D. Small Business Regulatory Enforcement Reform Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of subjects in 41 CFR part 101–49

Government property management, Excess government property.

For the reasons set forth in the preamble, 41 CFR part 101–49 is amended as follows:

PART 101–49—UTILIZATION, DONATION, AND DISPOSAL OF FOREIGN GIFTS AND DECORATIONS

1. The authority citation for part 101–49 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)); sec. 515, 91 Stat. 862 (5 U.S.C. 7342).

2. Section 101–49.001–5 is amended by revising the introductory text to read as follows:

§ 101–49.001–5 Minimal value.

Minimal value means a retail value in the United States at the time of acceptance of $260 or less, except that:

* * * * *

Dated: March 15, 1999.

David J. Barram,

Administrator of General Services.

[FR Doc. 99–6936 Filed 3–19–99; 8:45 am]

BILLING CODE 6820–34–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket 96–128; FCC 99–7]

Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996

AGENCY: Federal Communications Commission

ACTION: Final rule; Petition for Reconsideration.

SUMMARY: This order implements pay phone compensation provisions of section 276 of the Telecommications Act of 1996. This Order responds to an order of the U.S. Court of Appeals for the DC. Circuit, which remanded certain compensation rules adopted by the Federal Communications Commission in the Second Report Order in CC Docket No. 96–128, FCC No. 97–371, 62 FR 58659 (October 30, 1997). This Order reduces from $.284 to $.240 the default per-call compensation that is owed by long distance carriers to pay phone providers for compensable calls originating from pay phones. This Order also addresses other issues relating to the Commission's rules implementing the pay phone provisions of the Telecommunications Act of 1996.

DATES: Effective April 21, 1999.

FOR FURTHER INFORMATION CONTACT: Glenn Reynolds, Enforcement Division, Common Carrier Bureau. (202) 418–0960.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third Report and Order and Order on Reconsideration of the Second Report and Order (Third Report and Order) in CC Docket No. 96–128, adopted on January 28, 1999, and released on February 4, 1999. The full text of the Third Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, NW, Washington DC. The complete text of this decision may also be downloaded from the FCC's website, www.fcc.gov. The complete text may be purchased from the Commission's duplicating contractor, International Transcription Services, 1231 20th Street NW, Washington DC. 20036, (202) 857–3800.

I. Introduction

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

A. The Commission's Prior Orders

2. In the prior orders in this proceeding, the Commission has fulfilled much of the congressional mandate embodied in section 276 by creating the structural groundwork necessary for competition to flourish in the provision of payphone services. *See Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96–128, Notice of Proposed Rulemaking, 61 FR 31481 (June 20, 1996) (*NPRM*); Report and Order, 61 FR 52307 (October 7, 1996) (*First Report and Order*); Order on Reconsideration, 61 FR 65341 (December 12, 1996) (*First Report and Order on Reconsideration*) (together the *First Report and Order* and the *First Report and Order on Reconsideration* are referred to as the *Payphone Orders*). The *Payphone Orders* were affirmed in part and vacated in part. *See Illinois Public Telecomm. Ass'n v. FCC*, 117 F.3d 555 (D.C. Cir. 1997) (*Illinois Public Telecomm.*). The Commission addressed the issues remanded by *Illinois Public Telecomm.* in the Second Report and Order, 62 FR 58659 (October 30, 1997) (*Second Report and Order*). The Second Report and Order was also appealed. On appeal, the Court remanded certain issues to the Commission. *See MCI Telecomm. Corp. et al. v. FCC*, 143 F.3d 606 (D.C. Cir. 1998) (*MCI v. FCC*). In addition to responding to those issues remanded by the Court, this Order also addresses issues raised by parties that petitioned us to reconsider various decisions made in the Second Report and Order.

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

4. The Commission has adopted two prior orders aimed at balancing the policy objectives identified above. In these prior orders, the Commission gave primary importance to Congress's objective of establishing a market-based, deregulatory mechanism for payphone compensation, as required both in section 276 and the generally pro-competitive goals of the 1996 Act. The Commission recognized, however, that various statutory, technological, and economic factors inhibited the development of a fully deregulated means of providing fair compensation

for certain types of calls broadly referred to as ''dial-around'' calls for which payphone owners were largely uncompensated prior to the 1996 Act. Indeed, the Telephone Operator Consumer Services Improvement Act (TOCSIA) limits the ability of payphone service providers (PSPs) to negotiate with interexchange carriers (IXCs) fair compensation for dial-around calls. Unlike other aspects of payphone service, such as the local coin rate, the Commission accordingly found it necessary to adopt a more regulatory approach to ensuring that PSPs are fairly compensated for these types of calls.

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

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

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

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

9. As detailed below, both of the Commission's orders establishing a mechanism for setting ''fair compensation'' for access code and toll-free calls were appealed. While upholding most of the other market-opening undertakings described above, the Court in both instances found fault with the Commission's efforts to tie ''fair compensation'' for these dial-around or compensable calls to the deregulated prices charged by PSPs for local coin calls. In particular, the Court, in its second remand order, found that the Commission failed to adequately articulate why the price of a local call is an appropriate starting point for deriving a regulated default price for ''dial-around'' or compensable calls. The Commission's main rationale for this approach was that it could be viewed as being fair in the sense that the margin between price and incremental cost would be the same for all types of calls. Thus all types of calls could be viewed as making the same contribution to covering joint and common costs. Thus our justification for choosing $.35 as a starting point was simply that it could be viewed as producing a ''fair'' result.

B. The 1996 Act and Market Constraints

10. In this Order, we must reevaluate the appropriate means by which to achieve the basic policy objectives expressly set out in section 276. In setting a default compensation amount, the present realizing any of these goals individually will not be the optimal means of satisfying one or more of the other goals. For example, the market for payphone services is characterized by increasing competitive pressures due, in part, to the market-opening directives of our previous orders in this proceeding. Additional pressures have arisen from payphone-market substitutes, i.e., the rapidly growing availability of Personal Communications Service (PCS) and cellular technology, which provides some consumers with an economic alternative to payphones. In a competitive payphone market, these factors certainly may lead to a reduction in the deployment of payphones in some areas, particularly in low-volume locations. Moreover, the number of payphones deployed across the country is inexorably related to our determination of a fair compensation amount, as we are directed to do by Congress. Simply stated, a higher default compensation amount will lead to the deployment of more payphones, and a lower default compensation amount will lead to fewer payphones, irrespective of which rate represents ''fair compensation.'' Another example arises from the Congressional mandate that the Commission's compensation methodology be established on a ''per call'' basis. Because the overwhelming majority of a payphone's costs are fixed, a per call compensation plan results in the following anomaly: A payphone with a low number of calls, e.g., in a rural area where few calls are made from the phone, will just barely recover its costs. Under the same plan, a payphone with a high number of calls, e.g., a payphone in a busy bus station, will recover much more than its costs.

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

12. After considering the record before us and the opinions of the Court,

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

13. In contrast to the provision of local coin call service, however, the provision of access-code and toll-free call service is subject to statutory and technological restrictions that presently inhibit the ability of the parties to the transaction to reach a mutually agreeable price, or, alternatively, to decline to transact. In particular, Congress previously mandated in section 226 of the Act that PSPs must provide to consumers using their payphones access to all IXCs. As a result, PSPs have minimal leverage to negotiate with these IXCs for a fair compensation amount for delivering calls to the IXCs' networks. Indeed, this concern was one of the fundamental reasons why Congress adopted the compensation provisions of section 276. In its previous orders, the Commission sought to overcome this lack of bargaining power by establishing a system where the IXC could choose to ''block,'' or not accept, calls if it determined that the price being demanded by the PSP was more than the IXC was willing to pay. We conclude in this Order, however, that the present ability of carriers to block is not sufficiently developed to ensure that allowing the default rate to float with the PSP's local coin rate will necessarily result in a compensation level that is ''fair,'' as contemplated by the statute.

C. Summary of Our Actions in this Order

14. In this Order, we switch from the top-down methodology of our prior orders to a ''bottom-up'' methodology to establish the default per-call compensation amount that shall be paid to PSPs for compensable calls that are not otherwise compensated. We refer to the compensation amount as a ''default amount'' to emphasize that it applies only in the absence of some other price that may be negotiated between the payphone owner and the carrier. Pursuant to the bottom-up methodology adopted in this Order, we calculate an average fully distributed cost for each type of call such that the default price for each type of call is set equal to the fully distributed cost of that type of call. We call this a ''bottom-up'' approach to connote the idea that the price of dial-around or compensable calls is calculated by ''building-up'' from a starting point of zero using costs, instead of ''building-down'' from a starting point of the price of coin calls using avoided costs. In our explanation of the shift to a bottom-up methodology, we respond to the concerns of the Court in MCI v. FCC, which remanded the Commission's Second Report and Order.

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

16. Because our bottom-up methodology assures fair compensation for the overwhelming majority of payphones, we conclude that the per-call compensation methodology that we adopt in this Order will not negatively affect the current deployment of payphones and thus will promote Congress's goal of widespread deployment of payphones. In particular, by using a ''marginal'' payphone location for purposes of calculating the default compensation amount, we have sought in this Order to ensure the continued deployment of existing payphones to the greatest practical extent. Furthermore, nothing in our Order affects or jeopardizes the states' ability to ensure that public interest payphone programs are viable and supported in an equitable and fair fashion. We therefore conclude that the per-call compensation methodology adopted herein is the best option available to implement section 276(b)(2) of the Act in light of existing technological, statutory, and economic constraints.

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

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

19. As of 30 days after publication of this Order in the **Federal Register**, IXCs must compensate PSPs the default per-call compensation amount for all compensable payphone calls not otherwise compensated pursuant to contract. For purposes of this Order, a compensable call includes toll-free calls, access-code calls, certain 0+, and certain inmate calls. The default per-call compensation amount shall be applicable through at least January 31, 2002. We anticipate that, by this time, the parties will have had the opportunity to resolve the impediments that currently inhibit the ability of payphone owners and carriers to negotiate fair compensation for dial-around calls. If, by January 31, 2002, parties have not invested the time, capital, and effort necessary to remove these technological impediments, or we determine that other impediments to a market-based resolution continue to exist, the parties may petition the

Commission regarding the default compensation amount, related issues pursuant to technological advances, and the expected resultant market changes. Barring an unforeseen change in the market or in the relevant technology, we will look with disfavor upon any petition requesting that we modify, before January 31, 2002, either the compensation amount or compensation mechanism. We find that it will require a significant amount of time for IXCs to fully implement and deploy the necessary technologies and that it is important to provide stability to the parties, the public, and the market concerning the amount of per-call compensation.

II. Discussion

A. Remand Issues

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

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

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

1. Definition of Compensable Call

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

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

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

2. Definition of Fair Compensation

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

27. In light of the above, we find that PSPs will be fairly compensated if, at a minimum, we: (1) balance the interest of PSPs and those parties that will ultimately pay the default compensation amount; and (2) ensure that the default compensation amount is sufficient to support the continued widespread availability of payphones for use by consumers.

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

29. In its prior orders, the Commission defined ''fair compensation'' as the amount to which a willing seller (i.e., PSP) and a willing buyer (i.e., customer, or IXC) would agree to pay for the completion of a payphone call. In the Second Report and Order, the Commission, in establishing a default compensation amount, found that fair compensation required that dial-around calls contribute a proportionate share of the common costs of payphone service. We

continue to believe that this is an essential element of our determination of ''fair compensation'' in this context. We find that any other approach would unfairly require one segment of payphone users to disproportionately support the availability of payphones to the benefit of another segment of payphone users. Such subsidies distort competition and appear inconsistent with Congress's directive to eliminate other types of subsidies. The default compensation amount that we establish below seeks to ensure that the current number of payphones is maintained.

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

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

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

32. In the Second Report and Order, the Commission established a two-phase compensation system. Under the first phase, PSPs would receive, for a two-year period ending in October 1999, a default compensation amount of $.284 for each compensable call, absent an agreement between the PSP and IXC on a different rate. The Commission arrived at this figure by using a top-down approach for determining the costs to the PSP of making available coinless calls from their payphone. The Commission's top-down approach started with what the Commission determined was the most prevalent price of a deregulated local coin call (i.e., $.35). From this starting point, and consistent with the Commission's understanding of the Court's statements in *Illinois Public Telecomm.*, the Commission subtracted the costs of providing coin calls that are not incurred for providing coinless calls, an amount calculated to be $.066. Thus, for two years, an IXC would be required to pay the PSP $.284 for every compensable call.

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

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

a. TOCSIA and Targeted Call Blocking.

35. Because of TOCSIA and the present lack of targeted call blocking, we conclude that the compensation system established in the Second Report and Order is currently unworkable. First, under TOCSIA, the PSP (or seller) must connect (or sell) all calls to the IXC. Under the Commission's prior approach, and after the two-year phase-in period, each PSP would be allowed to set the price for compensable calls at whatever level it chose by raising or lowering the local coin rate at a particular payphone. Accordingly, the PSP would be able to receive a greater compensation amount by raising the local coin price. At a minimum, this relationship creates a non-cost based incentive on the part of the PSPs to raise the local coin rate from a payphone, not to make more money from coin calls but to increase the level of compensation from dial-around calls. In most instances, we believe that the ability of a PSP to raise its local rate in this manner will be constrained by competitive forces. As the Court pointed out, however, we also have previously recognized that locational monopolies allow PSPs to set some payphones' rates above cost. Additionally, where a

payphone generates few local coin calls relative to the number of coinless calls, e.g., a payphone located in an airport, linking the coinless rate to the coin rate potentially could create instances where a PSP seeks to maximize its total revenue by raising the local coin rate, even if doing so deterred customers from making coin calls. In this situation, a PSP may be able to more than offset lost revenues from local coin calls with the compensation it would receive from coinless calls.

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

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

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

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

b. Recovery of Joint and Common Costs.

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

41. We find insufficient evidence in the record to ascertain the method by which PSPs set prices for a various types of calls in order to recover the common costs of providing payphone service. The error in the Commission's assumption that each call contributes equally to joint and common costs may be demonstrated by examining the revenue that PSPs receive for 0+ and 1+ calls. Although coinless calls (such as 0+ calls) cost less than coin calls, some PSPs receive more than $.70 per 0+ call. This is more than twice as much as the prevailing $.35 local coin price. Also, the RBOC Coalition states that for many payphones, the 1+ sent-paid charges (i.e., the coin price for a long distance call) exceeds basic long distance charges by an average of $1.45 per call. Clearly, some PSPs do not price their calls such that each call makes an equal contribution to joint and common costs. Therefore, if our goal is to price dial-around calls such that they make a proportionate contribution to joint and common costs, we cannot do so by basing their price on the local coin calling price, because we do not know how individual PSPs price local coin calls in relation to the recovery of joint and common costs. Therefore, upon reconsideration, we find unreliable the assumption that PSPs set prices so that each call recovers an equal amount of joint and common costs.

c. MCI v. FCC.

42. Finally, in light of the Court's concerns regarding whether a market-based rate for coinless calls could be derived by subtracting costs from a rate charged for coin calls, we find that a top-down approach is unsuitable at present for setting default compensation. By using a bottom-up approach, we resolve the Court's concerns, because we focus on the costs of a dial-around call, rather than attempting to compare the rate and costs of a local coin call to the cost of a dial-around call. The Court's concerns in *MCI* v. *FCC* and the other factors discussed in this section persuade us that, at this time, a bottom-up compensation methodology is more appropriate than a top-down methodology.

5. Selection of a Bottom-Up Methodology

43. In light of existing technological, statutory, and economic constraints, we find that the most appropriate mechanism for establishing fair compensation is a bottom-up approach. We recognize that such a compensation mechanism does not replicate the price that the market would set for each and every call from a payphone, which, in an ideal setting, would be our preferred outcome. Under the constraints detailed previously, however, we conclude that a bottom-up approach will best comply with the statutory directive of ensuring the widespread deployment of payphones in a manner that is consistent with our definition of fair compensation.

44. In establishing a bottom-up approach, we considered three standard

economic approaches to setting prices, in addition to our review of the top-down methodology used in the *Second Report and Order:* (1) marginal cost pricing; (2) the RBOC Coalition's Ramsey's-style pricing; and (3) fully distributed cost coverage. As explained in Section IV.B. of the Order, we find that a fully distributed cost-coverage approach best fulfills our statutory directives within the economic, technological, and statutory constraints that currently exist. Specifically, we find that a fully distributed cost-coverage approach that determines cost by working from the bottom up will comport with statutory directives and satisfy the Court's concerns raised in *MCI* v. *FCC.* Furthermore, we find that, in keeping with Commission precedent arising from our implementation of the 1996 Act, payphone costs will be calculated on a forward-looking basis. Thus, in setting a default compensation amount using a fully distributed cost-coverage approach (our ''bottom-up'' methodology), we examine the costs of a new payphone operation installing new payphones.

45. As explained above, we find that ''fair compensation'' means that the marginal cost of compensable calls, plus an appropriate amount of the joint and common costs of the payphone operation, will be recovered for each compensable call. We conclude that a bottom-up methodology will provide fair compensation consistent with this standard. Thus, rather than focusing on the cost of adding one additional payphone to an operation, we instead examine the total costs of a payphone operation and distribute those costs across all of the payphones in that operation. We find that this approach results in a compensation amount that is fair to both payphone owners and the beneficiaries of these calls. We also conclude that establishing a compensation amount that allows a PSP to recover its costs will promote the continued existence of the vast majority of payphones presently deployed, thereby satisfying what we consider to be Congress's primary directive that we ensure the widespread deployment of payphones.

46. In this Order, we consider a cost to be ''joint and common'' if the amount of the cost does not vary with respect to the mixture of calls at the payphone. For example, the cost of a payphone's enclosure does not change due to an increase in the number of coin calls relative to coinless calls, or vice versa. We conclude, therefore, that the enclosure is a joint and common cost, and we attribute the enclosure costs to all types of calls. We attribute costs that are not joint and common to the type of call associated with that cost. For example, as the number of coin calls from a payphone increases, the coin collection costs also will rise due to the higher frequency of coin collection trips. We therefore attribute coin collection costs solely to coin calls.

47. As discussed above, we find that the use of a bottom-up approach also resolves the concern that PSPs do not necessarily price their various services such that each call recovers an equal share of joint and common costs. In the Second Report and Order, the Commission's goal was to set a compensation amount that would allow each call to recover its share of joint and common costs. The top-down approach, which subtracted the avoided costs of a compensable call from the price of the local coin call, assumed that each call would contribute equally to the joint and common cost. As explained above, we find that this assumption is not necessarily reliable, based on the manner in which PSPs price various calls. Under our bottom-up approach, however, that problem no longer is at issue. Under the bottom-up approach, we use the total monthly joint and common costs of the payphone operation and divide these costs by the total monthly number of calls from a marginal payphone location. This results in a per-call share of the joint and common costs. Thus, a bottom-up approach alleviates the problem of how to ensure that each call has the opportunity to recover its share of joint and common costs.

48. Our bottom-up approach also avoids the impact of the technological restrictions discussed previously that undermine our previous approach of allowing the default rate to change with the deregulated coin rate of each payphone. As explained above, in the bottom-up system we adopt herein, we have set a single amount for compensation, which we find fair and compensatory. IXCs do not need the ability to block calls from payphones based on a varying compensation amount because all payphones will use the same compensation amount, absent an agreement between the parties for some different level of compensation. Finally, our bottom-up approach alleviates the Court's concerns in MCI v. FCC stemming from the Commission's use of the local coin price as the starting point of compensation for dial-around calls. Under the bottom-up approach, we do not use the local coin price to determine the costs associated with a compensable call. Thus, we do not run afoul of the Court's concern that the Commission was ''subtracting apples from oranges.'' Rather, we determine each of the costs of the dial-around call and add them together, from the bottom up, to determine the per-call compensation amount.

49. Our default compensation amount is calculated to allow the payphone owner the opportunity to recover a proportionate share of joint and common costs associated with dial-around calls. Payphone owners may, of course, determine that contracting with IXCs to receive a lower amount will attract more dial-around traffic and thus increase their profits. Payphone owners also have the opportunity to set their own prices for non-compensable calls, e.g., coin calls and presubscribed calls, and may set the price for each type of call so that it covers the marginal cost plus a proportionate share of joint and common costs. This would allow a payphone in a marginal location the opportunity to recover all of its costs. Of course, a payphone owner may dismiss this pricing strategy in favor of an alternative strategy that may prove to be more profitable.

50. We note that our approach is not designed to make every payphone profitable. Payphones with sufficiently low call volumes or sufficiently high costs will not be profitable, regardless of the compensation amount we establish. We discuss in Section III.B.3.b. of the Order our selection of a marginal payphone location and our calculation of the number of calls from that location, important components of our calculation of the compensation amount.

51. Certain petitioners argue that we should use a marginal cost pricing approach, in which prices are set by considering the cost of producing one additional good. Others argue that we should use a Ramsey's-style pricing approach. We find that marginal cost pricing and the RBOC Coalition's Ramsey's-style pricing are ineffective in complying with our statutory goals. As explained elsewhere, however, we conclude that basing our determination of fair compensation on the marginal payphone is the approach most consistent with the statutory directive of ensuring widespread deployment of payphones.

52. Specifically, we reject marginal cost pricing for the same reasons given by the Commission in the *First Report and Order* and alluded to in Section III of the Order. That is, a purely incremental cost standard for dial-around calls would undercompensate PSPs for dial-around calls, because it would prevent PSPs from recovering a reasonable share of joint and common costs from those calls. Thus, the revenue

that would have been received from these calls would be subsidized by revenue from other types of calls, which, in and of itself, contradicts Congress's directive to eliminate subsidies and also distorts competition. Our bottom-up approach, however, adequately considers and accounts for the dial-around call's share of the joint and common costs. In Section III.B.2.c. of the Order, we reject the RBOC Coalition's version of Ramsey's-style pricing, in part, because the pricing methodology is extremely sensitive to small changes in input estimates. Furthermore, we find unreliable the input estimates provided by the RBOC Coalition.

6. Conclusions and Response to the Court

53. We conclude, for the reasons stated above and elsewhere in this Order, that a bottom-up methodology is the most appropriate means for establishing a default compensation amount at this time. We also conclude that our selection of a bottom-up methodology reasonably resolves the Court's concerns, as expressed in *MCI* v. *FCC.* As the Court indicated, a market-based rate may be an appropriate method at some point in the future. When the time is appropriate, we will consider revisiting this issue.

C. Reconsideration Issues

54. In this section, we address petitioners' arguments in support of, and in opposition to, various methodologies for determining the default compensation amount. In addition to the bottom-up methodology described above, we set the default compensation amount.

1. Alternative Compensation Methodologies

55. In this Section, we address alternative compensation mechanisms put forth by commenters that were not discussed above in connection with the Court's remand.

a. Duration Methodology.

56. Several commenters argue that the compensation amount for a toll-free call should be based on the duration of the call. We are not convinced by the record evidence that the marginal costs of a relatively shorter dial-around call are significantly different than those of a longer call. Although the line charge for some coin calls may vary depending on the length of the call, dial-around calls do not incur any additional line charge, regardless of their length. Indeed, as we have discussed, because most payphone costs are fixed, they do not vary with the length of the call. Nor are we convinced that longer calls cause a significant amount of additional wear and tear on a payphone. Consistent with the Commission's determination in the Second Report and Order, we decline to make an adjustment for opportunity costs of a dial-around call because we conclude that it is unlikely that the revenue from another call will be lost. In the Second Report and Order, the Commission concluded that compensating PSPs for opportunity costs was not necessary because the evidence demonstrates that dial-around calls only occupy 1.8 percent of available payphone usage time. In this Order, we decline to consider location rents as a cost of a dial-around call. Even if we were to consider including compensating PSPs in connection with location rents, the amount of rent would not vary with the duration of a phone call because the amount of payphone revenue would not change.

57. Furthermore, we are persuaded that a duration-based methodology would result in added expense, delay, and confusion. Several complaints have already been filed with the Commission regarding payment of payphone compensation. We believe the establishment of a duration-based methodology would result in the filing of even more complaints, thereby exacerbating, rather than resolving, the current situation.

58. Even if we based the compensation amount on the duration of a call, we could not cap the compensation amount at $.285 or any other amount, because it would not fully compensate PSPs. Assuming the default amount were set at $.285, PSPs receiving less than $.285 for short calls must receive more than $.285 for longer calls in order for the PSP to be fully compensated. We therefore decline to alter the payphone compensation mechanism to reflect the duration of the call. We note, however, that IXCs and LECs are free to use measured service compensation in their contracts, if they so choose.

b. RBOC Coalition's Ramsey's-Style Pricing Methodology.

59. We again decline to adopt the RBOC Coalition's elasticities methodology. Our objection is not that elasticities and marginal costs cannot be taken into account in setting product prices, especially in an industry with high fixed and common costs. Rather, we find that we do not have sufficiently accurate information in the record to use elasticities and marginal costs in this particular case. We also conclude that, for purposes of setting dial-around per-call compensation, the RBOC Coalition's proffered methodology results in prices that are unreliable. Specifically, the RBOC Coalition's methodology is highly sensitive to estimated values of elasticities and marginal costs. In conjunction with the RBOC Coalition's highly speculative estimates of the elasticities and marginal costs at issue, we find that the resulting ''suggested price'' is widely variant and thus of little practical value in establishing a reasonable compensation figure. Simply put, the RBOC Coalition's methodology gives wildly divergent answers when the inputs are changed even slightly, and we find such variance unacceptable given the unreliability of the information we have for input data.

c. Bellwether Compensation.

60. Sprint argues that we should identify the most efficient carrier and base the dial-around compensation amount on that carrier's costs, i.e., the so-called ''bellwether'' approach. We decline to adopt a bellwether approach because there is insufficient information on the record to conclude that the cost differences among PSPs with data on the record are due to differences in efficiency. All of the parties that submitted data on the record operate payphones in multiple areas and in multiple states. Each region of the country experiences different costs. For example, payphones in dry climates require less protection from rain than payphones in wetter climates. Therefore, a PSP in a more arid region could install a less protective and thus cheaper enclosure than a PSP in a wetter region. Clearly, a PSP in the wetter region should not be deemed less efficient because it needs to invest in a more expensive enclosure. Similarly, we find that regional differences in labor costs and telephone line expenses would affect the cost of a payphone operation. Sprint did not provide any justification showing that any party was more efficient than another.

d. Caller-Pays Methodology.

61. Under a caller-pays compensation methodology, the calling party would pay for dial-around calls by depositing coins or using a credit card. The caller-pays compensation mechanism is a variation of the set use fee compensation mechanism. Under the set use fee compensation mechanism, the IXC imposes a charge on the caller, collects payment from the caller, and remits that money to the PSP. In the *First Report and Order,* the Commission rejected the caller-pays approach and the set use fee approach on similar grounds. Despite some parties' requests,

we decline to adopt a caller-pays compensation methodology at this time.

62. We expect IXCs to develop the technology necessary to employ targeted call blocking, which will allow them to block calls from PSPs that they find to be excessively priced. With the bargaining power afforded to them by the ability to block calls, we are hopeful that IXCs will negotiate privately with PSPs for fair and mutually agreeable compensation amounts. Our preference is for IXCs and PSPs ultimately to enter into privately negotiated agreements establishing compensation amounts for dial-around calls. Although some economists would argue that a caller-pays methodology forms the basis for the purest market-based approach, we find that the statutory language and legislative history indicate Congress's disapproval of a caller-pays methodology. We therefore conclude that we should monitor the advancement of call blocking technology and any accompanying marketplace developments before reconsidering a caller-pays compensation approach.

63. We also note that some parties urge us to adopt a ''modified caller-pays plan.'' Under a modified caller-pays plan, entities subscribing to a toll-free number would have three options for handling calls made from payphones. First, the subscriber could elect to accept calls from payphones and pay the charges associated with those calls that are passed through to it by the IXC. Second, the subscriber could block all calls from payphones, eliminating the need for compensation to the PSP. Third, the subscriber could elect to use a special ''area code'' (i.e., 8XX, instead of ''800'' or ''877'' codes) that would enable it to block incoming payphone calls that callers chose not to pay for with coins or a credit card. For the reasons provided above for not instituting a mandatory caller-pays system, we also decline in this proceeding to impose the modified caller-pays or 8XX plan. We note that a modified caller-pays plan is the subject of a petition for rulemaking filed by AirTouch and that the Commission may examine the issue further if that petition is granted.

e. Requests for Exemptions from Compensation.

64. Several petitioners assert that certain types of calls, such as ''help line'' or paging calls, should be exempt from per-call compensation charges. Other petitioners urge us to exempt from compensation requirements payphone calls to 800 hotlines and Electronic Benefit Transfer (''EBT'') services. Specifically, these parties request that we either waive the per-call compensation amount or establish an 8XX number for non-profit organizations. We find that Congress clearly instructed us in Section 276 to ensure compensation for ''each and every'' call from a payphone. Congress explicitly exempted only two types of calls: emergency calls (911) and TRS calls. Because Congress did not provide for any other exceptions, we cannot grant an exception for these types of calls. Even if Congress permitted us to grant an exception for EBT calls, we are unconvinced that we should do so. We understand that when a caller is placing an EBT call, the buyer of that call will be the government. This is insufficient justification, however, to deny payphone owners compensation for the use of their payphone. We are confident that our default compensation amount is fair to all parties involved. In receiving compensation, payphone owners will benefit from their decision to place their payphone where consumers benefit from using it. In addition, carriers will pay no more than a proportionate share of the payphone's joint and common costs.

65. We also decline requests to artificially raise the local coin calling rate or to re-regulate payphone prices so that calls like EBT calls can be made for free or at a reduced price. We understand that because of our default compensation amount, government agencies will ultimately spend more money to disburse benefits. Under Citicorp's proposal to raise the local coin calling price, however, consumers will still pay for those calls, albeit in a different form. Under Citicorp's proposal for free or reduced-price EBT calls, PSPs would not receive the extra compensation from EBT traffic and therefore would have no economic incentive to locate payphones according to the needs of EBT callers. Any such scheme also would involve creating a subsidy, an option that Congress specifically eliminated in the 1996 Act.

66. We note that APCC states that some PSPs would be willing to reduce the amount of per-call compensation if they find evidence that IXCs do the same. We encourage those parties with budgetary concerns to meet with the IXCs and PSPs to reach a voluntary agreement regarding per-call compensation.

2. Cost Calculation

67. In this section, we address challenges to three aspects of the Commission's calculation in the Second Report and Order of the cost of a dial-around call. Petitioners challenge the accuracy of the various sources of cost data on which we relied in determining the cost of a dial-around call. Petitioners challenge our choice of a marginal payphone location in establishing certain per-call costs. Finally, petitioners argue that various components of our cost calculation were either improperly allowed, improperly disallowed, or improperly calculated.

a. Source of Cost Data.

68. In this section, we address issues raised concerning the cost data discussed in the Second Report and Order. We also examine the cost data submitted in response to our *Public Notice* and in petitions for reconsideration. Petitioners raise concerns regarding five sources of cost data. First, petitioners argue that, in the Second Report and Order, the Commission relied too heavily on data from independent PSPs. Second, parties claim that NYNEX's cost studies show that NYNEX's average cost of a coin call is less than $.25, implying that the compensation amount also should be less than $.25. Third, parties claim that, in the Second Report and Order, the Commission ignored Sprint's cost data. Fourth, AT&T submitted data from SBC that purportedly shows that, in using a LEC's costs, the per-call compensation amount should be less than $.25. Fifth, MCI submitted a cost study purporting that the average cost of a dial-around call is significantly less than the Commission estimated. We address each of these issues separately.

69. *Reliance on APCC and Independent PSP data.* When calculating the average cost of a dial-around call in the Second Report and Order, the Commission relied on data that it concluded was reliable. In its petition for reconsideration, AT&T asserts that the Second Report and Order generally overstates the costs of payphone calls, because the Commission relied too heavily on cost data submitted by APCC and other independent payphone providers. AT&T further states that most payphones are operated by LECs, not independent payphone owners. In the Second Report and Order, the Commission relied solely on APCC data only when determining the number of calls made from a payphone in a marginal location. In this Order, however, we do not rely on that calculation. We therefore need not address AT&T's arguments regarding the use of APCC data.

70. *NYNEX cost studies for Massachusetts and New York State.* Before the Commission issued the Second Report and Order, Sprint petitioned the Commission to require

NYNEX to distribute to all parties of record a copy of the confidential Massachusetts DPUC study, which concludes that the cost of a coin call is $.167. The Commission denied Sprint's petition. AT&T contends that the Massachusetts DPUC study supports a per-call dial-around price of less than $.167. AT&T suggests that the LECs failed to supply cost data because such data would militate in favor of establishing a compensation amount that is less than an amount that would benefit the LECs.

71. On July 10, 1998, the New York Public Service Commission (PSC) filed comments showing that, in a study conducted in New York, Bell Atlantic's average cost of a coin call is less than $.25. Several parties cite this study in support of AT&T's contention that, due to lower costs experienced by LECs, the default, per-call compensation amount should be less than $.25. We believe that, when taking into account all the appropriate costs, the average cost of making a coin call in New York is likely to be higher than the $.25 that the New York PSC reported.

72. *Sprint data.* In the Second Report and Order, the Commission did not rely heavily on Sprint cost data. AT&T alleges that the Commission failed to adequately consider Sprint's cost data. We conclude that the Sprint data are unreliable. First, Sprint's return and depreciation estimates appear to be based on embedded costs, not forward-looking costs. This is significant in assessing the reliability of Sprint's data, because embedded costs do not necessarily reflect the economic cost of establishing a current operation. Specifically, Sprint's cost study suggests that it can recoup the value of a payphone by recovering $6.98 each month for five years. Thus, based on Sprint's data, a Sprint payphone, including pedestal, enclosure, and installation, costs $418.80. The evidence on the record, however, demonstrates that a newly installed coin payphone unit costs more than $2,300. Clearly, Sprint's asset return requirement is too low.

73. Second, we find appropriate our decision in the Second Report and Order to not rely on Sprint's estimate for Sales, General and Administration (SG&A) costs (i.e., overhead costs). Sprint reported that its SG&A costs are only $8.51 per payphone per month. This is almost 70 percent less than a large PSP's SG&A cost and nearly 50 percent less than SBC's SG&A estimate of $16.52. In light of the contrary record evidence, and given our experience regulating telecommunications companies, including payphone operators, we find that Sprint's SG&A estimate does not reasonably represent the costs of a stand-alone payphone company. For this reason, we find that the Commission properly exercised its discretion and did not rely on Sprint's estimate of SG&A costs. We note that, although the Commission did not fully explain its reasoning in the Second Report and Order, we believe the Commission's decision was nonetheless correct. Furthermore, for these same reasons, we conclude that we should not rely on Sprint's costs in this Order.

74. *SBC data* (as submitted by AT&T). In its petition for reconsideration, AT&T submits a new cost study, called Project Quintet, that SBC performed to facilitate the possible sale of its payphone operations. AT&T argues that the Project Quintet data demonstrate that the average cost of a coin call is $.195. SBC states that the costs enumerated in Project Quintet were incomplete and did not account for several costs of a payphone operation, including legal support and rent. The RBOC Coalition submitted supplemental information regarding maintenance and SG&A costs. AT&T believes that the Project Quintet data are sufficient to estimate SBC's payphone costs and do not require modification.

75. We note that the Project Quintet data that AT&T submitted does not include line items for legal support, rent, advertising, or other similar costs. We therefore concur with SBC that those costs were not included in the data submitted by AT&T. We find, however, that the Project Quintet data, as supplemented by SBC, provides some assistance to our determination of a fair default compensation amount. Although the capital costs derived from the Project Quintet data are unusable because they are based on embedded costs, we conclude that the SG&A and maintenance costs, as supplied by SBC, are reliable.

76. *MCI data.* In response to our *Public Notice*, MCI submitted a payphone cost study suggesting that the average cost of a coin call is $.16, and the average cost of a coinless call is $.12. Upon review, we conclude that MCI's cost study is unreliable for four reasons. First, the cost study is based on a hypothetical business model. Because payphones serve a wide variety of locations, including outdoor locations, we find that the capital cost data from actual payphone operations will better reflect a PSPs actual costs. Second, MCI's SG&A estimate is based on multiplying the capital investment by 10.4 percent. This 10.4 percentage was arrived at by examining AT&T's overhead costs. AT&T is primarily a long distance company, not a payphone operator. We find that MCI failed to adequately explain why a payphone operator's overhead costs should bear the same relationship to capital as AT&T's. We thus find unreliable MCI's percentage of 10.4 for estimating overhead costs. Furthermore, MCI multiplies its overhead factor by an amount of capital that we find to be too low, resulting in an SG&A estimate that consequently is too low. We thus conclude that MCI's SG&A cost estimate is unreliable.

77. Third, we find that MCI's cost study is incomplete. For example, MCI did not include any cost estimates for trucks, replacement parts, and other items. We find that these costs are required, however, for a payphone operation. Also, MCI estimated the monthly telephone expenses, in part, by using the 1996 ARMIS reports, using line items USOA 2315 and 6315 (public telephone equipment), but did not account for the payphone costs included in accounts 6533 and 6534. For these reasons, we conclude that MCI's cost study is unreliable.

78. *LEC payphone data versus non-LEC payphone data.* Several parties contend that LEC payphones are more efficient than non-LEC payphones. Parties point to NYNEX cost studies that allegedly show that NYNEX experienced lower costs than non-LEC PSPs. As we state above, we are unable to verify the validity of some of this third-party information. Also, some of the third-party data appears to be unreliable on its face. Also, the RBOC Coalition states that the NYNEX studies do not include all payphone costs. Thus, we find that, before using third-party information, such information must be verified.

79. We conclude, however, that much of the data submitted by the independent PSPs reliably reflect the costs of a stand-alone payphone operation. First, as the Commission noted in the Second Report and Order, the independent PSPs' data are consistent with their Securities and Exchange Commission (SEC) forms 10K, which must be certified to by an officer of the company. Further, these data are based on their own, actual payphone operations. In certain instances, where we could not use a particular cost element because it did not accurately measure the cost we were examining, the RBOC Coalition and PSPs submitted supplemental data that convinced us of the data's reliability. In addition, in response to our request, the RBOC Coalition supplied data for payphone line costs and FLEX ANI cost recovery tariffs. We find the payphone line cost

data and FLEX ANI data to be reliable, because the cost estimates were largely taken from tariffs, with the remaining figures provided with sufficient documentation to convince us they are correct.

b. Use of Marginal Payphone Location.

80. To establish a per-call default compensation amount based on the costs of a payphone operation, the cost of that operation must be divided by a particular number of calls. In the Second Report and Order, we concluded that we should use the number of calls at the marginal payphone location. A marginal payphone location is a location where the payphone operator is able to just recoup its costs, including earning a normal rate of return on the asset, but is unable to make payments to the location owner. The Commission determined that when the 1996 Act was passed and payphones were receiving dial-around compensation on a per-phone basis, the marginal payphone location experienced 542 calls per month.

81. We reaffirm that use of the marginal payphone location is necessary to fairly compensate PSPs and ensure the widespread deployment of payphones in compliance with the mandates of section 276. We find that basing the default compensation amount on an average payphone location would cause many payphones with less-than-average call volumes to become unprofitable. We note that many states examining the payphone market have concluded that there are a sufficient number of payphones and thus a public interest payphone program is unnecessary at this time. We conclude that, if we were to base the default compensation amount on the average payphone location, many payphones would become unprofitable and exit the industry. We therefore conclude that we should use the marginal payphone location when establishing the default compensation amount. Because it assures fair compensation for the overwhelming majority of payphones, we conclude that the methodology we adopt in this Order will not negatively affect the current deployment of payphones and thus is consistent with Congress's goal of widespread deployment of payphones.

82. MCI asserts that use of a marginal payphone location suffers from a "circularity" problem because the number of calls at a marginal payphone location is affected by the compensation amount. Thus, an increase in the per call compensation amount means that a payphone needs fewer calls to break even. The "circle" thus consists of call volume being a function of compensation, and compensation being a function of call volume. Although MCI argues that this circularity undermines the use of a marginal location, this same concern applies equally to the use of an average location, or for that matter any volume level the Commission could choose as a rational starting point for its analysis. This is true because the problem does not arise from the selection of average versus marginal payphone locations, but rather is inherent in the use of a per-call compensation scheme, as mandated by the statute. As the default amount increases, more low volume payphones become profitable; as default amount decreases, more payphones become unprofitable and are likely to be taken out of service.

83. The concern identified by MCI requires us first to deduce an appropriate level of payphone deployment, in order to calculate a "fair" compensation amount. Based on the evidence in the record, we have concluded that the current approximate level of deployment most appropriately satisfies Congress's stated goal of promoting widespread deployment of payphones to the benefit of the general public. This conclusion is supported by the filings of several states that have studied the payphone markets in their respective jurisdictions and concluded that the current deployment of payphones is adequately meeting the needs of the public. Realizing that many payphones with below average call volumes will disappear if we use the average payphone location to establish a default compensation amount, we instead conclude that the use of marginal payphone location best satisfies Congress's goal of widespread deployment by ensuring the profitability of most existing payphones.

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

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

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

87. MCI alternatively argues that the cost of the payphone that a PSP installs will be related to the call volume at that location. MCI suggests that a PSP

operating in a marginal payphone location may install a less expensive payphone unit than a PSP operating in an average payphone location. MCI therefore concludes that if we use the average cost of a payphone location, we should use the call volume from the average payphone location.

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

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

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

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

92. Assuming that a payphone receives $.35 for each of the 270 coin calls at a marginal location, $.231 for each dial-around call (the amount before interest for the four month delay) for each of the 142 dial-around calls at a marginal payphone location, and $.50 per call for each of the 26 operator assisted calls at a marginal payphone location, the payphone would generate $140.30 in revenue. Thus, we find that the marginal payphone location can support the costs of a typical payphone. We therefore find MCI's argument unconvincing.

c. Location Rents.

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

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

d. Coin Mechanism.

95. In the Second Report and Order, the Commission determined that the per-call cost of the coin mechanism was $.031. PSPs argue that the cost of a coin mechanism should not have been deducted, because the cost cannot be avoided. On reconsideration, we reaffirm our treatment of the payphone coin mechanism in the Second Report and Order. We find the actual deployment of numerous coinless payphones is convincing evidence that undermines the assertion that such payphones are not economically viable. Even the RBOC Coalition apparently admits that more than 20,000 of its members' payphones are coinless. While the record does not appear to include similar data for independent PSPs, we would expect that, given the historic differences in the manner in which RBOCs and independent payphone owners have deployed their payphones, the percentage of coinless payphones deployed by independent PSPs is even higher that the RBOC Coalition members. This conclusion is consistent with reports that nearly six percent of all installed payphones in 1997 were coinless. Moreover, the RBOC data and this latter information reflect industry deployment as of year end 1997, at which time per call dial-around compensation had only recently been implemented. Needless to say, the availability of dial-around compensation greatly increases the economic viability of coinless payphones. Such viability should be even further enhanced by the continuing (and apparently rapid) growth of dial-around calls and simultaneous decrease in the number of coin calls. Indeed, as the percentage of dial-around calls increases relative to all calls from payphones, the coin mechanism becomes increasingly unnecessary. In fact, a coin mechanism is likely to be installed only where the coin traffic warrants the expense. For these reasons we are convinced that the

previous treatment of the payphone coin mechanism is correct.

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

e. Bad Debt.

97. In the Second Report and Order, the Commission found insufficient information on the record to account for the costs relating to bad debt. We conclude that the recent history of per-call compensation payments is not an accurate guide for future levels of bad debt. We do not know the percentage of uncollected per-call compensation that is due to billing errors of the PSPs, as opposed to unscrupulous carriers. We also note that the RBOC Coalition asks us to clarify our rules regarding the entity that is required to pay per-call compensation. Although we were unable to generate a sufficient record on this question before issuing this Order, parties may file a petition for clarification on this issue. It appears that if we were to grant such a petition, uncollectibles would be significantly reduced. An additional reason why we decline to establish a cost element for bad debt is that, in doing so, PSPs that ultimately recover their uncollectibles from delinquent carriers would then double-recover: once from the debtor and once from the consumer, i.e., through the cost element included in the compensation amount. Furthermore, as discussed below, we ensure that PSPs will receive interest on late payments for as long as such payments are overdue. For these reasons, we find that it would be unwise to establish a cost element for bad debt at this time. We note that, in a forthcoming order, we will determine the amount that IXCs owe PSPs for the period before October 7, 1997 and the way in which IXCs may recover overpayments that result from the default compensation amount established herein. If a petition for clarification is resolved prior to the adoption of our order addressing IXCs payments prior to October, 1997, we may visit the issue of uncollectibles in that order.

f. Dial-Around Collection Costs.

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

g. Components of the Cost Calculation.

(1) Payphone Capital Expense.

99. In the Second Report and Order, the Commission recognized the need for a PSP to recover depreciation costs and earn a return on its investment. The Commission concluded in the Second Report and Order that the record did not provide sufficient detail regarding the cost of capital. The Commission therefore estimated capital costs by examining the 1996 SEC form 10-K data for two non-LEC PSPs, CCI and Peoples Telephone. The Commission concluded that the amount of capital per new payphone, including the coin mechanism, was between $2,799 and $3,234. Upon reconsideration, we find that the cost of capital used in the Second Report and Order included some costs that are not necessary to run a payphone operation. Accordingly, we recalculate the cost of capital.

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

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

102. We conclude above that a coinless payphone is similar to the 11A-type payphone. AT&T states that the cost of a 11A-type coinless payphone is $225. The median estimates provided by Peoples Telephone and Davel for the remainder of the payphone unit (e.g., the enclosure, pedestal, installation, and the associated parts) is $1,362.50. Consistent with the Commission's determination in the Second Report and Order, we agree with AT&T that we should subtract the $60 of installation costs that are associated with the coin mechanism. We thus conclude that a coinless payphone unit costs $1,527.50. We find that $1,527.50 in capital costs amounts to a monthly payment of $28.04. We arrive at the $28.04 monthly figure by determining the monthly payments necessary to depreciate the $1,527.50 investment over ten years, while earning a return of 11.25 percent on net investment, and allowing for federal, state and local taxes at a rate of 39.25 percent.

(2) Line Charge Costs.

103. In the Second Report and Order, the Commission noted that PSPs pay LECs for payphone lines under a variety of tariffs that range from measured rates (e.g., per message or per minute) to flat,

monthly (i.e., unmeasured) rates. The Commission concluded that the average line cost for a coinless call ranged from $.065 to $.075 per call. The Commission calculated this cost by subtracting the average per-call measured service charges from the average line cost data reported by PSPs. AT&T avers that instead of subtracting the average measured service charge for all payphones, the Commission should have subtracted the average measured service charges for those phones that actually paid measured service charges. The RBOC Coalition argues that the Commission overstated the line savings of a coinless call.

104. In the *Second Report and Order*, the Commission found the data in the record to be insufficient to distinguish among these different types of costs. The RBOC Coalition subsequently submitted evidence demonstrating the correct calculation of the joint and common cost of the payphone line. In its calculation, the RBOC Coalition used the monthly line charge where only unlimited service was available, the fixed monthly charge where only measured service was available, and the fixed monthly charge associated with measured service where the PSP had the choice of unlimited service or measured service. The RBOC Coalition calculated a weighted average joint and common line cost based on the total number of payphones, including both BOC and independent payphones, in each member's territory. The national average joint and common line cost is $33.65.

(3) Maintenance Costs.

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

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

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

(4) Sales, General, and Administrative Costs.

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

109. In the Second Report and Order, the Commission concluded that per-call SG&A costs ranged from $28.80 to $29.27. Newly submitted data suggests that SG&A costs are lower, however. We find that the new SBC cost data, as supplemented by the RBOC Coalition, provides a reasonable estimate of the maintenance costs of an RBOC payphone operation. We also find that the Peoples Telephone data represents a reasonable estimate of a non-LEC payphone operation. The new data suggests that, on a per-phone, per-month basis, SG&A costs amount to $16.52 for RBOCs. In its comments submitted in 1997, Peoples Telephone suggested that SG&A amounted to $25.27. In the Second Report and Order, the Commission added $4.02 to SG&A costs to account for bad debt. Because we consider bad debt elsewhere in this Order, we do not add here the bad debt costs provided by Peoples Telephone. Because there are more RBOC Coalition payphones than independent payphones, we calculate a weighted average SG&A cost of $19.62 per month.

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

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

111. We based the $.01 FLEX ANI cost estimate, in part, on evidence filed by USTA, in which it stated that the costs associated with LECs providing coding digits would be $600 million. Subsequent to the adoption and release of the Second Report and Order, USTA filed a revised coding digit estimated cost of $61.2 million, prompting some parties to petition for reconsideration of our FLEX ANI cost estimate. In addition to the updated USTA information, many LECs have since filed their actual FLEX ANI tariffs, which establish with specificity the costs to be recovered in relation to FLEX ANI. In light of this new information, several parties have filed petitions requesting that our decision reflect the revised coding digit cost estimates.

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

113. We adjust the default compensation amount to reflect the updated USTA coding digit cost estimate and the recently filed FLEX ANI tariffs. We find that the average

payphone owner would pay $1.08 per payphone line for 36 months because of FLEX ANI. We describe our calculation here. Pursuant to the *Coding Digit Waiver Order,* 63 FR 20534 (April 27, 1998), LECs may account for the recovery of the cost of implementing FLEX ANI over a variable length of time. The RBOC Coalition submitted data showing that several RBOCs chose to recover their FLEX ANI costs over a 24-month-period, while BellSouth chose to recover its costs over a 12-month-period. Because this Order establishes a three-year-period for default compensation payments, we find that the amount PSPs are paid for FLEX ANI should be calculated as if the RBOCs tariffed the FLEX ANI cost-recovery element for 36 months.

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

(6) Interest.

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

116. We find that firms that expect a one-month delay before receiving payment will price their goods accordingly, with the interest already built into the quoted price. The calculations so far have not considered a built-in 30-day delay in payment. Further, at the time the *Second Report and Order* was released, the Commission anticipated a three-month delay, not a four-month delay, in receiving payments. In light of the average delay in payments of four months, we conclude that we should add to the compensation amount a total of four months of interest at 11.25 percent per year. The above default price will therefore be raised by $.009 to reflect four months of interest on the base amount of $.231. If IXCs are late in making their payments to PSPs, interest on the principal will continue to accrue at 11.25 percent per year.

(7) Marginal Cost of a Payphone Call.

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

(8) Default Compensation Amount.

118. The new default price for compensable calls is $.24. We arrived at this amount by adding the joint and common costs and dividing the sum of the joint and common costs by the number of calls at a marginal location. We then add to this number four months of interest at 11.25 percent. These calculations result in a default compensation amount of $.24.

(9) Top-down Calculation. 119. Although we decline in the Order to adopt a top-down methodology, we have performed a top-down calculation to validate that our bottom-up methodology is reasonable. Similarly, the Commission in the *Second Report and Order* undertook a bottom-up calculation to validate the reasonableness of a top-down methodology. In performing this calculation, we start with what commenters agree is the predominant local coin calling price in the United States, $.35. We subtract from this amount the cost of the coin mechanism, termination charges, and coin collection charges.

120. We find that the installation of a coin mechanism costs a PSP $17.02 per month. Dividing $17.02 by the 318 coin calls made at an average payphone location, we conclude that we would subtract $.054 for the coin mechanism. We would also subtract $.038 for local termination charges, and subtract $.036 for coin collection charges. We do not include coding digit cost recovery charges here because most PSPs are now paying these charges. Further, because FLEX ANI costs are joint and common, they are already reflected in the $.35 starting price. We thus conclude that, under this approach, the default amount, before interest, would be $.222. To this amount, we would add $.008 for interest, resulting in a total of $.23. Thus, using the same data with a top-down methodology, the default amount is within a penny of the default amount arrived at under our bottom-up approach. We believe this similarity supports the reasonableness of the default compensation amount we adopt in this Order.

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

3. Compensation for October 7, 1997 to Present

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

functions,'' as well as pursuant to the provisions of section 276, which directs the Commission to ''take all actions necessary to promulgate regulations to insure fair compensation.''

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

4. Method of IXC Overpayment Recovery

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

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

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

V. Procedural Matters

A. Final Paperwork Reduction Act Analysis

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

B. Supplemental Final Regulatory Flexibility Analysis

128. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *NPRM*. The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. The Commission conducted a Final Regulatory Flexibility Analysis (FRFA) in the *Second Report and Order*. The Commission's Supplemental Final Regulatory Flexibility Analysis (SFRFA) in this Order conforms to the RFA.

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

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

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

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

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

131. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one that: (1) is

independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally ''any not-for-sprofit enterprise which is independently owned and operated and is not dominant in its field.'' As of 1992, there were approximately 275,800 small organizations nationwide. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were approximately 85,000 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns, of which 37,566 (96 percent) have populations of fewer than 50,000. The Census Bureau estimates that this ratio is basically accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the rule change.

a. Common Carrier Services and Related Entities.

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

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

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

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

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

137. Local Exchange Carriers. Neither the Commission nor the SBA has defined small local exchange carriers (LECs). The best available definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent *Telecommunications Industry Revenue* data, 1,371 carriers reported that they were engaged in the provision of local exchange services. We do not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees. Thus, we are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 1,371 providers of local exchange service are small entities or small ILECs that may be affected by the rule change.

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

139. Competitive Access Providers. Neither the Commission nor the SBA has developed a definition of small

entities specifically applicable to competitive access services providers (CAPs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent *Telecommunications Industry Revenue* data, 109 carriers reported that they were engaged in the provision of competitive access services. We do not have data specifying the number of these carriers that are not independently owned and operated or that have more than 1,500 employees. Thus, we are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 109 small entity CAPs that may be affected by the rule changes herein.

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

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

142. Resellers (including debit card providers). Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable SBA definition for a reseller is a telephone communications company other than radiotelephone (wireless) companies. According to the most recent *Telecommunications Industry Revenue* data, 339 reported that they were engaged in the resale of telephone service. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 339 small entity resellers that may be affected by the rule changes herein.

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

b. Wireless and Commercial Mobile Service. 144. Rural Radiotelephone Service. The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS). We will use the SBA's definition applicable to radiotelephone companies, i.e., an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

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

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

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

147. This Order results in no additional filing requirements.

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

148. In the Second Report and Order, we addressed steps taken to minimize the economic impact on small entities. In particular, we addressed the potential economic impact on small businesses

and small incumbent LECs from (1) the amount of compensation paid to PSPs, and (2) the administration of per-call compensation.

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

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

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

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

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

VI. Conclusion

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

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

156. The $.24 default price will be the price that, beginning thirty days after this order is published in the **Federal Register**, IXCs must compensate PSPs for all coinless payphone calls not otherwise compensated pursuant to contract, or advance consumer payment, including subscriber 800 and access code calls, certain 0+ and certain inmate calls. The $.24 price will serve as the default per-call compensation price for coinless payphone calls through January 31, 2002. At the conclusion of the three year period, if parties have not invested the time, capital, and effort necessary to move these issues to a market-based resolution, parties may petition the Commission regarding the default amount, related issues pursuant to technological advances, and the expected resultant market changes.

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

VII. Ordering Clauses

158. Accordingly, pursuant to authority contained in Sections 1, 4, 201–205, 226, and 276 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 201–205, 215, 218, 219, 220, 226, and 276, *it is ordered* that the policies, rules, and requirements set forth herein *are adopted*.

159. *It is further ordered* that this order is effective April 21, 1999.

160. *It is further Ordered,* that 47 CFR Part 64 is amended as set forth in Appendix A, effective April 21, 1999.

161. *It is further Ordered* that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this *Third Report and Order* and *Order on Reconsideration of the Second Report and Order,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

162. *It is further Ordered* that the July 14, 1998 Motion of Telecommunications Resellers Association to accept late-filed pleading *is granted.*

List of Subjects in 47 CFR Part 64

Communications common carriers, Operator service access, Payphone compensation, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

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

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

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

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

2. Amend § 64.1300 by removing paragraph (d) and by revising paragraph (c) to read as follows:

§ 64.1300 Payphone compensation obligation.

* * * * *

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

[FR Doc. 99–6944 Filed 3–19–99; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–234; RM–9324]

Radio Broadcasting Services; Augusta, WI

AGENCY: Federal Communications Commission.