

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: April 18, 2001.

Margaret E. Lawless,

Acting Executive Associate Director for Mitigation.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 96-128; FCC 01-109]

The Pay Telephone Reclassification and Compensation Provisions of The Telecommunications Act of 1996, RBOC/GTE/SNET Payphone Coalition Petition for Clarification

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (FCC or Commission) modified the Commission's rules regarding per-call compensation for payphone calls to better ensure that payphone service providers (PSPs) are fairly compensated for all completed, coinless calls made from payphones. The Commission revised its rules to address the difficulty that PSPs face in obtaining compensation for coinless calls placed from payphones that involve a switch-based telecommunications reseller in the call path. Given the difficulty of determining which entity is responsible for compensating the PSP for such calls (i.e., the switch-based reseller or the interexchange carrier that routes calls to the switch-based reseller), the Commission modified its rules to require the first underlying facilities-based interexchange carrier (IXC) to whom the local exchange carrier (LEC) directly delivers such calls to compensate the PSP for the completed coinless calls.

DATES: Effective April 27, 2001.

ADDRESSES: Federal Communications Commission, Secretary, 445 12th Street, SW., Room TW-B204F, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Marty Schwimmer (202) 418-2320, fax (202) 418-2345, TTY (202) 418-0484, or mschwimm@fcc.gov. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, The Portals, 445 12th Street, SW., Suite 6-A320, Washington, DC 20554.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Order on Reconsideration in CC Docket No. 96-128, FCC 01-109, in the matter of The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, RBOC/GTE/SNET Payphone Coalition Petition for Clarification, adopted March 28, 2001, and released April 5, 2001. The full text of the item is available for inspection and copying during the weekday hours of 9 a.m. to 4:30 p.m. in the Commission's Reference Center, Room CY-A257, 445 12th Street, SW., Washington, DC 20554, or copies may be purchased from the Commission's duplicating contractor, ITS, Inc., 445 12th Street, SW., Suite CY-B400, Washington, DC 20554, phone (202) 857-3800. This Order contains no new or modified information collections subject to the Paperwork Reduction Act of 1995, Public Law 104-13.

Synopsis of the Second Order on Reconsideration

In implementing Section 276 of the Act—which requires the Commission to prescribe regulations ensuring that all PSPs are fairly compensated for every completed intrastate and interstate call, including coinless "access code" or "subscriber 800" calls dialed from their payphones—the Commission adopted several payphone compensation rules in its *First Payphone Order*, 61 FR 52309, October 7, 1996. In the *Payphone Order On Reconsideration*, 61 FR 65341, December 12, 1996, the Commission revised the payphone compensation responsibilities for calls involving switch-based resellers. In 1998, the Common Carrier Bureau released the *Coding Digit Waiver Order*, 63 FR 26497, May 13, 1998, further clarifying the *Payphone Order on Reconsideration*. In that Order, the Common Carrier Bureau clarified switch-based reseller responsibilities for paying per-call compensation in order to clarify IXC obligations to disclose information about their switch-based resellers. The purpose of that order was to help ensure that PSPs knew from whom to expect compensation for coinless calls, to avoid the problem of entities disclaiming responsibility for such calls. Finally, in a recent order, the Commission concluded that the *Payphone Order on Reconsideration* and the Common Carrier Bureau's *Coding Digit Waiver Order* placed the tracking and compensation obligations squarely on facilities-based carriers, including facilities-based resellers. We found that, despite of our efforts to ensure that PSPs are compensated for coinless calls in instances in which

switch-based resellers are involved in routing coinless calls from payphones to end-users, there remained uncertainty in the market, and PSPs have been frustrated in their efforts to receive compensation for certain coinless calls.

In this Second Order on Reconsideration, we require the first facilities-based interexchange carrier to which a LEC routes a compensable coinless payphone call to: (1) Compensate the PSP for completed calls at a mutually agreeable rate; (2) track or arrange for tracking of the call to determine whether it is completed and therefore compensable; and (3) provide to the PSP a statement of the number of coinless calls it receives from each of that PSP's payphones. We also require each reseller or debit card customer whose number is dialed on a coinless basis to reimburse the first facilities-based carrier for the amount paid by that carrier to the PSP and for that carrier's cost of tracking the call and providing such information to the PSP. We also encourage PSPs and switch-based resellers to enter into private contractual arrangements with each other for direct payment of compensation to PSPs.

We decline to initiate a further rulemaking proceeding, at this time, which would propose that the carrier responsible for compensation is the entity identified by the Carrier Identification Code (CIC) used to route the call. Most commenters generally opposed the proposal. For the purpose of determining payphone compensation responsibilities, the proposal would not likely be an improvement over the existing rules as clarified in this Second Order on Reconsideration. Even if all carriers had CICs, they would still need to look to subsequent carriers in the routing sequence for payphone call completion information to fulfill their compensation responsibilities. By ensuring that PSPs are consistently able to obtain per call compensation from a readily identifiable, responsible carrier, the first facilities-based interexchange carrier, we resolve the issues before us without a further rulemaking on CICs at this time.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), there will not be a significant economic impact on a substantial number of small business entities resulting from this Second Order on Reconsideration. Although the revised rules provide that the first underlying facilities-based interexchange carrier is initially responsible for payment and tracking of all compensable payphone calls, the

rules also provide that the first underlying facilities-based interexchange carrier may then obtain reimbursement from any reseller ultimately responsible for the compensation. Thus, although this Second Order on Reconsideration modifies the mechanism governing how PSPs obtain compensation, the rules do not significantly affect which carrier is ultimately responsible for per-call compensation to PSPs.

Ordering Clauses

Pursuant to the authority contained in Sections 1, 4(i), 4(j), and 276 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and 276, that the RBOC/GTE/SNET Payphone Coalition Petition for Clarification is GRANTED IN PART AND DENIED IN PART, as described in this Second Order on Reconsideration.

Part 64 of the Commission's rules, 47 CFR Part 64, is amended by revising §§ 64.1300(a), 64.1310(a), and 64.1310(b) as set forth in the rule changes.

List of Subjects in 47 CFR Part 64

Communications common carriers, Individuals with disabilities, Reporting and recordkeeping requirements, Telegraph, Telephone.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications

Commission amends 47 CFR Part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

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

Authority: 47 U.S.C. 154, 47 U.S.C. 225, 47 U.S.C. 251(e)(1).151, 154, 201, 202, 205, 218–220, 254, 302, 303, and 337 unless otherwise noted. Interpret or apply sections 201, 218, 225, 226, 227, 229, 332, 48 Stat. 1070, as amended, 47 U.S.C. 201–204, 208, 225, 226, 227, 229, 332, 501 and 503 unless otherwise noted.

2. Section 64.1300 is amended by revising paragraph (a) to read as follows:

§ 64.1300 Payphone compensation obligation.

(a) Except as provided herein, the first facilities-based interexchange carrier to which a completed coinless access code or subscriber toll-free payphone call is delivered by the local exchange carrier shall compensate the payphone service provider for the call at a rate agreed upon by the parties by contract.

* * * * *

3. Section 64.1310 is amended by revising paragraphs (a) and (b) to read as follows:

§ 64.1310 Payphone compensation payment procedures.

(a) It is the responsibility of the first facilities-based interexchange carrier to which a compensable coinless access code or subscriber toll-free payphone call is delivered by the local exchange carrier to track, or arrange for the

tracking of, each such call so that it may accurately compute the compensation required by § 64.1300(a). The first facilities-based interexchange carrier to which a compensable coinless payphone call is delivered by the local exchange carrier must also send back to each payphone service provider at the time dial around compensation is due to be paid a statement in computer readable format indicating the toll-free and access code numbers that the LEC has delivered to the carrier, and the volume of calls for each toll-free and access number each carrier has received from each of that payphone service provider's payphones, unless the payphone service provider agrees to other arrangements.

(b) The first facilities-based interexchange carrier to which a compensable coinless payphone call is delivered by the local exchange carrier may obtain reimbursement from its reseller and debit card customers for the compensation amounts paid to payphone service providers for calls carried on their account and for the cost of tracking compensable calls. Facilities-based carriers and resellers may establish or continue any other arrangements that they have with payphone service providers for the billing and collection of compensation for calls subject to § 64.1300(a), if the involved payphone service providers so agree.

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