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

In the Matter of	)	
	)	
The Pay Telephone Reclassification	)	
And Compensation Provisions Of	)	CC Docket No. 96-128
The Telecommunications Act Of 1996	)	
	)	
RBOC/GTE/SNET Payphone Coalition	)	NSD File No. L-99-34
Petition for Clarification	)	
	)	

SECOND ORDER ON RECONSIDERATION

Adopted: March 28, 2001 **Released:** April 5, 2001

By the Commission:

I. INTRODUCTION

1. In this Second Order on Reconsideration, we modify 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 a payphones. We are aware of problems which PSPs face in trying to collect the per-call compensation they are due pursuant to the mandate of the Telecommunications Act of 1996 and the Commission's rules. In this order, we revise our rules to address the difficulty which PSPs face in obtaining compensation for coinless calls placed from payphones which involve a switch-based telecommunications reseller in the call path. Given the difficulty in determining which entity is responsible for compensating the PSP for such calls (*i.e.*, the switch-based reseller or the interexchange carrier which routes calls to the switch-based reseller), we modify our 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.

2. For reasons explained below, 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. Finally, 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.[1]

II. BACKGROUND

3. Since 1996, the Commission has issued a number of orders that have defined the relationship between PSPs and other carriers in the call path from the payphone to the called party for purposes of assuring that PSPs are adequately compensated for calls placed from payphones. In 1996, in the *First Payphone Order*,[2] the Commission concluded that the IXC, as the primary beneficiary of payphone calls, should compensate the PSP. In a reconsideration order also released in 1996, the Commission modified this rule somewhat to provide that because switch-based resellers were capable of tracking calls and should be responsible for paying compensation, those carriers were required to pay compensation to PSPs.[3] In order to help PSPs identify the carrier from whom compensation was due for coinless calls, the Common Carrier Bureau in 1998 clarified the *Payphone Order on Reconsideration*, stating that if the switch-based reseller is responsible for paying per-call compensation, the underlying facilities-based carrier must identify the switch-based reseller responsible for paying per-call compensation.[4]

4. 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[5] dialed from their

---

[1] Petition for Clarification filed February 26, 1999 (Coalition Petition). The Commission sought comments on the Coalition's Petition in Common Carrier Bureau Seeks Comment On The RBOC/GTE/SNET Payphone Coalition Petition For Clarification Regarding Carrier Responsibility For Payphone Compensation Payment, *Public Notice*, NSD File No. L-99-34, DA 99-730 (rel. April 15, 1999).

[2] The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, *Report and Order,* Docket No. 96-128, 11 FCC Rcd 20,541 (1996) (*First Payphone Order*).

[3] The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, *Order on Reconsideration*, Docket No. 96-128, 11 FCC Rcd 21,233 (1996) (*Payphone Order on Reconsideration*).

[4] The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, *Memorandum Opinion and Order*, Docket No. 96-128, 13 FCC Rcd 10,893 (1998) (*Coding Digit Waiver Order*).

[5] An "access code call" means a call made using a sequence of numbers that, when dialed, connect the caller to the operator service provider (OSP) associated with that sequence, rather than the OSP presubscribed to the originating line. 47 U.S.C. § 226(a)(1). Access codes include toll-free numbers (such as those often dialed using calling cards), "10-10" numbers (101XXXX calls in equal access areas), and "950" Feature Group B numbers (950-0XXX or 950-1XXX anywhere, where the three-digit XXX denotes a particular interexchange carrier). *See* Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, *Second Report and Order*, CC Docket No. 91-35, 7 FCC Rcd 3251, n.1 (1992). "Subscriber 800 calls" are not access code calls, but are calls placed directly to individual subscribers of toll-free numbers (such as 800, 888, 877, 866, etc.). *See, e.g.*, Toll Free Service Access Codes, *Fourth Report and Order and Memorandum Opinion and Order*, CC Docket No. 95-155, 13 FCC Rcd 9058 (1998).

payphones[6]—the Commission adopted several payphone compensation rules in its *First Payphone Order*.[7] Pertinent to the discussion here are the rules that imposed responsibilities upon carriers for making payments to PSPs, tracking calls to completion, and arranging billing and collection.[8] Moreover, In the *First Payphone Order*,[9] the Commission adopted a "carrier-pays" system for per-call compensation, concluding that "the primary economic beneficiary of payphone calls should compensate the PSPs."[10] The Commission concluded that "all IXCs that carry calls from payphones are required to pay per-call compensation."[11] In addition, the Commission recognized that a reseller lacking its own facilities does not have the ability to track calls and that a facilities-based carrier should pay compensation to the PSP "in lieu of a non-facilities based carrier that resells service."[12] In the interests of lower costs and administrative efficiency, the Commission required facilities-based carriers to pay for calls received by their reseller customers and then, if they so chose, "to impose the payphone compensation amounts on these [reseller] customers."[13] The *First Payphone Order* also established rules for tracking payphone calls. Specifically, the order stated that the "underlying, facilities-based carrier has the burden of tracking calls to its reseller customers," that the facilities-based carrier "may recover that cost from the reseller, if it

---

[6] Previously, PSPs were not assured of receiving revenues for coinless access code or subscriber 800 calls dialed from their payphones, even though PSPs are prohibited from blocking such calls under the Telephone Operator Consumer Services Improvement Act (TOCSIA), Pub. L. No. 101-435, 104 Stat. 986 (1900). Section 226 (c)(1)(B), enacted in TOCSIA, provides that a telephone "aggregator" (an entity such as a PSP or a hotel that makes public telephones available using an OSP) must "ensure that each of its telephones…allows the consumer to use '800' and '950' access code numbers to obtain access to the provider of operator services desired by the consumer." 47 U.S.C. § 226 (c)(1)(B). This provision is implemented by the Commission's regulations at 47 C.F.R. § 64.704(a), "Call blocking prohibited." The proscription has the effect of also precluding PSPs from blocking calls to subscriber 800 numbers, because when toll-free numbers are dialed no distinction exists between subscriber 800 calls and toll-free number access code calls. *See* Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, *Second Report and Order*, CC Docket No. 91-35, 7 FCC Rcd 3251 (1992).

[7] 47 C.F.R. Subpart M - Provision of Payphone Service. *First Payphone Order*, 11 FCC Rcd 20,541; *Order on Reconsideration*, 11 FCC Rcd 21,233 (1996), *aff'd in part and remanded in part sub nom. Ill. Pub. Telecomm. Ass'n v. FCC*, 117 F.3d 555(D.C. Cir. 1997), *cert. denied sub nom. Va. State Corp. Comm'n v. FCC*, 523 U.S. 1046 (1998). See also *Second Report and Order*, 13 FCC Rcd 1778 (1997), *aff'd in part and remanded in part sub nom. MCI v. FCC*, 143 F.3d 606 (D.C. Cir. 1998); *Third Report and Order and Order on Reconsideration of the Second Report and Order*, 14 FCC Rcd 2545 (1999) (*Third Report and Order*), *aff'd sub nom. Am. Pub. Communications Council v. FCC*, 215 F.3d 51 (D.C. Cir. 2000).

[8] The rules required every carrier to whom a completed payphone call was routed to compensate the PSP. 47 C.F.R. § 64.1300. In addition, it was the responsibility of each carrier to whom a compensable call from a payphone was routed to track, or arrange for the tracking of, each call. 47 C.F.R. § 64.1310.

[9] *First Payphone Order*, 11 FCC Rcd 20541 (1996).

[10] *Id.*, 11 FCC Rcd at 20584.

[11] *Id.*

[12] *Id.*, 11 FCC Rcd at 20586.

[13] *Id.*, 11 FCC Rcd at 20586.

chooses," and that the tracking obligation "parallel[s] the obligation of the facilities-based carrier to pay compensation."[14]

5. In the *Payphone Order On Reconsideration*,[15] the Commission revised the payphone compensation responsibilities for calls involving switch-based resellers. The Commission found that a carrier that maintains its own switching capability is required to pay compensation and provide per-call tracking for calls originated from payphones.[16] Moreover, the Commission stated that, "[i]f a carrier does not maintain its own switching capability, then, as set forth in the [*First Payphone Order*], the first underlying carrier remains obligated to pay compensation to the PSP in lieu of its [reseller] customer that does not maintain a switching capability."[17]

6. In 1998, the Common Carrier Bureau released the *Coding Digit Waiver Order*,[18] 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 this 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. Specifically, the Bureau stated that, where the switch-based reseller identified itself as responsible for compensating the PSP, the facilities-based carrier must notify the billing PSP that the switch-based reseller, not the IXC, is responsible for paying per-call compensation for a particular 800 number. The Bureau further stated that the underlying facilities-based carrier must then identify the switch-based reseller responsible for paying PSP compensation for that particular 800 number. Finally, the Bureau specifically cautioned that neither facilities-based carriers nor switch-based resellers may "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."[19]

7. 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.[20] The Commission also stated that "the logical construction of the language from

---

[14] *Id.*, 11 FCC Rcd at 20591-92.

[15] *Payphone Order on Reconsideration*, 11 FCC Rcd 21,233 (1996).

[16] *Id.* at 21,277.

[17] *Id.*

[18] The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, *Memorandum Opinion and Order*, Docket No. 96-128, 13 FCC Rcd 10,893 (1998).

[19] *Coding Digit Waiver Order,* 13 FCC Rcd at 10915-16.

[20] Bell Atlantic-Delaware, Inc., *et al.*, v. Frontier Communications Services, Inc., *et al.*, File No. E-98-48, and Bell Atlantic-Delaware, Inc., *et al.*, v. MCI Telecommunications Corp., File No. E-98-49, *Memorandum Opinion and Order,* FCC 10-110 (rel. Apr. 5, 2001) (*Bell Atlantic-Frontier Order*).

the *Coding Digit Waiver Order* requires a first facilities-based carrier to pay [the PSP] unless the reseller has identified itself to the first facilities-based carrier as being responsible for paying compensation."[21]

8. We have found that in spite 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 is uncertainty in the market and that PSPs have been frustrated in their efforts to receive compensation for certain coinless calls. We agree with commenters stating that PSPs suffer shortfalls in compensation when calls are routed from an IXC to a switch-based reseller.[22] Illustrating how carriers avoid payment, APCC claims that IXCs unilaterally determine that they are not responsible for paying compensation for calls routed to switch-based resellers, but at the same time the IXCs do not identify which resellers are responsible for compensation, even when the PSP requests this information.[23] APCC further claims that when an IXC and a switch-based reseller determine, independently, that neither is responsible for compensation on a call, they do not track the call.[24] Some IXCs and resellers, however, deny there is a shortfall in compensation, claiming that the PSPs have presented only unsupported statements but no evidence of shortfalls, and that if a shortfall exists, it is due to PSP billing failures.[25]

9. Below we clarify carrier responsibilities for compensating payphone service providers for coinless calls in which more than one carrier is involved in routing, and thus resolve the Coalition's request.[26] Specifically, we conclude that the carrier responsible for compensating the PSP for such calls is the first facilities-based interexchange carrier to which a completed

[21] *Id*. at para. 15.

[22] The RBOC/GTE/SNET Payphone Coalition (Coalition) claims that from 20 to 50 percent of revenues from major IXCs and up to 100 percent of revenues from smaller IXCs for calls routed through a switched-based reseller go uncollected. Coalition Petition at 2. For individual BOCs the Coalition avers that Bell Atlantic has invoiced 1,200 carriers for the fourth quarter of 1998, but that fewer than 50 paid anything and its shortfall for all of 1998 runs at 30 percent of expected revenues. The Coalition also states BellSouth has sent invoices to between 110 and 120 carriers, but only 68 IXCs have paid anything at all and its shortfall exceeds 22 percent of expected revenues. The Coalition further states that Ameritech contracted over 600 carriers but only 59 are paying compensation. SBC has received payment from only 40 IXCs. Coalition Reply Comments at 5-6. APCC avers that, at the end of 1998, it invoiced some 1,200 companies identified as carriers and requested each to disclose the number of calls received from APCC's PSP clients and pay compensation for such calls, but that less than one-third responded, most claiming they were not required to pay compensation, and only 73 paid compensation. APCC Comments at 4-5.

[23] APCC Comments at 3, 4.

[24] APCC Comments at 7; APCC Reply Comments at 5.

[25] Cable & Wireless Comments at 2-3; MCI WorldCom Comments at 3-4; TRA Comments at 6.

[26] Petition for Clarification filed February 26, 1999 (Coalition Petition). The Commission sought comments on the Coalition's Petition in Common Carrier Bureau Seeks Comment On The RBOC/GTE/SNET Payphone Coalition Petition For Clarification Regarding Carrier Responsibility For Payphone Compensation Payment, *Public Notice*, NSD File No. L-99-34, DA 99-730 (rel. April 15, 1999).

coinless access code or subscriber 800 payphone call is delivered by the LEC unless another carrier comes forward and identifies itself to the PSP as the party liable for compensating the PSP.[27]

III. DISCUSSION

10. We conclude that the payphone compensation rules as interpreted in the *Payphone Order on Reconsideration* and explained in the Bureau's *Coding Digit Waiver Order* have not had the intended effect of ensuring that PSPs receive compensation for each and every completed, coinless payphone call. The comments filed in response to the Coalition's Petition indicate that many PSPs experience difficulty in collecting the per-call compensation they are due under the Commission's rules regarding payphone compensation. In particular, PSPs have not received full compensation for calls that involve switch-based resellers.[28] To remedy this failure in the compensation regime, we conclude that further revision of our regulations is necessary to fulfill the mandate of section 276.

11. To ensure that the payphone compensation regime is clear and effective, we once again reconsider the rules established in the *First Payphone Order,* and modified in the *Payphone Order on Reconsideration*. In this *Second Order on Reconsideration*, we generally reconfirm the compensation plan adopted in the *First Payphone Order*, but we modify the rules to reflect the Commission's statements in that order. Specifically, as discussed in detail below, we conclude, based on the record before us, that even where a switch-based reseller is involved in routing a payphone call, the first underlying facilities-based carrier to whom the LEC delivers the compensable call must: (1) compensate the PSP for each completed coinless call; (2) track or arrange for tracking of all compensable calls; and (3) send to the PSP call completion information to enable the PSP to verify the accuracy of compensation it receives for coinless, compensable calls and/or to bill the underlying facilities-based carrier.[29] The underlying facilities-based carrier may then obtain reimbursement of the compensation from the switchless or switch-based reseller.

12. **Call Routing Variations**. Although the actual configuration of facilities and hardware for each coinless call made from payphones may vary significantly, because the routing

---

[27] Coalition Petition at 1-2.

[28] *See, e.g.*, APCC Comments at 2-3; Cable & Wireless Comments at 2-3; Frontier Comments at 2-3; Sprint Comments at 2; Coalition Reply Comments at 8; Qwest Reply Comments at 7; Williams Reply Comments at 1. We note that it is not necessary for us to reach a conclusion about the actual levels of compensation shortfalls at this time.

[29] In the *First Payphone Order,* when the Commission referred to "facilities-based carriers" and "underlying carriers" as the responsible carriers, it specified IXCs, not resellers (neither switchless nor switch-based), stating, for example: "[T]he PSP will be permitted to levy a charge each time a caller dials a subscriber 800 number. We conclude that *the charge must be paid directly by the IXC*, although the carrier may pass it through to the 800 subscriber…." 11 FCC Rcd at 20550. "We conclude further that *all IXCs* that carry calls from payphones are required to pay per-call compensation." 11 FCC Rcd at 20584. "…LECs, PSPs, and the carriers receiving payphone calls should be able to take advantage of each other's technological capabilities … *IXCs may use the technology of their choice to meet their tracking obligations*." 11 FCC Rcd at 20591. (*Emphasis added*.)

of coinless calls is critical in determining carrier compensation responsibilities, it is helpful to review some basics regarding such routing. Initially, every payphone call, including coin-sent paid and coinless, is received by the LEC serving the payphone. If necessary, the call is then routed to the underlying facilities-based carrier, usually an interexchange carrier (IXC). For a coin-sent paid call, the LEC routes the call to the carrier selected by the PSP and presubscribed to the payphone. For a coinless call, however, the carrier to which the call is routed is selected by the calling party if an access code is dialed, or by the called party if a subscriber 800 number is dialed.[30] The first underlying facilities-based interexchange carrier or its reseller customer will then switch and transmit the call for completion. At every stage of the call flow there is billing information generated and passed between the entities, including the appropriate originating payphone ANI (Automatic Number Identification) digits that the LEC transmits to the underlying facilities-based interexchange carrier, so that each party knows to whom it has rendered a service.[31] The notable exception in this information flow is the PSP; call completion and billing information is not automatically passed to the PSP, because the PSP's payphone is on the "line" side of the LEC and is not involved in call routing on the carrier side of the LEC. It is also important to note that the LEC does not track the routing of the call once the LEC delivers the call to the underlying facilities-based interexchange carrier.

13. A calling or called party to a call may select any of several possible carriers for an access code or subscriber 800 call, including an IXC, a switchless reseller, or a switch-based reseller. If the party selects an IXC, the call is routed from the LEC to the IXC to the called party. If the party selects a switchless reseller of an IXC, the call is likewise routed from the LEC to the underlying IXC to the called party, but for the reseller's account. If the party selects a switch-based reseller, the IXC routes the call to the reseller's switch where the call validation and processing functions occur. Although the LEC passes ANI information to the underlying facilities-based interexchange carrier, depending upon the nature of the facilities involved the reseller may not be able to receive the ANI information necessary to track the call as originating from a payphone.

14. **Compensation and Tracking Responsibilities**. It is evident, based on the record, that in many instances, facilities-based carriers and switch-based resellers determine independently that they are not responsible for compensating PSPs under our rules, with the result that no compensation is made to PSPs for some compensable calls. Generally, the Coalition, Williams, and payphone providers believe that the owner/operator of the "first switch" is liable under our rules for compensation unless some other carrier expressly identifies itself to the PSP.[32] ITA adds that the carrier may recoup compensation from the reseller.[33] Interexchange carriers,

---

[30] Other coinless payphone calls such as "0" (operator) and "411" (directory assistance) are not at issue in this clarification. *See First Payphone Order*, 11 FCC Rcd at 20551 and 20569.

[31] Letter from Robert F. Aldrich, Counsel, APCC, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC docket No. 96-126, NSD Filed No. L-99-34, at 15 (filed Nov. 16, 2000) (APCC Nov. 16, 2000 *Ex Parte*).

[32] Coalition Petition at 1-3; Coalition Reply Comments at 1-2, 9; Williams Reply Comments at 1.

[33] ITA Comments at 3.

on the other hand, believe that the switch-based reseller that ultimately transfers the call to the LEC for termination is the primary economic beneficiary of a call and is therefore responsible for compensation. For example, Cable & Wireless argues that nothing in the current regulations or Commission statements suggests that the owner of the "first switch" is responsible for payment. It argues, instead, that the responsible carrier is the one that retains the caller as its own customer, and, along with Qwest, believes that switch-based resellers must reimburse the underlying facilities-based carrier if that carrier so requests and that IXCs responsible for payment are under an affirmative obligation to identify themselves to PSPs.[34] Sprint and Frontier believe, however, that the carrier with the "last switch" should pay because it is the only carrier that can know if a call is completed.[35]

15. We are persuaded that we must modify our payphone compensation rules to require the first underlying facilities-based interexchange carrier to whom the LEC directly delivers the call to compensate the PSP for each completed coinless access code or subscriber 800 payphone call. This rule is consistent with the Commission's finding in the *First Payphone Order* that "in the interest of administrative efficiency and lower costs, facilities-based carriers should pay the per-call compensation for the calls received by their reseller customers."[36] We are persuaded by APCC's arguments that the failure in the compensation regime results from insufficient information about the reseller being made available to the PSP. Once the first underlying facilities-based interexchange carrier passes the call to a reseller, it is technically infeasible for the PSP automatically to receive information about the reseller, including the identity of the reseller, whether the carrier has passed ANI information to the reseller, and whether a call was in fact completed by a given reseller.[37] We agree with APCC that the Commission's decision in the *Payphone Order on Reconsideration* leaves switch-based resellers in the position of having to identify themselves voluntarily to the IXC as the party liable for paying compensation to PSPs, and that resellers have had little incentive to do so.[38]

16. Moreover, we require the first underlying facilities-based interexchange carrier to whom the LEC directly delivers the call to track or arrange for tracking of all compensable calls made to its reseller customers.[39] We find reasonable APCC's argument that underlying facilities-based carriers, who have a customer relationship with resellers, are in a far better position to track the calls and provide adequate information to PSPs to ensure that they are compensated for every compensable call.[40] Indeed, a contrary rule requiring a switch-based reseller to pay per-call

[34] Cable & Wireless Comments at 1-3, 8; Qwest Comments at 2, 5.

[35] Sprint Comments at 2; Letter from Richard Juhnke, Sprint, to Lawrence E. Strickling, Chief, Common Carrier Bureau, CC Docket No. 96-128, dated December 4, 1998, at 3.

[36] *First Payphone Order*, 11 FCC Rcd at 20586, para. 86.

[37] APCC Nov. 16, 2001 *Ex Parte*.

[38] APCC Comments at 6.

[39] *First Payphone Order*, 11 FCC Rcd at 20591-92.

[40] *Id*.

compensation even though it could not receive ANI digits due to the underlying facilities-based carrier's technical limitations would not be effective in ensuring compensation to the PSP.[41] Our decision here to make the first underlying facilities-based interexchange carrier responsible for compensating the PSP is based in large part on the fact that only the first underlying interexchange carrier is reasonably certain to have access to the information necessary for per call tracking or to be able to arrange for per call tracking in its arrangements with switch-based resellers that complete the calls. In fact, the Commission's finding in the *First Payphone Order* that each payphone, including each LEC payphone, is required to generate the appropriate coding digits with the ANI for the underlying carrier to track calls remains relevant today.[42]

17. We conclude further that nothing on the record requires us to change the Commission's original decision not to require a standardized technology or methodology for tracking calls.[43] Not only may the first underlying facilities-based interexchange carrier to whom the LEC directly delivers the call use the technology of its choice to meet its tracking obligations, this carrier also has the option of performing the tracking itself or contracting out these functions to another party, such as a LEC or clearinghouse.[44]

18. We also conclude, consistent with the Commission's decision in the *First Payphone Order*, that facilities-based carriers may recover from their reseller customers the expense of payphone per-call compensation and the cost of tracking compensable calls by negotiating reimbursement terms in future contract provisions.[45] This decision is consistent with the Commission's conclusion in the *First Payphone Order* that the primary economic beneficiary of payphone calls should bear the cost of the call.[46] Further, we modify our rules to adopt a direct-billing arrangement between underlying facilities-based carriers and PSPs. Pursuant to this requirement, the facilities-based carrier must send back to each PSP a statement indicating the toll-free and access code numbers for calls that the LEC has routed to the carrier, and the volume of calls for each toll-free and access code number that each carrier has received from each of that PSP's payphones.[47]

19. In revising the Commission's payphone compensation rules, we do not intend to nullify private contractual arrangements to which PSPs have already agreed, if all involved parties wish to continue them. Accordingly, we also include in the revised rules a proviso that PSPs may continue to rely upon any current or future contractual arrangements they may have with

---

[41] Coalition Reply Comments at 9.

[42] *First Payphone Order*, 11 FCC Rcd at 20591.

[43] *Id.*, 11 FCC Rcd at 20590-91.

[44] *Id*.

[45] *First Payphone Order*, 11 FCC Rcd at 20586.

[46] *Id*. In addressing alleged violations of these regulations, we will continue to apply the regulations in effect at the time that the violation accrues. *See generally Bell Atlantic-Frontier Order*.

[47] *First Payphone Order*, 11FCC Rcd at 20,596.

underlying facilities-based carriers or resellers.

20. Moreover, we recognize that modifying per-call tracking capabilities may require some new investments by the underlying facilities-based carrier that is responsible for compensating the PSP. We conclude, however, that the mandate of Section 276 that we ensure a fair "per call compensation plan" for "each and every completed intrastate and interstate call" requires the carrier to whom the LEC directly delivers the call to provide tracking for calls for which they receive switching/transport revenues. While the continuing shortfall in payphone compensation needs to be corrected as soon as possible, in order to accommodate the modifications that might be necessary as a result of the change in our rules articulated herein, we find that a transition period of up to six months is reasonable and warranted for these new requirements to become effective. Accordingly, we require the first facilities-based interexchange carrier to whom the LEC directly delivers the call to provide for tracking of all compensable calls it receives from payphones, including calls routed to a switch-based reseller, as soon as possible, but no later than six months from the effective date of the rules adopted in this proceeding. Until that date, the underlying facilities-based carrier and its switch-based reseller customers must comply with the Commission's interpretation of the payphone compensation rules as articulated in the *Payphone Order on Reconsideration* and interpreted in *Bell Atlantic-Frontier Order*; namely, the first facilities-based carrier must pay unless the reseller has identified itself to the first facilities-based carrier as being responsible for paying compensation.[48]

21. As set forth in Appendix B, we revise section 64.1300(a) to impose compensation payment responsibility upon the first facilities-based interexchange carrier to which the LEC routes a compensable coinless payphone call. Similarly, we revise section 64.1310(a) to impose upon the same facilities-based carrier the responsibility to track or arrange for tracking of calls, and to send back to the PSP a statement indicating the number of completed toll-free and access code calls that it has received from each of that PSP's payphones, unless the PSP agrees otherwise. We also revise section 64.1310(b) to permit the underlying facilities-based carrier to obtain reimbursement from resellers and debit card providers for the compensation paid to PSPs for calls carried on their account and for the cost of tracking those calls. Finally, we modify the rules to permit facilities-based carriers and resellers (both switch-based and switchless) to establish or continue any additional billing and collection arrangements they have with PSPs, if the involved PSPs agree.

22. Finally, we decline to implement the Coalition's proposal for a further rulemaking to require the carrier responsible for compensation to be identified by a Carrier Identification Code (CIC). CICs are numeric codes assigned to carriers that enable access customers to be identified and provide billing and routing information for such customers.[49] Under the Coalition's proposal, the CIC would be used to identify the entity that routes the compensable call from the LEC's network, and that entity would be the party responsible for payment of per-call

[48] *Payphone Order on Reconsideration,* 11 FCC Rcd at 21,277.

[49] S*ee* Administration of the North American Numbering Plan Carrier Identification Codes (CICs), *Further Notice of Proposed Rulemaking and Order*, 13 FCC Rcd 3201, 3203 (1998).

compensation.[50] We note that the Commission has proposed and sought comments on whether to require all carriers to have CICs, in a separate proceeding.[51]

23. Most commenters in this proceeding generally oppose the Coalition's proposal.[52] 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. For example, a switchless reseller that has a CIC would still need to rely upon its underlying facilities-based interexchange carriers for call tracking. Even switch-based resellers would still need to rely on a subsequent carrier that has the last switch in the call sequence to ascertain whether a call is completed.[53] 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.

IV. FINAL REGULATORY FLEXIBILITY ACT ANALYSIS

24. We certify that, under the Regulatory Flexibility Act, 5 USC § 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 compensation is obtained, the rules do not significantly affect which carrier is ultimately responsible for per-call compensation to payphone service providers. The Commission will send a copy of this final certification, along with this Second Order on Reconsideration, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of

---

[50] Coalition Petition at 2.

[51] Common Carrier Bureau Asks Parties To Refresh Record And Seeks Additional Comment On Proposal To Require Resellers To Obtain Carrier Identification Codes, *Public Notice*, CC Docket No. 94-129, DA 00-1093 (rel. May 17, 2000).

[52] Parties opposing the CIC rulemaking include Cable & Wireless (Comments at 1), Frontier (Comments at 8), ITA (Comments at 1, Reply Comments at 1), MCI WorldCom (Comments at 1), Qwest (Comments at 1, Reply Comments at 8), Sprint (Comments at 1), and TRA (Reply Comments at 1). APCC would have the Commission institute a new rulemaking to simplify the compensation process, but not necessarily to implement the Coalition's clarification proposal. APCC Reply Comments at 6-10. AT&T is the only IXC not opposing the clarification proposal, stating it has "no objection to a rule that embodies this practice" since it typically uses CICs to calculate payphone obligations. AT&T Comments at 1.

[53] *See* Sprint Comments at 4.

1996,[54] and to the Chief Counsel for Advocacy of the Small Business Administration.[55] A copy of this certification will be published in the Federal Register.[56]

V. ORDERING CLAUSES

25. Accordingly, IT IS ORDERED, 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.

26. IT IS FURTHER ORDERED that Part 64 the Commission's rules, 47 C.F.R. Part 64, IS AMENDED by revising sections 64.1300(a), 64.1310(a), and 64.1310(b) as set forth in Appendix B of this Second Order on Reconsideration.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

---

[54] 5 U.S.C. § 801 (a)(1)(A).

[55] 5 U.S.C. § 605(b).

[56] *Id.*

APPENDIX A

Comments

Airtouch Paging (AirTouch)
American Public Communications Council (APCC)
AT&T Corp. (AT&T)
Cable & Wireless USA, Inc. (Cable and Wireless)
Frontier Corporation (Frontier)
International Telecard Association (ITA)
MCI WorldCom, Inc. (MCI WorldCom)
Qwest Communications Corporations (Qwest)
Sprint Corporation (Sprint)
Telecommunications Resellers Association (TRA)

Reply Comments

APCC
Coalition
ITA
Qwest
TRA
Williams Communications, Inc. (Williams)

APPENDIX B

PART 64 -- MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

Section 64. 1300(a) will be revised to read as follows:
(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.

Section 64.1310(a) will be revised to read as follows:
(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 Section 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.

Section 64.1310(b) will be revised to read as follows:
(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 Section 64.1300(a), if the involved payphone service providers so agree.