Commission's rules, 47 C.F.R. 0.91, 0.291, the policies and requirements set forth in the payphone proceeding and the *Per-phone Compensation Waiver Order* are clarified.

Federal Communications Commission.

Robert W. Spangler,

Acting Chief, Enforcement Division, Common Carrier Bureau.

[FR Doc. 98–12346 Filed 5–12–98; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket 96–128; DA 98–642]

Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996; AT&T Request for Limited Waiver of the Per-Call Compensation Obligation

AGENCY: Federal Communications Commission.

ACTION: Final rule; clarification and waivers

SUMMARY: The Common Carrier Bureau adopted a Memorandum Opinion and Order (''Order''), which grants interexchange carriers (''IXCs'') a waiver of the payphone compensation requirements of the *Payphone Orders* to enable them to pay to payphone service providers (''PSPs'') per-phone instead of per-call compensation for subscriber 800 and access code calls from payphones when payphone-specific coding digits are not available from those payphones. The Order also serves as a companion to the *Bureau Coding Digit Waiver Order,* because in the Order the Bureau grants IXCs a waiver of the per-call compensation requirement so they may pay per-phone instead of per-call compensation for the payphones for which the Bureau granted waivers in the *Bureau Waiver Order* and the *Bureau Coding Digit Waiver Order.*

DATES: Effective April 3, 1998.

FOR FURTHER INFORMATION CONTACT: Rose Crellin, Formal Complaints and Investigations Branch, Enforcement Division, Common Carrier Bureau, (202) 418–0960.

SUPPLEMENTARY INFORMATION: This is a summary of the Bureau's Memorandum Opinion and Order in CC Docket No. 96–128 [DA 98–642], adopted on April 3, 1998, and released on April 3, 1998. The full text of the Memorandum Opinion and Order (''Order'') is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. The complete text of this decision also may be purchased from the Commission's duplicating contractor, International Transcription Services, 1231 20th Street, N.W., Washington, D.C. 20036.

MEMORANDUM OPINION AND ORDER

I. Introduction

1. In the *Order,* the Common Carrier Bureau (''Bureau'') grants interexchange carriers (''IXCs'') a waiver of the payphone compensation requirements of the *Payphone Orders* [1] to enable them to pay to payphone service providers (''PSPs'') per-phone instead of per-call compensation for subscriber 800 and access code calls from payphones when payphone-specific coding digits are not available from those payphones. On March 9, 1998, the Bureau adopted a Memorandum Opinion and Order clarifying the payphone-specific coding digit requirements set forth in the *Payphone Orders* and granting limited waivers of the requirement that local exchange carriers (''LECs'') provide payphone-specific-coding digits to PSPs, and that PSPs provide coding digits from their payphones to IXCs, before PSPs can receive per-call compensation from IXCs for subscriber 800 and access code calls.[2] The *Order* serves as a companion to the *Bureau Coding Digit Waiver Order,* because in the order the Bureau grants IXCs a waiver of the per-call compensation requirement so they may pay per-phone instead of per-call compensation for the payphones for which the Bureau granted waivers in the *Bureau Waiver Order* [3] and the *Bureau Coding Digit Waiver Order*.[4]

2. Moreover, in the *Order,* the Bureau addresses a letter filed by AT&T Corporation (''AT&T'') requesting that AT&T, and other similarly situated IXCs, receive a waiver to pay per-phone rather than per-call compensation when payphone-specific coding digits are not available for a payphone. The *Order* grants in part AT&T's request that AT&T and other similarly situated IXCs be permitted to compensate PSPs on a per-phone basis, where payphone-specific coding digits are not available. The *Order* concludes that the waiver granted therein, which allows IXCs to pay per-phone compensation when payphone-specific coding digits are not available from a payphone, is necessary to ensure that PSPs receive fair compensation while LECs, PSPs, and IXCs transition to providing and receiving payphone-specific coding digits to identify calls from payphones. In the *Order,* the Bureau also concludes that granting the waiver and allowing IXCs to pay per-phone instead of per-call compensation where payphone-specific coding digits are not available is in the public interest.

3. The *Bureau Coding Digit Waiver Order* required that payments be remitted at least on a quarterly basis. That order required that the payment for the October 1997 through December 31, 1997 period must be paid no later than April 1, 1998. In the *Order,* however, the Bureau notes that the waiver granted therein will require some IXCs to obtain additional information and calculate their per-phone compensation amounts, and that these IXCs may need additional time to make the payments to PSPs for the October 1997 through December 31, 1997 period for payphone compensation. Thus, the Bureau stated that IXCs may make this payment no later than April 30, 1998, but must include additional interest for the period after April 1, 1998, at the rate of 11.25 percent per year, if the payment is not made by April 1, 1998.

4. The waiver granted in the *Order* is effective on April 3, 1998, to ensure that all PSPs continue to receive compensation, as required by the *Payphone Orders* and the *Second Report and Order.* Without this waiver, many

[1] *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996,* CC Docket No. 96–128, Report and Order, 61 FR 52307 (October 7, 1996) (''*Report and Order*''); Order on Reconsideration, 61 FR 65341 (December 12, 1996), (''*Order on Reconsideration*'') (together 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.*''). *See also* Second Report and Order, 13 FCC Rcd 1778 (1997) (''*Second Report and Order*''), pets. for recon. pending, review pending, *MCI Telecomm. Corp.* v. *FCC,* D.C. Circuit No. 97–1675 (filed November 7, 1997); *Sprint Corp.* v. *FCC,* D.C. Circuit No. 97–1685 (filed November 13, 1997); *Personal Communications Industry Association* v. *FCC,* D.C. Circuit No. 97–1709 (filed December 1, 1997); *Illinois Public Telecommunications Association* v. *FCC,* D.C. Circuit No. 97–1713 (filed December 3, 1997).

[2] *See Bureau Coding Digit Waiver Order,* Memorandum Opinion and Order, CC Docket No. 96–128, DA 98–481 at paras. 19–20 (rel. March 9, 1998), 63 FR 20534 (April 27, 1998).

[3] *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996,* 62 FR 58659 (October 30, 1997), (*Bureau Waiver Order*).

[4] This waiver order relies on the record established for the *Bureau Coding Digit Waiver Order* 63 FR 20534 (April 27, 1998), and ex partes received subsequent to the release of that order. *Pleading Cycle Established for Petitions to Waive Payphone Coding Digits,* Public Notice, 12 FCC Rcd 17,340 (1997) (*Public Notice*).

PSPs would not be compensated for payphone calls that began October 7, 1997, because the LECs servicing them are not yet able to provide payphone-specific coding digits, and some of the IXCs are unable to identify certain payphone calls. The immediate implementation of the waiver is crucial to the Commission's efforts to ensure fair compensation for all PSPs, encourage the deployment of payphones, and enhance competition among PSPs, as mandated by Section 276.

5. The *Second Report and Order,* established a default compensation rate of $0.284 per call, absent a negotiated agreement, for subscriber 800, access code, inmate, and 0+ calls. In the *Order* the Commission also extended the default per-call compensation period from one to two years, for the first two years of per-call compensation, i.e., from October 7, 1997 until October 6, 1999, to allow participants, including IXCs, LECs, and PSPs, additional time to adjust to market-based per-call payphone compensation for subscriber 800 and access code calls.

6. In the *Payphone Orders,* the Commission imposed a requirement that, by October 7, 1997, LECs transmit payphone-specific coding digits to PSPs, and that PSPs transmit those digits from their payphones to IXCs. The Commission also required IXCs to implement methods to track payphone calls. In the *Order on Reconsideration,* the Commission clarified that the provision of payphone-specific coding digits is a prerequisite to payphone per-call compensation payments by IXCs to PSPs for subscriber 800 and access code calls and that each payphone must transmit coding digits that ''specifically identify it as a payphone, and not merely as a restricted line.'' Finally, that order clarified that LECs must make available to PSPs, on a tariffed basis, such coding digits as part of their ANI for each payphone.

7. On October 7, 1997, the Bureau provided, on its own motion, a limited waiver until March 9, 1998, for those payphones from which the necessary coding digits to identify individual payphone calls were not provided. The limited waiver was to afford LECs, IXCs, and PSPs an extended transition period for the provision of payphone-specific coding digits without further delaying the payment of per-call compensation for each and every call originated from a payphone as required by Section 276 of the Communications Act. This limited waiver applies to the requirement that LECs provide payphone-specific coding digits to PSPs, and that PSPs provide coding digits from their payphones before they can receive per-call compensation from IXCs for subscriber 800 and access code calls. The Bureau stated, however, that LECs and PSPs capable of transmitting coding digits for some or all of their serving area remained obligated to do so.

8. On March 9, 1998, in the *Bureau Coding Digit Waiver Order,* the Bureau clarified the requirements established in the *Payphone Orders* for the provision of payphone-specific coding digits by LECs and PSPs, to IXCs. Specifically, the Bureau clarified that flexible automatic numbering identification (''FLEX ANI'') and automatic number information indicators (''ANI ii'') are the methods to provide payphone-specific coding digits that comply with the requirements of the *Payphone Orders.* The Bureau also clarified the requirement for federal tariffs that LECs must file pursuant to the *Payphone Orders.* The Bureau also granted permissions and waivers under Part 69 of the Commission's rules allowing LECs to establish rate elements to recover the costs of implementing FLEX ANI to provide payphone-specific coding digits for per-call compensation. In addition, the Bureau granted, on its own motion, limited waivers to LECs, PSPs, and IXCs to facilitate the transition to per-call compensation and affirmed its grant, in the *Bureau Waiver Order,* of a limited waiver of five months, until March 9, 1998, to those LECs and PSPs who asserted that they could not provide payphone-specific coding digits as required by the *Payphone Orders.*

9. In the *Bureau Coding Digit Waiver Order,* the Bureau emphasized that the IXC obligation to pay per-call compensation established in the *Payphone Orders* remains in effect. As required in the *Bureau Waiver Order,* payphones appearing on the LEC-provided lists of payphones are eligible for per-call compensation even if they do not transmit payphone-specific coding digits. As required in the *Payphone Orders* and the *Second Report and Order,* absent a negotiated agreement, IXCs must pay per-call compensation of $0.284, for all calls not otherwise compensated that they receive from payphones. LECs that have certified to the IXC that they comply with the requirements of the *Payphone Orders* must receive per-call compensation.

II. Discussion

A. AT&T Request for Per-phone Compensation

10. Beginning October 7, 1997, IXCs were required to pay compensation on a per-call basis. AT&T states, however, that it will be unable to pay per-call compensation because of the waiver granted in the *Bureau Waiver Order,* which provides LECs and PSPs an extended time period within which to provide payphone-specific coding digits.

11. In the *Order,* the Bureau grants, in part, AT&T's request that the Bureau waive the payphone compensation provisions and permit IXCs to pay per-phone—instead of per-call—compensation when payphone-specific coding digits are not provided with a payphone call's ANI. In the *Report and Order,* the Commission concluded that the requisite technology exists for IXCs to track calls from payphones. The Commission recognized, however, that tracking capabilities vary from carrier to carrier, and that it may be appropriate, for an interim period, for some carriers to pay compensation for ''each and every completed intrastate and interstate call'' on a flat-rate basis until per-call tracking capabilities are in place. In the *Bureau Coding Digit Waiver Order,* the Bureau explained that the record indicates that LECs, PSPs, and IXCs are encountering problems with transitioning to per-call compensation. Therefore, the Bureau concluded that AT&T had shown special circumstances for IXCs to pay per-phone instead of per-call compensation when payphone specific coding digits are not available, particularly in light of the waivers granted within the *Bureau Waiver Order* and the *Bureau Coding Digit Waiver Order.*

12. Other IXCs also indicate a problem paying per-call compensation during the waiver period when payphone-specific coding digits are not available and that in certain circumstances, such as payphones served by nonequal access switches, payphone-specific coding digits will not be available until the switches are replaced. Therefore, the Bureau also concludes in the *Order* that it is in the public interest to grant the waiver conditioned upon an IXCs compliance with the methodology set forth herein, which allows IXCs to pay per-phone compensation where payphone-specific coding digits are unavailable from a payphone. The Bureau further stated that it is in the public interest to grant the waiver to require per-phone compensation where payphone-specific coding digits are unavailable from a payphone, so that there is no further delay in the payment of payphone compensation. This waiver is consistent with the Commission's conclusion in the *Payphone Orders* that it is

appropriate for carriers to pay flat-rate or per-phone compensation for an interim period until carriers fully implement tracking capabilities. The waiver granted therein does not apply if either the ''27'' coding digit or FLEX ANI coding digits (''27,'' ''70,'' ''29'') are available from a LEC for that payphone and that payphone is able to provide payphone-specific coding digits; where the payphone-specific coding digit is available, the per-call compensation requirements apply.

B. Per-call and Per-phone Compensation Requirements

1. Compensation Requirements

13. In the *Bureau Waiver Order* and the *Bureau Coding Digit Waiver Order*, the Bureau required IXCs to pay per-call compensation. Pursuant to the waiver granted in the *Order*, beginning October 7, 1997, IXCs must either pay per-call, or per-phone compensation as described in the Order, for payphones that do not provide payphone-specific coding digits. IXCs must pay per-call compensation for all payphones capable of providing a ''27'' ANI ii coding digit or FLEX ANI coding digits (''27,'' ''70,'' ''29'') for compensable calls. IXCs must compensate payphones that do not provide payphone-specific coding digits (''27,'' ''70,'' ''29'') either on a per-call basis or the per-phone method described in the *Order* and set forth in the brief below. Therefore, according to the *Order*, IXCs who choose to pay per-phone compensation pursuant to the waiver granted therein, must use payphone call volume information that is available to them already to determine the call volumes for which a payphone should be compensated when payphone-specific coding digits are not available for a specific payphone. An IXC may chose to compensate those payphones that are not capable of providing payphone-specific coding digits on a per-call basis where the IXC maintains a per-call tracking mechanism, such as tracking payphone calls from payphones that transmit an ''07'' digit and then comparing those calls to ANI lists. The *Order* specifies, however, that an IXC may not compensate some payphones that do not provide payphone-specific coding digits (but do provide an ''07'' ANI ii coding digit) on a per-call basis and other payphones that do not provide payphone-specific coding digits (but do provide an ''07'' ANI ii coding digit) on a per-phone basis, except for those payphones that are in the process of changing from per-phone to per-call compensation. The Bureau notes that the default rate established in the *Second Report and Order*, $0.284, which terminates at the conclusion of per-call compensation—October 7, 1999—will continue to remain in effect as a default compensation rate, absent a negotiated agreement, for calls originated from those payphones that are not able to provide payphone-specific coding digits.

14. LECs must provide ANI lists and lists of end offices that are not providing payphone-specific coding digits that specifically identify smart and dumb payphones to IXCs. In accordance with the compensation mechanism described in the *Order*, IXCs must pay per-call compensation, not per-phone compensation, once FLEX ANI is available in an end office. If payphone-specific-coding digits are available for a payphone in an end office, the fact that an IXC may decide not to take FLEX ANI from the LEC for that end office does not relieve the IXC of paying per-call compensation for that payphone once payphone-specific coding digits are available. The waiver to pay per-phone compensation does not apply in this case.

15. In the *Order*, the Bureau also clarifies the requirements set forth in the *Bureau Coding Digit Waiver Order*, that LECs provide IXCs and PSPs with certain information on request. Because IXCs choosing to pay per-call compensation for smart payphones even when payphone-specific coding digits are not available will have to compare calls with an ''07'' ANI ii digit with a LEC ANI list, the *Order* requires that the LEC ANI lists provided to the IXCs as required in the *Bureau Coding Digit Waiver Order* also indicate whether the smart payphones are transmitting the ''07'' digit. LECs also must provide FLEX ANI and ANI ii payphone-specific coding digits as soon as they are available on a switch to each IXC once the IXC requests the service for payphone compensation.

2. Compensation Methodology

16. IXCs must pay per-call compensation for a payphone if ANI ii payphone-specific coding digits (''27'') or FLEX ANI payphone-specific coding digits (''27,'' ''70,'' ''29'') are available to the IXC. In the *Order*, the Bureau grants a waiver to IXCs and allows them to compensate PSPs on a per-phone basis for those payphones that are not able to provide payphone-specific coding digits conditioned upon the IXCs compliance with the methodology set forth in the *Order*. IXCs electing to pay per-phone compensation in accordance with the waiver granted in the *Order*, must calculate the average number of subscriber 800 and access code calls based on information obtained from BOC dumb payphones transmitting the ''27'' coding digit. The *Order* divides payphones into five categories for determining the methodology used to calculate per-phone compensation: (1) Payphones able to provide payphone-specific coding digits; (2) LEC payphones that are not able to provide payphone-specific coding digits served by equal access switches (except those payphones subject to category (5)); (3) independent PSP payphones that are not able to provide payphone-specific coding digits served by equal access switches (except those payphones subject to category (5)); (4) payphones served by non-equal access switches; and (5) payphones on equal access switches owned by small and midsized LECs granted a waiver from the implementation of FLEX ANI because they are unable to recover the cost of FLEX ANI implementation over a reasonable period (''small and midsized LEC waiver'') pursuant to paragraph 76 of the *Bureau Coding Digit Waiver Order*.

17. Although the *Order* describes the compensation method for these categories individually, with the exception of compensation for those payphones that are able to provide payphone-specific coding digits, IXCs must use call volume information obtained from October 1997 through March 31, 1998 (the ''sample period''), to establish average subscriber 800 and access code call volumes per-phone to compensate PSPs for calls originated from their payphones during the fourth quarter of 1997 and the first quarter of 1998 (from October 7, 1997 through March 31, 1998). Thereafter, IXCs paying per-phone compensation will base compensation owed to PSPs for payphones that are not able to provide payphone-specific coding digits on call volumes obtained from BOC dumb payphones that are able to provide payphone-specific coding digits representative of the quarter for which compensation is owed.[5] Regardless of whether a payor pays per-call or per-phone compensation, each payor must compensate PSPs $0.284 per call, adjusted for interest where appropriate. In addition, although the compensation mechanism calculates compensation on a monthly basis, compensation must be remitted at least on a quarterly basis absent alternative arrangements between the PSP and the IXC. Payphones can

[5] For example, if compensation is due to PSPs for the second quarter of 1998, IXCs will pay PSPs based on call volumes collected from BOC dumb payphones during April–June 1998.

receive compensation only for those months that they were in service.

18. IXCs must maintain the information they use to develop the per-call and per-phone compensation payments to PSPs. In the *Report and Order,* the Commission required that IXCs initiate an annual verification of their per-call tracking functions to be made available for FCC inspection upon request, for the 1998 calendar year to ensure that IXCs are tracking all of the calls for which they are obligated to pay compensation. Nothing in the *Order* relieves IXCs of the responsibility of maintaining this information. When paying per-phone compensation as described therein, payphone compensation payors should note that payments by each payor for each payphone being compensated by that payor on a per-phone basis will be the same, although different payors will vary in the number of calls for which they must compensate payphones receiving per-phone compensation. Payors must be prepared to submit their compensation calculations and payment records if requested by the Bureau.

a. *Payphones capable of providing payphone-specific coding digits.*

19. The first category, payphones capable of providing payphone-specific coding digits, must be compensated on a per-call basis. Compensation must be remitted at least on a quarterly basis absent alternative arrangements between the PSP and the IXC. If a payphone that is not able to provide payphone-specific coding digits becomes capable of providing payphone-specific coding digits in the first 60 days of a quarter, then the IXC will be responsible for compensating that particular PSP on a per-call—instead of per-phone—basis beginning the next quarter. The payor will multiply the number of calls received from each PSP's payphone capable of providing payphone-specific coding digits by $0.284 to compute compensation owed to that PSP.

b. *LEC payphones that are not capable of providing payphone-specific coding digits.* 20. The second category, LEC payphones that are not able to provide payphone-specific coding digits, will be compensated on a per-phone basis. In the *Order,* the Bureau bases compensation for LEC payphones that are not capable of providing payphone-specific coding digits on the average number of subscriber 800 and access code calls realized from BOC dumb payphones that are able to provide payphone-specific coding digits. There is insufficient information on the record to suggest that LEC payphones that are not able to provide payphone-specific coding digits realize different call volumes than BOC payphones that are able to provide payphone-specific coding digits. Therefore, in the *Order,* the Bureau found that it is appropriate to base compensation for LEC payphones that are not able to provide payphone-specific coding digits on call volumes realized by BOC payphones that are able to provide payphone-specific coding digits.

21. To determine the amount of compensation due to LEC payphones that are not able to provide payphone-specific coding digits,[6] the payor will calculate the average number of subscriber 800 and access code calls it received from BOC dumb payphones that are able to provide payphone-specific coding digits (the ''27'' coding digit) from October 1, 1997 through March 31, 1998 (the sample period). First, the IXC will sum the number of completed subscriber 800 and access code calls it received from all BOC dumb payphones that were capable of providing payphone-specific coding digits during this period and divide by six. This results in the average number of subscriber 800 and access code calls received from all BOC dumb payphones per month. Second, the payor will obtain from the BOCs the number of BOC dumb payphones that were capable of providing payphone-specific coding digits as of the first of each month for the sample period. The payor will sum the figures and divide by six. This is the average number of BOC dumb payphones able to provide payphone-specific coding digits during the sample period. Third, the payor will divide the average number of calls calculated above in step one (1) by the average number of payphones calculated in step two (2). This division results in the average call volume per month for BOC dumb payphones that are providing the ''27'' coding digit (either through ANI ii, or FLEX ANI). This average number will be the number of calls for which compensation is due per month to each LEC payphone that is not capable of providing payphone-specific coding digits.[7] Lastly, the payor will multiply the average monthly call volume by $0.284 to compute compensation owed per-phone per month. As discussed above, this data will be used to compensate payphones for the last quarter of 1997 and the first quarter of 1998. Thereafter, LEC dumb payphones will be compensated using this same methodology based on call volume information obtained from BOC dumb payphones during the applicable quarter using three months of data rather than six months of data. In the *Order,* the Bureau declines to adjust call volume calculations to account for the possibility that BellSouth may place dumb payphones only in the lowest call volume locations. Due to the different placement strategies and the variance among payphone types, call volumes will vary among BOCs. Therefore, omitting what might be the lowest call volume data from the sample would not lead to an unbiased estimate of BOC payphone call volumes, because it would artificially leave in the highest remaining data.

c. *Independent PSP payphones that are not capable of providing payphone-specific coding digits.* 22. The third category, independent PSP payphones that are not capable of providing payphone-specific coding digits,[8] also will be compensated on a per-phone basis as calculated above for LEC payphones that are not capable of providing payphone-specific coding digits. In the *Order,* the Bureau declines to increase the average call volumes calculated above from BOC payphone call volumes for independent PSPs payphones, because data on the record indicates that the call volumes may be similar, and further, in the *Report and Order,* despite limited (if any) call volumes between BOCs and independent payphones, the Commission established one call volume for independent and LEC PSPs. In adopting a uniform rate, the Commission noted that some differences may exist among various PSPs, but found that each PSP should receive the same compensation amount for subscriber 800 and access code calls. The Commission also sought to allow all competitors equal opportunity to compete for essential aspects of the payphone business. In the *Order,* the Bureau also declined to establish separate call volume amounts for the purpose of this limited waiver, and concludes instead that call volumes should not be treated differently based on ownership characteristics.

d. *Payphone on non-equal access switches.* 23. The fourth category involves payphones on non-equal access switches. Non-equal access switches do not provide payphone-specific coding digits; therefore, theses payphones must

[6] The Bureau notes that this compensation method is for those payphones that are located on equal access switches.

[7] In calculating the amount owed to PSPs per-phone for the month of October, the payor may divide the monthly average per-phone rate for the month by 31 days and subtract for six days to begin per-phone compensation on October 7, 1998.

[8] To clarify, payphones that will receive compensation under the mechanism described in this section are independent payphones that are not capable of providing payphone-specific coding digits and are served by equal access switches.

be compensated on a per-phone basis until they are able to provide payphone-specific coding digits. Both IXCs and LECs have indicated that payphones served by nonequal access switches receive lower call volumes than other payphones. Parties have provided limited information to establish a call volume for these payphones. GTE indicates that it has a total of 289 payphones on non-equal access switches, which receive an average of 14.35 calls per payphone per month, and a small company in Iowa, Heart of Iowa Telecommunications Cooperative, which maintains 11 payphones, receives an average of 65 calls per payphone per month. Based on this limited data submitted on the record illustrating that call volumes for payphones on non-equal access switches and switches in rural areas receive substantially less calls than BOC dumb payphones, in the *Order*, the Bureau concluded that payphones on non-equal access switches cannot be compensated based on the average call volumes for BOC dumb payphones. Accordingly, payors must compensate payphones served by non-equal access switches based on the weighted average of call volumes submitted in this record for payphones served by non-equal access switches and payphones served by rural switches, 16 calls per-phone per month.[9]

24. In the *Order,* the Bureau stated that it expected parties to submit additional information on the record regarding call volumes for non-equal access areas. The Bureau stated that it would consider revisions to the compensation methodology for payphones served by non-equal access switches if it received additional record information on call volumes for non-equal access payphones that suggests that call volumes are different than the data upon which we rely herein.

e. *Payphones served by LECs granted small and midsize LEC waiver.* 25. In the *Bureau Coding Digit Waiver Order,* the Bureau granted a limited waiver to midsize and small LECs for equal access switches where a LEC is unable to recover its costs of implementing FLEX ANI, through a monthly charge for no longer than a 10 year period, from all payphones in its serving area.[10] This waiver is specifically granted for small and midsize LECs for which the cost of implementing FLEX ANI would be unreasonably burdensome, despite provisions in the *Bureau Coding Digit Waiver Order* for cost recovery. This waiver was provided for small and midsize LECs with a small number of payphones per switch. Payphones served by LECs that would qualify for this waiver, would be located in more rural areas than other payphones and thus would have lower call volumes. Therefore, in the *Order,* the Bureau concludes that these payphones should receive per-phone compensation as described above for payphones served by nonequal access switches until payphone-specific coding digits are available for these payphones. The Bureau stated, however, that if it received additional information on the record indicating that call volumes are different for small and midsized LECs that have deferred FLEX ANI implementation pursuant to the small and midsized LEC waiver it may subsequently require different call volumes for these two catagories.

3. Alternative Per-Call Compensation Methodologies

26. In the *Order*, the Bureau declined to adopt the flat-rate interim compensation approach set forth in the *Payphone Orders,* which required IXCs with annual toll revenues in excess of $100 million to pay, collectively, a flat-rate interim compensation amount of $45.85 per payphone per month, in shares proportionate to their share of total market long distance revenues. In the *Order,* the Bureau noted that the court in *Illinois Public Telecomm.* vacated the Commission's flat-rate interim compensation plan stating that the Commission did not justify basing flat-rate compensation on total toll revenues, and therefore, acted arbitrarily and capriciously by only requiring payments from the largest IXCs. The court further stated that the Commission had not shown a nexus between toll revenues and the number of access code and subscriber 800 calls a particular carrier carries.

27. The *Order* also rejects basing per-phone compensation aggregated call volume data supplied by the Coalition because the data is limited in nature, accounting for only 20 percent of the payphones, may neglect regional variations, may not be representative of all BOCs, and provides insufficient information to establish per-phone call volumes for small carriers, a problem faced in the allocation method used in the *Report and Order* that was vacated by the court.

28. In the *Order,* the Bureau also concludes that a retroactive adjustment of payphone compensation for the period covered by the *Bureau Waiver Order* and the *Bureau Coding Digit Waiver Order* is not necessary, because the methodology adopted therein to provide fair compensation through a per-phone mechanism that reasonably approximates call volumes for PSP payphones.

4. Miscellaneous

29. The *Order* also declines to require, as USTA requests, that LECs be compensated for all blocked calls, because, USTA argues, blocked calls are the result of IXCs using FLEX ANI or LIDB for fraud detection, pursuant to CC Docket No. 91–35. The Commission defined a completed call as a call answered by the called party. Because a blocked call is by definition not a completed call, the *Payphone Orders* do not require such compensation. The *Order* also declines to require that any waiver granted in response to AT&T's request be granted only after IXCs have paid interim compensation and only to IXCs that demonstrate that they cannot track compensable calls using LEC ANI lists.

30. APCC requests that the Bureau clarify the obligations of facilities-based IXCs who provide 800 service to disclose information about switch-based resellers who provide 800 number service resold from the facilities based carriers so that PSPs can identify who they should bill for payphone compensation. APCC indicates that its members are unable to identify the switch-based reseller to bill for payphone compensation. In the *Report and Order* the Commission acknowledged that telecommunications services are sold in advance, particularly in the debit card context, and resold to other carriers, thus making it difficult in those situations to identify the carrier liable for per-call compensation. The Commission also stated that facilities-based carriers may recover the expense of payphone per-call compensation from their reseller customers. As clarified in the *Order on Reconsideration,* switched-based resellers are responsible for paying per-call compensation. When facilities-based IXCs providing 800 service have determined that they are not required to pay compensation on particular 800

[9] The weighted average is derived as follows: 289 GTE payphones x 14.35 calls per payphone per month = 4147.15 total calls. We then determined the total number of calls for the small payphone company in Iowa: 11 x 65 = 715 calls. Finally, we found the total number of calls to be 4862.15 (4147.15 + 715) and divided that by the total number of payphones (300), which results in an average call volume of 16 calls per-phone per month.

[10] This limited waiver for small and midsize LECs that are not able to recover their costs of implementing FLEX ANI over up to a 10 year period is not available to price cap, CLASS A, and Tier 1 LECs. In 1996, the Class A LECs included all price cap LECs.

number calls because their switch-based reseller customers have identified themselves as responsible for paying the compensation, those facilities-based carriers must cooperate with PSPs seeking to bill for resold services. Thus, a facilities-based carrier must indicate, on request by the billing PSP, whether it is paying per-call compensation for a particular number. If it is not, then it must identify the switch based reseller responsible for paying payphone compensation for that particular 800 number. Facilities-based IXCs and switched-based resellers may not avoid compensating PSPs by withholding the name of the carrier responsible for paying per-call compensation, thereby avoiding the requirements of the *Payphone Orders* and Section 276.

IV. Conclusion and Ordering Clauses

31. For the foregoing reasons, we grant in part AT&T's letter request to pay per-phone compensation to PSPs where payphone-specific coding digits are not available. We find that allowing AT&T and other similarly situated IXCs to pay per-phone instead of per-call compensation based on the methodology set forth above, is in the public interest, because it will further the goals of Section 276 of the Act, that PSPs be compensated for each and every completed call and will ease the transition to per-call compensation.

32. Accordingly, pursuant to authority contained in Sections 1, 4, 201–205, 218, 226, and 276 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 201–205, 218, 226, and 276, that the policies and requirements set forth herein are adopted.

33. It is further ordered that this order is effective immediately upon release thereof.

34. It is further ordered that AT&T's letter request to pay on a per-phone instead of a per-call basis is granted to the extent described herein and is otherwise denied.

Federal Communication Commission.

A. Richard Metzger, Jr.,

Chief, Common Carrier Bureau.

[FR Doc. 98–12347 Filed 5–12–98; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 101

[CC Docket No. 92–297; FCC 98–77]

Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the rules to adopt partitioning and disaggregation rules for the Local Multipoint Distribution Service (LMDS). This action will encourage spectrum efficiency and the more rapid deployment of service to the public. The effect of these rules is to provide LMDS licensees greater flexibility to respond to marketplace demands.

EFFECTIVE DATE: May 28, 1998.

FOR FURTHER INFORMATION CONTACT: Susan Magnotti of the Public Safety and Private Wireless Division, Wireless Telecommunications Bureau at 202–418–0680 or via email at smagnott@fcc.gov.

SUPPLEMENTARY INFORMATION:

1. This is a summary of the Commission's *Fourth Report and Order* to allow partitioning and disaggregation for LMDS spectrum.

2. On March 11, 1997, the Commission adopted the *Second Report and Order* (*Second Report and Order*), 62 FR 23148; April 29, 1997, *Order on Reconsideration, and Fifth Notice of Proposed Rule Making (Fifth NPRM)*, 62 FR 16514; April 7, 1997, wherein it established service rules to govern licensing of LMDS and competitive bidding rules to select among mutually exclusive LMDS applications. The Commission concluded that its actions would open the door for new broadband wireless services and that LMDS spectrum could be used to provide competition to both local exchange carriers (LECs) and cable television systems. It envisioned that our LMDS service and licensing rules would foster the future growth of this new service and permit LMDS licensees to satisfy a broad array of their customer's communications needs. In addition, the Commission permitted partitioning and disaggregation by LMDS licensees to encourage spectrum efficiency and the more rapid deployment of service, and to leave the decision of determining the correct size of licenses to the licensees and the marketplace. It concluded that allowing partitioning and disaggregation for LMDS spectrum would create powerful tools for licensees to concentrate on core areas or to deliver services outside of the major market areas. The Commission further found that LMDS partitioning and disaggregation would provide opportunities for small businesses seeking to enter the multipoint video distribution and local telephony marketplaces.

3. In the *Fifth NPRM*, the Commission sought comment on specific procedural, administrative and operational rules to govern LMDS partitioning and disaggregation. It sought comment on how rights and obligations of LMDS licensees would be affected if such licensees were permitted to avail themselves of the partitioning and disaggregation options. It also sought comment on whether there are any technical or regulatory constraints unique to the LMDS service that would render any aspects of partitioning and disaggregation impractical or administratively burdensome. In this connection, the Commission noted that it had recently adopted specific procedures for partitioning and disaggregation in the broadband Personal Communications Services (PCS) and sought comment on whether such procedures would be appropriate for LMDS. A total of five comments and five reply comments were received in response to the *Fifth NPRM*.

A. Available License Area

4. *Background*. In the *Fifth NPRM*, the Commission tentatively concluded that parties to a LMDS partitioning agreement should be afforded flexibility in defining partitioned license areas. It sought comment on this tentative conclusion and, in particular, asked whether there are any technical or other issues unique to LMDS that would dictate a different approach.

5. *Discussion*. We conclude that LMDS licensees should have broad flexibility in defining partitioned license areas. As we noted in the *Fifth NPRM*, such an approach is consistent with our treatment of partitioning in other services, particularly broadband PCS. In addition, we believe that allowing LMDS licensees to partition their service areas along any boundaries they wish will enhance their ability to respond quickly to consumer demands. In this connection, we agree with CellularVision USA, Inc. (CellularVision) that such an approach will allow LMDS licensees to consider unique geographical or market characteristics when designing their business plans. We also are concerned that requiring LMDS partitioned areas to be based upon a uniform standard, such