

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
C.F. Communications Corp., et al.,	)	EB Docket No. 01-99
	)	
Complainants,	)	
	)	File Nos. E-89-170, E-89-171, E-89-172,
v.	)	E-89-179, E-89-180, E-89-181, E-89-
	)	182, E-92-97, E-93-34, E-93-35, E-93-
Century Telephone of Wisconsin, Inc., et al.,	)	36, E-93-37, E-93-38, E-93-39, E-93-40,
	)	E-93-41, E-93-42, E-93-43, E-93-44, E-
Defendants.	)	93-45, E-93-46, E-93-47, E-93-48, E-93-
	)	49, E-93-50, E-93-56, E-93-57, E-93-58,
	)	E-93-59, E-93-60, E-93-61, E-93-62, E-
	)	93-73, E-93-74, E-93-081

**HEARING DESIGNATION ORDER**

**Adopted:** April 20, 2001

**Released:** April 24, 2001

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. Pursuant to the Commission's rules,<sup>1</sup> we initiate a consolidated hearing in this Hearing Designation Order ("HDO") for the above-captioned formal complaints to determine the Complainants' damages.<sup>2</sup> The Commission has previously ruled that the defendant local exchange carriers ("LECs" or "Defendants") violated section 201(b) of the Communications Act of 1934, as amended, ("Act") and Part 69 of the Commissions' rules<sup>3</sup> by improperly assessing End User Common Line ("EUCL") charges upon the Complainants, a group of independent payphone

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<sup>1</sup> 47 C.F.R. § 1.722(d)(1) ("Issues concerning the amount, if any, of damages may be either designated by the Enforcement Bureau for hearing before, or, if the parties agree, submitted for mediation to, a Commission Administrative Law Judge."). *See also Implementation of the Telecommunications Act of 1996, Amendment of Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Common Carriers*, Report and Order, 12 FCC Rcd 22497, 22555 (1998); *Implementation of the Telecommunications Act of 1996, Amendment of Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Common Carriers*, Order on Reconsideration, FCC 01-78 (rel. Mar. 7, 2001).

<sup>2</sup> *See* Appendix A for a list of the parties.

<sup>3</sup> 47 U.S.C. § 201(b); 47 C.F.R. §§ 69.1 *et seq.* Unless otherwise indicated, all C.F.R. references are to the 2000 edition. We refer to prior C.F.R. editions in instances where the prior rules were different than the current rules.

providers (“IPPs” or “Complainants”).<sup>4</sup> This HDO resolves certain outstanding issues and refers others, including whether Complainants are entitled to an award of damages, to an Administrative Law Judge (“ALJ”).

## II. BACKGROUND

### A. Procedural Status

2. A number of LECs have sought review of the *Liability Order* to the U.S. Court of Appeals for the D.C. Circuit.<sup>5</sup> Also, several IPPs have sought review of the *Reconsideration Order* in that Court.<sup>6</sup> The Court has not issued a ruling to date in either case. Sprint recommends that the hearing be held in abeyance pending resolution of the *Liability Order’s* appeal.<sup>7</sup> We reject this proposal because we believe that proceeding promptly and efficiently with the disposition of the claims for damages will provide guidance in other similar disputes currently before the Commission.<sup>8</sup>

3. Pursuant to its finding that Defendants were liable for the improper assessment of EUCL charges, the Commission authorized Complainants to file supplemental complaints for damages.<sup>9</sup> In order to facilitate settlement discussions, the Commission temporarily waived the 60-day deadline for filing such complaints and stated that a filing date would be announced at a status conference with all the parties.<sup>10</sup> During the status conference, Enforcement Bureau staff informed the parties that the damages phase of this proceeding could well be referred to an ALJ for formal hearings.<sup>11</sup> The parties were directed to file proposed HDOs, as well as comments reflecting their

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<sup>4</sup> *C.F. Communications Corp., et al. v. Century Telephone of Wisconsin, Inc., et al.*, Memorandum Opinion and Order on Remand, 15 FCC Rcd 8759 (2000) (“*Liability Order*”); recon. denied, 15 FCC Rcd 22906 (2000). This order reversed a previous decision of the Commission that had been vacated by the D.C. Circuit and remanded to the Commission for further consideration consistent with that court’s opinion. *See C.F. Communications Corp. v. FCC*, 128 F.3d 735 (D.C. Cir. 1997) (“*Appeals Court Decision*”).

<sup>5</sup> In its July 19, 2000 *Reconsideration Order*, the Commission affirmed certain of its determinations in the *Liability Order*. *C.F. Communications Corp., et al. v. Century Telephone of Wisconsin, Inc., et al.*, Order on Reconsideration, 15 FCC Rcd 22906 (2000) (“*Reconsideration Order*”). *See Bell Atlantic Telephone Companies, et al. v. FCC*, No. 00-1207 (D.C. Cir. filed May 15, 2000).

<sup>6</sup> *See Alcazar Homes Ltd. d/b/a Alcazar Ltd., et al. v. FCC*, No. 00-1404 (D.C. Cir. filed Sept. 10, 2000).

<sup>7</sup> Sprint Proposed HDO at 5 (filed Oct. 13, 2000).

<sup>8</sup> There are many informal complaints from IPPs raising the same issues involved in the instant complaints. *See Liability Order*, 15 FCC Rcd at 8761.

<sup>9</sup> *Id.* at 8771.

<sup>10</sup> *Id.*

<sup>11</sup> *See* Sept. 25, 2000 Letter Ruling from Tejal Mehta, Enforcement Bureau, FCC, to Counsel for Parties. File Nos. E-93-060 through 62; E-93-074; E-93-081; E-93-034 through 50; E-93-056 (“*Letter Ruling*”).

views on how any such hearing should proceed.<sup>12</sup> After review of these proposed HDOs and consideration of the accompanying comments, we designate the above-captioned complaints for hearing before an ALJ in the manner set forth below.<sup>13</sup>

## B. The End User Common Line Charge

4. During the period at issue in these cases, the application of the end user common line charge on payphone providers depended on whether or not a payphone was “public” or “semi-public.”<sup>14</sup> In 1983, the Commission created the public/semi-public distinction, explaining that “[a] pay telephone is used to provide semi-public telephone service when there is a combination of general public and specific customer need for the service, such as at a gasoline station or pizza parlor.”<sup>15</sup> By contrast, “[a] pay telephone is used to provide public telephone service when a public need exists, such as at “an airport lobby, at the option of the telephone company and with the agreement of the owner of the property on which the phone is placed.”<sup>16</sup>

5. Given that the end users of public payphones are the “transient general public,” the Commission determined that the owners and operators of these payphones would not be assessed a EUCL charge because there was no fair and practical mechanism for passing the charge on to the actual cost causers, *i.e.*, the end user callers.<sup>17</sup> Yet, the Commission held that payphones classified as “semi-public” would be subject to a EUCL charge.<sup>18</sup> Amendments to the Commission’s rules following passage of the Telecommunications Act of 1996 mandate that both IPPs and LECs pay EUCL charges for all of their payphones, and thus this proceeding concerns rules that are not currently in effect.<sup>19</sup>

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<sup>12</sup> *Id.*

<sup>13</sup> We issue this designation order pursuant to sections 4(i), 4(j) and 208 (a) of the Communications Act and sections 0.111 and 0.311 of the Commission’s rules. 47 U.S.C. § § 154 (i), 154 (j), 208 (a); 47 C.F.R. § 0.111, 0.311. *See also* 47 C.F.R. § 1.722(d)(1).

<sup>14</sup> *Liability Order*, 15 FCC Rcd at 8768.

<sup>15</sup> *MTS and WATS Market Structure*, Order on Reconsideration, 97 FCC 2d 682, 704, n.40 (1983) (“*First Reconsideration Order*”). At the time the Commission developed this scheme for payphone access charges, the only existing payphones were owned by LECs.

<sup>16</sup> *Id.* at 704, n.41.

<sup>17</sup> *Id.* at 705.

<sup>18</sup> *Id.* at 706.

<sup>19</sup> *See Liability Order*, 15 FCC Rcd at 8761 *citing Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 20541, ¶ 187 (1996) (“*First Payphone Order*”); *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Report and Order on Reconsideration, 11 FCC Rcd 21233, ¶ 207 (1996).

## C. The Commission's *Liability Order*

### 1. IPPs Not End Users

6. The Commission's *Liability Order* responded to the court's remand of an earlier Commission ruling.<sup>20</sup> The Commission's earlier ruling held that IPP payphones were subject to a EUCL charge because the IPPs were "end users" pursuant to section 69.2(m) of the rules.<sup>21</sup> But on remand from an appeal of that decision, the Commission reversed itself and concluded in the *Liability Order* that, although C.F. Communications and other IPPs own the payphones, they cannot be considered "end users" under section 69.2(m), because they do not own the premises where their payphones are located.<sup>22</sup>

### 2. IPPs Must Pay EUCL Charge

7. Nonetheless, the *Liability Order* did not relieve the IPPs of the obligation to pay EUCL charges for their use of the Defendants' common lines in all instances. The Commission concluded that, irrespective of whether an IPP was an "end user," the primary determination... was whether the payphone is "public" or "semi-public."<sup>23</sup> The *Liability Order* found that the LECs chose to assess EUCL charges on all IPP payphones without regard to where they were located or the manner in which they were used.<sup>24</sup> The *Liability Order* concluded that the Defendants had imposed an unreasonable charge in violation of section 201(b)<sup>25</sup> and Part 69 of the Commission's rules to the extent that they assessed and collected EUCL charges against the Complainants' *public* payphones.<sup>26</sup>

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<sup>20</sup> See *Appeals Court Decision*, 128 F.3d at 742; see also *C.F. Communications Corp. v. Century Telephone of Wisconsin, Inc. et. al.*, Memorandum Opinion and Order, 8 FCC Rcd 7334, 7335-36 (1993) ("Bureau Order"); *C.F. Communications Corp. v. Century Telephone of Wisconsin, Inc., et. al.*, Memorandum Opinion and Order, 10 FCC Rcd 9775 (1995); *C.F. Communications Corp., et. al. v. Michigan Bell Telephone Co., et. al.*, 12 FCC Rcd 2134 (1997).

<sup>21</sup> The Commission's ruling was pursuant to section 69.2(m) which provides that "a carrier other than a telephone company" is an end user when it "offers telecommunications services exclusively as a reseller" and all of its "resale transmissions ... originate on the premises of such reseller." *Bureau Order*, 8 FCC Rcd at 7336. See also 47 C.F.R. § 69.2(m).

<sup>22</sup> *Liability Order*, 15 FCC Rcd at 8768.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 8766, 8768. See also *Appeals Court Decision*, 128 F.3d at 741.

<sup>25</sup> *Id.* at 8768, 8773.

<sup>26</sup> *Id.* at 8768.

### III. SUBSTANTIVE MATTERS

#### A. Untimely Issues

8. When the Bureau sought proposed HDOs from the parties, it stated that parties could also submit comments regarding the procedure of the hearing.<sup>27</sup> A number of Complainants, however, included numerous substantive arguments apparently intended to expand the scope of their damages complaints.<sup>28</sup> Each of these arguments is rejected as untimely because each should have been raised in a timely filed reconsideration petition to the *Liability Order*.<sup>29</sup> Complainants are, therefore, barred from asserting any of these claims in their supplemental complaints.

#### B. Statute of Limitations

9. In this section, we address various arguments raised by the parties regarding the statute of limitations.

##### 1. October 1997 Court of Appeals Decision

10. Certain Complainants contend that the “cause of action for recovery of EUCL charges did not accrue for purposes of the two year statute of limitations set forth in 47 U.S.C. § 415 until the October 1997 decision by the Court of Appeals” to enable “each complainant to recover all EUCL charges they incurred so long as they filed a formal complaint no later than two years after that decision.”<sup>30</sup> Because all of the complaints at issue in this HDO were filed well before 1997, we find that this argument is irrelevant and decline to address it at this juncture.<sup>31</sup>

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<sup>27</sup> See *Letter Ruling*.

<sup>28</sup> See Comments of Certain Complainants Regarding Hearing Designation Order, filed Oct. 13, 2000 (“Certain Complainants’ Comments”) at 10-13 and Comments of Kayson Communications Inc. and Best Payphones Inc. Regarding Hearing Designation Order, filed on Oct. 23, 2000 (“Kayson and Best Comments”) at 3 (arguing that because IPPs were found to not be end-users users within the meaning of section 69.104(a), the collection of EUCL charges for semi-public payphones is unlawful); Certain Complainants’ Comments at 14 (contending that the Commission’s *Liability Order* constitutes a “new” construction of the Access Charge rules); Certain Complainants’ Comments at 8 (arguing that the collection of EUCL charges from IPPs by the LECs violates section 203 of the Act because IPPs are not end users and the the LECs’ tariffs specify that EUCL charges will be assessed on “end users”); Certain Complainants’ Comments at 14-16 (arguing that New York Telephone Company’s state tariff should have bearing on this damages proceeding). In addition, Certain Complainants contend that Defendants must bear the burden of proving which payphones were used primarily for semi-public use. See Certain Complainants’ Comments at 16.

<sup>29</sup> We note that a number of complainants filed a petition for reconsideration on May 15, 2000 that could well have incorporated these arguments but did not. See Complainant’s Petition For Reconsideration. The Commission ruled on the issues raised in this petition in its *Reconsideration Order*, 15 FCC Rcd 22906 (2000).

<sup>30</sup> Certain Complainants’ Comments at 8.

<sup>31</sup> The most recent complaint was filed in 1993. See File No. E-93-081.

## 2. American Public Communication Council Petition

11. Certain Complainants argue that a 1989 Petition for Declaratory Ruling filed by the American Public Communications Council (“APCC”) concerning the EUCL assessment on IPPs should be considered a section 208 complaint.<sup>32</sup> In its view, such a complaint would enable some or all of the Complainants (who are APCC members) to recover damages for the two-year period prior to the filing of that 1989 petition. We note, however, that APCC did not invoke the section 208 process and did not seek any damages in its petition. Moreover, our formal complaint filing rules in effect at that time did not provide for such petitions to be converted into formal complaints. Thus, APCC’s petition cannot be deemed a section 208 complaint.

## 3. Damages Recovery Back To September 6, 1995

12. Certain Complainants also contend that Complainants who filed their complaints after September 6, 1995 -- the date the Commission issued the order<sup>33</sup> upholding the Bureau’s denial of the complaints -- should be permitted to recover EUCL damages back to September 6, 1993.<sup>34</sup> These Certain Complainants assert that the Common Carrier Bureau’s October 14, 1993 Order<sup>35</sup> and the Commission’s September 6, 1995 Order denying them the relief they sought “made it futile” for Complainants to file complaints for EUCL charges at that time. Because the last complaint at issue in this proceeding was filed in 1993, we decline to address this argument at this time, as it is irrelevant to any of the complaints affected by this HDO.

### C. Equity Considerations

13. Because the LECs assessed EUCL charges indiscriminately on the IPPs’ public and semi-public payphones, Certain Complainants contend that Defendants are estopped from claiming EUCL charges for Complainants’ semi-public payphones.<sup>36</sup> We reject this view. As a way of recovering their costs, the LECs were lawfully entitled to assess the EUCL on semi-public payphones. Thus, the Defendants may retain the EUCL charge for the IPPs’ semi-public payphones.

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<sup>32</sup> Certain Complainants’ Comments at 8.

<sup>33</sup> *C.F. Communications Corp. v. Century Telephone of Wisconsin, Inc., et. al.*, Memorandum Opinion and Order, 10 FCC Rcd 9775 (1995). This decision affirmed the *Bureau Order*. It was subsequently vacated by *the Appeals Court Decision*.

<sup>34</sup> Certain Complainants’ Comments at 8.

<sup>35</sup> *Bureau Order*, 8 FCC Rcd 7334, 7335-36 (1993).

<sup>36</sup> Certain Complainants’ Comments at 15.

#### IV. PROCEDURAL DESIGNATIONS

##### A. Procedural and Evidentiary Rules

14. This Proceeding shall be governed by section 1.201 through 1.364<sup>37</sup> of the Commission's rules of practice for hearing proceedings, to the extent practicable for the adjudication of these issues.<sup>38</sup> The ALJ may, in his discretion, require that the parties submit all or any portion of their case in writing if he determines that such written submission would contribute significantly to the disposition of the proceeding.<sup>39</sup>

##### B. Consolidation

15. We conclude that consolidating the supplemental complaints into a single proceeding will provide greater administrative efficiency.<sup>40</sup>

##### C. Statute Of Limitations

16. Consistent with prior Commission precedent, when ruling on the time period of a damages complaint, the ALJ must consider the following elements.

17. Complaints for damages are subject to a two-year statute of limitations period starting from the date on which the formal complaint was filed.<sup>41</sup> Several Complainants may have filed informal complaints about improper EUCL charges prior to their filing of formal complaints. The *Liability Order* states, pursuant to section 1.718 of the Commission's rules, that a formal complaint is deemed to relate back to the filing of an informal complaint if the formal complaint: (1) is filed within six months from the date of the carrier's response to the informal complaint; (2) makes reference to the date of the informal complaint; and, (3) is based on the same cause of action as the informal complaint.<sup>42</sup> If the unsatisfied informal complainant fails to file a formal complaint within the six-month period, the complainant is deemed to have abandoned the informal complaint and the statute of limitations runs from the date the formal complaint was filed.<sup>43</sup>

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<sup>37</sup> 47 C.F.R. §§ 1.201- 1.364.

<sup>38</sup> 47 C.F.R. § 1.722.

<sup>39</sup> See *Hi Tech Furnace Systems, Inc. v. FCC*, 224 F.3d 781, 786 (D.C. Cir. 2000); 47 U.S.C. §§ 154(i), 154(j); 47 C.F.R. § 1.732(g).

<sup>40</sup> Certain Complainants' Comments at 17; Kayson and Best Comments at 4.

<sup>41</sup> 47 U.S.C. § 415.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*; but see *Informal Complaints Filed By Independent Payphone Service Providers Against Various Local Exchange Carriers Seeking Refunds of End User Common Line Charges*, File No. 89-170, DA 99-1858, Common Carrier Bureau (rel. Sept. 10, 1999) ("Waiver Order"). In its *Waiver Order*, the Common Carrier Bureau, in the interests of administrative efficiency, tolled the six month relation back requirement contained in section 1.718 for a (continued....)

18. In the *Reconsideration Order*, the Commission deferred to the damages phase of this proceeding the issue of whether each formal complaint for damages would qualify under the relating back rules.<sup>44</sup> Accordingly, Complainants and Defendants may present arguments concerning the application of the relating-back rule to any particular complaint or Complainant.

19. There is an outstanding issue as to whether Ascom is subject to the same limitations period as its bankrupt predecessor.<sup>45</sup> We find that this issue requires a factual determination which the Bureau cannot make without additional information provided by Ascom. We, therefore, refer this issue to the ALJ for a decision.

#### **D. Discovery**

20. Discovery shall be conducted in accordance with sections 1.311-1.325 of the Commission's rules.<sup>46</sup>

#### **E. The Burdens of Proceeding and Burden of Proof**

21. Complainants have both the burden of proceeding with the introduction of evidence and the burden of proving damages.<sup>47</sup> Given the passage of time, determining the exact number of public and semi-public payphones may be difficult. We therefore encourage the parties to consider proxies that can be used to obtain a reasonable estimation of that number.<sup>48</sup>

#### **F. Bureau Participation**

22. The Enforcement Bureau shall be a party to the proceeding and will determine its level of participation, as appropriate, on an issue-by-issue basis. Pursuant to section 1.47(c) of the Commission's rules, the Bureau shall be served with documents in the same manner as other parties.

(Continued from previous page) \_\_\_\_\_  
number of informal complaints as of June 15, 1998, as long as the formal complaint is filed with the Commission no less than 90 days after a final nonappealable order has been entered in the remand proceeding. *Id.* at ¶ 5.

<sup>44</sup> *Reconsideration Order* at ¶ 5.

<sup>45</sup> See Ascom et. al Comments at 9.

<sup>46</sup> 47 C.F.R §§ 1.311-1.325.

<sup>47</sup> See *Hi Tech Furnace Systems, Inc. v. FCC*, 224 F.3d 781, 786 (D.C. Cir. 2000); see also *New Valley Corporation v. Pacific Bell Telephone Company*, 15 FCC Rcd 5128 at ¶ 14; and *Liability Order*, 15 FCC Rcd at 8771. ("Complainants will have to provide evidence sufficient to prove among other things, how many of their payphones were in fact 'public payphones,' under the definition established in the *First Reconsideration Order*, as clarified in the *Liability Order*.")

<sup>48</sup> *Liability Order*, 15 FCC Rcd at 8771.

## V. DAMAGES INSTRUCTIONS

### A. Measure of Damages

23. The scope of the hearing is limited to determining the proper amount of damages to which Complainants are entitled.<sup>49</sup> The measure of damages is the amount of EUCL payments Defendants assessed and collected from the Complainants for their public payphones.<sup>50</sup> Based on the *Liability Order's* findings, each Complainant must demonstrate the number of public payphones it had, under the definition established in the *First Reconsideration Order*,<sup>51</sup> as clarified in the *Liability Order*,<sup>52</sup> and the amount of EUCL charges it paid for those public payphones.<sup>53</sup> In addition, each Complainant must calculate the applicable amount of interest due on those improperly assessed charges.<sup>54</sup>

### B. Defenses to Damages Claim

24. During the liability phase, the Commission rejected Defendants' argument that Complainants had not been damaged financially by the improper assessment of EUCL charges.<sup>55</sup> Given that this no-damages defense has been thoroughly considered, Defendants are barred from raising it during the hearing. Defendants may, however, demonstrate that the improperly assessed EUCL charges were not paid.

## VI. ORDERING CLAUSES

25. ACCORDINGLY, IT IS ORDERED, pursuant to sections 1, 4(i), 4(j), 201(b), 203(c), 206, 207 and 208 of the Communications Act of 1934 as amended, 47 U.S.C. §§ 151, 154 (i), 154 (j), 201 (b), 203(c), 206, 207, and 208 and sections 0.111, 0.311, 1.722(d)(1) and 69.105(a) of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311, 1.722(d)(1) and 69.105(a), that the above-captioned complaints ARE DESIGNATED FOR A CONSOLIDATED HEARING before an Administrative Law Judge, at a time and place to be specified in a subsequent Order, upon the following issues:

(1) To determine the relevant time period of each complaint pursuant to section 415 of the Act, section 1.718 of the Commission's rules, and the *Waiver Order*;

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<sup>49</sup> *Fidelity Radio, Inc.*, 1 FCC 2d 66 (1965); *Atlantic Broadcasting Co.*, 5 FCC 2d 717 (1966).

<sup>50</sup> *Liability Order*, 15 FCC Rcd at 8771.

<sup>51</sup> *First Reconsideration Order*, 97 FCC 2d at 704, n.40 and n.41.

<sup>52</sup> *Liability Order*, 15 FCC Rcd at 8771.

<sup>53</sup> The rates for the EUCL charges are to be determined from the LECs' tariffs for the relevant time period.

<sup>54</sup> The IRS rate of interest for corporate overpayments is the appropriate interest rate for this type of proceeding, because the rate is easily obtainable and revised on a regular basis. See *U.S. Sprint Communications Partnership v. Pacific Northwest Bell Telephone Co.*, Memorandum Opinion and Order, 8 FCC Rcd 1288, 1298, ¶ 51, n.109 (1993).

<sup>55</sup> See *Liability Order*, 15 FCC Rcd at 8770.

(2) To determine how many payphones each Complainant owned during the period covered in issue (1) were “public”;<sup>56</sup>

(3) To determine the amount of EUCL charges paid for the “public” payphones identified in Issue (2) above, over the time period determined under Issue (1) above;

(4) To determine, in light of the evidence adduced under the foregoing issues, the amount of damages, if any, to which each Complainant is entitled;

(5) To determine the amount of interest, if any, that each Complainant shall be awarded.

26. IT IS FURTHER ORDERED, that to avail themselves of the opportunity to be heard and the right to present evidence, the designated parties, pursuant to section 1.221 (c) of the Commission’s rules SHALL FILE in triplicate, within twenty (20) days of the mailing of this Order by the Secretary, a WRITTEN NOTICE OF APPEARANCE, stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

27. IT IS FURTHER ORDERED, that the rules of practice and procedure governing this hearing will be in accordance with the Commission’s *Hearing Proceedings*, 47 C.F.R. §§ 1.201 – 1.364 subject to the ALJ’s discretion to regulate the hearing.

28. IT IS FURTHER ORDERED, that all Discovery shall be conducted in accordance with 47 C.F.R. §§ 1.311 – 1.325, subject to the ALJ’s discretion.

29. IT IS FURTHER ORDERED, that Complainants shall have both the burden of proceeding with the introduction of evidence and the burden of proof on all issues.

30. IT IS FURTHER ORDERED, that the Enforcement Bureau shall be a party to the proceeding.

31. IT IS FURTHER ORDERED, that the Secretary of the Commission shall cause to have this Order published in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon, Chief  
Enforcement Bureau

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<sup>56</sup> *Id.* at 8771.

**APPENDIX A**

Alcazar Ltd.  
American Payphone, Inc.  
Ascom Communication, Inc  
B.D.A. Sales Inc.  
Bell Telephone Co. of Pennsylvania  
Best Payphones, Inc.  
C&P Telephone Co. of Maryland  
C&P Telephone Co. of Virginia  
C.F. Communications Corp.  
Carolina Telephone Co.  
Century Telephone of Wisconsin, Inc.  
Crescent Communications  
GTE Florida, Inc.  
GTE North, Inc.  
GTE South, Inc.  
Just Telephone Inc.  
Kayson Communication  
Michigan Bell Telephone Co.  
Millicom Services Co.  
Mosinee Telephone Co.  
New England Telephone and Telegraph Co.  
New Jersey Bell Telephone Co.  
NYPAY Communications Co.  
New York Pay Phone Systems, Inc.  
New York Telephone Co.  
North West Telephone Co.  
Southern Bell Telephone and Telegraph  
Southwestern Bell Telephone Co.  
Telebeam Telephone  
Turtle Lake Telephone Co.  
United Telephone Co. of Florida  
United Telephone Co. of Pennsylvania  
Utelco, Inc.  
Wisconsin Bell, Inc.