

the carriers receiving payphone calls should be able to take advantage of each other's technological capabilities through the contracting process. To this end, we agree with the RBOCs and conclude that no standardized technology for tracking calls is necessary, and that IXCs may use the technology of their choice to meet their tracking obligations.³⁴¹

98. MCI and Sprint contend that each payphone should be required to generate 07 or 27 coding digits within the ANI for the carrier to track calls.³⁴² We agree. Currently under our rules, LECs are required to tariff federally originating line screening ("OLS") services that provide a discrete code to identify payphones that are maintained by non-LEC providers.³⁴³ We conclude that LECs should be required to provide similar coding digits for their own payphones.

99. AT&T states that it currently cannot track subscriber 800 calls because it receives only the ANI of the terminating telephone, and it estimates that a per-call tracking ability for subscriber 800 calls will take one year to achieve.³⁴⁴ Other commenters, such as the RBOCs and USTA, propose a one-year transition before carriers are required to track subscriber 800 calls. In view of the current difficulties in tracking such calls, we conclude that a transition is warranted for requiring carriers to track compensable calls. Therefore, we require carriers to provide for tracking of all compensable calls they receive from payphones, through any arrangement they choose, as soon as possible, but no later than one year from the effective date of the rules adopted in this proceeding.³⁴⁵ Until that date, carriers must pay flat-rate compensation, as specified below.³⁴⁶

100. We recognize that implementing a per-call tracking capability will require new investments for some carriers, particularly small carriers, but we conclude that the mandate of Section 276 that we ensure a fair "per call compensation plan" for "each and every completed intrastate and interstate call" requires these carriers to provide tracking for calls for which they receive revenue, even though they previously did not have to compensate the PSP for many of these calls. We conclude further that, by permitting carriers to contract out their per-call tracking responsibility, and by allowing a transition for tracking subscriber 800 calls, we have taken the appropriate steps to minimize the per-call tracking burden on small carriers. In addition, we conclude that, to parallel the obligation of the facilities-based carrier to pay compensation, the

³⁴¹ See RBOC Comments at 7.

³⁴² MCI Comments at 10; Sprint Comments at 16.

³⁴³ Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, CC Docket No. 91-35, Third Report and Order (rel. Apr. 5, 1996) at para. 34 ("OLS Order").

³⁴⁴ AT&T Comments at 14-15.

³⁴⁵ As discussed at para. 49, above, IXCs also have the option of avoiding the obligation to pay per-call compensation for subscriber 800 calls by blocking these calls from payphones.

³⁴⁶ See paras. 119-126, below.

underlying, facilities-based carrier has the burden of tracking calls to its reseller customers, and it may recover that cost from the reseller, if it chooses.

101. In the Notice, we tentatively concluded that carriers should be required to initiate an annual verification of their per-call tracking functions to be made available for FCC inspection upon request, to ensure that they are tracking all of the calls for which they are obligated to pay compensation. We require this verification for a one-year period, the 1998 calendar year, and delegate to the Chief, Common Carrier Bureau, the authority to establish the form and content, if necessary, of the verification documentation of these per-call tracking capabilities. We conclude that requiring carriers to maintain the appropriate records and certify as to the accuracy of both the data and the tracking methodology would facilitate the prompt and accurate payment of per-call compensation. We also conclude that PSPs should be allowed to inspect this certification, apart from any proprietary network data. In addition, we expect that the PSPs and carriers performing the tracking will work together to reconcile or explain any PSP data that are inconsistent with the annual certification. We decline to adopt, however, the suggestions of some commenters that we require a full-scale independent audit of a carrier's tracking capability, or mandate that the verification occur on a quarterly basis. A full-scale audit or a quarterly verification would impose too great of a burden on carriers in an area where we have encouraged them to use technology and other arrangements of their choice in implementing a per-call tracking capability.

4. Administration of Per-Call Compensation

a. The Notice

102. In the Notice, the Commission tentatively concluded that the direct-billing arrangement established for the payment of compensation from IXCs to PPOs should be used with the simple addition of requiring IXCs, and the intrastate interexchange operations of LECs, to send back to each PSP a statement indicating the number of toll-free and access code calls that each carrier has received from each of that PSP's payphones.³⁴⁷ The Commission also proposed to establish a requirement that the carrier responsible for paying compensation file annually a brief report with the Common Carrier Bureau listing the total amount of compensation paid, pursuant to the rules adopted in this proceeding, to PSPs for intrastate, interstate, and international calls; the number of compensable calls received by the carrier; and the number of payees.³⁴⁸ Such a requirement would help ensure that the carriers are tracking all of the calls for which they are obligated to pay compensation.³⁴⁹

³⁴⁷ Notice at paras. 32-33.

³⁴⁸ Id. at para. 33.

³⁴⁹ Id.

103. Because the compensation mechanism proposed in the Notice uses the ANI as the basis for tracking calls, the Commission tentatively concluded that minimal regulatory guidelines for the industry should be adopted regarding resolution of disputed ANIs in the per-call compensation context.³⁵⁰ Possible guidelines for which the Commission has sought comment are as follows: (1) intraLATA carrier provision of a list of payphone ANIs to IXC (e.g., each quarter); (2) verification of disputed ANIs by intraLATA carrier on request; (3) maintenance of verification data for at least 18 months after the close of a compensation period; (4) acceptance of compensation claims once an intraLATA carrier makes a positive identification of an installed payphone; (5) IXC denial of payment for compensation claims that are submitted by a PSP over one year after the end of the period in question.³⁵¹

b. Comments

104. APCC argues that the compensation payor should bear the costs associated with the administration of the compensation mechanism.³⁵² Various commenters argue that the Commission should use a direct-billing arrangement for the payment of compensation from IXCs to PSPs that is similar to the one adopted in the access code call compensation proceeding.³⁵³ MCI argues that under the Commission's proposed direct-billing arrangement, carriers should be required to report to the Commission only the total amount of compensation paid to all PSPs annually.³⁵⁴ Other commenters, notably the small IXCs, contend that the LECs are better equipped than the IXCs and intraLATA carriers to administer the payment of per-call compensation.³⁵⁵ Some of these commenters argue that PSP-administered compensation would be preferable to that handled by the carriers receiving the payphone calls.³⁵⁶ SDN argues that compensation should be based on a national formula and administered by the individual states.³⁵⁷

105. The RBOCs, Sprint, APCC, and Peoples support the Commission's tentative conclusion that minimal regulatory guidelines for the industry should be adopted regarding

³⁵⁰ Id. at para. 34.

³⁵¹ Id.

³⁵² APCC Reply at 25-26.

³⁵³ See, e.g., AT&T Comments at 16; GVNW Comments at 4.

³⁵⁴ MCI Comments at 11.

³⁵⁵ See, e.g., Cable & Wireless Comments at 11-12; CompTel Comments at 10-11; Excel Comments at 6-7; Frontier Comments at 12-14; WorldCom Comments at 17-18.

³⁵⁶ Cable & Wireless Comments at 13; Excel Comments at 7; MCI Comments at 19.

³⁵⁷ SDN Comments at 2.

resolution of disputed ANIs.³⁵⁸ They argue that LECs must be given an incentive to provide accurate and timely verification of ANIs for independently provided payphones.³⁵⁹ MCI argues that a dispute resolution process is not necessary if payphones are required to transmit certain information digits associated with payphone-originated calls.³⁶⁰

106. The commenters also make a number of suggestions on the possible dispute resolution guidelines articulated by the Commission in the Notice. GTE argues that mandatory procedures in this area are not necessary, because of the increased costs they will entail.³⁶¹ In addition, GTE argues that PSPs are able to file a complaint with the Commission when they have a dispute regarding compensation.³⁶² With regard to the list of payphone ANIs provided each quarter by the LECs, AT&T argues that it is the LEC that provides the payphone line that must provide the list, not the intraLATA carrier presubscribed to the payphone.³⁶³ GVNW argues that requiring LECs to furnish IXCs with a quarterly list of ANIs is too costly and burdensome, and technology-based solutions to tracking problems will eventually make this list unnecessary.³⁶⁴ AT&T requests that the Commission require the LECs to submit the ANI list to the IXCs within 30 days of the end of a compensation period.³⁶⁵

107. AT&T and Sprint contend that if the LEC does not provide verification of a disputed payphone ANI, carriers should not be required to pay compensation.³⁶⁶ AT&T further contends that LECs should be required to provide verification in a timely fashion.³⁶⁷ MICPA argues that carriers should not be able to use delays in LEC verification to delay the payment of compensation to PSPs.³⁶⁸ APCC argues that the Commission should impose a penalty for LECs

³⁵⁸ APCC Comments at 29; Peoples Comments at 26; RBOC Comments at 7; Sprint Comments at 15.

³⁵⁹ Id.

³⁶⁰ MCI Comments at 11.

³⁶¹ GTE Comments at 8-9.

³⁶² Id.

³⁶³ AT&T Comments at 17.

³⁶⁴ GVNW Comments at 3.

³⁶⁵ AT&T Comments at 17.

³⁶⁶ AT&T Comments at 17-18; Sprint Comments at 15.

³⁶⁷ AT&T Comments at 17.

³⁶⁸ MICPA Comments at 6.

that do not make a verification when requested.³⁶⁹ MCI suggests that if a payphone is disconnected, the LECs should be required to notify the compensation-paying carriers within 24 hours.³⁷⁰ NTCA contends that the possible guidelines outlined by the Commission would impose too great of a burden on small LECs.³⁷¹ MCI argues that the statute of limitations for the payment of compensation should not be tolled while ANIs are being disputed.³⁷² Two state associations of independent payphone providers argue that the Commission must prohibit the carriers from imposing undue burdens on PSPs before paying compensation.³⁷³

108. A number of independent payphone providers argue that the Commission should shorten the quarterly compensation period.³⁷⁴ Peoples and Telaleasing both suggest that carriers should pay compensation to PSPs on a monthly basis.³⁷⁵ MCI argues that it should not be required to pay compensation on claims more than three months old.³⁷⁶ Sprint argues that, to reduce the administrative burden and costs associated with the payment of compensation, carriers should be allowed to defer payment to PSPs until the PSP is due to receive a minimum of \$10 from that carrier.³⁷⁷ The RBOCs contend that the Commission should impose a penalty on carriers who demonstrate a wilful failure to pay compensation.³⁷⁸ APCC argues that PSPs should be allowed to charge interest for payments that have been due for more than 90 days.³⁷⁹

109. To facilitate the payment of compensation, CompTel argues that PSPs should register with a central resource all payphones for which carriers must pay compensation.³⁸⁰ It argues that this step would reduce administrative costs for all parties, avoid duplication of efforts, and negate the risk of multiple payments to separate parties claiming ownership of the

³⁶⁹ APCC Comments at 29.

³⁷⁰ MCI Comments at 12.

³⁷¹ NTCA Comments at 5-6.

³⁷² MCI Comments at 12.

³⁷³ IPTA Comments at 19; MICPA Comments at 6.

³⁷⁴ IPTA Comments at 21; MICPA Comments at 6; Peoples Comments at 26; Telaleasing Reply at 11.

³⁷⁵ Peoples Comments at 26; Telaleasing Reply at 11.

³⁷⁶ MCI Comments at 12.

³⁷⁷ Sprint Comments at 15.

³⁷⁸ RBOC Comments at 7.

³⁷⁹ APCC Comments at 30. See also Telaleasing Reply at 11.

³⁸⁰ CompTel Comments at 11. See also GTE Comments at 7-8; Oklahoma CC Comments at 3.

same payphone.³⁸¹ APCC argues that, to avoid additional payment disputes, each LEC bill for payphone service must affirmatively state that it is for payphone service.³⁸²

c. Discussion

110. We conclude that we should adopt a direct-billing arrangement between IXCs and PSPs, once tracking capabilities are in place, that would build on the arrangement established in the access code call compensation proceeding, with the addition of the requirement that these carriers must send back to each PSP a statement indicating the number of toll-free and access code calls that each carrier has received from each of that PSP's payphones.³⁸³ This arrangement places the burden of billing and collecting compensation on the parties who benefit the most from calls from payphones -- carriers and PSPs. For this reason, we conclude that it would not be appropriate to burden LECs with the administration of the per-call compensation mechanism, because their economic interest in the compensable calls is significantly less than that of the IXCs and PSPs. While PSPs could be efficient administrators of a compensation mechanism, we conclude that the carriers already responsible for tracking the calls and paying compensation for them have the greatest ability and incentive to establish the most efficient means of administering the payment of compensation. As with the tracking of calls, carrier-payors are free to use clearinghouses, similar to those that exist for access code call compensation, or to contract out the direct-billing arrangement associated with the payment of compensation. We decline to leave it to the individual states to administer compensation, as suggested by SDN,³⁸⁴ because we believe the parties can agree on a solution more efficient than the likely varying approaches adopted by each of the states.

111. We also proposed in the Notice to establish a requirement that the carrier responsible for paying compensation file each year a brief report with the Common Carrier Bureau listing the total compensation paid to PSPs for intrastate, interstate, and international calls; the number of compensable calls carried by the carrier; and the number of payees.³⁸⁵ Such a requirement would help ensure that the carriers are tracking all of the calls for which they are obligated to pay compensation. This requirement will apply to calendar year 1998, when tracking capabilities are in place and compensation is being paid on a per-call basis. While MCI argues that carriers should be required to report only the total amount of compensation to all PSPs annually, we conclude that more detailed reporting is necessary to monitor the per-call payphone compensation mechanism in its initial complete calendar year to help ensure that all IXCs are

³⁸¹ CompTel Comments at 11.

³⁸² APCC Comments at 30.

³⁸³ Notice at paras. 32-33.

³⁸⁴ See para. 104, above.

³⁸⁵ Notice at para. 33.

paying their respective compensation obligations. We conclude further that, once per-call compensation is routinely paid by IXCs, this reporting requirement will be terminated after the carriers have filed their reports for the 1998 calendar year.³⁸⁶ Carrier-payors should file their reports as soon as possible after the end of the calendar year, but no later than the end of the first quarter of the following year. To implement the reporting requirement, we delegate to the Chief, Common Carrier Bureau, the authority to establish the form and content, if necessary, of the annual report listing the total amount of compensation paid to PSPs, including the authority to extend or limit the scope of this report.

112. While we have elected to burden the LECs only insignificantly in creating the per-call compensation mechanism mandated by Section 276 of the Act, we conclude that we must establish minimal regulatory guidelines for the payphone industry regarding resolution of disputed ANIs to give LECs³⁸⁷ a greater incentive to provide accurate and timely verification of ANIs for independently provided payphones. While any party may file a complaint with the Commission about disputed ANIs, we conclude that the better practice is for LECs who maintain the list of ANIs to work with both carrier-payors and PSPs to resolve disputes more efficiently and quickly before lodging a complaint with the Commission. We also conclude that we should require that each LEC must submit to each carrier-payor on a quarterly basis a list of ANIs of all payphones in the LEC's service area (called the "COCOT list" in the access code call compensation proceeding).³⁸⁸ We disagree with GVNW's proposal that furnishing the quarterly list of ANIs is too costly and burdensome for LECs. As stated above, we have attempted to minimize the burdens on LECs, and no party has shown that there is currently an effective substitute for this list, despite the future promise of technological solutions.

113. In response to the various arguments made by commenters, we conclude that the following guidelines will facilitate the proper verification of payphone ANIs by LECs. First, LECs must provide a list of payphone ANIs to carrier-payors within 30 days of the close of each compensation period (i.e., each quarter). Second, LECs must provide verification of disputed ANIs on request, in a timely fashion. Such verification data must be maintained and available for at least 18 months after the close of a compensation period. Third, once a LEC makes a positive identification of an installed payphone, the carrier-payor must accept claims for that payphone's ANI until the LEC provides information, on a timely basis, that the payphone has been disconnected. Fourth, a LEC must respond to all requests for ANI verification, even if the verification is a negative response. Carrier-payors are not required to pay compensation once the LEC verifies that the particular ANI is not associated with a COCOT line for which

³⁸⁶ Id. at para. 33, n. 90.

³⁸⁷ As AT&T correctly points out, it is the LEC that provides the payphone line that must provide the list of ANIs, not the intraLATA carrier presubscribed to the payphone. AT&T Comments at 17.

³⁸⁸ Second Report and Order, 7 FCC Rcd at 3259. LECs are permitted to "recover their reasonable costs in generating and producing these lists through direct charges" to the carriers using them. Reconsideration Order, 8 FCC Rcd at 7157. "COCOT" is an acronym for customer-owned, coin-operated telephone.

compensation must be paid. Fifth, carrier-payors should be able to refuse payment for compensation claims that are submitted long after they were due. Carriers should not refuse payment on timeliness grounds, however, for ANIs submitted by a PSP up to one year after the end of the period in question. Further, the period for a PSP to bring a complaint to the Commission based on an ANI disputed by the carrier-payor will not begin to accrue until the carrier-payor issues a final denial of the claim.

114. We conclude that the guidelines, as outlined above, will facilitate the proper verification of payphones without imposing undue burdens on LECs, PSPs, or carrier-payors. In adopting these guidelines, we reject a number of proposals by commenters. First, in response to the argument of AT&T and Sprint that they not be required to pay compensation when a LEC fails to verify a particular ANI, we conclude that by directing LECs to respond to all requests for verification, carriers should be able to avoid payment only when the LEC issues a negative response to the verification inquiry. Second, we conclude that mandating a penalty on the LEC, as urged by APCC, for failing to respond to a verification request in a timely manner, is not necessary when the Commission's complaint process is available. Similarly, the complaint process is available to PSPs for instances of a carrier's wilful failure to pay compensation, as discussed by the RBOCs. We note that we will aggressively take action on such complaints. Third, we conclude that requiring a LEC to notify all carrier-payors of a payphone disconnection within 24 hours would be too great a burden to place on LECs, particularly when they are required to provide ANI lists only on a quarterly basis. Such notification, however, should occur on a basis as timely as possible. Fourth, we conclude that, for purposes of bringing a complaint before the Commission concerning a carrier's payment of payphone compensation, the time period for the statute of limitations does not begin to run until after the carrier-payor considers a compensation claim and issues a final denial of the claim. To conclude otherwise, as suggested by MCI, would permit a carrier-payor to delay a denial of the claim to preclude a PSP's complaint remedy before the Commission.

115. Various independent payphone providers argue that we should require compensation to be paid on a monthly basis. In the access code call compensation proceeding, we allowed the parties to determine how and when compensation would be paid, and quarterly compensation period was adopted by the industry through consensus.³⁸⁹ While the industry may decide upon a similar compensation period for per-call compensation, we leave the details associated with the administration of this compensation mechanism to the parties to determine for themselves through mutual agreement.³⁹⁰ We disagree, however, with MCI's proposal that carriers not be required to pay compensation claims that are more than three months old. Because a carrier-payor's administrative expenses are presumably reduced through the payment of compensation on a quarterly, as opposed to monthly, basis, we conclude that the reasonable

³⁸⁹ Second Report and Order, 7 FCC Rcd at 3259.

³⁹⁰ Id.

trade-off is that the carrier remains liable, as discussed above,³⁹¹ for compensation claims that are submitted within one year of the end of the compensation period in question. The parties may themselves revisit this issue if they elect a shorter compensation period. Sprint argues that a carrier should be allowed to defer payments to individual PSPs until the amount due aggregates to \$10 from that carrier to the particular PSP for all of its payphones. We agree and conclude that such a requirement would reduce the administrative expenses associated with the payment of compensation. If PSPs would like to charge interest on overdue payments from IXC's, as suggested by APCC,³⁹² they should negotiate such a provision in their compensation agreement with the particular carrier.

116. We agree with APCC that the payment of compensation would be facilitated and some disputes avoided if LECs were required to state affirmatively on their bills to PSPs that the bills are for payphone service. We conclude that LECs who have knowledge that a particular phone line is used for a payphone, must indicate on that payphone's monthly bill that the amount due is for payphone service. We also agree with CompTel's suggestion that the registration of all payphones with a central resource or clearinghouse would reduce administrative costs for all parties and would avoid duplication of efforts. We decline, however, to mandate the creation of a central resource or clearinghouse for compensation purposes, and believe that the parties themselves are better able to establish such a resource that would be directly connected to the payment of compensation.

5. Interim Compensation Mechanism

a. The Notice

117. The Commission sought comment on whether independent payphone providers should receive some measure of interim compensation, to be paid until the effective date of the final rules adopted in this proceeding, for the growing volume of dial-around calls originated from their payphones.³⁹³ Those who support such relief were instructed to comment on the appropriate interim compensation amount, how such an interim compensation mechanism could be structured, and the feasibility of implementing an interim plan when final rules are required to be in place in nine months.³⁹⁴ The Commission also requested comment on the legal basis for, and practical consequences of, making such interim compensation effective as of the release date of the Notice.³⁹⁵

³⁹¹ See para. 113, above.

³⁹² See para. 108, above.

³⁹³ Notice at para. 39.

³⁹⁴ Id. at para. 40.

³⁹⁵ Id.

b. Comments

118. Various independent payphone providers and BellSouth argue that the Commission should prescribe interim relief for independent payphone providers, retroactive to the date of the Notice and to be paid until the effective date of the rules adopted in this proceeding, for the growing volume of dial-around calls originated from their payphones.³⁹⁶ They argue that independent payphone providers, unlike the LECs, are uncompensated for the majority of coinless calls that use their payphones, and that the quantity of these calls is increasing.³⁹⁷ They also argue that delays for unforeseen reasons will likely impact the effective date of the final rules in this proceeding, which makes an interim relief mechanism a necessity for the survival of their businesses.³⁹⁸ These commenters suggest compensation amounts that range from \$.40 on a per-call basis³⁹⁹ to \$24,⁴⁰⁰ \$38.70,⁴⁰¹ and \$40⁴⁰² on a flat rate per phone basis. Intellicall suggests that the Commission prescribe interim relief through a "caller-pays" coin deposit approach.⁴⁰³ BellSouth also argues that LEC-owned payphones should be eligible to receive interim relief once they have removed all subsidies from their payphone operations.⁴⁰⁴ The RBOCs, GTE, AT&T, MCI, Sprint, and One Call all oppose granting interim relief to independent payphone providers.⁴⁰⁵ They argue that such relief would be unadministrable because it would require parties to participate in two payment systems, and interim relief would be without a statutory basis.⁴⁰⁶ AT&T states that it does not oppose interim relief for access code calls only.⁴⁰⁷

³⁹⁶ APCC Comments at 34-40; BellSouth Comments at 6-7; Communications Central Comments at 10-11; NJPA Comments at 9-10; Peoples Comments at 10-11; Telaleasing Reply at 8.

³⁹⁷ APCC Comments at 34-37; Peoples Comments at 10-11.

³⁹⁸ Id.

³⁹⁹ APCC Comments at 36-40; Communications Central Comments at 10-11.

⁴⁰⁰ NJPA Comments at 9-10.

⁴⁰¹ Peoples Comments at 10-11, accord BellSouth Reply at 2; Telaleasing Reply at 9.

⁴⁰² APCC Comments at 36-40.

⁴⁰³ Intellicall Comments at 36.

⁴⁰⁴ BellSouth Reply at 2.

⁴⁰⁵ AT&T Comments at 11; GTE Comments at 10; MCI Comments at 15; One Call Comments at 8; RBOC Comments at 19-20; Sprint Comments at 25.

⁴⁰⁶ Id.

⁴⁰⁷ AT&T Comments at 11.

c. Discussion

119. Because the IXCs required to pay compensation to PSPs are not required to track individual compensable calls until one year from the effective date of the rules adopted in this proceeding, we conclude that PSPs should be paid monthly compensation on a flat rate by IXCs with annual toll revenues in excess of \$100 million, beginning on the effective date of the rules adopted in this proceeding and ending on October 1, 1997.⁴⁰⁸ This flat-rate monthly compensation will apply proportionally to individual IXCs, based on their respective annual toll revenues. For reasons of administrative convenience of the parties, we conclude that we should model the interim mechanism adopted in this Report and Order on that set forth in the access code call compensation proceeding.⁴⁰⁹ In the access code compensation proceeding, CC Docket No. 91-35, we excused several carriers from the obligation to pay flat-rate compensation for originating access code calls, because they certified that they were not providers of "operator services," as defined by TOCSIA.⁴¹⁰ We note that Section 276's requirement that we ensure fair compensation for "each and every completed intrastate and interstate call," including access code calls, supersedes the compensation obligations established in CC Docket No. 91-35, including the waivers granted to AT&T and Sprint.⁴¹¹ Because Section 276 is the statutory authority for mandating per-call compensation for all compensable calls, including access code calls, the statutory exclusion in TOCSIA for those carriers that are not providers of "operator services" is no longer a basis for being excused from the obligation to pay either the total flat-rate compensation amount established in the instant proceeding, or a portion thereof.

120. In the Notice, we set forth the history of the flat-rate compensation mechanism we adopted for access code calls. TOCSIA had directed the Commission to determine whether independent payphone providers should receive compensation for originating interstate calls to non-presubscribed OSPs from their payphones.⁴¹² The Commission concluded in the Second Report and Order that a per-call compensation mechanism was preferable because

⁴⁰⁸ Unlike the per-call compensation mechanism adopted in this Report and Order, the interim flat-rate compensation obligation applies to both facilities-based IXCs and resellers that have respective toll revenues of \$100 million per year.

⁴⁰⁹ See generally Second Report and Order, Reconsideration Order, and Second Further Notice.

⁴¹⁰ Second Further Notice, 10 FCC Rcd at 11463.

⁴¹¹ Two IXCs, AT&T and Sprint, certified to the Commission that they were able to pay compensation on a per-call basis and petitioned the Commission for approval to pay compensation on that basis. See Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, Memorandum Opinion and Order, 10 FCC Rcd 1590 (Com. Car. Bur. 1994) ("AT&T Waiver"); Memorandum Opinion and Order, 10 FCC Rcd 5490 (Com. Car. Bur. 1995) ("Sprint Waiver"). They argued that a per-call compensation mechanism would better serve the Commission's objective to implement a more cost-based approach to compensation for calls to non-presubscribed OSPs. The Common Carrier Bureau agreed and granted AT&T and Sprint the right to pay compensation in the amount of \$.25 per call in lieu of paying per-phone compensation to PPOs. Id.

⁴¹² 47 U.S.C. § 226(e)(2).

it would create greater incentives for PPOs to place their payphones in locations that generate the most traffic. The Commission concluded, however, that it was not technically feasible to implement such a mechanism at that time.⁴¹³ Instead, the Commission adopted flat-rate compensation in the amount of \$6 per phone per month (based on average of 15 access code calls at a rate of \$.40 per call), on an interim basis.

121. When we adopted a compensation mechanism for interstate access code calls, the Commission concluded that, because they did not involve use of a "carrier-specific access code"⁴¹⁴ and were routed directly to an end user, subscriber 800 calls were not within the class of calls for which TOCSIA directed the Commission to consider compensation.⁴¹⁵ The Commission, therefore, limited compensation to interstate "access code calls."⁴¹⁶ In July 1992, in response to a petition for reconsideration by the APCC, the Commission affirmed its conclusion that subscriber 800 calls were not within the Commission's definition of interstate "access code calls" for which compensation should be paid.⁴¹⁷ In 1992, after the Commission affirmed its exclusion of subscriber 800 calls from the class of compensable access code calls, the Florida Pay Telephone Association ("FPTA") sought judicial review in the United States Court of Appeals for the District of Columbia Circuit of this aspect of the First Report and Order and the Subscriber 800 Reconsideration Order. In its Florida Payphone decision,⁴¹⁸ the Court found no reason to distinguish between the routing of access code calls and subscriber 800 calls. Therefore, it reversed and remanded the case to the Commission to "consider the need to prescribe compensation for subscriber 800 calls routed to providers of operator services that are other than the presubscribed provider of operator services."⁴¹⁹

122. We first re-examine the basis for setting the \$.40 per-call compensation amount that was aggregated to a flat rate of \$6 per month. In the 1992 Second Report and

⁴¹³ Second Report and Order, 7 FCC Rcd at 3252-53.

⁴¹⁴ The Second Report and Order defines an "access code" as a "sequence of numbers that, when dialed, connects the caller to the OSP associated with that sequence, as opposed to the OSP presubscribed to the originating line. Access codes include 10XXX in equal access areas and "950" Feature Group B dialing (950-0XXX or 950-1XXX) anywhere, where the three-digit XXX denotes a particular IXC. Some OSPs use an 800 number as an access code." Id. at 3251 n.1.

⁴¹⁵ First Report and Order, 6 FCC Rcd at 4746 (citing S. Rep. No. 439, 101st Cong., 2d Sess. 19 (1990), reprinted in 1990 U.S. Code Cong. & Ad. News 1577, 1582). "Subscriber 800 calls" consist of calls to an 800 number assigned to a particular subscriber. See Florida Payphone, 54 F.3d at 859.

⁴¹⁶ Id.

⁴¹⁷ Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, Order on Reconsideration, 7 FCC Rcd 4355, 4367 (1992) ("Subscriber 800 Reconsideration Order").

⁴¹⁸ Florida Payphone, 54 F.3d at 857.

⁴¹⁹ Id.

Order, the Commission identified three reasonable compensation approaches that established a range of reasonable compensation rates. The three approaches were: (1) as a surrogate for independent payphone provider costs, access charge compensation that a LEC receives for its regulated provision of payphones; (2) as a measure of value to OSPs of receiving access code calls, charges for a transfer by a LEC live operator to an OSP of the caller's choice ("O-transfer service charges"); and (3) AT&T's federally regulated operator service rates on calls made from payphones presubscribed to AT&T.⁴²⁰ We conclude that these three approaches, which are based on a different standard than that in Section 276, are inapplicable for determining interim compensation in the instant proceeding. Our focus in the instant proceeding is to let the market set the appropriate compensation amount. As discussed above,⁴²¹ for the limited purpose of calculating compensation for PSPs on a flat-rate basis until per-call compensation becomes mandatory we will use a rate of \$.35 per call, which is the rate in the majority of states that have allowed the market to determine the appropriate local coin rate.

123. We next re-examine the average number of access code calls originated by a payphone per month. In 1992, the Commission found that the average was 15 calls. As summarized below, data on the record in the instant proceeding indicate that the average number of access code calls per month is now considerably higher. In addition, similar data show the volume of subscriber 800 calls generated by the average payphone.

124. Various independent payphone providers and the RBOCs submitted data on the average number of access code and subscriber 800 calls originated respectively by their payphones. Together, these data cover payphones located in geographically diverse areas across the country. Peoples, the largest independent provider, states that each of its payphones originates, on average, 43 access code calls and 86 subscriber 800 calls per month (total of 129 compensable calls).⁴²² Communications Central, another large independent payphone provider, states that each of its payphones originates an average of 49.5 access code calls and 79.7 subscriber 800 calls per month (total of 130 compensable calls).⁴²³ Telaleasing states that each of its payphones originates an average of 37 access code calls and 87 subscriber 800 calls per month (total of 124 compensable calls).⁴²⁴ APCC states that it surveyed approximately 100,000 payphones owned by 20 diverse providers and found that, in a three-month period in 1996, each payphone originated an average of 40 access code calls and 100 subscriber 800 calls per month

⁴²⁰ See Second Report and Order, 7 FCC Rcd at 3255-57.

⁴²¹ See para. 56, above.

⁴²² Peoples Comments at 9-10. Peoples' estimates are derived from the total number of calls originated by all of its payphones over a six-month period spanning late 1995 to early 1996. Id.

⁴²³ Communications Central Comments at Attachment B. Communications Central's estimates are derived from the total number of calls originated by all of its payphones over a one-month period in 1996. Id.

⁴²⁴ Telaleasing Reply at 8. Telaleasing's estimates are derived from the total number of calls originated by all of its payphones over a one-month period in 1996. Id.

(total of 140 compensable calls).⁴²⁵ Data provided by the RBOCs show that the payphones maintained by five of the seven RBOCs originate, on average, 52 access code calls and 80 subscriber 800 calls per payphone per month (total of 132 compensable calls).⁴²⁶

125. The data on the record from the five PSP sources noted in the preceding paragraph yield similar average monthly compensable call volumes. Based on the call volume data provided by the PSPs, we conclude that, for purposes of calculating flat-rate compensation, that the average payphone originates a combined total of 131 access code calls and subscriber 800 calls per month.⁴²⁷ When 131 calls per month is multiplied by the \$.35 compensation amount, the monthly flat-rate compensation amount is \$45.85. We conclude that this \$45.85 flat-rate amount must be paid by carriers, proportionally to their annual toll revenues, to PSPs. This flat-rate obligation applies to access code calls and subscriber 800 calls originated on or after the effective date of the rules adopted in this proceeding.⁴²⁸ PSPs that are affiliated with LECs will not be eligible for this interim compensation until the first day of the month following their reclassification and transfer of payment equipment along with the termination of subsidies, as discussed below.⁴²⁹

126. We decline to require that per-call compensation be paid retroactive to the date of release of the Notice.⁴³⁰ We conclude that the rules adopted in this Report and Order, including the requirement that interim flat-rate compensation be paid until per-call tracking capabilities are in place, provides compensation to PSPs as soon as practicable. For the same reasons discussed elsewhere in this Report and Order,⁴³¹ we also reject Intellicall's argument that interim compensation be mandated through a "caller pays" coin-deposit approach.

⁴²⁵ APCC Comments at 5-6.

⁴²⁶ See Ex Parte Letter of Michael Kellogg, Counsel, RBOCs, to William Caton, Acting Secretary, FCC (August 23, 1996).

⁴²⁷ The PSP data tend to show that one third of the total amount of compensable calls are access code calls, while two thirds are subscriber 800 calls.

⁴²⁸ We conclude that on the effective date of the interim compensation set forth in this Order, the \$6 per payphone per month compensation for access code calls, as set forth in CC Docket No. 91-35, is terminated. See para. 119, above.

⁴²⁹ See generally, Part B of this Report and Order.

⁴³⁰ The independent payphone providers refer to this retroactive compensation as "interim relief." See para. 117, above. The interim flat-rate compensation that we mandate in this Report and Order, pursuant to Section 276(b)(1)(A), is for the first year after the effective date of the rules adopted in this proceeding. The term "interim" refers to the one-year period before compensation is to be paid on a per-call basis.

⁴³¹ See para. 85, above.

B. RECLASSIFICATION OF INCUMBENT LEC-OWNED PAYPHONES

127. In the foregoing Part, we establish rules and guidelines to ensure that PSPs are fairly compensated for calls originating at their payphones. For certain PSPs -- those who are LECs -- the new compensation arrangement can be implemented only upon the discontinuance of the regulatory system under which they now recover their costs of providing payphone service. In this Part, we describe the necessary steps for the LECs' transition to the new compensation framework, and set a schedule for the LECs' implementing actions.

128. Section 276(b)(1)(B) directs the Commission to "discontinue the intrastate and interstate carrier access charge payphone service elements and payments in effect on such date of enactment, and all intrastate and interstate payphone subsidies from basic exchange and exchange access revenues, in favor of a [per-call] compensation plan[.]"⁴³² Currently, incumbent LEC payphones, classified as part of the network, recover their costs from Carrier Common Line (CCL) charges assessed on those carriers that connect with the incumbent LEC. In order to comply with Section 276(b)(1)(B) by removing payphone costs from the CCL charge and all intrastate and interstate payphone subsidies from basic exchange and exchange access revenues, the Notice sought comment on: (1) the prospective classification of incumbent LEC payphones as Customer Premises Equipment (CPE); (2) the transfer of incumbent LEC payphone equipment assets from regulated to nonregulated status; (3) the termination of access charge compensation and all other subsidies for incumbent LEC payphones; and (4) the classification of AT&T payphones.

1. Classification of LEC Payphones as CPE**a. The Notice**

129. In the Notice, we tentatively concluded that incumbent LEC payphones should be treated as nonregulated, detariffed CPE.⁴³³ We also proposed that incumbent LECs, whether or not they provide payphone service, must offer individual central office coin transmission services to PSPs under a nondiscriminatory, public, tariffed offering.⁴³⁴ To this end, we sought comment on both the central office coin services that must be made available by incumbent LECs to the PSPs to achieve this goal, and the type of services and the technological requirements necessary to allow independent payphone providers to use payphones that are equivalent to those payphones currently used by LECs. In addition, we sought comment on any industry standards that may need to be developed with respect to potential claims regarding any

⁴³² 47 U.S.C. § 276(b)(1)(B).

⁴³³ Notice at para. 42.

⁴³⁴ Id. at para. 45.

demonstrable network reliability concerns that may result from PSPs connecting their payphones that make use of central office coin transmission services.⁴³⁵

130. Because the incumbent LECs have used central office coin services in the past, but have not made these services available to independent payphone providers for use in their provision of payphone services, we sought comment on whether incumbent LEC provision of coin transmission services on an unbundled basis should be treated as a new service under our price cap rules.⁴³⁶ Because incumbent LECs may have an incentive to charge their competitors unreasonably high prices for these services, we tentatively concluded that the new services test is necessary to ensure that central office coin services are priced reasonably.⁴³⁷ Additionally, we sought comment on whether incumbent LECs not currently subject to price cap regulation should be required to submit cost support for their central office coin services, pursuant to Sections 61.38, 61.39, and 61.50(i) of our rules.⁴³⁸

131. We also tentatively concluded that Section 68.2(a)(1) of our rules should be amended to facilitate registration of both instrument-implemented and central-office-implemented payphones and sought comment on this tentative conclusion.⁴³⁹ In addition, we tentatively concluded that the demarcation point for all new LEC payphones should be consistent with the minimum point of entry standards for other wireline services and, in addition, tentatively concluded that the demarcation point should be the same one as incumbent LECs use for independent payphone providers today.⁴⁴⁰ Finally, we sought comment on what services (such as fraud protection, installation and maintenance services, joint marketing opportunities, per-call tracking capabilities, and call validation services) other than those associated with central office coin transmission services provided to their own payphones by incumbent LECs, particularly the BOCs, should be unbundled under the rules to be adopted in this proceeding and made available to PSPs.⁴⁴¹

⁴³⁵ Id.

⁴³⁶ Id. at para. 46.

⁴³⁷ Id.

⁴³⁸ Id.

⁴³⁹ Id. at para. 47.

⁴⁴⁰ Id.

⁴⁴¹ Id. at para. 48.

b. Comments**i. CPE Deregulation**

132. Most of the parties support reclassifying payphone equipment as CPE and generally assert that deregulating payphone equipment is important in establishing a competitive payphone market.⁴⁴² Ohio PUC, on the other hand, argues that payphones should be detariffed but not deregulated and a charge should be imputed for LEC payphones.⁴⁴³ Florida PSC supports deregulating payphones because needed functionalities are available either from the set or the network and because deregulation will ensure that payphone service is not subsidized. Florida PSC argues, however, that smaller LECs should be given a choice whether to deregulate CPE, because separating costs is burdensome.⁴⁴⁴ Ameritech contends that payphone deregulation should apply to all LECs, not just incumbent LECs, because Section 276 (b)(1)(B) is not limited in applicability.⁴⁴⁵

133. The RBOCs argue that there should be a twelve-month transition period to nonregulated status for payphone CPE.⁴⁴⁶ Others argue there should be no transition period, or a shorter period than twelve months, for example, 90 days after release of an order.⁴⁴⁷ BellSouth argues that it should be able to conduct deregulated operations immediately on the release of this Report and Order.⁴⁴⁸

134. GPCA argues that a separate subsidiary should be required for BOCs that merge.⁴⁴⁹ Ohio PUC argues that Tier 1 LECs should provide payphones through a separate subsidiary if payphone equipment is deregulated.⁴⁵⁰ Most of the parties, however, do not argue

⁴⁴² AT&T Comments at 18; USTA Comments at 5; Ameritech Comments at 13; NJPA Comments at 10; SCPA Comments at 2; Sprint Comments at 25; CPA Comments at 10-11; MCI Comments at 15; RBOC Comments at 23; GPCA Comments at 5 [Note: with regard to payphone reclassification and nonstructural safeguards, APCC relies on and agrees with GPCA comments. See APCC Comments at 41; APCC Reply at 35]; California PUC Comments at 14; USTA Comments at 5; GTE Reply Comments at 8-10.

⁴⁴³ Ohio PUC Comments at 9-10 .

⁴⁴⁴ Florida PSC Comments at 4-5. Florida recommends that LECs with less than 100,000 access lines be allowed to choose whether to deregulate CPE. Id.

⁴⁴⁵ Ameritech Comments at 3-4 .

⁴⁴⁶ RBOC Comments at 30.

⁴⁴⁷ International Telecard Comments at 26-27; GPCA Reply at 15.

⁴⁴⁸ BellSouth Reply at 8.

⁴⁴⁹ GPCA Comments at 4.

⁴⁵⁰ Ohio PUC Comments at 13.

that a separate subsidiary is required⁴⁵¹ and Florida PSC argues that it should be the option of the LEC.⁴⁵² The RBOCs argue that the Commission's accounting safeguards and price cap rules are sufficient to deter cross-subsidization.⁴⁵³ They also argue that a separate subsidiary requirement is against the plain language of the 1996 Act and that such a requirement was dropped from the Senate version.⁴⁵⁴ PacTel argues that the nonstructural safeguards of Computer III were expressly mandated by Section 276.⁴⁵⁵

ii. Unbundling of Payphone Services

135. The RBOCs and PacTel argue that the Commission should not require more unbundling than is necessary to ensure that PSPs and LECs are able to use the same payphones - standard central-office coin line and the alternate (smart set) access line. They also argue that the unbundling criteria used in Computer III should apply to any further unbundling.⁴⁵⁶ California PUC and GTE state that access line and central office transmission services should be tariffed.⁴⁵⁷ Ameritech states that it will offer tariffed coin line service, centralized office based coin rating, and signaling functionality, or payphone line (like business line).⁴⁵⁸ GPCA argues that coin line and alternate access line do not provide all the needed capabilities.⁴⁵⁹ MCI argues that the BOCs should provide all functionalities used in their delivery of payphone services on a nondiscriminatory basis, including coin transmission services and other associated services.⁴⁶⁰

136. GVNW argues that the interconnection rules must be flexible for small LECs because small LECs do not implement payphone services in the same way as do the BOCs, and that small LECs should only have to provide payphone services to others that they are

⁴⁵¹ Florida PSC at 6; NJPA Comments at 11-12; SW Bell Reply at 5; USTA Comments at 5; PacTel Reply Comments at 2-5; Sprint Comments at 25.

⁴⁵² Florida PSC Comments at 6.

⁴⁵³ RBOC Reply at 21-23.

⁴⁵⁴ RBOC Comments at 40, n.53.

⁴⁵⁵ PacTel Reply at 2-5.

⁴⁵⁶ PacTel Reply at 2-5; RBOC Reply at 21-23.

⁴⁵⁷ California PUC Comments at 14; GTE Reply at 8-10.

⁴⁵⁸ Ameritech Comments at 16-17.

⁴⁵⁹ GPCA Reply at 3.

⁴⁶⁰ MCI Comments at 16.

providing to themselves.⁴⁶¹ AT&T states that competitive access providers (CAPs) should not have to offer central office coin service unless they provide payphone service themselves.⁴⁶² NCTA and OPASTCO argue that LECs should not have to provide a specific set of payphone services, such as central coin services, that they are not already equipped to provide because of the significant investment required to upgrade switches.⁴⁶³ Florida PSC states that all LECs in Florida tariff payphone blocking, screening, and intercept services.⁴⁶⁴

137. AT&T argues that LECs should be required to offer under tariff all functions used in their delivery of payphone services, including: all central office intelligence, answer supervision, collect refund, far end disconnect, call blocking and screening options, access to some monitoring and disaggregation routines, and 911 services.⁴⁶⁵ GPCA argues that all network functions must be unbundled and charges should be imputed for inputs from regulated services. GPCA also argues that the following functions should be unbundled: answer supervision, the intercept signal (indicating that the call cannot be completed as dialed), coin collect and return functionality, and rate schedule functionality. In addition, GPCA asserts that these functionalities are necessary to provide fraud protection and to ensure that cross subsidies are eliminated.⁴⁶⁶ CPA supports GPCA's recommended list of functionalities.⁴⁶⁷

138. AT&T contends that LECs must offer public access line services for resale at rates that reflect the economic cost of providing the services through TSLRIC-based prices,⁴⁶⁸ while SW Bell argues that Section 252 pricing should not apply to Section 276 payphones services.⁴⁶⁹ California PUC asserts that LECs should unbundle and provide tariffed payphone services and that new services should be justified with cost studies.⁴⁷⁰ CPA argues that whatever rates are established for payphone services should be imputed to the LEC payphone operations.⁴⁷¹

⁴⁶¹ GVNW Comments at 5-7.

⁴⁶² AT&T Comments at n. 37; AT&T Reply at n.71. See also NCTA Comments at 5.

⁴⁶³ NCTA Reply at 4-6; OPASTCO Reply at 2-3.

⁴⁶⁴ Florida PSC Comments at 7.

⁴⁶⁵ AT&T Comments at 19, n. 36 & at 22, n. 42-43.

⁴⁶⁶ GPCA Reply at 1-7.

⁴⁶⁷ CPA Reply Comments at 15-16.

⁴⁶⁸ AT&T Comments at 19, n. 36.

⁴⁶⁹ SW Bell Reply at 7.

⁴⁷⁰ California PUC Comments at 16.

⁴⁷¹ CPA Reply at 15-16.

The RBOCs, USTA and GTE argue that unbundled payphone services should be tariffed at the state level and therefore not subject to the new services test under the Commission's rules.⁴⁷²

iii. Other Payphone Services

139. GPCA asserts that other services should be available on an equal access basis, including fraud protection, special number assignments, installation and maintenance, billing and collection, validation, per call tracking, and joint marketing. GPCA also argues that if operator services are available in the LEC network, and commissions are paid to the LEC, the commissions should be available to independent payphone providers.⁴⁷³ MCI contends that fraud protection, installation and maintenance, per-call tracking, and call validation services should be available to independent payphone providers.⁴⁷⁴ The RBOCs and Sprint argue that these additional services are not necessary for PSPs to provide service.⁴⁷⁵

iv. Registration and Demarcation Point for Payphones

140. The RBOCs, MCI, and Oklahoma CC assert that Section 68.2(a)(1) of our rules should be amended to include registration of both instrument-implemented and central-office-implemented payphones.⁴⁷⁶ The RBOCs argue that the embedded, installed base should be grandfathered but new sets and refurbished sets (with added functionality) should have to be registered.⁴⁷⁷ GPCA does not oppose grandfathering the installed base of payphones from Part 68 registration, but argues that refurbished payphones should not be grandfathered.⁴⁷⁸ The RBOCs contend that standards for interconnection should be established by revising Section 68.3 of our rules to include specifications for central-office-implemented payphones.⁴⁷⁹ Anchorage Telephone suggests that a technical committee should be established to develop interconnection standards.⁴⁸⁰

⁴⁷² RBOC Comments at 25; USTA Reply at 7; GTE Reply at 9.

⁴⁷³ GPCA Reply at 7-14.

⁴⁷⁴ MCI Comments at 15-16. MCI contends that a "cuckoo" tone (which identifies the phone to an operator as a payphone) should be available for fraud protection, rather than specialized phone numbers used for LEC phones today. *Id.* at 16.

⁴⁷⁵ RBOC Comments at 25; Sprint Comments at 26.

⁴⁷⁶ RBOC Comments at 26; MCI Comments at 16; Oklahoma CC Comments at 3.

⁴⁷⁷ RBOC Comments at 26.

⁴⁷⁸ GPCA Reply at 7.

⁴⁷⁹ RBOC Comments at 26, n.28.

⁴⁸⁰ Anchorage Telephone Comments at 1.

141. AT&T, MCI, and Sprint contend that the demarcation point for LEC payphones should be the same as it is today for independent payphone providers.⁴⁸¹ GPCA argues that the demarcation point should be applied in a nondiscriminatory manner to all payphones and that LECs should be required to set demarcation points for different types of sites if the points will vary. GPCA also asserts that embedded inside wire should be available to all providers on an equal basis and that the demarcation point for embedded and new inside wire should be the same.⁴⁸² The RBOCs argue that the demarcation point should be treated flexibly.⁴⁸³ In contrast, CPA argues that the demarcation point should not be flexible and should be at the minimum point of entry.⁴⁸⁴

c. Discussion

i. CPE Deregulation

142. We conclude that to best effectuate the 1996 Act's mandate that access charge payphone service elements and payphone subsidies from basic exchange and exchange access revenues be discontinued, incumbent LEC payphones should be treated as deregulated and detariffed CPE. The Commission determined in Computer II that CPE should be deregulated and detariffed to ensure that the costs associated with regulated services are separated from the competitive provision of the equipment used in conjunction with those services.⁴⁸⁵ The Commission concluded that CPE should be unbundled from its underlying transmission service in order to prevent improper cross-subsidization.⁴⁸⁶ Consistent with this prior finding, we conclude that LEC payphones must be treated as unregulated, detariffed CPE in order to ensure that no subsidies are provided from basic exchange and exchange access revenues or access charge payphone service elements as required by the Act.

143. In Computer II, the Commission specifically excluded coin-operated payphones from the definition of CPE.⁴⁸⁷ The Commission found that, unlike other CPE, which

⁴⁸¹ AT&T Comments at 18 n.34; MCI Comments at 16; Sprint Comments at 25-26.

⁴⁸² GPCA Comments at 7, 10-11.

⁴⁸³ RBOC Comments at 27.

⁴⁸⁴ CPA Comments at 10-11.

⁴⁸⁵ Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), 77 FCC 2d 384, 445 (1980) (Computer II), modified on recon., 84 FCC 2d 50 (1981), modified on further recon., 88 FCC 2d 512 (1981), aff'd sub nom. Computer and Communications Industry Ass'n v. FCC, 693 F.2d 198 (D.C. Cir. 1982), cert denied, 462 U.S. 938 (1983).

⁴⁸⁶ Computer II, 77 FCC 2d at 466-7, 474.

⁴⁸⁷ Id. at 447, n. 57.

could be unbundled from basic exchange service, coin-operated payphones were still integrated with the LECs' network facilities and concluded that payphones owned by LECs and AT&T should remain part of regulated basic communications service.⁴⁸⁸ The Commission later extended this determination to LEC coinless payphones.⁴⁸⁹ Thereafter, the Commission, in the Coin Registration Order, recognized the right of nonLEC payphone providers to interconnect smart payphones to the interstate public switched network.⁴⁹⁰ Following this order allowing the interconnection of smart payphones, independent payphone providers began to compete with the LECs. Currently, there are approximately 1.5 million LEC payphones and approximately 350,000 competitively provided payphones.⁴⁹¹ We conclude that the market for payphone CPE is competitive and that it is no longer necessary to treat payphone CPE differently by integrating LEC payphones with the underlying service. Moreover, we conclude that the transient public that uses payphones will best be served by the wide availability of competitive payphones services. We also conclude that it is not in the public interest to continue to treat LEC payphones as regulated equipment, while treating independent payphones as CPE, and that deregulation of payphones is consistent with the procompetitive approach set forth in Section 276.⁴⁹² We have recently deregulated inmate payphones⁴⁹³ and most of the parties in this proceeding agree that incumbent LEC payphones should also be deregulated and detariffed.⁴⁹⁴ Accordingly, we conclude that incumbent LEC payphones must be deregulated, detariffed and classified as CPE for regulatory purposes.⁴⁹⁵

⁴⁸⁸ Id.

⁴⁸⁹ Petition for Declaratory Ruling of Tonka Tools, Inc. and Southern Merchandise Corp. Regarding American Telephone and Telegraph Company Provision of Coinless Pay Telephones, 58 RR2d 903, 910 (1985) (Tonka Tools).

⁴⁹⁰ See Registration of Coin Operated Telephones, Memorandum Opinion and Order, 49 Fed. Reg. 27763 (1984) (Coin Registration Order).

⁴⁹¹ See para. 9, above.

⁴⁹² 47 U.S.C. § 276(b)(1)

⁴⁹³ Petition for Declaratory Ruling by the Inmate Calling Services Providers Task Force, Declaratory Ruling, 11 FCC Rcd 7362 (1996) (Inmate Services Order); Petitions for Waiver and Partial Reconsideration or Stay of Inmate-Only Payphones Declaratory Ruling, Order, 11 FCC Rcd 8013 (Com. Car. Bur. 1996) (Inmate Services Waiver Order).

⁴⁹⁴ We discuss at paras. 159, below, the equipment to be deregulated and detariffed and the method of valuation.

⁴⁹⁵ See also para. 190, below, regarding AT&T payphones. Section 255 of the 1996 Act requires manufacturers of telecommunications equipment and CPE, and telecommunications service providers, to ensure that their equipment and services are accessible to persons with disabilities, if readily achievable. 47 U.S.C. § 255(b)-(c). If such access is not readily achievable, the manufacturer or service provider must ensure that the equipment or service is compatible with existing peripheral devices or specialized CPE commonly used by persons with disabilities, if readily achievable. 47 U.S.C. § 255(d). The implementation of Section 255 will be addressed in a separate proceeding.

144. We decline to limit the deregulation of payphones to those owned by larger LECs, as suggested by the Florida PSC, because Section 276 is not limited in application to larger LECs. Moreover, we conclude that the benefits we have observed in CPE deregulation apply to payphones and that these benefits apply regardless of the size of the LEC.

145. We decline to require the BOCs or other incumbent LECs to provide their payphone CPE through a structurally separated affiliate.⁴⁹⁶ We discuss below the nonstructural safeguards we require for BOCs to provide payphone CPE on an integrated basis and decline to require, as proposed by some commenters, that other incumbent LECs be required to provide CPE through structurally separate affiliates. Section 276 does not require LEC or BOC provision of payphone service through a separate subsidiary. Although the 1996 Act does not specifically prohibit the Commission from imposing a separation requirement, it requires the establishment of nonstructural safeguards for the BOCs, a clear statement that nonstructural safeguards, rather than structural separation, are mandated.⁴⁹⁷ Moreover, Section 276 does not require even nonstructural safeguards for other LECs. Other sections of the 1996 Act, including Section 272, BOC provision of interLATA services, and Section 274, BOC provision of electronic publishing, specifically require structural separation. In addition, in the BOC CPE Relief Order we removed the structural separation requirements established in Computer II for BOC provision of CPE because we concluded that nonstructural safeguards were sufficient to deter cross-subsidization and discrimination and the high costs of mandatory structural separation were not in the public interest.⁴⁹⁸ This conclusion is also applicable in the context of BOC provision of payphone CPE. We also note that the Computer II structural separation requirements were not applied to the provision of CPE by other LECs.⁴⁹⁹ Finally, we note that nonstructural accounting safeguards applicable to the BOCs' provision of payphone service are being established in a separate proceeding.⁵⁰⁰ Accordingly, we do not impose structural separation requirements for the provision of payphones by the BOCs or other LECs. As we did in the BOC CPE Relief Order, we preempt states' ability to impose structural separation requirements on the payphone operations of the BOCs or other LECs.⁵⁰¹ We do not, however, preempt the

⁴⁹⁶ See paras. 192-207, below, for a discussion of the statutory mandate that we "prescribe a set of nonstructural safeguards for [BOC] payphone service ... which safeguards shall, at a minimum, include the nonstructural safeguards equal to those adopted in the Computer Inquiry-III ... proceeding." 47 U.S.C. § 276(b)(1)(C).

⁴⁹⁷ See 47 U.S.C. § 276(b)(1)(C).

⁴⁹⁸ Furnishing of Customer Premises Equipment by the Bell Operating Telephone Companies and the Independent Telephone Companies, 2 FCC Rcd 143 (1987)(BOC CPE Relief Order).

⁴⁹⁹ See Computer II, 77 FCC 2d at 469-70. Structural separation requirements initially imposed on GTE were removed on reconsideration. See 84 FCC 2d at 72-75.

⁵⁰⁰ See Implementation of the Telecommunications Act of 1996: Accounting Safeguards under the Telecommunications Act of 1996, Notice of Proposed Rulemaking, 11 FCC Rcd 9054 (1996) ("Accounting Safeguards NPRM").

⁵⁰¹ BOC CPE Relief Order, 2 FCC Rcd at 143. See 47 U.S.C. § 276(c).

states from imposing on nonBOC LECs nonstructural safeguards that are no more stringent than those we impose on the BOCs.

ii. Unbundling of Payphone Services

146. We conclude, pursuant to Computer II, Section 201, 202, and 276 of the Act, and previous CPE decisions, that incumbent LECs must offer individual central office coin transmission services to PSPs under nondiscriminatory, public, tariffed offerings if the LECs provide those services for their own operations.⁵⁰² Under Computer II, all carriers must unbundle basic transmission services from CPE.⁵⁰³ Moreover, Section 202 of the Act prohibits a carrier from discriminating unreasonably in its provision of basic service.⁵⁰⁴ We conclude that incumbent LECs must provide coin service so competitive payphone providers can offer payphone services using either instrument-implemented "smart payphones" or "dumb" payphones that utilize central office coin services, or some combination of the two in a manner similar to the LECs. Because the incumbent LECs have used central office coin services in the past, but have not made these services available to independent payphone providers for use in their provision of payphone services, we require that incumbent LEC provision of coin transmission services on an unbundled basis be treated as a new service under the Commission's price cap rules. Because incumbent LECs may have an incentive to charge their competitors unreasonably high prices for these services, we conclude that the new services test is necessary to ensure that central office coin services are priced reasonably. Incumbent LECs not currently subject to price cap regulation must submit cost support for their central office coin services, pursuant to Sections 61.38, 61.39, or 61.50(i) of the Commission's rules.⁵⁰⁵ Incumbent LECs must file tariffs with the Commission for these services no later than January 15, 1997. To the extent that this requirement precludes the BOCs from complying with the Computer II, Computer III, and ONA network information disclosure requirements, we waive the notice period in order to ensure that these services are provided on a timely basis consistent with the other deregulatory requirements of this order.⁵⁰⁶

⁵⁰² Computer II, 77 FCC 2d at 387-9; 47 U.S.C. §§ 201, 202, and 276; BOC CPE Relief Order, 2 FCC Rcd at 143.

⁵⁰³ See 47 C.F.R. § 64.702(e).

⁵⁰⁴ See 47 U.S.C. § 202(a).

⁵⁰⁵ 47 C.F.R. §§ 61.38, 61.39, 61.50(i).

⁵⁰⁶ Network disclosure requirements are discussed in Computer II, 2 FCC Rcd at 150-151; 3 FCC at 23-24; and Computer III at 3 FCC Rcd at 1164-65. The Commission may waive a rule for good cause shown, in whole or in part, on the Commission's own motion or petition. 47 C.F.R. § 1.3. Regarding the waiver standard, see Wait Radio v. Federal Communications Commission, 418 F.2d 1153 (D.C. Cir. 1969); Northeast Cellular Telephone Co. v. Federal Communications Commission, 897 F.2d 1164 (D.C. Cir. 1990). See also Inmate Services Waiver Order, FCC Rcd at 8013 (granting a waiver of the network disclosure notice period to enable the provision of payphone services for inmate payphones before the required notice period).

Pursuant to this waiver, network information disclosure on the basic network payphone services must be made by the BOCs by January 15, 1997.

147. We conclude that tariffs for payphone services must be filed with the Commission as part of the LECs' access services to ensure that the services are reasonably priced and do not include subsidies.⁵⁰⁷ This requirement is consistent with the Section 276 prescription that all subsidies be removed from payphone operations. We decline to require, as proposed by AT&T, that the pricing regime under Sections 251 and 252 apply to all Section 276 payphone services offered by incumbent LECs. Section 276 does not refer to or require the application of Sections 251 and 252 to LEC payphone services. In addition, the elements and services to be offered under Sections 251 and 252 are not available to entities that are not telecommunications carriers, and many PSPs are not telecommunications carriers.⁵⁰⁸ In addition, Section 276 does not refer to or require the application of Sections 251 and 252 to LEC payphone services. Moreover, Section 276 specifically refers to the application of Computer III and ONA requirements, at a minimum for BOC provision of payphone services. Accordingly, we conclude that Computer III tariff procedures and pricing are more appropriate for basic payphone services provided by LECs to other payphone providers. Pursuant to Section 276(c), any inconsistent state requirements with regard to this matter are preempted.

148. Parties argue that several other network services and network elements should be unbundled and provided to payphone providers. We decline to impose this requirement on all LECs. We do not find that such unbundling is necessary to provide payphone services. In addition, some features require substantial costs to make switch changes.⁵⁰⁹ Moreover, pursuant to Computer III and ONA requirements discussed below, BOCs must unbundle additional network elements when requested by payphone providers based on specific criteria established in the Computer III and ONA proceedings. In Computer III, we decided that it was not necessary to apply this requirement to other LECs, and we similarly conclude that it is not necessary to direct other LECs to unbundle additional services or unbundled elements in this proceeding because additional services are not necessary to provide payphone services and

⁵⁰⁷ BOCs have filed payphone service tariffs with the Commission. See e.g., US West Communications, Tariff FCC No. 5, Pay Telephone Sent-Paid Services, August 5, 1994; BellSouth Communications Inc., Tariff F.C.C.No. 1, Access Service, Coin Services, January 31, 1992. See 47 U.S.C. § 276(c) and §§ 201-205 regarding authority to require tariffing of basic payphone services.

⁵⁰⁸ See Local Competition Order at para. 876 (holding that the services that incumbent LECs offer to PSPs are retail services provided to end users, and should be available at wholesale rates to telecommunications carriers and Section 251(c)(4), but need not be made available at wholesale rates to independent PSPs that are not telecommunications carriers).

⁵⁰⁹ See ex parte, Michael K. Kellogg to William F. Caton, Secretary, FCC, September 6, 1996 at 3; GVNW Comments at 5-7.