

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DA 97-678

In the Matter of	)	
	)	
Implementation of the	)	CC Docket No. 96-128
Pay Telephone Reclassification	)	
and Compensation Provisions of the	)	
Telecommunications Act of 1996	)	

ORDER

Adopted: April 4, 1997

Released: April 4, 1997

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. In this Order, the Common Carrier Bureau ("Bureau") clarifies and grants a limited waiver of the Commission's interstate tariffing requirements¹ for unbundled features and functions, as set forth in the Payphone Reclassification Proceeding, CC Docket No. 96-128.² Local exchange carriers ("LECs") must comply with these requirements, among others, before they are eligible to receive the compensation from interexchange carriers ("IXCs") that is mandated in that proceeding. Because some LECs are not in full compliance with the Commission's federal tariffing requirements for unbundled features and functions under the Payphone Order and Order on Reconsideration, we grant all LECs a limited waiver of the deadline for filing the federal tariffs for unbundled features and functions, to the extent necessary, to enable LECs to file the required federal tariffs within 45 days after the release of this Order, with a scheduled effective date no later than 15 days after the date of filing. In addition, each individual Bell Operating Company ("BOC") must file a written ex parte document, by April 10, 1997, advising on the status of intrastate tariffs for the unbundled features and functions that it has not yet federally tariffed, and stating that it commits to filing federal tariffs for such features

¹ For purposes of this Order, the term "intrastate tariff" refers to a tariff filed in the state jurisdiction and the term "interstate tariff" refers to a tariff filed in the federal jurisdiction.

² Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Report and Order, FCC 96-388 (rel. Sept. 20, 1996) ("Payphone Order"); Order on Reconsideration, FCC 96-439 (rel. Nov. 8, 1996) ("Order on Reconsideration"), appeal docketed sub nom. Illinois Public Telecommunications Assn. v. FCC and United States, Case No. 96-1394 (D.C. Cir., filed Oct. 17, 1996) (both orders together "Payphone Preclassification Proceeding").

and functions within 45 days of the release date of this Order. Submission of this ex parte is necessary before the Bureau may act on their pending comparably efficient interconnection ("CEI") plans.³ We also waive the requirement, for a period of 60 days from the release date of this Order, that these interstate tariffs for unbundled features and functions be effective before the LECs are eligible to receive payphone compensation. If, however, a LEC fails to file all of the requisite federal tariffs for unbundled features and functions within 45 days of the release date of the instant Order, it will not be in compliance with the Commission's requirements and, consequently, will not be eligible to receive payphone compensation. This Order does not waive any of the other requirements with which the LECs must comply before receiving compensation.⁴

2. This Order also restates that LECs must comply with all of the enumerated requirements established in the Payphone Reclassification Proceeding before the LECs' payphone operations are eligible to receive payphone compensation. Tariffs for payphone services, including unbundled features and functions filed with the states, pursuant to the Payphone Reclassification Proceeding, must be cost-based, consistent with Section 276, nondiscriminatory, and consistent with Computer III tariffing guidelines.⁵ In addition, the Payphone Reclassification Proceeding required states to ensure that payphone costs for unregulated equipment and subsidies are removed from the intrastate local exchange service and exchange access service rates.⁶ These intrastate tariffing requirements must be met and the tariffs effective by April 15, 1997, for the LEC's payphone operations to receive the payphone compensation provided by the Payphone Reclassification Proceeding.⁷

3. The Bureau takes this action, on its own motion, pursuant to the authority delegated to it by the Commission in the Order on Reconsideration to determine whether a LEC has met the requirements of the Payphone Reclassification Proceeding prior to receiving compensation.⁸ The instant Order advances the twin goals of Section 276 of the Act by promoting both competition among payphone service providers ("PSPs") and the widespread deployment of payphone services to the benefit of the general public.⁹

³ In addition to filing the ex parte with the Secretary in CC Docket No. 96-128, each of the BOCs must also file a copy of its ex parte in its CEI plan proceeding, also by April 10, 1997.

⁴ See Order on Reconsideration at paras. 131-132.

⁵ Id. at para. 163. As stated in the Order on Reconsideration, the intrastate tariffs are subject to the new services test. Order on Reconsideration at Id., n. 492.

⁶ See, e.g., Payphone Order at paras. 180-187.

⁷ Order on Reconsideration at paras. 131-132.

⁸ Id. at para. 132. See also id. at para. 163. These delegations of authority to the Bureau are consistent with Section .091 of the Commission's rules, 47 CFR § 0.91.

⁹ 47 U.S.C. § 276(b)(1).

II. BACKGROUND

4. In the Payphone Reclassification Proceeding, the Commission noted that Telecommunications Act of 1996 fundamentally changed telecommunications regulation. It stated that the 1996 Act erects a "pro-competitive deregulatory national framework designed to accelerate rapid private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."¹⁰ To that end, the Commission advanced the twin goals of Section 276 of the Act of "promot[ing] competition among payphone service providers and promot[ing] the widespread deployment of payphone services to the benefit of the general public. . ."¹¹ It sought to eliminate those regulatory constraints that inhibit the ability both to enter and exit the payphone marketplace, and to compete for the right to provide services to customers through payphones. At the same time, the Commission recognized that a transition period is necessary to eliminate the effects of some long-standing barriers to full competition in the payphone market. For this reason, it concluded that it would continue, for a limited time, to regulate certain aspects of the payphone market, but only until such time as the market evolves to erase these sources of market distortions.¹²

5. In the Payphone Order, the Commission concluded that, consistent with Section 276 of the Act, PSPs are to be compensated for "each and every completed intrastate and interstate call" originated by their payphones.¹³ For the first year of the compensation provided by the Payphone Order, the Commission required those IXCs with annual toll revenues in excess of \$100 million to pay PSPs proportionate shares, based on their respective market shares, of interim, flat-rated compensation in the amount of \$45.85 per payphone per month.¹⁴ This monthly amount is to compensate each payphone for an average of 131 access code calls and subscriber 800 calls. The Commission concluded that LEC PSPs would be eligible to receive this compensation by April 15, 1997, once the LEC, among other things, terminated certain subsidies flowing to its payphone operations.¹⁵

6. In the Order on Reconsideration, the Commission concluded that to be eligible to receive compensation, a LEC must be able to certify the following:

¹⁰ S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 1 (1996).

¹¹ 47 U.S.C. § 276(b)(1).

¹² Payphone Order at paras. 11-19.

¹³ Id. at paras. 48-76.

¹⁴ Id. at paras. 119-126.

¹⁵ Order on Reconsideration at para. 131.

1) it has an effective cost accounting manual ("CAM") filing; 2) it has an effective interstate CCL tariff reflecting a reduction for deregulated payphone costs and reflecting additional multiline subscriber line charge ("SLC") revenue; 3) it has effective intrastate tariffs reflecting the removal of charges that recover the costs of payphones and any intrastate subsidies; 4) it has deregulated and reclassified or transferred the value of payphone customer premises equipment ("CPE") and related costs as required in the Report and Order; 5) it has in effect intrastate tariffs for basic payphone services (for "dumb" and "smart" payphones); and 6) it has in effect intrastate and interstate tariffs for unbundled functionalities associated with those lines.¹⁶

7. The Commission also noted that additional requirements apply to those LECs that are BOCs:

In addition to the requirements for all other LECs, BOCs must also have approved [comparably efficient interconnection ("CEI")] plans for basic payphone services and unbundled functionalities prior to receiving compensation. Similarly, prior to the approval of its [CEI] plan, a BOC may not negotiate with location providers on the location provider's selecting and contracting with the carriers that carry interLATA calls from their payphones.¹⁷

III. CLARIFICATION AND LIMITED WAIVER OF FEDERAL TARIFFING REQUIREMENTS FOR UNBUNDLED FEATURES AND FUNCTIONS

A. Background

8. In the Payphone Order, the Commission required that LECs tariff payphone services at the federal level.¹⁸ The Payphone Order also required that network services provided by a LEC to its payphone operations must be federally tariffed as well.¹⁹ In the Order on Reconsideration, the Commission required LECs to file tariffs for the basic payphone services and unbundled functionalities in the intrastate and interstate jurisdictions. Basic payphone services for instrument-implemented "smart" payphones, "dumb" payphones, and inmate payphones, including any features and functions that the LEC has unbundled from the basic payphone line, which enable independent providers to offer payphone services, and unbundled features and functions provided by a LEC to its payphone operations, must be tariffed at the state

¹⁶ Id.

¹⁷ Id. at para. 132.

¹⁸ Payphone Order at para. 147.

¹⁹ Id. at para. 148.

level.²⁰ The Commission also required that the unbundled payphone features and functions provided by a LEC to others and the unbundled features and functions provided by a LEC to its payphone operations must be tariffed in the federal jurisdiction.²¹ The Commission also stated in the Payphone Order²² that while it did not require LECs to provide additional unbundling of features for payphone services by April 15, 1997, states could require that LECs provide further unbundling, and further unbundling could be requested by PSPs from BOCs subsequently through the 120-day Open Network Architecture ("ONA") service process.²³

9. In addition, the Payphone Order required that in its CEI plan a BOC must explain how it will provide basic payphone services and unbundled functionalities and options taken by the BOC.²⁴ The Payphone Order required the filing of CEI plans for payphone services to ensure that the BOCs provide payphone services in a nondiscriminatory manner and consistent with other Computer III²⁵ and ONA requirements.²⁶ Thus, a BOC must indicate how it plans to

²⁰ In the Order on Reconsideration, the Commission concluded that even though it retained authority over payphone tariffs, it delegated to the states certain responsibilities. The Commission indicated, however, that if a state was not able to respond to those requirements the state could require that LECs in its state file with the Commission instead of the state for those responsibilities delegated to the state. Id. at para. 163.

²¹ Id. at paras. 162-165.

²² Payphone Order at para. 148.

²³ Filing and Review of Open Network Architecture Plans, 4 FCC Rcd 1 (1988) (BOC ONA Order), recon., 5 FCC Rcd 3084 (1990) (BOC ONA Reconsideration Order); 5 FCC Rcd 3103 (1990) (BOC ONA Amendment Order), erratum, 5 FCC Rcd 4045, pets. for review denied, California v. FCC, 4 F.3d 1505 (9th Cir. 1993), recon., 8 FCC Rcd 97 (1993) (BOC ONA Amendment Reconsideration Order); 6 FCC Rcd 7646, 7649-50 (1991) (BOC ONA Further Amendment Order); 8 FCC Rcd 2606 (1993) (BOC ONA Second Further Amendment Order), pet. for review denied, California v. FCC, 4 F.3d 1505 (9th Cir. 1993).

Under their ONA plans, BOCs must respond within 120 days to requests from competing enhanced service providers for new basic ONA services. BOCs must base their decisions on whether to provide these new services on the ONA selection criteria set forth in the Computer III Phase I Order: market area demand, utility as perceived by the requesting ESP, and costing and technical feasibility. See generally ONA Interim Waiver Order, 10 FCC Rcd at 1728-29.

²⁴ Payphone Order at para. 204.

²⁵ Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer III), CC Docket No. 85-229, Phase I, 104 FCC 2d 958 (1986) (Phase I Order), recon., 2 FCC Rcd 3035 (1987) (Phase I Reconsideration Order), further recon., 3 FCC Rcd 1135 (1988) (Phase I Further Reconsideration Order), second further recon., 4 FCC Rcd 5927 (1989) (Phase I Second Further Reconsideration Order); Phase I Order and Phase I Reconsideration Order vacated California v. FCC, 905 F.2d 1217 (9th Cir. 1990); Phase II, 2 FCC Rcd 3072 (1987) (Phase II Order), recon., 3 FCC Rcd 1150 (1988) (Phase II Reconsideration Order), further recon., 4 FCC Rcd 5927 (1988) (Phase II Further Reconsideration Order); Phase II Order vacated, California v. FCC, 905 F.2d 1217 (9th Cir. 1990); Computer III Remand Proceeding, 5 FCC Rcd 7719 (1990) (ONA Remand Order), recon., 7 FCC Rcd 909 (1992), pets. for review denied, California v. FCC, 4 F.3d 1505 (9th Cir. 1993); Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company

unbundle, and associate with a specific rate element in a tariff, the basic services and basic service functions that underlie its provision of payphone service. In addition, any options available to the BOC in the provision of such basic services or functions would be included in the unbundled offerings.²⁷

10. Finally, in a "compliance list" paragraph in the Order on Reconsideration, the Commission listed the requirements with which a LEC must comply to receive payphone compensation under the Commission's rules.²⁸ This compliance list requires the federal tariffing of unbundled features associated with payphone lines.²⁹

11. The Order on Reconsideration required that LECs file federal tariffs by January 15, 1997, to be effective no later than April 15, 1997.³⁰ A review of the federal tariffs filed by LECs and those detailed by the BOCs in their CEI plans revealed that some of the BOCs and other LECs had not filed federal tariffs for all the unbundled features and functions required by the Payphone Reclassification Proceeding. In response to staff inquiries, several parties filed ex parte presentations concerning LEC compliance with the requirements of the two payphone orders.

B. Comments

12. In an ex parte filing, the RBOC Coalition³¹ states that it agrees that the Commission's payphone orders impose a federal tariffing requirement.³² It argues, however, that the federal tariffing applies only to network-based, payphone-specific features and functions.³³ The RBOC Coalition argues further that among these network-based, payphone-specific features

Safeguards, 6 FCC Rcd 7571 (1991) (BOC Safeguards Order), BOC Safeguards Order vacated in part and remanded, California v. FCC, 39 F.3d 919 (9th Cir. 1994) (California III).

²⁶ Payphone Order at para. 202.

²⁷ Id. at para. 204.

²⁸ See para. 6. above.

²⁹ Order on Reconsideration, at para. 131.

³⁰ Order on Reconsideration at para. 163.

³¹ The RBOC Coalition consists of all of the BOCs except Ameritech.

³² Ex Parte Letter of Michael Kellogg, Counsel, RBOC Coalition to Mary Beth Richards, Deputy Chief, Common Carrier Bureau (March 19, 1997).

³³ Id.

and functions, only those that a LEC provides to its own payphone operations must be tariffed.³⁴ The RBOC Coalition notes, however, that "[w]hatever federal tariffing requirements ultimately are imposed, the Coalition members will of course comply with those requirements."³⁵ It states that it will support and comply with any reasonable resolution of the federal tariffing issue, "so long as it does not delay the rapid transformation of the payphone industry that Congress intended," or defer the legislative intent behind Section 276 to promote both competition among PSPs and the widespread deployment of payphone services.³⁶

13. In addition, both the RBOC Coalition and the American Public Communications Council ("APCC"), which represents independent PSPs, filed detailed ex parte presentations that set forth which payphone services they believe must be federally tariffed pursuant to the Payphone Reclassification Proceeding.³⁷ The RBOC Coalition argues that the Commission's payphone orders establish the principle that federal tariffs cannot be required for a feature unless that feature is unbundled.³⁸ Therefore, the RBOC Coalition maintains that its individual member BOCs will tariff all network-based, payphone-specific features and functions that they have unbundled, but should not be required to tariff at the federal level any features and functions that they have not unbundled.³⁹

14. On the other hand, APCC argues that the Commission intended for the basic payphone line to serve as a building block to which additional features and functions would be added as options, including such options as coin service features, answer supervision, and call blocking and screening.⁴⁰ Consequently, APCC contends, each of these services is an "unbundled feature or function" that must be federally tariffed, if the function is used by the LEC, in bundled or unbundled form, to provide payphone service.⁴¹ In addition, APCC argues

³⁴ Id.

³⁵ Id.

³⁶ Id.

³⁷ Ex Parte Letter of Michael Kellogg, Counsel, RBOC Coalition to Mary Beth Richards, Deputy Chief, Common Carrier Bureau, FCC (March 25, 1997); Ex Parte Letter of Robert F. Aldrich, Counsel, APCC to William F. Caton, Acting Secretary, FCC (March 27, 1997). As discussed below in paragraph 26, a number of other parties also filed ex parte letters, primarily on the state tariffing requirements of the Payphone Reclassification Proceeding, including AT&T, MCI, and GTE.

³⁸ Ex Parte Letter of Michael Kellogg, Counsel, RBOC Coalition to Mary Beth Richards, Deputy Chief, Common Carrier Bureau, FCC (March 25, 1997) at 4-5.

³⁹ Id.

⁴⁰ Ex Parte Letter of Robert F. Aldrich, Counsel, APCC to William F. Caton, Acting Secretary, FCC (March 27, 1997) at 3.

⁴¹ Id. at 3.

that the BOCs have not proposed to federally tariff coin service features, such as coin supervision, coin counting, and coin rating.⁴² APCC argues further that because a basic payphone line can be purchased without coin service features, these features are not inherently a part of the basic payphone line, and, therefore, should be tarified separately as "unbundled features and functions" at the federal level.⁴³

C. Discussion

15. The RBOC Coalition and APCC have made ex parte presentations to the Commission staff that set forth varying interpretations of the Commission's federal tariffing requirements for payphone services. We conclude that the RBOC Coalition interpretation of the federal tariffing requirement established in the two payphone orders is too narrow and does not reflect the level of federal tariffing of unbundled features and functions required by those orders. More specifically, the RBOC Coalition's interpretation does not comply with the Commission's objective of safeguarding against discrimination through the federal tariffing of unbundled features, because the Coalition does not include the unbundled features and functions provided by LECs to others, apart from those taken by a LEC's own payphone operations. The Payphone Reclassification Proceeding concluded that state and federal tariffing of both the payphone unbundled features and functions provided to others and the unbundled features and functions provided by the LEC to its own payphone operations must be tarified to avoid possible subsidies and discrimination.⁴⁴

16. On the other hand, we conclude that APCC's interpretation of the federal tariffing requirement established in the Payphone Reclassification Proceeding is too broad and would require a greater unbundling of payphone features than is required by that proceeding. The payphone orders, however, do not require that LECs unbundle more features and functions from the basic payphone line by April 15, 1997 than the LEC provides on an unbundled basis.⁴⁵ Thus, we clarify that, for example, if a LEC provides answer supervision bundled with the basic payphone line, the LEC is required neither to unbundle that service from its state tariff for payphone service, nor federally tariff that service by April 15, 1997.⁴⁶ If the LEC, however, provides answer supervision on an unbundled basis, it must tariff that service in both the state and federal jurisdictions.

17. We clarify here that the unbundled features and functions addressed in the

⁴² Id. at 5.

⁴³ Id. at 6.

⁴⁴ Payphone Order at para. 148; Order on Reconsideration at paras. 162-163.

⁴⁵ Payphone Order at para. 148; Order on Reconsideration at para. 165.

⁴⁶ As discussed below in para. 18, a state may require further unbundling, and PSPs may request additional unbundled features and functions from BOCs through the ONA 120-day service request process.

Payphone Reclassification Proceeding are network services similar to basic service elements ("BSEs") under the ONA regulatory framework. BSEs are defined as optional unbundled features that an enhanced services provider may require or find useful in configuring its enhanced service.⁴⁷ In this case, the unbundled features are payphone-specific, network-based features and functions used in configuring unregulated payphone operations provided by PSPs or LECs. Some of the LECs use terms such as tariffed "options" and "elective features" for network services that other LECs call features and functions. Options and elective features must be federally tariffed in the same circumstances as features and functions must be federally tariffed, depending on whether they are provided on a bundled basis with the basic network payphone line (state tariff), or separately on an unbundled basis (federal and state tariffs).⁴⁸

18. We also clarify that the requirement to file federal tariffs applies only to payphone-specific, network-based, unbundled features and functions provided to others or taken by a LEC's operations, such as answer supervision and call screening, with the following qualifications discussed below.⁴⁹ We agree with the RBOC Coalition that the federal tariffing requirement does not apply to non-network services, such as inside wire services.⁵⁰ Moreover, as suggested by the RBOC Coalition, we do not include in this federal tariffing requirement features and functions that are generally available to all local exchange customers and are only incidental to payphone service, such as touchtone services and various custom calling features.⁵¹ In addition, we clarify here that payphone-specific, network-based features and functions must be federally tariffed now only if the LEC provides them separately and on an unbundled basis from the basic payphone line, either to its payphone operations or to others, because the payphone orders did not require additional unbundling of features and functions by April 15 beyond those that the LEC chooses to provide.⁵² As required by the Payphone Reclassification Proceeding,

⁴⁷ Filing and Review of Open Network Architecture Plans, Phase I, Memorandum Opinion and Order, FCC 88-381, 4 FCC Rcd 1 (1988) ("BOC ONA Order").

⁴⁸ See, e.g., Application of Open Network and Nondiscrimination Safeguards to GTE Corporation, 11 FCC Rcd 5558 (1995) at para. 11.

⁴⁹ Filing and Review of Open Network Architecture Plans, Phase I, Memorandum Opinion and Order, 4 FCC Rcd 1 (1988) ("BOC ONA Order"); Payphone Order at para. 146; Order on Reconsideration at paras. 162, 166. Examples of other unbundled features and functions that must be federally tariffed if they are offered on an unbundled basis to others or taken by a LEC payphone operation on an unbundled basis include: call blocking, coin supervision additive, coin signaling transmission additive, coin rating, original line number screening, and IDDD blocking.

⁵⁰ Ex Parte Letter of Michael Kellogg, Counsel, RBOC Coalition to Mary Beth Richards, Deputy Chief, Common Carrier Bureau, FCC (March 25, 1997) at 2; Ex Parte Letter of Robert F. Aldrich, Counsel, APCC to William F. Caton, Acting Secretary, FCC (March 27, 1997) at 2.

⁵¹ Ex Parte Letter of Michael Kellogg, Counsel, RBOC Coalition to Mary Beth Richards, Deputy Chief, Common Carrier Bureau, FCC (March 25, 1997) at 2.

⁵² Payphone Order at para. 148.

however, a state may require further unbundling, and PSPs may request additional unbundled features and functions from BOCs through the ONA 120-day service request process.⁵³

19. The RBOC Coalition argues that Computer III prohibits mix and match of federal and state tariffs required by the Payphone Reclassification Proceeding.⁵⁴ In contrast, APCC argues that the reasons for prohibiting mix and match do not apply for tariffs filed pursuant to the payphone orders because the Commission has required that rates for both state and federal tariffs must be cost-based and subject to the new services test.⁵⁵ We conclude that the Payphone Reclassification Proceeding does not prohibit the mixing and matching of payphone services between federal and state tariffs by LEC and independent payphone operations. This conclusion applies only to payphone services and does not affect Computer III requirements.⁵⁶ In Computer III, the Commission did not allow such mixing and matching because: (1) mixing and matching could result in mismatch of basic service arrangements ("BSA") and BSEs costs and revenues; (2) it could undermine state policies; (3) states may impose terms and conditions on BSAs/BSEs that differ from those of the FCC; and (4) other jurisdictional problems.⁵⁷ Unlike Computer III, however, Section 276 provides the Commission with jurisdiction over all tariffing of payphone services.⁵⁸ The Commission has delegated to each state the review, pursuant to federal guidelines, of payphone tariffs filed in the state.⁵⁹ Given that the federal guidelines for tariffing discussed above⁶⁰ are the same in the state and federal jurisdictions, there is no undermining of state policies or the creation of jurisdictional conflicts. Moreover, in this case, mixing and matching provides a safeguard to ensure that unbundled features are available at rates that comply with the guidelines established in the Payphone Reclassification Proceeding. We conclude that the separations issues, if any, raised by allowing mixing and matching are outweighed, in this case, by the importance of this safeguard to ensure that unbundled features

⁵³ Id.

⁵⁴ Ex Parte Letter of Michael Kellogg, Counsel, RBOC Coalition to Mary Beth Richards, Deputy Chief, Common Carrier Bureau (March 25, 1997).

⁵⁵ Ex Parte Letter of Albert Kramer, Counsel, APCC to Mary Beth Richards, Deputy Chief, Common Carrier Bureau (March 27, 1997).

⁵⁶ Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, Notice of Proposed Rulemaking, CC Docket No. 89-79, 6 FCC Rcd 4524, 4535, para. 65 (1991).

⁵⁷ Id. See also Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, Notice of Proposed Rulemaking, CC Docket No. 89-79, 4 FCC Rcd 3983, 3989 at para. 43 (1989).

⁵⁸ Payphone Order at paras. 146-147.

⁵⁹ Order on Reconsideration at para. 163.

⁶⁰ Payphone Order at para. 146; Order on Reconsideration at para. 163. See also para. 2, above.

and functions are available at rates that comply with the guidelines established in the Payphone Reclassification Proceeding.⁶¹

D. Waiver

20. As discussed above,⁶² upon reviewing the contentions of the RBOC Coalition and the language it cites from the two orders in the Payphone Reclassification Proceeding, we conclude that while the individual BOCs are not in full compliance with the requirements of the Payphone Reclassification Proceeding, they have made a good faith effort to comply with the requirements. The RBOC Coalition concedes that the Commission's payphone orders mandate the federal tariffing of some payphone services, namely those that the LEC provides to its own payphone operations.⁶³ In addition, the RBOC Coalition states that it will take whatever action is necessary to comply with the Commission's orders in order to be eligible to receive payphone compensation at the earliest possible date.⁶⁴ Therefore, because the RBOC Coalition has indicated its intent to comply with the Commission's requirements, as established by the Payphone Reclassification Proceeding, and because the Coalition's narrower reading of what payphone services need to be federally tariffed is based on its good faith efforts to comply with the Commission's rules, we adopt this Order, which contains a limited waiver of the federal tariffing requirements for unbundled features and functions a LEC must meet before it is eligible to receive payphone compensation. Because other LECs may also have failed to file all the federal tariffs for unbundled features and functions required by the Payphone Order and the Order on Reconsideration, we apply this limited waiver to all LECs, with the limitations set forth below.⁶⁵

21. In the Payphone Order and Order on Reconsideration, the Commission required that LECs file federal tariffs by January 15, 1997 with a 90-day review period for unbundled features and functions.⁶⁶ Consistent with our conclusions above and in the interests of bringing LECs into compliance with the requirements of the Payphone Reclassification Proceeding, we waive for 60 days the requirement that LECs have "in effect ... interstate tariffs

⁶¹ The Commission is undertaking a proceeding to reform the separation rules. Any problems, if they exist, will be considered in that proceeding. See Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, Usage of the Public Switched Network by Information Service and Internet Access Providers, Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry, CC Docket Nos. 96-262, 94-1,91-213, 96-263, FCC 96-488 (rel. Dec. 24, 1996) at para. 6.

⁶² See para. 15, above.

⁶³ Ex Parte Letter of Michael Kellogg, Counsel, RBOC Coalition to Mary Beth Richards, Deputy Chief, Common Carrier Bureau (March 19, 1997).

⁶⁴ Id.

⁶⁵ See paras. 21-23, below.

⁶⁶ Order on Reconsideration at para. 131 (emphasis added).

for unbundled functionalities associated with [payphone] lines" by April 15, 1997.⁶⁷ We also waive both the January 15th filing deadline and the 90-day review period for interstate tariffs. LECs must file interstate tariffs for unbundled features and functions, as required by the Payphone Reclassification Proceeding, as clarified herein, within 45 days after the release date of this order under the streamlined tariff review process. These tariffs will be effective no later than 15 days after filing, unless suspended or rejected.⁶⁸ Any LEC that files federal tariffs for unbundled functionalities, as clarified herein, within 45 days of the release date of the instant Order will be eligible to collect the payphone compensation provided by the Payphone Reclassification Proceeding on April 15, 1997, as long as that LEC has complied with all of the other requirements set forth in paragraph 131 (and paragraph 132 for the BOCs) of the Order on Reconsideration.⁶⁹ If a LEC fails to file all of the requisite federal tariffs within 45 days, or if the federal tariffs for a particular LEC are not in effect after 60 days from the date of release of this Order, the LEC will not be eligible to receive the payphone compensation provided by the Payphone Reclassification Proceeding.

22. In addition, each individual BOC must also file a written ex parte document, by April 10, 1997, advising on the status of intrastate tariffs for the features and functions that it has not yet federally tariffed, and stating that it commits to filing federal tariffs for such features and functions within 45 days of the release date of this Order. Submission of this ex parte is necessary before the Bureau may act on the BOCs' pending CEI plans.

23. Waiver of Commission rules is appropriate only if special circumstances warrant a deviation from the general rule⁷⁰ and such deviation serves the public interest.⁷¹ Because the Commission is required to review incoming tariffs for the unbundled features and functions associated with payphone service, which have not been previously filed at the interstate level, we find that special circumstances exist in this case to grant a limited waiver of brief duration to address this responsibility. In addition, for the reasons stated above, our grant of a waiver in this limited circumstance, would not undermine, and is consistent with, the Commission's overall policies in CC Docket No. 96-128 to reclassify LEC payphone assets and ensure fair PSP compensation for all calls originated by payphones. Moreover, our review of the interstate tariffs that are the subject of this limited waiver will enable us to determine whether these tariffs have been filed in accordance with our rules. Accordingly, we grant a limited

⁶⁷ Id.

⁶⁸ 47 U.S.C. § 402; Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996, CC Docket No. 96-187, Report and Order, FCC 97-23 (rel. Jan. 31, 1997).

⁶⁹ Because the industry has elected to bill for and pay out compensation on a quarterly basis, the actual payment for compensation that begins to accrue on April 15, 1997 will not be made until after the requisite federal tariffs become effective within 60 days after the release date of the instant Order.

⁷⁰ Northeast Cellular Telephone Company v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁷¹ WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

waiver, as specified in this Order,⁷² subject to the filing of federal tariffs for unbundled features and functions within 45 days of the release date of this Order. This Order does not waive any of the other requirements set forth in paragraphs 131-132 of the Order on Reconsideration, including the requirement that a LEC have "in effect intrastate... tariffs for unbundled functionalities..."⁷³

IV. CLARIFICATION OF STATE TARIFFING REQUIREMENTS

A. Background

24. The Commission concluded in the Order on Reconsideration that LECs are required to tariff basic payphone lines (smart, dumb, and inmate⁷⁴) at the state level only.⁷⁵ Unbundled features and functions provided to others and taken by a LEC's payphone operations, however, must be tarified in both the intrastate and interstate jurisdictions.⁷⁶

25. In addition, in the Payphone Order, the Commission required that, pursuant to the mandate of Section 276(b)(1)(B), incumbent LECs must remove from their intrastate rates any charges that recover the costs of payphones. The Payphone Order required that states determine the intrastate rate elements that must be removed to eliminate any intrastate subsidies. These revised rates must be effective no later than April 15, 1997.⁷⁷

B. Comments

26. APCC filed a motion that the Commission rule that LECs are ineligible to receive payphone compensation because they have not tarified their services to PSPs at cost-based rates, and have not tarified the "basic payphone line" separately from "coin service" features and other unbundled functions, as required in paragraphs 162-163 of the Order on Reconsideration.⁷⁸ APCC states that it is filing its motion to request that the Commission declare, "if not within the

⁷² See paras. 20-23, above.

⁷³ Id. (emphasis added).

⁷⁴ The Commission noted in the Order on Reconsideration, at para. 131, that the LECs would also have to tariff basic services for inmate phone lines.

⁷⁵ Id. at paras. 162-165. The Commission provided guidelines pursuant to which the states are to review the state tariffs subject to the Payphone Reclassification Proceeding. Id. at para. 163.

⁷⁶ Id. at paras. 162-165.

⁷⁷ Payphone Order at para. 186.

⁷⁸ Motion of the American Public Communications Council for a Ruling on the Bell Operating Companies' Compliance with the Payphone Orders, CC Docket No. 96-128, filed March 26, 1997 at 1-2 ("APCC Motion").

CEI proceeding then in a separate ruling," that the BOCs must satisfy these requirements.⁷⁹ APCC also argues that the BOCs have not complied with the Commission's requirements that all services offered to PSPs be offered at cost-based rates complying with the FCC's "new services" test.⁸⁰ APCC contends that "[a]lthough the FCC stated that it will rely on the states to determine... whether state-tariffed services comply with the Payphone Orders and Section 276, the Commission made it clear that if a state is unable to review the tariffs, the Commission will do so."⁸¹

27. The RBOC Coalition argues in an ex parte filing that the new services test, as referenced in note 492 of the Order on Reconsideration, applies only to unbundled elements of the lines used for "dumb" payphones, which have not been provided to independent PSPs in the past.⁸² The RBOC Coalition argues further that a contrary reading would (1) require the states to apply a federal test to a purely intrastate service, and (2) require the states to apply the new services test in circumstances where the test does not apply in the federal arena, because the services at issue are not new.⁸³

28. In ex parte presentations, both AT&T and MCI argue that some LECs have not acted to eliminate intrastate payphone costs and subsidies from their intrastate payphone tariffs, as required by the Payphone Reclassification Proceeding.⁸⁴ AT&T requests that the Commission act promptly to enforce these requirements to prevent LECs from claiming entitlement to interim payphone compensation before they have complied with the Commission's requirements.⁸⁵ GTE recently made an ex parte presentation on the intrastate tariffs it filed in 29 jurisdictions, and it noted that the status of these tariffs varies from state to state.⁸⁶ APCC maintains that the LECs must file intrastate tariffs for payphone services that are cost-based,

⁷⁹ Id.

⁸⁰ Id. at 4.

⁸¹ Id. at 4-5.

⁸² Ex Parte Letter of Michael Kellogg, Counsel, RBOC Coalition to Mary Beth Richards, Deputy Chief, Common Carrier Bureau, FCC (April 3, 1997).

⁸³ Id.

⁸⁴ Ex Parte Letter of E.E. Estey, Government Affairs Vice President, AT&T to Regina Keeney, Chief, Common Carrier Bureau, FCC (March 28, 1997); Ex Parte Letter of Leonard Sawicki, FCC Affairs Director, MCI to William Caton, Acting Secretary, FCC (March 20, 1997).

⁸⁵ Ex Parte Letter of E.E. Estey, Government Affairs Vice President, AT&T to Regina Keeney, Chief, Common Carrier Bureau, FCC (March 28, 1997).

⁸⁶ Ex Parte Letter of Charon J. Harris, Director - Policy Matters, GTE to William Caton, Acting Secretary, FCC (April 3, 1997).

consistent with the requirements that certain subsidies be terminated, and nondiscriminatory.⁸⁷

C. Discussion

29. We deny the APCC Motion that requests that the Commission conclude that the BOCs are disqualified from receiving interim compensation pursuant to the Payphone Reclassification Proceeding.⁸⁸ APCC argues that the BOCs have failed both to retariff their basic payphone services at cost-based rates, and to tariff separately from basic payphone lines coin service features and other unbundled features and functions.⁸⁹ We have clarified above that the Payphone Reclassification Proceeding did not require, by April 15, 1997, the level of unbundling sought by APCC.⁹⁰ LECs, including the BOCs, must comply with the state tariffing requirements of the Payphone Reclassification Proceeding. In response to APCC's contentions, we conclude that we do not have a record to determine here whether the BOCs have complied with the state tariffing requirement for cost-based rates. As required by the Order on Reconsideration, however, LECs, including the BOCs, must be prepared to certify that they have complied with all the requirements of the Payphone Reclassification Proceeding, including those involving intrastate tariffs, subject to the limited waiver provided herein.

30. We emphasize that LECs must comply with all of the enumerated requirements established in the Payphone Reclassification Proceeding, except as waived herein, before the LECs' payphone operations are eligible to receive the payphone compensation provided by that proceeding. Both independent PSPs and IXC's claim that some LECs have not filed state tariffs that comply with the requirements set forth in the Order on Reconsideration. These requirements are: (1) that payphone service intrastate tariffs be cost-based, consistent with Section 276, and nondiscriminatory;⁹¹ and (2) that the states ensure that payphone costs for unregulated equipment and subsidies be removed from the intrastate local exchange service and exchange access service rates.⁹² LEC intrastate tariffs must comply with these requirements by April 15, 1997 in order for the payphone operations of the LECs to be eligible to receive payphone compensation.⁹³ As discussed above,⁹⁴ LECs that have not complied with these

⁸⁷ Ex Parte Letter of Albert Kramer, Counsel, APCC to Mary Beth Richards, Deputy Chief, Common Carrier Bureau, FCC (March 28, 1997).

⁸⁸ APCC Motion at 1, 4-5.

⁸⁹ Id.

⁹⁰ See para. 15, above.

⁹¹ Order on Reconsideration at para. 163. As stated in the Order on Reconsideration, the intrastate tariffs are subject to the new services test. Order on Reconsideration at para. 163, n. 492.

⁹² Payphone Order at para. 148.

⁹³ Any party who believes that a particular LEC's intrastate tariffs fail to meet these requirements has the option of filing a complaint with the Commission. 47 U.S.C. § 208.

requirements will not be entitled to receive compensation.

31. We disagree with the RBOC Coalition regarding the applicability of the federal guidelines for state tariffing of payphone services. The Commission concluded in the Order on Reconsideration that it had jurisdiction over the tariffing of payphone services in order to implement Section 276.⁹⁵ The plain language of the Order on Reconsideration provides that state tariffs for payphone services must be cost based, consistent with the requirements of Section 276, nondiscriminatory, and consistent with Computer III guidelines. The footnote referred to by the RBOC Coalition provides references to Commission orders describing the applicable Computer III guidelines.⁹⁶

32. The guidelines for state review of intrastate tariffs are essentially the same as those included in the Payphone Order for federal tariffs. On reconsideration, the Commission stated that although it had the authority under Section 276 to require federal tariffs for payphone services, it delegated some of the tariffing requirements to the state jurisdiction. The Order on Reconsideration required that state tariffs for payphone services meet the requirements outlined above.⁹⁷ The Order on Reconsideration provides that states that are unable to review these tariffs may require the LECs to file the tariffs with the Commission.⁹⁸

33. We clarify that, for purposes of meeting all of the requirements necessary to receive payphone compensation, the question of whether a LEC has effective intrastate tariffs is to be considered on a state-by-state basis. Under this approach, assuming the LEC has complied with all of the other compliance list requirements,⁹⁹ if a LEC has effective intrastate tariffs in State X and has filed tariffs in State Y that are not yet in effect, then the LEC PSP will be able to receive payphone compensation for its payphones in State X but not in State Y. The intrastate tariffs for payphone services, including unbundled features, and the state tariffs removing payphone equipment costs and subsidies must be in effect for a LEC to receive compensation in a particular state.

⁹⁴ See paras. 6, 21, 29, above.

⁹⁵ Order on Reconsideration at para. 162.

⁹⁶ Id. at para. 163, n. 492.

⁹⁷ See para. 29, above.

⁹⁸ Order on Reconsideration at para. 163.

⁹⁹ See id. at paras. 131-132.

V. CONCLUSION

34. This Order advances the twin goals of Section 276 of the Act by promoting both competition among payphone service providers ("PSPs") and the widespread deployment of payphone services to the benefit of the general public.¹⁰⁰ In this Order, we clarify the Commission's interstate tariffing requirements for unbundled features and functions, as set forth in the Payphone Reclassification Proceeding. LECs must comply with these requirements before they are eligible to receive the compensation from IXC that is mandated in that proceeding. Because some LECs are not in compliance with the Commission's unbundled feature and functions federal tariffing requirements under the Payphone Reclassification Proceeding, we grant all LECs a limited waiver of the deadline for filing the federal tariffs for certain unbundled features and functions, to the extent necessary, and grant a limited waiver of the requirement that these tariffs be effective before the LECs are eligible to receive payphone compensation. Pursuant to this waiver, LECs must file federal tariffs for unbundled features and functions within 45 days of the release date of this order. Each individual BOC must also file a written ex parte document, by April 10, 1997, advising on the status of intrastate tariffs for the unbundled features and functions that it has not yet federally tariffed, and stating that it commits to filing federal tariffs for such unbundled features and functions within 45 days of the release date of this Order. Each of the BOCs must also file a copy of its ex parte in its CEI plan proceeding by April 10, 1997. We also waive the requirement, for a period of 60 days from the release date of this Order, that these federal tariffs be effective before the LECs are eligible to receive payphone compensation. This Order does not waive any of the other requirements with which the LECs must comply before receiving compensation.¹⁰¹

35. We emphasize that LECs must have effective state tariffs that comply with the requirements set forth in the Order on Reconsideration. These requirements are: (1) that payphone services state tariffs must be cost-based, consistent with Section 276, nondiscriminatory;¹⁰² and consistent with Computer III tariffing guidelines; and (2) that payphone costs for unregulated equipment and subsidies be removed from the intrastate local exchange service and exchange access service rates. LEC intrastate tariffs must comply with these requirements by April 15, 1997 for the payphone operations of LECs to receive payphone compensation. As discussed above, for LECs that have not complied with these requirements, their payphone operations will not be entitled to compensation pursuant to the Payphone Reclassification Proceeding, in the states in which they do not comply.¹⁰³

¹⁰⁰ 47 U.S.C. § 276(b)(1).

¹⁰¹ Id.

¹⁰² Id. at para. 163.

¹⁰³ See paras. 6, 21, 29, above.

VI. ORDERING CLAUSES

36. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 5(c), 201-205, 276 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c), 201-205, 276, and Sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, that limited waiver of the Commission's requirements to be eligible to receive the compensation provided by the Payphone Reclassification Proceeding, CC Docket No. 96-128. IS GRANTED to the extent stated herein.

37. IT IS FURTHER ORDERED that each individual BOC must file an ex parte document with the Secretary, by April 10, 1997, advising on the status of intrastate tariffs for the unbundled features and functions that it has not yet federally tariffed, and stating that it commits to filing federal tariffs for such unbundled features and functions within 45 days of the release date of this Order.¹⁰⁴

38. IT IS FURTHER ORDERED that this limited waiver SHALL BE EFFECTIVE upon release.

39. IT IS FURTHER ORDERED that the Motion of APCC requesting that the Commission conclude that the BOCs are disqualified from receiving interim compensation under the Payphone Reclassification Proceeding IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Regina M. Keeney
Chief, Common Carrier Bureau

¹⁰⁴ Each BOC should provide a copy of its ex parte document directly to the Chief, Common Carrier Bureau.