

247. The RBOCs argue that the Commission should specify that the grandfathering provision applies only to contracts enforceable by either party and, specifically, that a location provider's letter of authorization (which authorizes the IXC to serve a particular payphone) is not enforceable by the IXC and should therefore not be grandfathered.<sup>809</sup> Sprint also asserts that a contract can only be grandfathered if it includes binding obligations applicable to both parties -- which would not include letters of authorization that do not require the location provider to subscribe to the IXC's service for any fixed length of time.<sup>810</sup>

248. AT&T maintains that the definition of contract for these purposes should include all agreements which commit a location owner to select a particular IXC for phones at its premises. AT&T asserts that this would include lawfully executed letters of authorization.<sup>811</sup> ACI-NA also contends that the Commission should adopt a broad definition of contracts to be grandfathered under the 1996 Act, including letters of authorization and term extensions, so as to not disadvantage location providers that may rely on existing presubscription agreements for a necessary income stream.<sup>812</sup> CompTel also argues that location providers' letters of authorization constitute contracts that Congress intended to be grandfathered by the 1996 Act, since such agreements are typically part of mutually binding initial service orders or contracts with IXCs.<sup>813</sup> AT&T urges the Commission to affirm that interference with any existing contract at any time is an unjust and unreasonable practice under Section 201(b).<sup>814</sup>

249. Metropolitan Washington Airports Authority replies that so long as location providers have decision-making authority, it is unnecessary for the Commission to resolve the issue of whether LOAs are binding agreements grandfathered by the 1996 Act.<sup>815</sup> Instead, it argues that the determination of whether specific LOAs are binding on the parties should be left to applicable state law.<sup>816</sup>

c. Discussion

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<sup>809</sup> RBOC Comments at 45.

<sup>810</sup> Sprint Comments at 30.

<sup>811</sup> AT&T Comment at 27. See also Oncor Comments at 14.

<sup>812</sup> ACI-NA Comments at 4.

<sup>813</sup> CompTel Comments at 22.

<sup>814</sup> AT&T Comments at 27.

<sup>815</sup> Metropolitan Washington Reply at 6-7.

<sup>816</sup> Id.

250. We affirm our tentative conclusion that the 1996 Act grandfathers all contracts in force between location providers and payphones service providers or interLATA or intraLATA carriers which were in force and effect as of February 8, 1996. Since the statutory language is specifically limited to the date of enactment of the 1996 Act, and because there is an insufficient record to evaluate the propriety of extending that provision, we reject the argument that we extend this grandfathering protection to contracts entered into subsequent to February 8, 1996.<sup>817</sup>

251. As the statutory language specifically limits the scope of this provision to "contracts," we leave to applicable state law the question of whether a particular agreement constitutes an enforceable contract. We note that the comments reflect a difference of opinion as to the legal obligations involved in letters of authorization ("LOAs").<sup>818</sup> It may be that this disagreement reflects the fact that LOAs may be entered into under differing circumstances, reflecting various levels of commitment and/or consideration by the parties. Accordingly, we express no opinion as to whether particular LOAs would or would not constitute contracts for purposes of this section of the 1996 Act.

252. We do find, however, that interference with enforceable agreements between a location provider and either a payphone service provider or an interLATA or intraLATA carrier constitutes an unjust and unreasonable practice in violation of Section 201(b) of the 1996 Act.<sup>819</sup> We also find that practices involving undue coercion of location providers with respect to their choice of interLATA carrier for payphones on their premises may be found unjust and unreasonable. Such practices interfere with the efficient operation of the market by restricting choices, and thereby limit the benefits of competition.

**E. ABILITY OF PAYPHONE SERVICE PROVIDERS TO NEGOTIATE WITH LOCATION PROVIDERS ON THE PRESUBSCRIBED INTRALATA CARRIER.**

253. Section 276(b)(1)(E) directs the Commission to provide all payphone service providers with the right to participate in the selection of the intraLATA carriers presubscribed to their payphones.<sup>820</sup> In implementing this mandate, we seek to eliminate existing barriers upon any payphone service provider's ability to compete on this basis.

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<sup>817</sup> See, Oncor Comments at 13-14.

<sup>818</sup> Compare AT&T Comments at 27; RBOC Comments at 45. See also Metropolitan Washington Reply at 6-7.

<sup>819</sup> 47 U.S.C. §201(b).

<sup>820</sup> 47 U.S.C. § 276(b)(1)(E).

## 1. The Notice

254. Section 276(b)(1)(E) of the 1996 Act directs the Commission to "provide for all payphone service providers to have the right to negotiate with the location provider on the location provider's selecting and contracting with, and, subject to the terms of any agreement with the location provider, to select and contract with, the carriers that carry intraLATA calls from their payphones." In the Notice, we tentatively concluded that all PSPs, whether LECs or independent payphone service providers, should be given the right to negotiate with location providers concerning the intraLATA carrier.<sup>821</sup> We also tentatively concluded that the intraLATA carrier presubscribed to a payphone should be required to meet minimum Commission standards for the routing and handling of emergency calls.<sup>822</sup>

## 2. Comments

255. Commenters generally agree with the tentative conclusion that all payphone service providers should have the ability to negotiate with location providers for the selection of intraLATA carriers from their payphones.<sup>823</sup> Those who commented on the issue also agree with our tentative conclusion that minimum standards for the handling and routing of emergency calls should be required of all intraLATA carriers presubscribed to a payphone.<sup>824</sup>

256. Some commenters, including AT&T, MCI and SCPCA, assert that, in order to ensure effective competition in the intraLATA market, the Commission should specifically preempt any state requirement mandating the routing of intraLATA calls to the incumbent LEC.<sup>825</sup> AT&T also argues that the Commission should preempt any other state requirements that are inconsistent with the provisions of Section 276, including those requiring the inclusion of ILEC payphones in the presubscription process in states with toll dialing parity orders issued prior to December 15, 1995.<sup>826</sup> AT&T additionally asserts that the Commission should require

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<sup>821</sup> Notice at para. 75.

<sup>822</sup> Id.

<sup>823</sup> See, e.g., AT&T Comments at 28; MCI Comments at 19; ACI-NA Comments at 4; Florida PSC Comments at 9; RBOC Comments at 43-44; APCC Comments at 45-46; ACTEL Comments at 12; NJPA Comments at 18; SCPCA Comments at 8.

<sup>824</sup> See, e.g., Florida PSC Comments at 9; APCC Comments at 45-46; California PUC Comments at 19; Sprint Comments at 31.

<sup>825</sup> AT&T Comments at 28; MCI Comments at 19; SCPCA Comments at 8.

<sup>826</sup> AT&T Comments at 28.

immediate intraLATA presubscription for all BOC payphones located in areas where intraLATA presubscription is technically feasible.<sup>827</sup> Florida PSC argues that end-users placing 0- calls often seek assistance from live operators for emergency purposes, and therefore the Commission should continue to allow 0- traffic to be routed exclusively to the LEC.<sup>828</sup>

257. The RBOCs assert that the Commission should not mandate the adoption of new technologies in order to allow intraLATA presubscription at the central office switch.<sup>829</sup> The RBOCs state that such a requirement is neither technically feasible, nor necessary, since independent payphone service providers can program their "smart" payphones to select a presubscribed intraLATA carrier without relying on the local exchange carrier's central switching programming. Instead, the RBOCs contend that central office based presubscription for payphones should be addressed at the same time as all other intraLATA presubscription issues under Section 251 of the 1996 Act.<sup>830</sup>

258. ACI-NA asserts that while all payphone service providers should be authorized to negotiate with location providers on an equal basis, the Commission should make it clear that payphone service providers may not contract with a carrier over the objections of the location provider.<sup>831</sup> Independent payphone service providers also argue that the Commission should make explicit that the right to choose an intraLATA carrier includes the right to use the carrier for local sent and non-sent paid calls.<sup>832</sup> SCPCA also contends that all PSPs should be able to negotiate with location providers for selecting the local operator service for their payphones.<sup>833</sup>

### 3. Discussion

259. We affirm our conclusion that all payphone service providers should have the right to negotiate with location providers concerning the intraLATA carriers presubscribed

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<sup>827</sup> Id.

<sup>828</sup> Florida PSC Comments at 9.

<sup>829</sup> RBOC Comments at 43-44.

<sup>830</sup> Id. See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Second Report and Order and Memorandum Opinion and Order, FCC 96-333 (rel. Aug. 8, 1996) ("Local Competition Second Order").

<sup>831</sup> ACI-NA Comments at 4.

<sup>832</sup> APCC Comments at 45-46; NJPA Comments at 18.

<sup>833</sup> SCPCA Comments at 8.

to their payphones. This conclusion is consistent with both the specific language of Section 276, as well as with the 1996 Act's goal of bringing competition into this industry segment.<sup>834</sup>

**260.** We also affirm our tentative conclusion that intraLATA carriers presubscribed to payphones should be required to meet our minimum standards for routing and handling of emergency calls. We recently addressed this issue in CC Docket 94-198, in which we extended to aggregators, including payphone owners, standards for routing emergency calls.<sup>835</sup> This conclusion reflects our finding, also discussed in connection with public interest payphones, that payphones often serve a critical role in accessing emergency service.<sup>836</sup> By mandating the application of these minimum standards to intraLATA carriers presubscribed to payphones, we seek to ensure that individuals can receive timely and proper assistance when they rely on payphones for 0- or 911 emergency calls.<sup>837</sup>

**261.** Because Section 276(b)(1)(E) establishes that all payphone service providers are to have the right to negotiate for intraLATA carriers for their payphones, we find that state regulations which require the routing of intraLATA calls to the incumbent LEC are inconsistent with the 1996 Act. Section 276(c) specifically states that "to the extent that any State requirements are inconsistent with the Commission's regulations, the Commission's regulations on such matters shall preempt such State requirements."<sup>838</sup> Since we have found state requirements that mandate the routing of any or all intraLATA calls to an incumbent LEC to be inconsistent with the requirements of Section 276(b)(1)(E), we conclude that all such state requirements are preempted by the Commission's regulations.<sup>839</sup>

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<sup>834</sup> With respect to dialing parity requirements for intraLATA carriers presubscribed to payphones, see paras. 291 - 293, below (deferring to the Section 251(b) rulemaking on dialing parity with respect to technical and timing requirements concerning dialing parity for payphones).

<sup>835</sup> See Amendment of Policies and Rules Concerning Operator Service Providers and Call Aggregators, CC Docket No. 94-158, Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 4532 (1996). These standards require aggregators and operator service providers to ensure immediate connection of emergency calls to the proper service for the reported location of the emergency, if known, and, if not known, for the originating location of the call. 47 C.F.R. §64.706 .

<sup>836</sup> See para. 277, below.

<sup>837</sup> We are addressing similar concerns in a separate rulemaking regarding enhanced 911 emergency services. See 911 Notice.

<sup>838</sup> 47 U.S.C. § 276(c).

<sup>839</sup> The Commission also has general authority to preempt state regulation of intrastate communications services where such regulation would thwart or impede the Commission's exercise of its lawful authority over interstate communications services, such as when it is not "possible to separate the interstate and intrastate portions

262. We take particular note, however, of Florida PSC's argument that states should be allowed to mandate that 0- calls from payphones be routed exclusively to the incumbent LEC.<sup>840</sup> Florida PSC notes that such a requirement is necessary to ensure that emergency calls, where the caller simply dials "0" and nothing else, are delivered to a live, local operator. We believe that requiring 0- calls to be initially routed to the LEC is not necessarily inconsistent with the provisions of Section 276(b)(1)(E), so long as the state does not mandate that the LEC ultimately carry non-emergency intraLATA calls initiated by dialing "0" only.

263. As with the selection of an interLATA carrier, payphone location providers will have ultimate decision-making authority in the selection of intraLATA carriers for payphones located on their premises through their selection of a payphone service provider.<sup>841</sup> Obviously such choice is predicated on the development of competition in the in-region, intraLATA market. Once choice of intraLATA providers becomes available, however, PSPs can be expected to compete for locations through, among other things, the intraLATA carriers presubscribed to their payphones. As with the selection of interLATA carriers, interference with existing agreements between location providers and payphone service providers or intraLATA carriers, as well as undue coercion restricting the location provider's exercise of choice of such carriers, may constitute unjust and unreasonable practices in violation of Section 201(b) of the Act.<sup>842</sup>

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of the asserted FCC regulation." Louisiana Public Service Commission v. FCC, 476 U.S. 355, 375 n. 4 (1986).

<sup>840</sup> Florida PSC Comments at 9.

<sup>841</sup> See S. Conf. Rep. 104-230 at 44 (House amendment provided that "[l]ocation providers prospectively also have control over the ultimate choice of interLATA and intraLATA carriers in connection with their choice of payphone service providers").

<sup>842</sup> 47 U.S.C. §201(b). See discussion at para. 242, above.

**F. ESTABLISHMENT OF PUBLIC INTEREST PAYPHONES**

**264.** Section 276(b)(2) of the 1996 Act directs us to determine whether there is a need for maintaining payphones serving public health, safety, and welfare goals, and, if so, to ensure that such payphones are supported fairly and equitably.<sup>843</sup> As noted above, we recognize the potential that a freely competitive marketplace may not provide for payphones in locations where they serve important public policy objectives, but which, for various reasons, may not be economically self-supporting. To address the potential for such market failure, we establish guidelines by which the states may ensure the maintenance of payphones serving public interests in health, safety and welfare, in locations where they would not otherwise be available as a result of the operation of the market.<sup>844</sup> Consistent with our primary reliance on the competitive marketplace, however, these guideline require that the states administer and fund such public interest payphone programs in a manner which is competitively neutral, and which fairly and equitably compensates entities providing public interest payphones.

**1. The Notice**

**265.** Section 276(b)(2) of the 1996 Act directs the Commission to "determine whether public interest payphones, which are provided in the interest of public health, safety, and welfare, in locations where there would otherwise not be a payphone, should be maintained, and if so, ensure that such public interest payphones are supported fairly and equitably." In the Notice, we sought comment on whether it is in the public interest to maintain payphones.<sup>845</sup> We also sought comments on options for maintaining public interest payphones.<sup>846</sup> One option would be for the Commission to prescribe federal regulations for the maintenance of these payphones. A second option would be for the Commission to establish national guidelines for public interest payphones. A third option for maintaining public interest payphones would be to defer to the states to determine, pursuant to their own statutes and regulations, which payphones should be treated as "public interest payphones."<sup>847</sup>

**266.** In the Notice, we also sought comment on whether a "public interest payphone" should be defined as a payphone that both (1) operates at a financial loss, but also

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<sup>843</sup> 47 U.S.C. § 276(b)(2).

<sup>844</sup> See S. Conf. Rep. 104-230 at 43.

<sup>845</sup> Notice at paras. 77-78.

<sup>846</sup> Id. at paras. 78-81.

<sup>847</sup> Id.

fulfills some public policy objective, such as emergency access; and (2) even though unprofitable by itself, is not provided for a location provider with whom the PSP has a contract.<sup>848</sup> Under this definition, many payphones that fulfill important public policy objectives would not be included because they would be paid for, in the form of lower commission payments, by the entity that is requesting that a payphone be placed in a particular location to fulfill a public policy objective.<sup>849</sup>

267. In addition, we sought comment on appropriate mechanisms for meeting the statutory directive that we ensure public interest payphones are funded "fairly and equitably."<sup>850</sup> We sought comment on whether such a mechanism should be addressed through federal regulations, federal guidelines for the states, or by the states themselves. We requested that those commenters supporting a Commission-mandated funding mechanism detail how the mechanism would function, including who would be eligible to receive funding, who would be responsible for paying into the fund, and who would administer the funding mechanism.<sup>851</sup>

## 2. Comments

268. Most commenters agree that payphones can serve important public interests in health, safety and welfare, and that there is a need to ensure that payphones are maintained in locations where they may not be self-supporting.<sup>852</sup> For example, New York City asserts that, in the absence of incentives, PSPs are unlikely to place payphones in indispensable locations such as under-served residential neighborhoods and areas with significant emergency demands.<sup>853</sup> New York City states that payphones in such areas serve an important role in providing the public with basic communications services, an avenue to obtain information, and access to critical emergency services.<sup>854</sup> Idaho PUC states that payphones in rural areas often generate little revenue, but may be the only means of public telephone communication for miles.<sup>855</sup> New Jersey

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<sup>848</sup> Id. at para. 80.

<sup>849</sup> Id.

<sup>850</sup> Id. at para. 82. See 47 U.S.C. § 276(b)(2).

<sup>851</sup> Notice at para. 82.

<sup>852</sup> See, e.g., New York City Comments at 3; Ohio PUC Comments at 15; CPA Comments at 21; Ameritech Comments at 29; New Jersey DRA at 3.

<sup>853</sup> New York City Comments at 3.

<sup>854</sup> Id.; also Maine PUC Comments at 10.

<sup>855</sup> Idaho PUC Comments at 1.

DRA also asserts that public interest payphones provide services to individuals in poor and isolated communities who might otherwise not have any access to the exchange network, and are particularly necessary for assuring that such individuals have access to emergency services such as 911.<sup>856</sup> Puerto Rico Telephone states that those who by necessity use payphones as a substitute for residential telephone service rely on such payphones as their means of access to emergency services, as well as their means of communication with family members, employers, businesses and others.<sup>857</sup> Many commenters agree that public interest payphones are an integral part of efforts to achieve universal service.<sup>858</sup>

**269.** A few commenters, however, assert that the Commission need not take any action at this time to ensure the maintenance of public interest payphones. MCI contends that the issue of public interest payphones is part of the larger question of ensuring that all consumers have access to telephone service, and should, therefore, be referred to the Federal-State Joint Board on Universal Service.<sup>859</sup> The Iowa Utilities Board argues that the Commission should defer to the states with respect to public interest payphones because Iowa has found that it is "not necessary to establish rules requiring public interest payphones" in that state.<sup>860</sup>

**270.** Most commenters assert that the Commission should leave to the states the primary responsibility for administering public interest payphone programs.<sup>861</sup> A number of state and local regulatory agencies argue that any public interest payphones program should be left primarily to the states, because national guidelines could not adequately and economically prescribe locations or criteria for such payphones throughout the country. These commenters emphasize that state and local entities, including police, fire, rescue and public welfare agencies, are best situated to evaluate community needs and objectives.<sup>862</sup> Several state agencies note that

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<sup>856</sup> New Jersey DRA Comments at 3.

<sup>857</sup> Puerto Rico Telephone Comments at 2.

<sup>858</sup> See, e.g., New Jersey DRA Comments at 3; GVNW Comments at 8-9; Sprint Comments at 31-32; MCI Comments at 20; Texas PUC Comments at 5; GTE Comments at 16-17.

<sup>859</sup> MCI Comments at 20. See also Sprint Comments at 31-32.

<sup>860</sup> Iowa Utilities Board Comments at 4. See also US West Reply at 6.

<sup>861</sup> See, e.g., APCC Comments at 47; RBOC Comments at 46; CPA Comments at 22; Maine PUC Comments at 11-12; New Jersey DRA Comments at 4; AT&T Reply at 28; NTCA Reply at 7.

<sup>862</sup> California PUC Comments at 20-21; Maine PUC Comments at 11-12; Ohio PUC Comments at 16-17; Texas PUC Comments at 5; Idaho PUC Comments at 1-2; New Jersey DRA Comments at 4; New York DPS Comments at 8; Virginia SCC Comments at 4; also, New York City Comments at 4-8; Puerto Rico Telephone Comments at 1-4.

they already have, or are prepared to develop, programs which provide for placing payphones in locations where they might otherwise not exist.<sup>863</sup> For example, several states comment that they require incumbent local exchange carriers in their jurisdictions to place at least one payphone in each exchange area.<sup>864</sup>

**271.** One state plan referenced often in the comments is the California Universal Services program. California's program requires that LECs maintain "public policy" payphones at locations where revenues are not sufficient to profitably support a payphone.<sup>865</sup> The program requires that: (1) a selected committee evaluate the need for payphones at locations where they do not already exist; (2) the LECs install and maintain these payphones with the acknowledgement that revenues will not cover costs of installation and operation; (3) all PSPs support these payphones through a monthly rate charged to connect their payphones to the network; and (4) all LECs with payphones support these payphones with a contribution from their competitive public and semi-public payphones. Thus, the costs of supporting these public interest payphones are borne not by the general body of ratepayers, but rather by the payphone industry as a whole.<sup>866</sup> CPA asserts that this program does not place an undue burden on PSPs because the criteria for public interest payphones has been narrowly drawn, resulting in only one per cent of all payphones in the state being identified as public interest payphones.<sup>867</sup> The RBOCs, however, assert that the California plan may not work in other states, particularly in rural areas where the number of competitive payphones may be small relative to the number of public interest payphones.<sup>868</sup>

**272.** Several commenters, particularly the BOCs and independent payphone providers, urge the Commission to adopt national guidelines for state implementation of a public interest payphone program.<sup>869</sup> The RBOCs argue that the 1996 Act requires the Commission to adopt a narrow definition of what constitutes a public interest payphone in order to limit what

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<sup>863</sup> California PUC Comments at 20; Ohio PUC Comments at 16-17; New York City Comments at 5-7; Texas PUC Comments at 5.

<sup>864</sup> Ohio PUC Comments at 16; Idaho PUC Comments at 1; Missouri PSC Reply at 3.

<sup>865</sup> California PUC Comments at 20

<sup>866</sup> Id.

<sup>867</sup> CPA Comments at 21-24.

<sup>868</sup> RBOC Comments at 47.

<sup>869</sup> Id. at 46-47; Ameritech Comments at 29-31; CPA Comments at 22.

state and local governments can require of payphone providers.<sup>870</sup> They argue that since the 1996 Act requires the installation of public interest payphones only "in locations where there would otherwise not be a payphone,"<sup>871</sup> state and local regulators should not be allowed to require the installation of public interest payphones in locations where a payphone already exists, or on the premises of a location provider who has an existing contract for the placement of a payphone.<sup>872</sup> Ameritech specifically recommends adoption of guidelines, similar to the existing California model, which specify that a public interest payphone is one that would not "break even," and would not exist in the location absent public intervention.<sup>873</sup> The RBOCs and Ameritech urge rules limiting the designation of "public interest payphones" to those requested by state or local governmental agencies for purposes of ensuring health, safety, and welfare.<sup>874</sup> The RBOCs also contend that local governmental agencies already provide for the public interest payphones by requiring the placement of certain numbers of non-profitable payphones as part of their contracts with individual payphone service providers for the placement of competitive payphones.<sup>875</sup> A few state commenters also stated that it may be appropriate for the Commission to adopt basic national guidelines in order to ensure the deployment of public interest payphones in critical locations.<sup>876</sup>

273. Puerto Rico Telephone contends that because of the particularly low level of residential telephone service, any definition of public service payphones adopted by the Commission should include payphones that are used as a substitute for local residential telephone service.<sup>877</sup> GVNW, which represents small LECs, also recommends a broader definition of public interest payphones in order to ensure adequate access to payphones in schools, public parks, and other public locations.<sup>878</sup>

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<sup>870</sup> RBOC Comments at 46-47.

<sup>871</sup> 47 U.S.C. § 276(b)(2).

<sup>872</sup> RBOC Comments at 46-47; Ameritech Comments at 29-30.

<sup>873</sup> Ameritech Comments at 29-30.

<sup>874</sup> RBOC Comments at 46-47; Ameritech Comments at 32.

<sup>875</sup> RBOC Comments at 46.

<sup>876</sup> Oklahoma CC Comments at 4. See also New Jersey DRA Comments at 3-4; New York DPS Comments at 8.

<sup>877</sup> Puerto Rico Telephone Comments at 3-4.

<sup>878</sup> GVNW Comments at 8-10.

274. Among the independent payphone providers, APCC argues that the legislative history indicates that location providers, including state and local governments, having an existing contract with a PSP for the placement of payphones, should be precluded from having public interest payphones located on their premises.<sup>879</sup> CPA argues that the Commission should set basic national guidelines, while leaving implementation to the states.<sup>880</sup> It recommends the criteria of the California program as a good model for narrowly defining the scope of public interest payphones.<sup>881</sup>

275. Many commenters, particularly state and local regulators, contend that funding for public interest payphones should also be left to the discretion of the states.<sup>882</sup> Maine PUC asserts that if the Commission does attempt to prescribe national siting standards, then the Commission must also provide the states federal or interstate-derived funding to support such requirements.<sup>883</sup> Otherwise, it contends, the Commission should not limit the funding options available for state administration of public interest payphone programs.<sup>884</sup> Other commenters argue that to meet the 1996 Act's requirement that public interest payphones be "supported fairly and equitably," such payphones should be paid for by the requesting party.<sup>885</sup> Specifically, the RBOCs assert that the Commission should require requesting entities, including state and local governments, to compensate PSPs in an amount that allows the PSP to recover its costs for establishing a public interest payphone, plus a reasonable rate of return.<sup>886</sup> The BOCs argue that any funding mechanism that requires the PSPs to share in the responsibility of providing public interest payphones would necessitate a complex analysis of market share or a running tally of the number of payphones each PSP provides in a particular area.<sup>887</sup> Puerto Rico Telephone and

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<sup>879</sup> APCC Comments at 50-51.

<sup>880</sup> CPA Comments at 22.

<sup>881</sup> Id. at 22-23; APCC Comments at 50-51.

<sup>882</sup> See, e.g., Maine PUC Comments at 11; New York City Comments at 9; Ohio PUC Comments at 17; Texas PUC Comments at 5. See also, APCC Comments at 47.

<sup>883</sup> Maine PUC Comments at 12.

<sup>884</sup> Id.

<sup>885</sup> Id.; Ameritech Comments at 32; also USTA Comments at 11; NTCA Comments at 7; GTE Comments at 16-17.

<sup>886</sup> RBOC Reply at 33 (noting, however, that California's existing system should be grandfathered because it works due to the state's uniquely competitive factors).

<sup>887</sup> Id.

NTCA also contend that, if the Commission determines that public interest payphones should be maintained, then the Commission is also obligated to ensure that such payphones are properly funded.<sup>888</sup> They recommend that the Commission establish a fund segregated from other universal service support mechanisms, and administered by the NECA, to support public interest payphones. NECA affirms in its comments its ability to implement such a program<sup>889</sup>

276. APCC also maintains that the states should be given the discretion to determine the funding mechanism for public interest payphones, including funding based upon surcharges for all PSPs serving the location, or through a universal service mechanism funded by all rate payers.<sup>890</sup> While endorsing the funding mechanism adopted in the California plan, CPA argues that an alternative funding mechanism would be to allow PSPs to seek subsidy support for non-self-supporting payphones determined to be in the public interest, with award of the payphone location to the PSP bidding to provide a payphone at that location for the lowest subsidy amount.<sup>891</sup> GTE asserts that the Commission should require states to adopt rules for public interest payphone programs that are competitively neutral, including requiring fair compensation to PSPs providing public interest payphones, and ensuring that all PSPs may participate in such programs on a voluntary basis.<sup>892</sup> GTE argues that states may establish funds to ensure that public interest payphone programs are supported fairly, or could support such payphones as part of their state universal services fund.<sup>893</sup> SW Bell also urges the Commission to require the states to adopt competitively neutral funding mechanisms for public interest payphone programs, including the use of competitive bidding for the right to provide public interest payphones.<sup>894</sup>

### 3. Discussion

277. We conclude that there is a need to ensure the maintenance of payphones that serve the public policy interests of health, safety, and welfare in locations where there would

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<sup>888</sup> Puerto Rico Telephone Reply at 4-5; NTCA Reply at 7. See also NECA Comments at 6-7.

<sup>889</sup> NECA Comments at 6-7.

<sup>890</sup> APCC Comments at 47-51; also GPCA Reply at 22.

<sup>891</sup> CPA Comments at 24.

<sup>892</sup> GTE Comments at 16-17.

<sup>893</sup> Id.

<sup>894</sup> SW Bell Comments at 8.

not otherwise be payphones as a result of the operation of the market.<sup>895</sup> As demonstrated by the comments, all payphones serve the public interest by providing access to basic communications services.<sup>896</sup> We are particularly concerned about the role served by payphones in providing access to emergency services, especially in isolated locations and areas with low levels of residential phone penetration. Indeed, in some such areas, payphones are the only readily available means of accessing these critical communications services.<sup>897</sup> Moreover, as several commenters recognize, some payphones which are most critical for public health, safety and welfare purposes, are also the least likely to be economically self-supporting.<sup>898</sup> With the elimination of subsidies which have helped support such payphones in the past, as directed by the 1996 Act, it is possible that many of these payphones could disappear absent the availability of alternative methods to ensure their existence.<sup>899</sup>

**278.** Many states have already developed systems for identifying the need for public interest payphones, and developing solutions to address that need.<sup>900</sup> Indeed, we find that the states are typically in a superior position to evaluate the need for payphones which serve community interests in health, safety and public welfare. In particular, the states are better equipped than the Commission to respond to geographic and socio-economic factors affecting the need for such payphones that are too diverse to be effectively addressed on a national basis.<sup>901</sup>

**279.** We also find that the existence of a variety of state and local plans already providing for payphones serving public welfare goals demonstrates that the states are able to successfully administer such programs. For example, we note the program adopted in California, which all parties involved appear to view as having successfully provided for public interest

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<sup>895</sup> 47 U.S.C. § 276(b)(2). See S. Conf. Report 104-230 at 43.

<sup>896</sup> See, e.g., New Jersey DRA Comments at 3-4; New York City Comments at 3.

<sup>897</sup> See, e.g., New York City Comments at 3; Puerto Rico Telephone Comments at 1-4; Idaho PUC Comments at 1.

<sup>898</sup> See, e.g., Idaho PUC Comments at 1-2.

<sup>899</sup> See 47 U.S.C. § 276(b)(1)(B).

<sup>900</sup> See NTCA Comments at 6-7 (describing several state requirements for the provision of payphone service where it might otherwise not exist); also Missouri PSC Reply at 3; Ohio PUC Comments at 16-17; California PUC Comments at 20; Idaho PUC Comments at 1.

<sup>901</sup> See, e.g., Idaho PUC Comments at 1-2; New York DPS Comments at 8; Maine PUC Comments at 11.

payphones in the most critical locations.<sup>902</sup> The California program is funded by the payphone industry as a whole, yet is endorsed by payphone providers doing business in the state because, in part, it narrowly defines the criteria for public interest payphones to locations where there is a true public welfare need not being met by the competitive marketplace.<sup>903</sup> These criteria include requirements that a public interest payphone not be located on the premises of a person receiving compensation under a contract for the placement of other payphones, that access to the payphone be unrestricted, and that the payphone be at least a specified distance away from any other payphones.<sup>904</sup> The experience in California has been that only a very small number of locations, relative to the overall number of payphones, meet the narrow criteria for public interest payphones.<sup>905</sup> It may be, however, that in other states such a program would not effectively provide for public interest telephones because there are insufficient numbers of competitive payphones available to adequately and fairly support the locations meeting the criteria for public interest payphones.<sup>906</sup> Other states, however, have responded to an identified need for payphones necessary to satisfy public health, safety, and welfare concerns by requiring LECs to provide at least one public payphone in each telephone exchange,<sup>907</sup> or by requiring the placement of unprofitable payphones as part of contracts with PSPs for the placement of profitable payphones on public property.<sup>908</sup>

**280.** The existence of these various and diverse plans confirms both that the states have the authority to adequately address the need for public interest payphones, and that any effort to implement a uniform national program is unlikely to be as successful in accounting for differing conditions among the states. We also believe that any effort by the Commission to implement such a national program would be beyond our current resource capabilities. For all of the above reasons, we conclude that the primary responsibility for administering and funding of public interest payphone programs should be left to the states.

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<sup>902</sup> See, e.g., California PUC Comments at 20-21; CPA Comments at 22-24; RBOC Comments at 47, n. 62; SDPOA Reply at 3.

<sup>903</sup> CPA Comments at 22-24; SDPOA Comments at 3.

<sup>904</sup> CPA Comments at 23.

<sup>905</sup> CPA Comments at 22-24 (stating that less than 2,000 of the 200,000 payphones in the state, or less than one percent, were found to have met these criteria).

<sup>906</sup> See RBOC Comments at 47, n. 62; US West Reply at 6;

<sup>907</sup> See, e.g., Missouri PSC Comments at 3; Ohio PUC Comments at 16.

<sup>908</sup> RBOC Comments at 46.

281. While we leave the administration of public interest payphones to the states, we believe that the 1996 Act requires us to impose minimum guidelines for establishment of a public interest payphone program to meet our statutory obligation to ensure the maintenance of such payphones. In particular, we believe it is very important to establish a basic definition of public interest payphones that is narrowly tailored to payphones that are truly needed for the public interest reasons enunciated in the statute. The 1996 Act describes public interest payphones as those "which are provided in the interest of public health, safety, and welfare, in locations where there would otherwise not be a payphone . . ." <sup>909</sup> The Conference Report further explains that "the term does not apply to a payphone located near other payphones, or to a payphone that, even though profitable by itself, is provided for a location provider with whom the payphone provider has a contract." <sup>910</sup> The definition proposed in the Notice encompasses both of these statements. We also note that the limitations reflected in the Conference Report are similar to those included in the California program's criteria for "public policy payphones." <sup>911</sup>

282. We adopt as a definition of "public interest payphone," a payphone which (1) fulfills a public policy objective in health, safety, or public welfare, (2) is not provided for a location provider with an existing contract for the provision of a payphone, and (3) would not otherwise exist as a result of the operation of the competitive marketplace. This definition is similar in effect to the one proposed in the Notice. We conclude that the statute and Conference Report reflect a congressional intent that reliance on the public interest payphone provision is to be limited to instances where a payphone location serves a strong public interest that would not be fulfilled by the normal operation of the market. Thus, a state may not require that a public interest payphone be installed on premises where a location provider already has a contract for the maintenance of a competitive payphone, even if such contract requires the location provider to pay for the continued maintenance of such payphone. <sup>912</sup>

283. The 1996 Act directs the Commission, in the event that we find the need for public interest payphone programs, to "ensure that such public interest payphones are

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<sup>909</sup> 47 U.S.C. § 276(b)(2).

<sup>910</sup> S. Conf. Rep. 104-230 at 43.

<sup>911</sup> See CPA Comments at 23.

<sup>912</sup> We note that public interest payphones are distinct from some public payphones that are classified by various states as "semi-public" payphones. Semi-public payphones tend to be payphones placed in locations, at the request of the premises owner, that do not generate significant amounts of traffic. See RBOC Comments at 48-49. The LEC providing the semi-public payphone typically receives the coin revenues from the payphone, as well as a monthly fee discounted from the rate for a business line.

supported fairly and equitably."<sup>913</sup> We find that this provision requires a national guideline that companies providing public interest payphones be fairly compensated for the cost of such services. We leave to the discretion of the states how to fund their respective public interest payphone programs, so long as the funding mechanism, (1) "fairly and equitably" distributes the costs of such a program, and (2) does not involve the use of subsidies prohibited by Section 276(b)(1)(B) of the 1996 Act.<sup>914</sup> Thus, a state may choose to fund public interest payphones from its general revenues through a process that ensures that companies providing public interest payphones are fairly compensated and in a manner that does not otherwise affect the competitive balance of the industry.<sup>915</sup> Similarly, a state or local government may include requirements for placing non-profitable payphones as part of a voluntary, contractual agreement with a payphone services provider for the installation of competitive payphones on public property.<sup>916</sup>

**284.** Alternatively, states may address the need for public interest payphones by adopting appropriate rules in conjunction with their responsibilities for ensuring universal service pursuant to Section 254(f) of the 1996 Act.<sup>917</sup> We note that issues relating to public interest

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<sup>913</sup> 47 U.S.C. § 276(b)(3).

<sup>914</sup> See 47 U.S.C. § 276(b)(1)(B) & (b)(3)

<sup>915</sup> State programs supporting public interest payphones are also subject to the provisions of Section 253(b) of the 1996 Act which requires that such a program be implemented on a "competitively neutral basis." 47 U.S.C. §253(b). One means of achieving a competitively neutral process is by choosing the payphone services provider for public interest payphone locations through a competitive bidding process, i.e., whereby the location is awarded to the PSP bidding to serve the location for the lowest subsidy level. See, e.g., RBOC Comments at 46-47; CPA Comments at 24 (suggesting an alternative whereby a payphone provider could seek subsidy support for a particular location, but only through an auction whereby the right and obligation to provide a payphone at the location would be given to the PSP bidding the lowest subsidy amount). Alternatively, a funding program, like California's, which relies upon levies on all payphone service providers in the state, may be appropriate to the extent that it treats all PSPs, including LECs, in a competitively neutral manner and eliminates subsidies from local access charges. See paras. 269 and 277, above.

<sup>916</sup> See, e.g., RBOC Comments at 46.

<sup>917</sup> Section 254(f) provides:

(f) State Authority. - A State may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service. Every telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State. A State may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms.

payphones were not referred to the Universal Services Federal-State Joint Board in Docket 96-45.<sup>918</sup> Section 254(f), however, provides that states may adopt regulations to preserve and advance universal service within each state, not inconsistent with the rules we will eventually adopt in that proceeding.<sup>919</sup> Accordingly, any state may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that state so long as such regulations include additional specific, predictable, and sufficient mechanisms to support such definitions or standards, and that do not burden or rely on federal universal service support mechanisms.<sup>920</sup> We note that among the among the criteria established by the 1996 Act for defining services that are to be supported by a universal services program, are whether such telecommunications services "are essential to education, *public health, or public safety* . . . . [and] are consistent with the *public interest, convenience, and necessity*."<sup>921</sup> We find that the implementation of a public interest payphone program is consistent with these goals, and may be a valuable tool in the states' efforts to achieve universal service.<sup>922</sup> Therefore, we find that states may establish funding mechanisms for public interest payphones either by meeting the funding requirements of Section 276(b)(2), as limited by Section 276(b)(1)(B), or in accordance with state universal service rules adopted pursuant to Section 254(f) in conjunction with Section 276(b)(2) and (b)(1)(B).

**285.** In furtherance of our statutory responsibility under Section 276(b)(2), we direct each state to review whether it has adequately provided for public interest payphones in a manner consistent with this Report and Order. In particular, each state should evaluate whether it needs to take any measures to ensure that payphones serving important public interests will continue to exist in light of the elimination of subsidies and other competitive provisions established pursuant to Section 276 of the 1996 Act, and that any existing programs are administered and funded consistent with the requirements described above. This review must be completed by each state within two years of the date of issuance of this Report and Order, and

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47 U.S.C. §254(f).

<sup>918</sup> See Joint Board Notice at para. 57, n. 128.

<sup>919</sup> 47 U.S.C. §254(f).

<sup>920</sup> Id.

<sup>921</sup> 47 U.S.C. §254(c)(1)(A) and (D) (emphasis added). See Joint Board Notice at para. 9.

<sup>922</sup> See Maine PUC Comments at 12; New Jersey DRA Comments at 3; Texas PUC Comments at 5; Sprint Comments at 31-32; .

may be conducted in conjunction with each state's study of the payphone marketplace which we are requiring in connection with the transition to market-based payphone compensation.<sup>923</sup>

286. Finally, we do not delegate our entire responsibility under Section 276(b)(2) to "ensure that such public interest payphones are supported fairly and equitably."<sup>924</sup> If interested parties believe that a state is not supporting public interest payphones fairly and equitably, such parties may file a petition with the Commission asserting that the state is not providing for payphones in accordance with Section 276(b)(2) and the guidelines we adopt in this Report and Order, as may be amended from time to time.

## G. OTHER ISSUES

### 1. Dialing Parity

#### a. The Notice

287. We tentatively concluded in the Notice that the benefits of the dialing parity requirements to be adopted pursuant to Section 251(b)(3) of the 1996 Act should extend to all payphone location providers.<sup>925</sup> We sought comment on this and other methods for achieving dialing parity for payphone location providers, and users, of payphones that are consistent with the definition of dialing parity under Section 3(15) of the 1934 Act, as amended.<sup>926</sup> As a related matter, we also sought comment on whether we should extend the unblocking requirements established in TOCSIA to all local and long distance calls.<sup>927</sup>

#### b. Comments

288. AT&T, MCI, Sprint and the Virginia SCC all agree with the Commission's tentative conclusion that the benefits of the dialing parity requirements to be adopted pursuant

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<sup>923</sup> See para. 60, above.

<sup>924</sup> 47 U.S.C. § 276(b)(2).

<sup>925</sup> Notice at para. 84. Section 251(b)(3) states that all LECs have the duty to "provide dialing parity to competing providers of telephone exchange service and telephone toll service." 47 U.S.C. §251(b)(3).

<sup>926</sup> Id. See 47 U.S.C. §153(15) ("The term 'dialing parity' means that a person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer's designation among 2 or more telecommunications services providers (including such local exchange carrier)").

<sup>927</sup> Notice at para. 84.

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to Section 251(b)(3) of the 1996 Act should extend to all payphone location providers.<sup>928</sup> While the RBOCs agree with the tentative conclusion, they assert that such benefits should be exercised indirectly through the PSP's programming of their "smart" payphones to select a presubscribed intraLATA carrier, as opposed to directly through presubscription at the LEC's central office switch.<sup>929</sup> The Florida PSC contends that a PSP should be able to "program" its payphones to route 1+ and 0+ toll calls to the preferred carrier.<sup>930</sup> GVNW argues that it is the states who should be given the discretion of determining when and how dialing parity for intraLATA calls should be applied to payphones.<sup>931</sup>

**289.** AT&T requests that the Commission mandate inclusion of all incumbent LEC payphones in the presubscription process in the 15 states with toll dialing parity orders issued prior to December 15, 1995 as well as immediate intraLATA presubscription for all BOC payphones located in territories where intraLATA presubscription is now technically available.<sup>932</sup> The RBOCs argue that the Commission should deny AT&T's immediate intraLATA presubscription request, contending that this request is without basis in Section 276 and cannot be implemented for intraLATA payphone calls, apart from intraLATA residential and business calls.<sup>933</sup> According to the RBOCs, intraLATA dialing parity for payphone calls should operate on the same timetable as for all other calls.<sup>934</sup>

**290.** AT&T and MCI both argue that the Commission should adopt intraLATA unblocking requirements similar to the interLATA carrier unblocking requirements established in TOCSIA.<sup>935</sup> Sprint argues that the interLATA unblocking requirements established pursuant to TOCSIA should extend to all local and long distance calls.<sup>936</sup> Ameritech argues that the existing anti-blocking rules promulgated under TOCSIA remain sufficient to prevent aggregators from defeating LEC equal access features, so long as all LECs are mandated to continue providing these features.<sup>937</sup> According to Ameritech, Section 251(b)(3) of the 1996 Act does not incorporate the full list of equal access features in that it relies on a definition of dialing parity

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<sup>928</sup> AT&T Comments at 29; MCI Comments at 20; Sprint Comments at 32; Virginia SCC Comments at 4.

<sup>929</sup> RBOC Comments at 43-44.

<sup>930</sup> Florida PSC Comments at 10.

<sup>931</sup> GVNW Comments at 10.

<sup>932</sup> AT&T Comments at 28 n.51.

<sup>933</sup> RBOC Reply at 31-32.

<sup>934</sup> Id.

<sup>935</sup> AT&T Comments at 29; MCI Comments at 20.

<sup>936</sup> Sprint Comments at 32.

<sup>937</sup> Ameritech Comments at 33.

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which includes only presubscription and omits mention of 10XXX or other dialed access codes.<sup>938</sup> Therefore, Ameritech argues that because the dialing parity rules of Section 251(b)(3) do not include an express reaffirmation of the LECs' duty to honor 10XXX and other access codes, the Commission should expressly articulate such a reaffirmation in its implementation of Section 251(b)(3).<sup>939</sup>

### c. Discussion

**291.** In our recently issued order implementing the Section 251(b)(3) dialing parity requirements, we concluded that dialing parity was an important element in fostering vigorous local exchange and long distance competition "by ensuring that each customer has the freedom and the flexibility to choose among different carriers for different services without the burden of dialing access codes."<sup>940</sup> We believe that this statement is equally applicable to fostering vigorous competition in the payphone industry, and accordingly affirm our tentative conclusion that the benefits of dialing parity requirements adopted pursuant to Section 251(b)(3) of the 1996 Act should extend to all payphone location providers.

**292.** We also conclude that the technical and timing requirements established pursuant to Section 251(b)(3), and Section 271(c)(2)(B), should apply equally to payphones.<sup>941</sup> We find that burden on the LECs in requiring them to provide dialing parity for payphones, prior to all other phones, outweighs any competitive benefit that might result. In this respect, we note that independent payphone service providers' "smart payphones" can adequately create dialing parity within the payphone unit pending the implementation of true dialing parity.

**293.** Finally, we conclude that the unblocking of carrier access codes mandated by TOCSIA and our rules for interstate calls should also apply to intrastate (including local) access code calls. This may already be normal within the industry, and no party objected to our proposal. Allowing unrestricted access to a caller's preferred carrier is an essential feature of creating a competitive payphone industry, and we have created a mechanism that ensures that the

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<sup>938</sup> Id. at 33-34.

<sup>939</sup> Id.

<sup>940</sup> Local Competition Second Order, at para. 9. We also noted in that Order that Section 251(b)(3) creates a duty to provide dialing parity with respect to all telecommunications services, and does not limit the types of traffic or services for which dialing parity must be provided. Id. at para. 12.

<sup>941</sup> See Id. at 2-5, 14-45. In general, we adopted in that order a dialing parity schedule that requires each LEC, including a BOC, to implement toll dialing parity no later than February 8, 1999; requires each LEC, including a BOC, to provide toll dialing parity throughout a state coincident with its provision of in-region, interLATA or in-region, interstate toll service in that state. We also require all LECs, other than BOCs, that are either already offering or plan to begin to provide in-region, interLATA or in-region, interstate toll service before August 8, 1997, to implement toll dialing parity by August 8, 1997. We also note in that Order that Section 271 of the 1996 Act requires BOCs to provide intraLATA dialing parity throughout a state coincident with the exercise of their authority to offer interLATA services originating within the state. See 47 U.S.C. §271(e)(2)(A).

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PSP will receive compensation for all access code calls, including intrastate calls. Given the existence of compensation and the pro-competitive purpose of Section 276 of the 1996 Act, and in the absence of any technical limitations, we find that unblocked access for all access code calls from payphones is required.

### **2. Letterless Keypads**

#### **a. The Notice**

294. In the Notice, the Commission expressed a concern that use of letterless keypads may frustrate the intent of Congress, as expressed in TOCSIA, to permit callers to reach the OSP of their choice from payphones. We also stated that letterless keypads ultimately frustrate Congressional intent, as expressed in the 1996 Act, "to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public[.]"<sup>942</sup> Therefore, the Commission tentatively concluded that the use of letterless keypads violates both TOCSIA and the 1996 Act by preventing callers from accessing their OSP of choice, and we solicited comment on how the Commission should take action to prohibit use of these "by-pass" letterless keypads to restrict the availability of "vanity" access numbers.<sup>943</sup>

#### **b. Comments**

295. A wide range of commenters, including IXC's, RBOCs, independent LECs, state utility commissions and PPOs, share our concern that letterless keypads prevent consumers from reaching their OSP of choice and inhibit competition in the payphone industry.<sup>944</sup> The Ohio PUC cites complaints by consumers and "representatives of persons with communications disabilities."<sup>945</sup> In addition, many of the commenters agree with the Commission's tentative conclusion that letterless keypads violate both TOCSIA and the 1996 Act.<sup>946</sup> A significant

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<sup>942</sup> Notice at para. 85.

<sup>943</sup> Id.

<sup>944</sup> See, e.g., Actel Comments at 12-13; Ameritech Comments at 37; California PUC Comments at 21; GVNW Comments at 10-11; Idaho PUC Comments at 2-3; Indiana URC Comments at 6-7; MCI Comments at 20-21; Ohio PUC Comments at 17-18; Oklahoma CC Comments at 4; RBOC Comments at 49; Scherers Comments at 3; Sprint Comments at 33; Texas PUC Comments at 5-6; Virginia SCC Comments at 4.

<sup>945</sup> Ohio PUC Comments at 18.

<sup>946</sup> See, e.g., California PUC Comments at 21; Indiana URC Comments at 6; MCI Comments at 20-21; Sprint Comments at 33; Texas PUC Comments at 5.

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number of commenters encourage the Commission to ban these devices entirely.<sup>947</sup> Alternatively, Sprint argues for promulgation of positive rules requiring alphanumeric keypads on all payphones.<sup>948</sup> MCI, Scherers, and the Indiana URC argue for penalties to be assessed against offenders.<sup>949</sup> In particular, MCI calls for "significant Commission forfeitures," while Scherers endorses punitive fines and disconnection of service as a response to violations.<sup>950</sup> Sprint proposes further that no IXC should be required to provide compensation to any PSP found to be violating the proposed rule on letterless keypads.<sup>951</sup>

### c. Discussion

**296.** We now conclude, as we tentatively concluded in the Notice, that the use of letterless keypads violates both TOCSIA and the 1996 Act. We find that an exclusively numeric payphone keypad defeats a caller's attempt to reach its OSP of choice through the use of commonly-used "vanity" access sequences such as AT&T's "1-800-CALL-ATT" and "10ATT" or MCI's "1-800-COLLECT." Such access sequences, which can be easily remembered by consumers, require the presence of both alphabetic and numeric characters on payphone keypads. A letterless keypad, therefore, clearly defeats a consumer's attempt to utilize these heuristic sequences. In their sales material, letterless keypad manufacturers have specifically positioned these devices as "by-pass keypad[s]" that "prevent[] dial around [calls]."<sup>952</sup> No party has commented on a plausible purpose for these devices other than to restrict access to a non-presubscribed carrier.

**297.** To promote consumer access to OSPs, TOCSIA required the unblocking of 800 and 950 access numbers at aggregator locations and directed the Commission to mandate the unblocking of 10XXX access codes and/or the establishment of 800/950 access numbers by each OSP.<sup>953</sup> We conclude that letterless keypads violate the unblocking requirements of TOCSIA by preventing consumers from reaching their OSP of choice through the dialing of vanity access sequences. A payphone keypad without alphabetic characters serves the same purpose as the blocking that is prohibited by TOCSIA. Accordingly, we will take enforcement action, including

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<sup>947</sup> See, e.g., Ameritech Comments at 37; GVNW Comments at 10; Idaho PUC Comments at 3; Indiana URC Comments at 6; RBOC Comments at 49; Scherers Comments at 3; Sprint Comments at 33; Texas PUC Comments at 6.

<sup>948</sup> Sprint Comments at 33.

<sup>949</sup> Indiana URC Comments at 7; MCI Comments at 21; Scherers Comments at 3.

<sup>950</sup> MCI Comments at 21; Scherers Comments at 3.

<sup>951</sup> Sprint Comments at 33.

<sup>952</sup> Notice at para. 87.

<sup>953</sup> 47 U.S.C. § 226(e).

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forfeitures, if such devices are used, just as we would take action against other forms of blocking. Moreover, OSPs may not pay commissions to PSPs whose payphones block access.<sup>954</sup>

**298.** Independent of TOCSIA requirements, we conclude that the practice of deploying letterless keypads inhibits consumer choice in the selection of OSP services and is anticompetitive. Likewise, we conclude that such deployment restricts the availability of payphone OSP services to the general public. The 1996 Act seeks "to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public[.]"<sup>955</sup> Therefore, we conclude that use of letterless keypads is inconsistent with the 1996 Act.

### **3. Oncor Petition**

**299.** On August 7, 1995 Oncor Communications, Inc. filed a petition asking the Commission to prescribe compensation for public payphone premises owners and presubscribed OSPs. Oncor states that such compensation "is necessary to remedy the injustices resulting from access code calls."<sup>956</sup> The Commission invited comment on Oncor's petition by Public Notice released September 12, 1995. We deny Oncor's request. As commenters note, the presubscribed OSP incurs no costs when a consumer makes an access code call from a payphone, and it would be inequitable to require any party to compensate the OSP because the caller chose not to use it.<sup>957</sup> Moreover, there is no need for us to prescribe compensation for premises owners. The rules that we adopt in this Report and Order will ensure that PSPs are fairly compensated for calls that originate on their facilities, and market forces will ensure that the PSPs fairly compensate premises owners.

## IV. PROCEDURAL MATTERS

### **1. Petitions for Reconsideration and Ex Parte Presentations**

**300.** Parties must file any petitions for reconsideration of this Report and Order within 30 days from release of this document. We hereby waive, on our own motion, the requirements of Section 1.4 of our rules to establish this new date of public notice in light of the deadline established in the 1996 Act to complete this proceeding. Parties may file oppositions to the petitions for reconsideration pursuant to Section 1.106(g) of the rules, except that we require that oppositions to the petitions be filed within seven (7) days after the date for filing the petitions for reconsideration. The Commission will not issue a separate notice of any petitions

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<sup>954</sup> 47 C.F.R. § 64.704(b)(2).

<sup>955</sup> 47 U.S.C. § 276(b).

<sup>956</sup> Oncor Petition at 1.

<sup>957</sup> See MCI Comments on Oncor's Petition at 2-3; Comments of APCC on Oncor's Petition at 2.

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for reconsideration; this paragraph serves as notice to all interested parties of the due dates for petitions and oppositions. In addition, the Commission hereby waives Section 1.106(h) of the rules and will not accept reply comments in response to oppositions. We conclude that these actions are necessary to complete all Commission action in this proceeding, which involves issues concerning the Commission's expedited implementation of the 1996 Act, by the statutory deadline of November 8, 1996. We will consider all relevant and timely petitions and oppositions before final action is taken in this proceeding.

**301.** To file a petition for reconsideration in this proceeding parties must file an original and ten copies of all petitions and oppositions. Petitions and oppositions should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. If parties want each Commissioner to have a personal copy of their documents, an original plus fourteen copies must be filed. In addition, participants should submit two additional copies directly to the Common Carrier Bureau, Enforcement Division, Room 6008, 2025 M Street NW, Washington, D.C. 20554. The petitions and oppositions will be available for public inspection during regular business hours in the Dockets Reference Room (Room 230) of the Federal Communications Commission, 1919 M Street, NW, Washington, DC 20554. Copies of the petition and any subsequently filed documents in this matter may be obtained from ITS, Inc., 2100 M Street, NW, Suite 140, Washington, DC 20037, (202) 857-3800.

**302.** Petitions for reconsideration must comply with Sections 1.106 and 1.49 and all other applicable sections of the Commission's rules.<sup>958</sup> Petitions also must clearly identify the specific portion of this Report and Order for which relief is sought. If a portion of a party's arguments does not fall under a particular topic listed in the outline of this Report and Order, such arguments should be included in a clearly labelled section at the beginning or end of the filing. Parties may not file more than a total of ten (10) pages of ex parte submissions, excluding cover letters. This 10 page limit does not include: (1) written ex parte filings made solely to disclose an oral ex parte contact; (2) written material submitted at the time of an oral presentation to Commission staff that provides a brief outline of the presentation; or (3) written material filed in response to direct requests from Commission staff. Ex parte filings in excess of this limit will not be considered as part of the record in this proceeding.

## **2. Final Paperwork Reduction Act Analysis**

**303.** The decision herein has been analyzed with respect to the Paperwork Reduction Act of 1995, Pub. L. 104-13, and several of its requirements have been approved in accordance with the provisions of that Act. The Office of Management and Budget ("OMB") made several suggestions for our proposals:

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<sup>958</sup> See 47 C.F.R. § 1.49. We require, however, that a summary be included with all comments, although a summary that does not exceed three pages will not count toward the page limits. The summary may be paginated separately from the rest of the pleading (e.g., as "i, ii"). Id.