

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

In the Matter of
Modernization of Payphone Compensation Rules
Implementation of the Pay Telephone
Reclassification and Compensation Provisions of
the Telecommunications Act of 1996
2016 Biennial Review of Telecommunications
Regulations
WC Docket No. 17-141
CC Docket No. 96-128
WC Docket No. 16-132

NOTICE OF PROPOSED RULEMAKING AND ORDER

Adopted: June 22, 2017

Released: June 22, 2017

Comment Date: [30 days after date of publication in the Federal Register]

Reply Comment Date: [60 days after date of publication in the Federal Register]

By the Commission: Chairman Pai and Commissioners Clyburn and O’Rielly issuing separate statements.

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I. INTRODUCTION

1. In this Notice of Proposed Rulemaking (Notice), we propose eliminating the Commission’s payphone call tracking system annual audit requirement and associated reporting requirement.¹ In light of the dramatic decline in payphone use and the high cost of compliance in proportion to payphone compensation at issue, we anticipate that our proposal will remove costly yet no

¹ 47 CFR § 64.1320(f).

longer necessary requirements. We waive the 2017 and 2018 audit and associated reporting requirements while we consider the proposals in this Notice.

II. BACKGROUND

2. Section 276 of the Communications Act of 1934, as amended (the Act), which was adopted in the Telecommunications Act of 1996, directs the Commission to implement rules to ensure that payphone service providers (PSPs) are fairly compensated for all completed calls made from their payphones.² Pursuant to Congress' directive, the Commission adopted rules governing payphone compensation in 1996.³ In doing so, the Commission noted that fair compensation to PSPs was not possible without an effective per-call tracking mechanism.⁴ It thus required that the carriers to whom coinless access code and subscriber toll-free calls are routed, known as "Completing Carriers," "be responsible for tracking each compensable call and remitting per-call compensation to the PSP."⁵

3. In 2003, the Commission revised its payphone compensation rules to require, among other things, that Completing Carriers annually must file an audit report prepared by an independent third-party auditor in order to verify ongoing compliance.⁶ Completing Carriers are required to make all documentation underlying the audit report, including working papers, available to PSPs for inspection upon request.⁷ Completing Carriers can avoid the need to comply with the audit and related requirements only by entering into alternative compensation arrangements with PSPs.⁸

4. Sprint and Cincinnati Bell each recently filed petitions with the Commission seeking a waiver of the annual audit requirement.⁹ The two carriers also filed comments in response to the Commission's 2016 Biennial Review Public Notice urging the Commission to consider eliminating the annual payphone call tracking system audit requirement.¹⁰ In both sets of pleadings, the carriers point to the tremendous decline in payphone calling, the lack of a similar decline in the cost of the annual audit, and the companies' consistent compliance with the Commission's payphone compensation rules.¹¹

² See 47 U.S.C. § 276(b)(1)(A).

³ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Report and Order, 11 FCC Rcd 20541 (1996) (*First Report and Order*); 47 CFR §§ 64.1300 *et seq.*

⁴ *First Report and Order*, 11 FCC Rcd at 20544, para. 3.

⁵ *Id.* at 20567-69, paras. 51-52; 47 CFR § 64.1300(a).

⁶ 47 CFR § 64.1320(f)(2); *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Report and Order, 18 FCC Rcd 19975, 19976, para. 2 (2003); 47 CFR § 64.1320. Specifically, the auditor must "(1) [v]erify that no material changes have occurred concerning the Completing Carrier's compliance with the criteria of the prior year's System Audit Report; or (2) [i]f a material change has occurred . . . verify that the material changes do not affect compliance with the audit criteria set forth in paragraph (c) of this section." See 47 CFR § 64.1320(f).

⁷ 47 CFR § 64.1320(g).

⁸ See 47 CFR §§ 64.1310(a), 64.1320(a).

⁹ See Sprint Corp. Petition for Waiver, CC Docket No. 96-128, at 2 (filed Apr. 7, 2017) (Sprint Waiver Petition), https://ecfsapi.fcc.gov/file/10407048364008/Sprint%20Payphone%20Waiver%20Petition-2017-Public_Redacted.pdf; Cincinnati Bell Any Distance Inc. Petition for Waiver, CC Docket No. 96-128, at 3 (filed Apr. 25, 2017) (Cincinnati Bell Waiver Petition), <https://www.fcc.gov/ecfs/filing/10425289001286> (collectively, the Waiver Petitions).

¹⁰ See Sprint Corporation, Comments, WC Docket No. 16-132, at 1-2 (Dec. 5, 2016) (Sprint Biennial Comments); Cincinnati Bell Any Distance Inc., Reply Comments, WC Docket No. 16-132, at 1-2 (Jan. 3, 2017) (Cincinnati Bell Biennial Comments).

¹¹ See Sprint Biennial Comments at 1-2; Cincinnati Bell Biennial Comments at 1-2; Sprint Waiver Petition at 2; Cincinnati Bell Waiver Petition at 3-4.

USTelecom, ITTA, and Puerto Rico Telephone each filed in support of the Waiver Petitions and requested that the Commission broaden the relief to encompass additional carriers.¹²

III. DISCUSSION

5. After reviewing the record in the 2016 Biennial Review proceeding, the Waiver Petitions and supporting comments, and based on our own observations of the changing communications landscape, we find that the best course is to reevaluate the necessity of the annual payphone call tracking system audit requirement and associated reporting requirement on an industrywide basis. Below, we propose to eliminate or modify this requirement and seek comment on this proposal. We also waive the audit and associated reporting requirement for 2017 and 2018 while we consider whether and how to reform the audit requirement.

A. Annual Payphone Tracking System Audit Requirement

6. We propose to eliminate the annual audit requirement and associated reporting requirement embodied in Section 64.1320(f) of the rules in its entirety, and we seek detailed comment on this proposal. Have circumstances changed such that the benefits of these rules in helping to ensure PSPs are fairly compensated no longer justify the costs of the rule?

7. First, we seek comment on the assertion that the precipitous decline in payphone usage supports modernizing our compensation compliance regime by eliminating the annual audit requirement. At the peak of payphone usage in 1999, there were over 2.1 million payphones in service across the United States.¹³ Since that time, however, the rapid growth of mobile service seems to have resulted in a dramatic decline in the number of payphones in service in this country.¹⁴ By 2013, more than 90 percent of payphones had been disconnected, with only 192,286 remaining.¹⁵ Almost half of those were disconnected over the following three years, so that there were only 99,832 payphones in service at the end of 2016.¹⁶ Is there any reason to expect this declining trend to change in the future? We seek comment, and supporting data, on this issue.

8. Second, we seek comment on the costs of compliance. Are Sprint and Cincinnati Bell correct that those costs have not declined over time and in fact may have increased?¹⁷ Is there other data or evidence establishing the costs of compliance, including evidence establishing whether those costs have increased or decreased over time? Is it the case that the costs of compliance have not declined at the same pace as the payphone business such that over time the compliance costs per payphone and per payphone call have increased?

9. Third, we seek comment on the amount of payphone compensation that Completing Carriers pay relative to the cost of compliance. Not surprisingly, in light of declining payphone usage, the

¹² See Letter from B. Lynn Follansbee, Vice President, Law & Policy, United States Telecom Association, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-128, at 2 (filed Apr. 21, 2017) (USTelecom *Ex Parte* Letter); ITTA – The Voice of America’s Broadband Providers, Comments, CC Docket No. 96-128, WC Docket No. 16-132, at 1 (May 5, 2017) (ITTA Comments); Letter from Eduardo R. Guzman and Peter M. Bean, Squire Patton Boggs LLP, Counsel for Puerto Rico Telephone Company, Inc., to Marlene H. Dortch, Secretary FCC, WC Docket No. 16-132, CC Docket No. 96-128, at 1-2 (filed May 31, 2017) (Puerto Rico Telephone *Ex Parte* Letter).

¹³ FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *Payphone Statistics: 1997 – Most Recent*, tbl. 1 (Apr. 11, 2017) (Payphone Statistics Report), <http://www.fcc.gov/general/iatd-data-statistical-reports>; see also Cincinnati Bell Biennial Comments at 1; Cincinnati Bell Waiver Petition at 3.

¹⁴ See, e.g., Sprint Biennial Comments at 2; Cincinnati Bell Biennial Comments at 1; Puerto Rico Telephone *Ex Parte* Letter at 2.

¹⁵ Payphone Statistics Report, tbl. 1.

¹⁶ *Id.*; see also Sprint Biennial Comments at 2; Cincinnati Bell Biennial Comments at 1.

¹⁷ See Sprint Waiver Petition at 2; Cincinnati Bell Waiver Petition at 3.

amount of compensation paid to PSPs has likewise significantly declined over time.¹⁸ ITTA asserts that the amount of payphone compensation paid each year has declined even more across the industry than the 97 percent decline seen by Cincinnati Bell.¹⁹ According to Cincinnati Bell, the annual audit cost is currently five times the amount of payphone compensation it pays annually,²⁰ while Sprint projects that the cost of its annual audit will be approximately 15 percent of payphone compensation paid in 2016.²¹ We encourage commenters to provide similarly specific information. How has compensation paid to PSPs relative to the costs of compliance changed since the rule was adopted? How should we evaluate whether the audit costs relative to payphone compensation are too high? Is comparison with total payphone compensation relevant, or should we compare the costs of compliance against some other value(s)? For instance, should the costs of compliance be compared against the likely benefits of avoiding incorrect compensation payments? We believe that the existing evidence about audit costs relative to payphone compensation suggests the costs of the rule now outweigh the benefits, and we seek comment on this analysis.

10. Fourth, we seek comment on whether Section 64.1320(f) is still necessary to ensure compliance with the underlying payphone compensation requirements. What effect would elimination of this annual audit and associated reporting requirement have on Completing Carriers' compliance with our rules regarding compensation to PSPs, including, among other things, requirements to maintain a system for accurately tracking coinless access code or subscriber toll-free payphone calls to completion; to provide a quarterly sworn statement from the company's Chief Financial Officer; and, to provide quarterly reports to PSPs that contain information for identifying compensable and noncompensable calls?²² Importantly, relieving Completing Carriers of the audit requirement would not relieve them of their obligation to ensure that they are compensating PSPs for all compensable calls.²³ Payphone compensation compliance issues occurred in years past,²⁴ but we believe that those issues are no longer apparent. Indeed, no formal payphone compensation-related complaints have been brought to the Commission's attention since 2010,²⁵ and the last informal dispute of which we are aware occurred almost four years ago.²⁶ Are there any specific, recent examples of failure to appropriately compensate PSPs for coinless access code and subscriber toll-free calls originating from their payphones? Is ITTA correct that "most long-distance providers use a clearinghouse . . . to process quarterly payments to PSPs" and that the clearinghouses used by PSPs "have effective investigation and dispute resolution processes in place to address any disparities between Completing Carrier and PSP data that may arise," and if so does the

¹⁸ See, e.g., Sprint Waiver Petition at 2; Cincinnati Bell Waiver Petition at 3; USTelecom *Ex Parte* Letter at 2; Puerto Rico Telephone *Ex Parte* Letter at 2-3.

¹⁹ See ITTA Comments at 5.

²⁰ Cincinnati Bell Biennial Comments at 2; Cincinnati Bell Waiver Petition at 3; see also Puerto Rico Telephone *Ex Parte* Letter at 3.

²¹ Sprint Biennial Comments at 2; Sprint Waiver Petition at 2.

²² 47 CFR §§ 64.1310(a), 64.1320.

²³ 47 CFR § 64.1310(a).

²⁴ See, e.g., Petition of GCB Communications, Inc. d/b/a Pacific Communications and Lake Country Communications, Inc. for Declaratory Ruling, Declaratory Ruling, 27 FCC Rcd 7361 (WCB 2012), *aff'd*, Memorandum Opinion and Order on Review, 28 FCC Rcd 2651 (2013).

²⁵ *APCC Services, Inc. v. Intelco Communications, Inc.*, Memorandum Opinion and Order, 28 FCC Rcd 1911, 1912, para. 4 (EB 2013).

²⁶ *APCC Services, Inc. v. Level 3 Communications, Inc., Broadwing Communications, LLC and Global Crossing Communication, Inc.*, File No. EB-13-MDIC-0012 (June 28, 2013).

prevalence of such clearinghouses support repeal of the audit requirement?²⁷ Is the infrequency of complaints, disputes, and disparities related to the existence of the audit requirement? If not, should we expect the frequency of such problems to change if we eliminate the audit requirement, or would the remaining safeguards be sufficient? If eliminating the audit requirement would increase such problems (e.g., failure to adequately compensate PSPs), we seek estimates of the likely annual costs the relevant parties would incur to resolve those increased problems or bounds around those costs.

11. Finally, we do not believe that the option under our rules to enter into an alternative compensation agreement with each PSP, which thus removes the need to conduct an annual audit,²⁸ is an economically feasible alternative. We believe that Sprint, Cincinnati Bell, and USTelecom are correct that the transaction costs of negotiating, implementing, and managing such alternative compensation arrangements with numerous PSPs would outweigh the amount of compensation to be paid.²⁹ Consequently, the availability of this option under our rules appears to provide no basis to justify retention of the audit requirement. We seek comment on this issue.

12. *Alternatives.* We propose simply eliminating the audit requirement and associated reporting requirement. In the alternative, should we instead eliminate the requirement but adopt some less burdensome requirement, such as a self-certification, as Sprint and Cincinnati Bell each offer to provide in lieu of the annual audit?³⁰ If so, what form would such a self-certification take? Would it be sufficient for a Completing Carrier to self-certify that there have been no material changes to its payphone call tracking system,³¹ or would it also need to self-certify that there have been no changes to its network that affect the functioning or accuracy of the tracking system? Could such an annual self-certification replace the Section 64.1310(a)(3) quarterly sworn statement from the CFO?³² If we retain the requirement of a quarterly sworn statement, we seek comment on whether we should revise the requirement to allow certification by a company official other than the company's CFO, and, if so, which officials.³³

13. *Additional Reforms.* Finally, we seek comment on whether the changing communications landscape since 2003 warrants additional changes to our rules governing the payphone compensation process. For example, does Section 64.1320(a)'s initial payphone call tracking system audit requirement, and the attendant requirements set forth in Sections 64.1320(b)-(e) and (g), remain relevant today? Do new carriers still occasionally become Completing Carriers such that we should retain this requirement?³⁴ How often do PSPs or clearinghouses request underlying documents pursuant to Section 64.1320(g)?³⁵ Are all of the remaining requirements imposed by these rules still warranted to protect PSPs' right to full compensation for coinless access code and subscriber toll-free calls originating

²⁷ ITTA Comments at 3; *see also* Cincinnati Bell Biennial Comments at 2; Puerto Rico Telephone *Ex Parte* Letter at 3-4.

²⁸ 47 CFR § 64.1320(a).

²⁹ *See* Sprint Waiver Petition at 4; Cincinnati Bell Waiver Petition at 5; USTelecom *Ex Parte* Letter at 2.

³⁰ *See* Sprint Biennial Comments at 2; Cincinnati Bell Biennial Comments at 2; Sprint Waiver Petition at 3; Cincinnati Bell Waiver Petition at 4.

³¹ *See* Sprint Biennial Comments at 2; Cincinnati Bell Biennial Comments at 2; Sprint Waiver Petition at 3; Cincinnati Bell Waiver Petition at 4.

³² *See* ITTA Comments at 7.

³³ *See* Letter from Maggie McCready, V.P., Federal Regulatory and Legal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC (filed June 13, 2017).

³⁴ *See* 47 CFR § 64.1320(b).

³⁵ *See* 47 CFR § 64.1320(g).

from their payphones? Can some of these requirements be streamlined or eliminated while still affording full protection to PSPs, and if so, how?

14. In proposing to modernize specific Part 64 Subpart M requirements herein, we note that other subsections regarding the provision of payphone service were intended to apply solely on an interim basis and their terms have long since expired. For example, Sections 64.1301(a)-(c) set forth interim per-payphone compensation provisions that applied only from November 7, 1996 through October 6, 1997.³⁶ Similarly, Section 64.1301(d) set forth intermediate per-payphone compensation provisions that applied only from October 7, 1997 through April 20, 1999.³⁷ We believe Sections 64.1301(a)-(d), by their terms, no longer apply to any entity and can be eliminated. We further seek comment on whether additional provisions of Part 64 Subpart M that we have not specifically identified may similarly have expired and no longer apply to any entity, and if so, can be eliminated.

B. Waiver of the 2017 and 2018 Audit and Associated Reporting Requirements

15. To prevent Completing Carriers from incurring the expenses of complying with these requirements while we consider repealing them altogether or adopting some less burdensome requirement, we grant a waiver of the annual audit and associated reporting requirement for all Completing Carriers for 2017 and 2018.³⁸ Extending the waiver through 2018 recognizes that completing carriers may need to begin the process of expending resources to engage an auditor for a 2018 audit prior to the completion of this proceeding. Section 1.3 of the Commission's rules authorizes the Commission to suspend, revoke, amend, or waive a Commission rule for good cause shown.³⁹ The Commission agrees that the consistent record of compliance with its payphone compensation rules exhibited by Sprint and Cincinnati Bell,⁴⁰ and similarly asserted by USTelecom and ITTA on behalf of all Completing Carriers generally,⁴¹ together with the fact that they have not made any material changes to their payphone call-tracking systems,⁴² provides sufficient assurances that payphone compensation will be calculated correctly in 2017 and 2018 even if these audits are not undertaken.

16. We stress that a waiver of the 2017 and 2018 audit and associated reporting requirements in no way relieves Completing Carriers of any obligations to accurately track payphone-originated calls and appropriately compensate PSPs for such calls, including the obligation to "maintain verification data to support the quarterly reports submitted" to PSPs for 27 months after the close of the relevant quarter.⁴³ Consequently, because Completing Carriers must maintain quarterly verification data for over a two-year period, in the event any dispute should arise during the pendency of this proceeding, we do not believe that PSPs' interests will be harmed. Because in these circumstances we believe the audit requirement would impose unrecoverable costs and that the purposes of the requirement can be served by the fact that

³⁶ 47 CFR §§ 64.1301(a)-(c).

³⁷ 47 CFR § 64.1301(d).

³⁸ 47 CFR § 1.3.

³⁹ *Id.* ("Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown."); *see also Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*citing WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (*WAIT Radio*) (waivers must show special circumstances warranting a deviation from the general rule, and show such a deviation will serve the public interest)).

⁴⁰ *See* Sprint Waiver Petition at 3; Cincinnati Bell Waiver Petition at 2, 4.

⁴¹ USTelecom *Ex Parte* Letter at 1-2; ITTA Comments at 5-6.

⁴² *See* Sprint Waiver Petition at 2; *see also* Cincinnati Bell Waiver Petition at 2 (asserting that the required annual audits have "never identified any deficiencies").

⁴³ *See* 47 CFR § 64.1310(g).

Completing Carriers maintain the relevant data, we find good cause to waive the audit and associated reporting requirements for 2017 and 2018.

IV. PROCEDURAL MATTERS

A. *Ex Parte* Rules

17. This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.⁴⁴ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with Rule 1.1206(b). In proceedings governed by Rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

B. Initial Regulatory Flexibility Analysis

18. Pursuant to the Regulatory Flexibility Act (RFA),⁴⁵ the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and actions considered in this Notice. The text of the IRFA is set forth in Appendix B. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM. The Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of the NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.⁴⁶

C. Paperwork Reduction Act

19. This document contains proposed new and modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.⁴⁷

D. Filing of Comments and Reply Comments

20. Pursuant to Sections 1.415 and 1.419 of the Commission’s rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the

⁴⁴ 47 CFR §§ 1.1200 *et seq.*

⁴⁵ *See* 5 U.S.C. § 603.

⁴⁶ *See* 5 U.S.C. § 603(a).

⁴⁷ *See* 44 U.S.C. § 3506(c)(4).

first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <https://www.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.
- People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

E. Contact Person

21. For further information about this proceeding, please contact Michele Berlove, FCC Wireline Competition Bureau, Competition Policy Division, Room 5-C313, 445 12th Street, S.W., Washington, D.C. 20554, (202) 418-1477, Michele.Berlove@fcc.gov.

V. ORDERING CLAUSES

22. Accordingly, IT IS ORDERED that, pursuant to the authority contained in Sections 1-4, 11, and 276 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 161, 276, this Notice of Proposed Rulemaking IS ADOPTED.

23. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

24. IT IS FURTHER ORDERED that, pursuant to Sections 1, 4(i), 4(j), 11, and 276 of the Communications Act as amended, 47 U.S.C. § 151, 154(i), 154(j), 161, 276, and Section 1.3 of the Commission's rules, 47 CFR § 1.3, the 2017 and 2018 audit and associated reporting requirements in Section 64.1320(f) of the Commission's rules, 47 CFR § 64.1320(f), ARE WAIVED to the extent herein described, and the Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Proposed Rules

For the reasons set forth above, Part 64 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 64 – MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. Section 64.1320 is amended by deleting paragraph (f).

APPENDIX B**Initial Regulatory Flexibility Analysis**

1. As required by the Regulatory Flexibility Act (RFA),¹ the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rule Making (Notice). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of this Notice. The Commission will send a copy of this Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the Notice and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives of, the Proposed Rules

2. The Notice proposes to eliminate a burden on carriers responsible for completing coinless access and subscriber toll-free calls originating from payphones (Completing Carriers). The changing communications landscape has altered the balance of cost to Completing Carriers versus benefit to payphone service providers. Thus, the Commission seeks comment on a proposal to eliminate the annual payphone call tracking system audit and associated reporting requirement embodied in Section 64.1320(f) of the Commission's rules, whether there are other steps the Commission might take to ease the burden on Completing Carriers, and if certain subsections of Part 64 Subpart M have expired and can be eliminated.

B. Legal Basis

3. The proposed action is authorized under Sections 1, 2, 4(i), 11, and 276 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 161, 276.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

4. The RFA directs agencies to provide a description and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules and by the rule revisions on which the Notice seeks comment, if adopted.⁴ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁵ In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act.⁶ A "small-business concern" is one which: (1) is independently

¹ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

² See 5 U.S.C. § 603(a).

³ See *id.*

⁴ See 5 U.S.C. § 603(b)(3).

⁵ See 5 U.S.C. § 601(6).

⁶ See 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.⁷

5. The proposal on which we seek comment in the Notice will affect obligations on facilities-based carriers responsible for completing coinless access code and subscriber toll-free calls originating from payphones, including incumbent LECs, competitive LECs, and interexchange carriers.

1. Total Small Entities

6. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive small entity size standards that could be directly affected herein.⁸ First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.⁹ These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses.¹⁰ Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."¹¹ Nationwide, as of 2007, there were approximately 1,621,215 small organizations.¹² Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."¹³ U.S. Census Bureau data published in 2012 indicate that there were 89,476 local governmental jurisdictions in the United States.¹⁴ We estimate that, of this total, as many as 88,761 entities may qualify as "small governmental jurisdictions."¹⁵ Thus, we estimate that most governmental jurisdictions are small.

2. Wireline Providers

7. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as "establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including

⁷ See 15 U.S.C. § 632.

⁸ See 5 U.S.C. § 601(3)-(6).

⁹ See SBA, Office of Advocacy, "Frequently Asked Questions, Question 1 – What is a small business?" https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf (June 2016)

¹⁰ See SBA, Office of Advocacy, "Frequently Asked Questions, Question 2- How many small businesses are there in the U.S.?" https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf (June 2016).

¹¹ 5 U.S.C. § 601(4).

¹² Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2010).

¹³ 5 U.S.C. § 601(5).

¹⁴ U.S. Census Bureau, *Statistical Abstract of the United States: 2012* at 267, Table 428 (2011), <http://www2.census.gov/library/publications/2011/compendia/statab/131ed/2012-statab.pdf> (citing data from 2007).

¹⁵ The 2012 U.S. Census Bureau data for small governmental organizations are not presented based on the size of the population in each organization. There were 89,476 local governmental organizations in the Census Bureau data for 2012, which is based on 2007 data. As a basis of estimating how many of these 89,476 local government organizations were small, we note that there were a total of 715 cities and towns (incorporated places and minor civil divisions) with populations over 50,000 in 2011. See U.S. Census Bureau, *City and Town Totals Vintage: 2011*, <http://www.census.gov/popest/data/cities/totals/2011/index.html>. If we subtract the 715 cities and towns that meet or exceed the 50,000 population threshold, we conclude that approximately 88,761 are small.

VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”¹⁶ The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.¹⁷ Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.¹⁸ Thus, under this size standard, the majority of firms in this industry can be considered small.

8. *Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers as defined above. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.¹⁹ According to Commission data, census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.²⁰ The Commission therefore estimates that most providers of local exchange carrier service are small entities that may be affected by the rules adopted.

9. *Incumbent LECs*. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers as defined above. Under that size standard, such a business is small if it has 1,500 or fewer employees.²¹ According to Commission data, 3,117 firms operated in that year. Of this total, 3,083 operated with fewer than 1,000 employees.²² Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted. Three hundred and seven (307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers.²³ Of this total, an estimated 1,006 have 1,500 or fewer employees.²⁴

10. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers*. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers, as defined above. Under that size standard, such a business is small if it has 1,500 or fewer employees.²⁵ U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees.²⁶ Based on this data, the Commission concludes that the majority of Competitive LECs,

¹⁶ <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

¹⁷ See 13 CFR § 120.201, NAICS Code 517110.

¹⁸ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table.

¹⁹ 13 CFR § 121.201, NAICS code 517110.

²⁰ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

²¹ 13 CFR § 121.201, NAICS code 517110.

²² http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

²³ See *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*).

²⁴ *Id.*

²⁵ 13 CFR § 121.201, NAICS code 517110.

²⁶ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

CAPs, Shared-Tenant Service Providers, and Other Local Service Providers, are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.²⁷ Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees.²⁸ In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.²⁹ Also, 72 carriers have reported that they are Other Local Service Providers.³⁰ Of this total, 70 have 1,500 or fewer employees.³¹ Consequently, based on internally researched FCC data, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities.

11. We have included small incumbent LECs in this present RFA analysis. As noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.”³² The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not “national” in scope.³³ We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

12. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA has developed a definition for Interexchange Carriers. The closest NAICS Code category is Wired Telecommunications Carriers as defined above. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.³⁴ U.S. Census data for 2012 indicates that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees.³⁵ According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.³⁶ Of this total, an estimated 317 have 1,500 or fewer employees.³⁷ Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our proposed rules.

13. *Operator Service Providers (OSPs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a

²⁷ See *Trends in Telephone Service*, at tbl. 5.3.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² 5 U.S.C. § 601(3).

³³ Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, Federal Communications Commission (filed May 27, 1999). The Small Business Act contains a definition of “small business concern,” which the RFA incorporates into its own definition of “small business.” 15 U.S.C. § 632(a); 5 U.S.C. § 601(3). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. 13 CFR § 121.102(b).

³⁴ 13 CFR § 121.201, NAICS code 517110.

³⁵ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

³⁶ See *Trends in Telephone Service*, at tbl. 5.3.

³⁷ *Id.*

business is small if it has 1,500 or fewer employees.³⁸ According to Commission data, 33 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 31 have 1,500 or fewer employees and two have more than 1,500 employees.³⁹ Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our proposed rules.

14. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable NAICS Code category is for Wired Telecommunications Carriers as defined above. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.⁴⁰ Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.⁴¹ Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small. According to internally developed Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage.⁴² Of these, an estimated 279 have 1,500 or fewer employees.⁴³ Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by rules adopted pursuant to the Notice.

15. *Payphone Service Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to payphone service providers (PSPs). The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees.⁴⁴ According to the Commission's Form 499 Filer Database, 1100 PSPs reported that they were engaged in the provision of payphone services.⁴⁵ The Commission does not have data regarding how many of these 1100 companies have 1,500 or fewer employees. The Commission does not have data specifying the number of these payphone service providers that are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of PSPs that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 1100 or fewer PSPs that may be affected by the rules.

16. *Prepaid Calling Card Providers.* The SBA has developed a definition for small businesses within the category of Telecommunications Resellers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees.⁴⁶ According to the Commission's Form 499 Filer Database, 500 companies reported that they were engaged in the provision of prepaid calling cards.⁴⁷ The Commission does not have data regarding how many of these 500 companies have 1,500 or fewer employees. Consequently, the Commission estimates that there are 500 or fewer prepaid calling card providers that may be affected by the rules.

³⁸ 13 CFR § 121.201, NAICS code 517110.

³⁹ *Trends in Telephone Service*, tbl. 5.3.

⁴⁰ 13 CFR § 121.201, NAICS code 517110.

⁴¹ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

⁴² *Trends in Telephone Service*, at tbl. 5.3.

⁴³ *Id.*

⁴⁴ 13 CFR § 121.201, NAICS code 517110.

⁴⁵ See <http://apps.fcc.gov/cgb/form499/499a.cfm> (last visited May 19, 2017).

⁴⁶ 13 CFR § 121.201, NAICS code 517110.

⁴⁷ See <http://apps.fcc.gov/cgb/form499/499a.cfm> (last visited May 19, 2017).

3. Wireless Providers – Fixed and Mobile

17. For wireless services subject to auctions, we note that, as a general matter, the number of winning bidders that claim to qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments and transfers or reportable eligibility events, unjust enrichment issues are implicated.

18. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services.⁴⁸ The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.⁴⁹ For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year.⁵⁰ Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.⁵¹ Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

19. The Commission's own data—available in its Universal Licensing System—indicate that, as of October 25, 2016, there are 280 Cellular licensees that will be affected by our actions today.⁵² The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service, and Specialized Mobile Radio Telephony services.⁵³ Of this total, an estimated 261 have 1,500 or fewer employees, and 152 have more than 1,500 employees.⁵⁴ Thus, using available data, we estimate that the majority of wireless firms can be considered small.

20. *Wireless Communications Services*. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined “small business” for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” as an entity with average gross

⁴⁸ NAICS Code 517210. See <https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=ib&id=ib.en./ECN.NAICS2012.517210>.

⁴⁹ 13 CFR § 121.201, NAICS code 517210.

⁵⁰ U.S. Census Bureau, Subject Series: Information, Table 5, “Establishment and Firm Size: Employment Size of Firms for the U.S.: 2012 NAICS Code 517210” (rel. Jan. 8, 2016).

⁵¹ *Id.* Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

⁵² See <http://wireless.fcc.gov/uls>. For the purposes of this FRFA, consistent with Commission practice for wireless services, the Commission estimates the number of licensees based on the number of unique FCC Registration Numbers.

⁵³ See Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*), https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf.

⁵⁴ See *id.*

revenues of \$15 million for each of the three preceding years.⁵⁵ The SBA has approved these definitions.⁵⁶

21. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite).⁵⁷ Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.⁵⁸ According to Commission data, 413 carriers reported that they were engaged in wireless telephony.⁵⁹ Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.⁶⁰ Therefore, a little less than one third of these entities can be considered small.

4. All Other Telecommunications

22. “All Other Telecommunications” is defined as follows: This U.S. industry is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.⁶¹ The SBA has developed a small business size standard for “All Other Telecommunications,” which consists of all such firms with gross annual receipts of \$32.5 million or less.⁶² For this category, census data for 2012 show that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than \$25 million.⁶³ Consequently, we estimate that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

23. The Notice proposes and seeks comment on a rule change that will affect reporting, recordkeeping, and other compliance requirements. We expect the rule revision proposed in the Notice to reduce reporting, recordkeeping, and other compliance requirements. The rule revision should have a beneficial reporting, recordkeeping, or compliance impact on small entities because all carriers will be subject to fewer such burdens. This change is described below.

24. The Notice proposes to eliminate Section 64.1320(f) of the Commission’s rules and, thus, the annual payphone call tracking system audit and associated reporting requirement.⁶⁴ Should the

⁵⁵ *Amendment of the Commission’s Rules to Establish Part 27, the Wireless Communications Service (WCS)*, Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

⁵⁶ See Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (filed Dec. 2, 1998) (*Alvarez Letter 1998*).

⁵⁷ 13 CFR § 121.201, NAICS code 517210.

⁵⁸ *Id.*

⁵⁹ *Trends in Telephone Service*, tbl. 5.3.

⁶⁰ *Id.*

⁶¹ <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

⁶² 13 CFR § 121.201; NAICS Code 517919.

⁶³ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.

⁶⁴ 47 CFR § 64.1320(f).

Commission adopt this proposal, such action would result in reduced reporting, recordkeeping, or other compliance requirements for Completing Carriers, as that term is defined in Section 64.1300(a) of the Commission's rules.⁶⁵

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

25. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.⁶⁶

26. The Commission proposes to eliminate the annual payphone call tracking system audit requirement for Completing Carriers. The Commission believes that its proposal upon which the Notice seeks comment will benefit all carriers, regardless of size. The proposal would further the goal of reducing unnecessary regulatory burdens on affected carriers. We anticipate that a more modernized regulatory scheme with the associated reduction in compliance costs will allow carriers to invest their resources elsewhere to the benefit of consumers.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rule

27. None.

⁶⁵ 47 CFR § 64.1300(a).

⁶⁶ See 5 U.S.C. § 603(c).

**STATEMENT OF
CHAIRMAN AJIT PAI**

Re: *Modernization of Payphone Compensation Rules*, WC Docket No. 17-141; *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128; *2016 Biennial Review of Telecommunications Regulations*, WC Docket No. 16-132.

In Maroon 5's 2012 chart-topper "Payphone," Adam Levine sang "I'm at a payphone trying to call home. All of my change I spent on you." But those lyrics become more anachronistic with each passing year. As mobile connectivity explodes, the number of payphones in the United States has dropped precipitously, from a peak of 2,121,526 in 1999 to 99,832 at the end of 2016. That's a decrease of over 95%.

In light of these developments, we are beginning a rulemaking to consider whether certain payphone audit requirements have outlived their usefulness. You see, notwithstanding the Maroon 5 song, payphone owners often aren't compensated by a caller inserting change into a phone. Instead, when callers use coinless access codes (such as calling cards) or make toll-free calls from a payphone, it is often the companies that carry those calls, or "completing carriers," that compensate payphone owners. The FCC currently requires audits of completing carriers to make sure such payments owed to payphone owners are accurate. But we've heard that compliance with these rules now costs carriers a large fraction of, if not more than, the total compensation the audits are meant to verify. For example, in at least one case, a completing carrier that conducted such an audit spent five times more than the total compensation it owed to payphone owners. On top of all that, there haven't been any complaints about insufficient payphone compensation in years.

If ever a situation called for examining whether a regulation was outdated—whether the marketplace had changed, whether the costs outweighed the benefits—this is it. We'll figure out if these audits are net beneficial. And if they aren't, we'll clear them off the books.

I'd like to thank the staff who contributed to this item, including Michele Berlove, Madeleine Findley, Dan Kahn, Doug Klein, Rick Mallen, Kris Monteith, Eric Ralph, and Terri Natoli. As we proceed with our efforts to modernize the Commission's rules to match today's marketplace, we will continue to rely on your expertise.

**STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN**

Re: *Modernization of Payphone Compensation Rules*, WC Docket No. 17-141; *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128; *2016 Biennial Review of Telecommunications Regulations*, WC Docket No. 16-132.

For those of us pretending that these shades of brown are actually our natural hair color, we can remember clearly, the frantic search for dimes and quarters, when we needed to place a call, and a payphone was our only option. Today, for many, the payphone is all but a relic from the past. For the residents of Plainview, Nebraska, it has become, quite literally, just that. The last payphone serving the 12,000 residents of Plainview, went off the hook for good and is now one of the newest features in the town's public museum.

On this we all agree: the communications landscape has changed dramatically, and the number of payphones operating across America has fallen dramatically. When I came to the Commission in 2009, there were about 600,000 payphones in service. With increasing mobile phone penetration and use, their presence has dropped to under 100,000 today. And in a rapidly evolving communications industry, we find it necessary to assess, and re-assess, the regulations on the books when it comes to payphone service.

In today's Notice of Proposed Rulemaking, we seek comment on eliminating the payphone call tracking system annual audit and associated reporting requirement, and suspend those requirements through 2018. The existing audit rules were originally necessary to ensure that completing carriers adequately compensated payphone service providers for coinless access and subscriber toll-free calls. But in 2017, we must acknowledge, that it may no longer be necessary, to require these audits, especially if other rules provide sufficient safeguards and the cost outweighs the revenue benefits.

It is important to point out that the item does not call for the end of compensation tracking, and it certainly does not suggest the elimination of other payphone protections. Lest we forget, there are still some communities that rely on payphones for their communications, especially during an emergency.¹ What our item does call for, is consideration of how we can make the audit process more efficient, ensuring that it more accurately corresponds to the industry realities of today.

It is my sincere hope that increased efficiencies realized from this and other rulemakings, can lead to new innovations in providing service, especially to underserved communities. We have already seen such successes in the metamorphosis of payphones into public Wi-Fi hubs in New York City and I remain upbeat about what the future may bring.

Though the last payphone of Plainview is now silent, it will continue to serve as a reminder, of how far we have come in a relatively short period of time, and why nationwide access to communications services, is so important.

For all these reasons, I approve.

Thanks go to the Wireline Competition Bureau for your work here to remove outdated regulations.

¹ See Daniel Wheaton, Pay Phones are Relics But There's Still Demand for Them, LA Times (Apr. 26, 2016, 5:00AM), <http://www.latimes.com/local/california/la-me-pay-phone-survive-20160426-story.html>.

**STATEMENT OF
COMMISSIONER MICHAEL P. O'RIELLY**

Re: *Modernization of Payphone Compensation Rules*, WC Docket No. 17-141; *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128; *2016 Biennial Review of Telecommunications Regulations*, WC Docket No. 16-132.

I support the initiation of this proceeding to consider eliminating the annual payphone tracking system audit requirement and the associated reporting requirement. I also support the related waiver. Like many FCC rules still on the books, this one appears to have outlived its usefulness and it is likely that the costs far outweigh any benefits. Indeed, the record to date suggests that the cost of the audit is higher than the amount paid for payphone compensation.

This issue came to the Commission's attention through waiver petitions filed by impacted carriers and through comments submitted in response to the Commission's 2016 Biennial Review Public Notice. Now that companies have seen that the Commission is committed to clearing regulatory underbrush, I hope that more commenters will step forward with additional ideas – something I have encouraged during my time here. I also look forward to seeing more progress made through the Biennial Review proceeding, which I expect to contain further proposals for appropriate deregulation.

In addition to removing outdated rules from our books, the Commission should also get serious about including sunset provisions in new rules going forward. Such provisions would provide a defined check in point to reflect on whether rules remain necessary in light of the rapid technological and marketplace changes that characterize this sector of the economy. Should the benefits continue to outweigh the costs, they can certainly be retained by an affirmative act of the Commission. However, I expect that in many cases they will be overtaken by such changes. In those instances, sunset provisions enable the Commission to remove the rules without further expenditure of resources by staff or impacted entities.