wireless II, L.L.C.
14. Sprint

D. PARTIES FILING COMMENTS ON *MCI V. FCC*

1. Airtouch Paging
2. Allen Lund Company
3. American Public Communications Council (APCC)
4. AT&T Corp. (AT&T)
5. Cable and Wireless, Inc.
6. Citicorp
7. Competitive Telecommunications Corporation
8. Consumer-Business Coalition for Fair Payphone-800 Fees (Consumer-Business Coalition)
9. Excel Communications, Inc.
10. Frontier Corporation
11. International Telecard Association
12. IXC Communications Services, Inc.

13. LCI International Telecom Corp.
14. MCI Telecommunications Corporation
15. State of New York Department of Public Service
16. Paging Network, Inc.
17. Personal Communications Industry Association (PCIA)
18. PocketScience, Inc.
19. RBOC/GTE/SNET Payphone Coalition
20. Rhode Island Department of Human Services (Office of Financial Management and Legal Services)
21. Skytel
22. Sprint Corporation
23. Telecommunications Resellers Association
24. Vocall Communications
25. Worldcom, Inc.

E. PARTIES FILING REPLY COMMENTS (7/27/98)

1. Airtouch Paging
2. American Public Communications Council (APCC)
3. AT&T Corp. (AT&T)
4. Citicorp
5. State of Colorado, Department of Human Services
6. Consumer-Business Coalition for Fair Payphone-800 Fees (Consumer-Business Coalition)
7. District of Columbia, Office of the Chief Financial Officer
8. Electronic Benefit Transfer Council
9. Excel Communications, Inc.
10. Frontier Corporation
11. Georgia State Department of Human Resources
12. IXC Communications Services, Inc.
13. State of Kentucky, Cabinet for Families and Children
14. LCI International Telecom Corp.
15. State of Louisiana, Department of Social Services
16. MCI Telecommunications Corporation
17. State of New Hampshire, Department of Health and Human Services
18. State of Oklahoma Department of Human Services

19. Personal Communications Industry Association (PCIA)
20. State of Pennsylvania, Department of Public Welfare
21. RBOC/GTE/SNET Payphone Coalition
22. Skytel
23. Sprint Corporation
24. Telecommunications Resellers Association
25. State of Vermont, Agency of Human Services
26. State of Washington Department of Social and Health Services