

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

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

REPORT AND ORDER

Adopted: February 22, 2018

Released: February 22, 2018

By the Commission: Chairman Pai and Commissioners Clyburn, O’Rielly, Carr, and Rosenworcel
issuing separate statements

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I. INTRODUCTION

1. In this Report and Order, we continue our efforts to modernize our rules by eliminating costly requirements that are no longer necessary in light of technological and marketplace changes. Based on the substantial decline in payphone use and corresponding payphone compensation,¹ we

¹ See 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 Any Distance, Inc. Comments, WC Docket No. 17-141 et al., at 1 (filed Aug. 9, 2017) (continued....)

eliminate rules that are no longer needed to ensure that payphone service providers (PSPs) receive the compensation to which they are entitled.² Specifically, first, we eliminate all payphone call tracking system audit and associated reporting requirements. Second, we revise our rules to permit a company official other than the chief financial officer (CFO) to certify that a Completing Carrier's quarterly compensation payments to PSPs are accurate and complete.³ Finally, we eliminate expired interim and intermediate per-payphone compensation rules that no longer apply to any entity.⁴ The actions we take today further our goal of regularly examining and updating our rules to keep pace with technology and the changing communications landscape, and to eliminate requirements that are no longer necessary, thereby reducing the costs and burdens of rules that have outlived their purpose.

II. BACKGROUND

2. Section 276 of the Communications Act of 1934, as amended,⁵ directs the Commission to ensure that PSPs are fairly compensated for all completed calls using their payphones.⁶ In 2003, the Commission revised its rules to require Completing Carriers to establish effective call tracking systems, undergo initial and annual audits verifying the accuracy of those tracking systems, and file associated audit reports with the Commission.⁷

3. On June 22, 2017, the Commission adopted a *Notice of Proposed Rulemaking and Order (Notice)* proposing and seeking comment on reforms to its payphone compensation procedures.⁸ Specifically, the *Notice* proposed eliminating or revising the annual audit and associated reporting requirements.⁹ It also sought comment on other potential reforms, including eliminating the initial audit and associated requirements, and revising the quarterly CFO certification requirement to allow certification by some other company official.¹⁰ The Commission received nine comments in response to its *Notice*, all of which support revising the Commission's payphone compensation procedures.¹¹ The

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2017) (Cincinnati Bell Comments); Cincinnati Bell Any Distance Inc. Petition for Waiver, CC Docket No. 96-128, at 3 (filed Apr. 25, 2017) (Cincinnati Bell Waiver Petition).

² See 47 CFR §§ 64.1301(a)-(d), 64.1310(a)(3), 64.1320.

³ See 47 CFR § 64.1310(a)(3). A Completing Carrier is "a long distance carrier or switch-based long distance reseller that completes a coinless access code or subscriber toll-free payphone call or a local exchange carrier that completes a local, coinless access code or subscriber toll-free payphone call." 47 CFR § 64.1300(a). Our rules require that "a Completing Carrier that completes a coinless access code or subscriber toll-free payphone call from a switch that the Completing Carrier either owns or leases shall compensate the payphone service provider for that call at a rate agreed upon by the parties by contract." 47 CFR § 64.1300(b).

⁴ See 47 CFR §§ 64.1301(a)-(d).

⁵ 47 U.S.C. § 276; see also, *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.*

⁶ *First Report and Order*, 11 FCC Rcd 20541; 47 CFR §§ 64.1300 *et seq.*

⁷ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Report and Order, 18 FCC Rcd 19975, 19976, 19994-97 paras. 1-2, 40-43 (2003) (*Tollgate Order*); 47 CFR §§ 64.1320(a)-(b), (f).

⁸ *Modernization of Payphone Compensation Rules et al.*, Notice of Proposed Rulemaking and Order, 32 FCC Rcd 5397 (2017) (*Notice*).

⁹ See *id.*, 32 FCC Rcd at 5399, para. 5.

¹⁰ See *id.* at 5401, para. 12.

¹¹ See generally CenturyLink Comments, WC Docket No. 17-141 *et al.* (filed Aug. 9, 2017) (CenturyLink Comments); Cincinnati Bell Comments; ITTA—The Voice of America's Broadband Providers Comments, WC Docket No. 17-141 *et al.* (filed Aug. 9, 2017) (ITTA Comments); NCTA—The Internet & Television Ass'n (continued....)

Commission initiated this proceeding in response to waiver petitions and to comments filed in the 2016 Biennial Review.¹²

III. MODERNIZING PAYPHONE COMPENSATION REGULATORY OBLIGATIONS

A. Eliminating Audits and Associated Requirements

4. Today, we eliminate both the initial and annual audit and all associated requirements contained in our payphone compensation compliance rules. The record strongly supports these actions, and no commenter opposes them.

5. We identify several reasons why the audit requirements are no longer necessary. First, the steady and steep decline over more than a decade of the number of payphones in service demonstrates that they no longer play as critical a role in society's communications as they once did, as would-be users rely instead on mobile subscriptions.¹³ At the peak of payphone usage in 1999, over 2.1 million payphones were in service across the United States.¹⁴ By 2013, due to the rapid growth of mobile service subscribership,¹⁵ that number had dropped by more than 90 percent,¹⁶ and subsequently dropped again by almost half over the following three years, with fewer than 100,000 payphones remaining in service at the end of 2016.¹⁷ In contrast, mobile voice subscriptions have consistently grown each year since 1999, when approximately 79.1 million mobile voice subscriptions were reported, to approximately 310.7 million in 2013, and approximately 341 million mobile voice subscriptions in the United States as of the end of 2016.¹⁸ Moreover, the data show that, as of November 2016, over 90 percent of households and between 92 percent and 95 percent of adults in the United States own a mobile phone.¹⁹

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Comments, WC Docket No. 17-141 et al. (filed Aug. 9, 2017) (NCTA Comments); Puerto Rico Telephone Co., Inc. Comments, WC Docket No. 17-141 et al. (filed Aug. 9, 2017) (Puerto Rico Telephone Comments); Sprint Corp. Comments, WC Docket No. 17-141 et al. (filed Aug. 9, 2017) (Sprint Comments); USTelecom Comments, WC Docket No. 17-141 et al. (filed Aug. 9, 2017) (USTelecom Comments); Verizon Comments, WC Docket No. 17-141 et al. (filed Aug. 9, 2017) (Verizon Comments); USTelecom Reply Comments, WC Docket No. 17-141 et al. (filed Sept. 8, 2017) (USTelecom Reply).

¹² See generally Sprint Corp. Petition for Waiver, CC Docket No. 96-128 (filed Apr. 7, 2017) (Sprint Waiver Petition); Cincinnati Bell Waiver Petition (collectively, the Waiver Petitions); Sprint Corp., Comments, WC Docket No. 16-132 (Dec. 5, 2016) (Sprint Biennial Comments); Cincinnati Bell Any Distance Inc., Reply Comments, WC Docket No. 16-132 (Jan. 3, 2017) (Cincinnati Bell Biennial Comments).

¹³ See, e.g., Sprint Comments at 3; Puerto Rico Telephone Comments at 3 n.9; Verizon Comments at 2-3; USTelecom Comments at 3; Sprint Waiver Petition at 3; Sprint Biennial Comments at 2; Cincinnati Bell Biennial Comments at 1; B. Lynn Follansbee, Vice Pres., Law & Policy, United States Telecom Ass'n, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-128, at 2 (filed Apr. 21, 2017) (USTelecom *Ex Parte* Letter); Letter from Eduardo R. Guzman and Peter M. Bean, Squire Patton Boggs LLP, Counsel for Puerto Rico Tel. Co., Inc., to Marlene H. Dortch, Secretary FCC, WC Docket No. 16-132, CC Docket No. 96-128, at 2 (filed May 31, 2017) (Puerto Rico Telephone *Ex Parte* Letter).

¹⁴ Payphone Statistics Report, Tbl. 1, <http://www.fcc.gov/general/iatd-data-statistical-reports>; see also Cincinnati Bell Biennial Comments at 1; Cincinnati Bell Waiver Petition at 3.

¹⁵ See CenturyLink Comments at 2; ITTA Comments at 3; Puerto Rico Telephone Comments at 3; Sprint Comments at 3; USTelecom Comments at 3-4; Verizon Comments at 3; Cincinnati Bell Biennial Comments at 1; Sprint Biennial Comments at 2; Puerto Rico Telephone *Ex Parte* Letter at 2.

¹⁶ Payphone Statistics Report, Tbl. 1.

¹⁷ *Id.*; see CenturyLink Comments at 2; Cincinnati Bell Comments at 2; ITTA Comments at 3; NCTA Comments at 2; Puerto Rico Telephone Comments at 3; Sprint Comments at 2; Verizon Comments at 3; USTelecom Comments at 3; Cincinnati Bell Biennial Comments at 1; Sprint Biennial Comments at 2.

¹⁸ FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service*, at Tbl. 11.1 (Sept. 2010), (*2010 Trends in Telephone Service*) (based on FCC Form 477 data, December, 31, 1999 to (continued....))

6. The decline in the number of payphones reflects a concomitant decline in the number of payphone calls completed, and together these trends have led to a massive decrease in the amount of compensation paid by Completing Carriers to PSPs.²⁰ CenturyLink and Verizon each maintain that the amount of payphone compensation paid each year has declined by over 90 percent in the last 10 years and 98.5 percent in the last 12 years, respectively.²¹ And Sprint asserts that since its peak in 2005, the amount of payphone compensation it pays each year has declined by 99.3 percent.²² In light of the foregoing data, we agree with commenters that there is no reason to expect the declining trend of payphone use to change.²³

7. Additionally, the record indicates that audit requirements are no longer needed as safeguards to ensure that PSPs receive the compensation they are due. No commenter refutes this fact. No formal or informal payphone compensation-related complaints have been filed with the Commission in recent years, and there is no evidence of looming disputes likely to lead to such complaints in the near future.²⁴ Many Completing Carriers use clearinghouse vendors to calculate and distribute the

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December 31, 2007), https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf; FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *Local Telephone Competition: Status as of June 30, 2013*, at 2, Fig. 1 (June 2014) (*2014 Local Competition Report*), https://apps.fcc.gov/edocs_public/attachmatch/DOC-327830A1.pdf; FCC Form 477 data, Nationwide and State-Level data for 2008-Present, available at <https://www.fcc.gov/voice-telephone-services-report>; *Implementation of Section 600(b) of the Omnibus Budget Reconciliation Act of 1993: Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, Including Commercial Mobile Services*, Twentieth Report, 32 FCC Rcd 8978, para. 19, 8982, n.84 (2017) (*20th Annual Mobile Wireless Competition Report*), <https://www.fcc.gov/document/fcc-releases-20th-wireless-competition-report-0> (finding that by the end of 2016, there were 341 million wireless connections); FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *Voice Telephone Service: Status as of December 31, 2016*, at 2, Fig. 1 (Feb. 2018); see also ITTA Comments at 3-4; CenturyLink Comments at 2; USTelecom Comments at 3; Verizon Comments at 2-3. Until 2005, however, carriers with under 10,000 subscribers in a state were not required to report Form 477 data, so not all mobile voice subscriptions were reflected in reported data.

¹⁹ See Centers for Disease Control, National Center for Health Statistics, National Health Interview Survey Early Release Program, “Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, July-December 2016,” Tbl 1, <https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201705.pdf>; Pew Research Center, Institute for Technology, Mobile Worksheet, <http://www.pewinternet.org/fact-sheet/mobile/> (last visited Jan. 10, 2018) (Pew Mobile Report); see also USTelecom Comments at 3. The Pew Center’s demographic findings regarding mobile phone ownership indicate that 100% of adults ages 18-29, 99% of adults ages 30-49, and 97% of adults ages 50-64 own mobile phones. See Pew Mobile Report.

²⁰ See, e.g., Sprint Corp. Comments at 2 (noting a “99.3% decline [through the first quarter of 2017] from the payphone compensation peak for Sprint in 2005”); Puerto Rico Telephone Comments at 5 (noting a 91% drop in payphone compensation between 2005 and 2014); Cincinnati Bell Comments at 2 (noting a 94% decrease in the number of payphone calls it completed between 2007 and 2016); Verizon Comments at 3 (noting “a 98.5% decrease in payphone calls and compensation payments between the third quarter of 2004 and the fourth quarter of 2016”); CenturyLink Comments at 3 (noting a 90% drop in its payphone compensation); USTelecom Comments at 3.

²¹ See CenturyLink Comments at 3; Verizon Comments at 3.

²² See Sprint Comments at 2.

²³ See, e.g., USTelecom Comments at 3; Verizon Comments at 3; ITTA Comments at 3-4.

²⁴ See *APCC Services, Inc. v. Intelco Communications, Inc.*, Memorandum Opinion and Order, 28 FCC Rcd 1911, 1912, para. 4 (EB 2013) (*APCC v. Intelco*); *APCC Services, Inc. v. Level 3 Communications, Inc. et al.*, File No. EB-13-MDIC-0012 (June 28, 2013) (*APCC v. Level 3*); Century Link Comments at 4-5; USTelecom Comments at 4.

compensation due to PSPs.²⁵ These clearinghouses act as intermediaries between PSPs and Completing Carriers,²⁶ and they have dispute resolution procedures in place in the event a disagreement regarding the accuracy of compensation should arise.²⁷ And, the Commission retains the authority to investigate any payphone compensation compliance issues of which it becomes aware, as today's actions have no impact on Completing Carriers' continuing obligations under our rules to maintain an accurate call tracking system and to fully compensate PSPs for the calls covered by these rules.²⁸

8. *Annual Audit Requirement.* We eliminate a Completing Carrier's obligation to annually certify that there have been no material changes to its payphone call tracking system, an obligation that required an annual audit by the Completing Carrier.²⁹ In light of the changed payphone marketplace dynamics since this requirement was adopted and the unanimous record reflecting that the costs of this requirement far exceed any remaining benefit, we find that the annual audit and associated reporting requirements are no longer necessary. While the number of payphones and associated compensation have dramatically declined, the costs of complying with the annual audit requirement have either remained steady or increased, dwarfing the compensation paid out.³⁰ For example, Puerto Rico Telephone's audit cost is now 18 times the amount of payphone compensation it pays.³¹ And according to Cincinnati Bell, the cost of its audit on a per-call basis increased 900%, from \$0.10 per call in 2007 to over \$1.00 per call in 2016.³² By comparison, Completing Carriers must pay PSPs \$0.494 per compensable call.³³

²⁵ See Cincinnati Bell Comments at -2; ITTA Comments at 7; NCTA Comments at 2; Puerto Rico Telephone Comments at 6; Verizon Comments at 4; USTelecom Comments at 4.

²⁶ See USTelecom Comments at 4. According to National Payphone Clearinghouse, its services include: (1) "electronically accept[ing] claims of payphone ownership from Payphone Service Providers (PSPs) and ownership verification data from the Local Exchange Carriers (LECs)"; (2) "validat[ing] the PSP claims against the LEC reported data to ensure that the correct payphone ownership has been established"; (3) us[ing] direct deposit to make quarterly compensation payments to the industry on behalf of the IXCs"; (4) serv[ing] its Clients as a control point to facilitate communication with all PSPs and Aggregators"; (5) "utiliz[ing] a 3rd party auditor to audit all processes in an effort to aide their Clients with the FCC Audit/Attestation requirements"; (6) "provid[ing] a central site for the sharing of CFO certifications and audit/attestation reports to the industry"; and (7) "produc[ing] valuable and detailed End of Quarter reports to the NPC Clients and to the industry to aid in compensation reconciliation." <https://www.npc.cc/home.aspx>.

²⁷ See Cincinnati Bell Comments at 1-2; ITTA Comments at 7; Puerto Rico Telephone Comments at 6; USTelecom Comments at 4; Verizon Comments at 4; *see also* Puerto Rico Telephone Comments at 6-7 (asserting that the infrequency of disputes and complaints amongst PSPs is not due to the audit requirements, but the effective processes of the Completing Carriers and clearinghouses).

²⁸ See ITTA Comments at 7. The requirement that Completing Carriers compensate PSPs for 100 percent of all completed calls originating from the PSPs' payphones remains in place, 47 CFR §§ 64.1300, 64.1310(a)(3); *see also* Verizon Comments at 5 (noting that Verizon is not asking the Commission to change the payphone compensation system); Cincinnati Bell Comments at 4; NCTA Comments at 2; ITTA Comments at 2, as does the requirement that Completing Carriers maintain call tracking systems that "accurately track[] coinless access code or subscriber toll-free payphone calls to completion." 47 CFR § 64.1310(a)(1). There have been no formal or informal complaints filed with the Commission in recent years. *See APCC v. Intelco*, 28 FCC Rcd at 1912, para. 4; *APCC v. Level 3*; Century Link Comments at 4-5; USTelecom Comments at 4.

²⁹ See 47 CFR § 64.1320(f).

³⁰ See, e.g., ITTA Comments at 4-5; NCTA Comments at 2; USTelecom Comments at 3; Verizon Comments at 3-4; Cincinnati Bell Comments at 2.

³¹ See Puerto Rico Telephone Comments at 5.

³² Cincinnati Bell Comments at 2. And while Sprint paid \$226,920.88 in compensation for fiscal year 2016, an audit, absent the Commission's waiver earlier this year, would have cost Sprint \$46,500. *See* Sprint Comments at 2. Likewise, as noted above, Verizon stated that its compensation payments decreased by 98.5 percent from 2004 to 2016. *See* Verizon Comments at 3.

9. Moreover, the record confirms that the only option under the rules to avoid an annual audit, i.e., to enter into alternative compensation agreements with PSPs, is not an economically feasible alternative.³⁴ We agree with commenters that the transaction costs of negotiating, implementing, and managing alternative compensation agreements with numerous individual PSPs would significantly outweigh the amount of compensation paid.³⁵ In addition, unless a Completing Carrier entered into an alternative compensation arrangement with *every* PSP to which it owed compensation, an annual audit would still be required.³⁶

10. We thus conclude that the benefits, if any, of the annual audit, which were expressly adopted “[t]o ensure the accuracy” of Completing Carriers’ call tracking systems,³⁷ no longer outweigh the burden imposed on Completing Carriers,³⁸ and eliminating these requirements will avoid unnecessary regulatory costs while not harming PSPs. For these same reasons, we see no need to adopt a new annual self-certification obligation in lieu of the annual audit as Sprint and Cincinnati Bell proposed in their waiver petitions.³⁹

11. *Initial Audit Requirement.* We likewise eliminate the initial audit and associated requirements.⁴⁰ The drastically changed communications landscape that precipitated the decline in payphones today has similarly made it unlikely that many, if any, new carriers will become Completing Carriers.⁴¹ Moreover, we agree with commenters that the industry has successfully developed systems that work to ensure accurate PSP call tracking.⁴² Any new Completing Carrier has the benefit of this development in establishing its own accurate payphone call tracking and compensation system, obviating the need to expend significant costs associated with a burdensome initial audit requirement. This is particularly true in light of the rules that remain in place to ensure that PSPs receive the compensation to which they are entitled.⁴³

12. *Other Audit-Related Requirements.* Finally, because this Order eliminates both the initial and annual payphone call tracking system audit requirements,⁴⁴ the remaining requirements associated with these audit requirements no longer serve any purpose.⁴⁵ Consequently, we eliminate section 64.1320 in its entirety. As a result, Completing Carriers no longer must file statements with the Commission, PSPs, or other carriers identifying and updating contact information for persons responsible for handling

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³³ 47 CFR § 64.1300(d),

³⁴ 47 CFR § 64.1320(a).

³⁵ See ITTA Comments at 2; Sprint Comments at 3-4; USTelecom Comments at 7-8; Sprint Waiver Petition at 4; Cincinnati Bell Waiver Petition at 5; USTelecom *Ex Parte* Letter at 2.

³⁶ See Sprint Comments at 4.

³⁷ *Tollgate Order*, 18 FCC Rcd at 19993, para. 38.

³⁸ See CenturyLink Comments at 3-4; Cincinnati Bell Comments at 1; ITTA Comments at 2; NCTA Comments at 2; Puerto Rico Telephone Comments at 4; Sprint Comments at 2; USTelecom Comments at 3-4; Verizon Comments at 2; USTelecom Reply at 2.

³⁹ See *Notice*, 32 FCC Rcd at 5399, para. 12.

⁴⁰ 47 CFR §§ 64.1320(a)-(c).

⁴¹ See, e.g., ITTA Comments at 10.

⁴² See, e.g., Cincinnati Bell Comments at 3.

⁴³ See 47 CFR §§ 64.1300, 64.1301, 64.1310.

⁴⁴ See *supra* paras. 3-11.

⁴⁵ 47 CFR §§ 64.1320 (e), (g).

the Completing Carrier's payphone compensation.⁴⁶ While one commenter suggests that the Commission may wish to retain this requirement to help protect PSPs' rights to full compensation,⁴⁷ our rules already require that Completing Carriers provide this same information to PSPs on a quarterly basis, and that requirement remains in effect.⁴⁸ We see no added benefit to retaining a redundant provision. Similarly, because Completing Carriers will no longer be required to conduct audits and file audit reports, we eliminate the requirement that Completing Carriers make underlying audit documents available upon request.⁴⁹ Aside from the fact that there will be no associated underlying audit documents for PSPs to request, the record suggests PSPs may not have relied on this provision, as one Completing Carrier commenter states it never received a request from a PSP for this information.⁵⁰

B. Quarterly Sworn Statement

13. We also revise the requirement that a Completing Carrier provide a sworn statement from its chief financial officer (CFO) certifying to the accuracy and completeness of its quarterly payphone compensation to PSPs.⁵¹ Under our revised rule, any company official with knowledge of and responsibility for the accuracy of payphone compensation by the carrier may provide the requisite sworn statement.⁵² We agree with commenters that requiring this certification only from a senior level corporate executive such as the CFO, who necessarily must rely on assurances from company personnel responsible for payphone compensation, consumes unnecessary time and resources.⁵³ We note that no commenter opposed eliminating the CFO certification.⁵⁴

14. We decline to eliminate the quarterly sworn statement altogether, as some commenters request.⁵⁵ Since PSPs have no contractual relationships with Completing Carriers,⁵⁶ the quarterly sworn statement accompanying Completing Carriers' required quarterly compensation payments remains the only assurance PSPs now have that they are being appropriately compensated for the use of their payphones.⁵⁷ And though we recognize such quarterly sworn statements impose some burden on

⁴⁶ 47 CFR § 64.1320 (e).

⁴⁷ See ITTA Comments at 10.

⁴⁸ 47 CFR § 64.1310(a)(4)(iii).

⁴⁹ 47 CFR § 64.1320 (g).

⁵⁰ See Cincinnati Bell Comments at 4 n.14. Completing Carriers must continue to retain call verification data for 27 months after submitting their quarterly compensation payments and reports to PSPs and provide such data to PSPs upon request. 47 CFR § 64.1310(a)(3).

⁵¹ 47 CFR § 64.1310(a)(3).

⁵² See, e.g., CenturyLink Comments at 3; Verizon Comments at 5; ITTA Comments at 9; USTelecom Comments at 6-7 (all proposing annual attestation as to the accuracy of reported payphone compensation by a duly authorized employee of the company).

⁵³ See, e.g., CenturyLink Comments at 5; Verizon Comments at 5; ITTA Comments at 8.

⁵⁴ Some Completing Carrier commenters do not object to retaining the CFO sworn statement obligation. See generally Puerto Rico Telephone Comments; Cincinnati Bell Comments.

⁵⁵ See ITTA Comments at 8; USTelecom Comments at 6; USTelecom Reply at 3.

⁵⁶ See *supra* para. 9.

⁵⁷ Implicit in a certification that the quarterly compensation payment "is accurate and is based on 100% of all completed calls that originated from that payphone service provider's payphones," as required under our rules, 47 CFR § 64.1310(a)(3), is the fact that the carrier's payphone call tracking system is necessarily operating effectively.

carriers,⁵⁸ our action today eliminating the CFO requirement reduces that burden substantially.⁵⁹ We also decline the suggestion that we replace the quarterly sworn statement with an annual sworn statement to the PSPs because it was raised for the first time in response to the *Notice* and the record is accordingly sparse.⁶⁰

C. Expired Interim and Intermediate Per-Payphone Compensation Rules

15. Finally, we eliminate interim and intermediate per-payphone compensation rules that, by their own terms, expired 18 and 20 years ago.⁶¹ No commenters opposed elimination of these rules, nor did they bring any similarly expired provisions warranting elimination to our attention.

IV. PROCEDURAL MATTERS

A. Final Regulatory Flexibility Analysis

16. As required by the Regulatory Flexibility Act of 1980 (RFA),⁶² the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to this Report and Order. The FRFA is contained in Appendix B.

B. Paperwork Reduction Act

17. The Order contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.⁶³

18. In this document, we have assessed the effects of revising or eliminating certain payphone compensation procedural requirements, and find that doing so will serve the public interest and is unlikely to directly affect businesses with fewer than 25 employees.

⁵⁸ But because “most completing carriers . . . have contracted with vendors to calculate their payphone compensation,” *see* Sprint Comments at 3; *see also* Cincinnati Bell Comments at 2, they presumably already require and receive assurances from those vendors upon which they can rely in making their sworn statements.

⁵⁹ *See e.g.*, CenturyLink Comments at 5; Verizon Comments at 5; ITTA Comments at 8.

⁶⁰ *See* CenturyLink Comments at 5; Sprint Comments at 3; Verizon Comments at 5.

⁶¹ 47 CFR §§ 64.1301(a)-(d); *see also* ITTA Comments at 9. Sections 64.1301(a)-(d) were adopted as interim and intermediate compensation measures to ensure that PSPs remained compensated while carriers established effective call-tracking systems. *See Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Fourth Order on Reconsideration and Order on Remand, 17 FCC Rcd 2020, 2021, para. 2 (2002); *First Report and Order*, 11 FCC Rcd at 20590, para. 96. Sections 64.1301(a)-(c), which established interim default compensation for certain types of payphone calls, by its express terms applied for the period “beginning November 7, 1996, and ending October 6, 1997.” 47 CFR § 64.1301(a)-(c). Similarly, section 64.1301(d), also applicable to certain payphone calls, established default compensation for an intermediate period “beginning October 7, 1997, and ending April 20, 1999.” 47 CFR § 64.1301(d).

⁶² *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

⁶³ *See Notice*, 32 FCC Rcd at 5403, para. 19.

C. Congressional Review Act

19. The Commission will send a copy of this Report and Order, including a copy of the Final Regulatory Flexibility Certification, in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act.⁶⁴ In addition, the Report and Order and this final certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration (SBA), and will be published in the Federal Register.⁶⁵

D. Contact Person

20. For further information about this proceeding, please contact Michele Levy 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

21. 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 Report and Order IS ADOPTED.

22. IT IS FURTHER ORDERED that part 64 of the Commission's rules IS AMENDED as set forth in Appendix A, and that any such rule amendments that contain new or modified information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act SHALL BE EFFECTIVE after announcement in the Federal Register of Office of Management and Budget approval of the rules, and on the effective date announced therein.

23. IT IS FURTHER ORDERED that this Report and Order SHALL BE effective 30 days after publication in the Federal Register, except for 47 CFR § 64.1310(a)(3), which contains information collection requirements previously approved by OMB and which provision shall become effective as set forth in the preceding paragraph.

24. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

25. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, *see* 5 U.S.C. 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁶⁴ *See* 5 U.S.C. § 801(a)(1)(A).

⁶⁵ *See* 5 U.S.C. § 605(b).

APPENDIX A**Final 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. The authority for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 254(k), 403(b)(2)(B), (c), Pub. L. 104-104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 227, 228, 254(k), 276, 616, 620, and the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, unless otherwise noted.

2. Section 64.1301 is amended by deleting paragraphs (a) through (d) and redesignating paragraph (e) as an undesignated paragraph.

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

§ 64.1310 Payphone Compensation procedures.

(a) * * *

(3) When payphone compensation is tendered for a quarter, a company official with the authority to bind the Completing Carrier shall submit to each payphone service provider to which compensation is tendered a sworn statement that the payment amount for that quarter is accurate and is based on 100% of all completed calls that originated from that payphone service provider's payphones. Instead of transmitting individualized statements to each payphone service provider, a Completing Carrier may provide a single, blanket sworn statement addressed to all payphone service providers to which compensation is tendered for that quarter and may notify the payphone service providers of the sworn statement through any electronic method, including transmitting the sworn statement with the § 64.1310(a)(4) quarterly report, or posting the sworn statement on the Completing Carrier or clearinghouse website. If a Completing Carrier chooses to post the sworn statement on its website, the Completing Carrier shall state in its § 64.1310(a)(4) quarterly report the web address of the sworn statement.

* * * * *

4. Section 64.1320 is deleted in its entirety.

APPENDIX B

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the Notice of Proposed Rulemaking (*Notice*) for the payphone compensation proceeding.² The Commission sought written public comment on the proposals in the *Notice*, including comment on the IRFA. The Commission received no comments on the IRFA. Because the Commission amends its rules in this Order, the Commission has included this Final Regulatory Flexibility Analysis (FRFA). This present FRFA conforms to the RFA.³

A. Need for, and Objectives of, the Rules

2. In the *Notice*, the Commission proposed to eliminate the audit and associated reporting requirements, easing the burden on carriers responsible for completing coinless access and subscriber toll-free calls originating from payphones (Completing Carriers).⁴ The Commission also proposed to revise its rules to allow a company official capable of binding the carrier, as opposed to requiring a carrier's chief financial officer (CFO), to provide quarterly sworn statements that compensation to Payphone Service Providers (PSPs) is accurate.⁵ Additionally, the Commission proposed to eliminate the interim and intermediate per-phone compensation rules.⁶ In so doing, the Commission sought to modernize its rules to reflect the changing communications landscape based on the substantial decline in payphone use and eliminate interim and intermediate expired rules.⁷

3. Pursuant to these objectives, this Order adopts changes to Commission rules regarding payphone audit and associated reporting requirements and interim and intermediate rules. The Order adopts changes to the payphone rules that: (1) eliminate the payphone call tracking system initial and annual audits, (2) eliminate the associated audit reporting requirements, (3) modify the quarterly sworn statements, allowing a company official responsible for payphone compensation for the Completing Carrier to provide quarterly sworn statements, and (4) eliminate the interim and intermediate per-phone compensation rules. The modifications to our payphone rules, which reflect the changing communications landscape, advance our goals of reducing regulatory burdens and abolishing unnecessary rule provisions.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

4. The Commission did not receive comments specifically addressing the rules and policies proposed in the IRFA.

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996).

² *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*, Notice of Proposed Rulemaking, 32 FCC Rcd 5397 (2017) (“*Notice*”).

³ See 5 U.S.C. § 604.

⁴ See *Notice*, 32 FCC Rcd at 5399, 5401-02, paras. 6, 13.

⁵ See *Notice*, 32 FCC Rcd at 5401, para. 12.

⁶ See *Notice*, 32 FCC Rcd at 5402, para. 14.

⁷ See *Notice*, 32 FCC Rcd at 5399, 5402, paras. 1, 7, 14.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

5. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.⁸

6. The Chief Counsel did not file any comments in response to this proceeding.

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

7. 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 Further Notice seeks comment, if adopted.⁹ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”¹⁰ In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act.¹¹ A “small-business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.¹²

8. The majority of our changes will affect obligations on carriers who complete calls originating from payphones, including incumbent LECs and, in some cases, competitive LECs.

9. *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.¹³ 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.¹⁴ These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses.¹⁵

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.”¹⁶

⁸ 5 U.S.C. § 604(a)(3).

⁹ See 5 U.S.C. § 603(b)(3).

¹⁰ See 5 U.S.C. § 601(6).

¹¹ 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.”

¹² See 15 U.S.C. § 632.

¹³ See 5 U.S.C. § 601(3)-(6).

¹⁴ 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)

¹⁵ 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).

¹⁶ 5 U.S.C. § 601(4).

Nationwide, as of Aug 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).¹⁷

11. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”¹⁸ U.S. Census Bureau data from the 2012 Census of Governments¹⁹ indicates that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.²⁰ Of this number there were 37, 132 General purpose governments (county,²¹ municipal and town or township²²) with populations of less than 50,000 and 12,184 Special purpose governments (independent school districts²³ and special districts²⁴) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category shows that the majority of these governments have populations of less than 50,000.²⁵ Based on this data we estimate that at least 49,316 local government jurisdictions fall in the category of “small governmental jurisdictions.”²⁶

¹⁷ Data from the Urban Institute, National Center for Charitable Statistics (NCCS) reporting on nonprofit organizations registered with the IRS was used to estimate the number of small organizations. Reports generated using the NCCS online database indicated that as of August 2016 there were 356,494 registered nonprofits with total revenues of less than \$100,000. Of this number, 326,897 entities filed tax returns with 65,113 registered nonprofits reporting total revenues of \$50,000 or less on the IRS Form 990-N for Small Exempt Organizations and 261,784 nonprofits reporting total revenues of \$100,000 or less on some other version of the IRS Form 990 within 24 months of the August 2016 data release date. See <http://nccsweb.urban.org/tablewiz/bmf.php> where the report showing this data can be generated by selecting the following data fields: Show: “Registered Nonprofit Organizations”; By: “Total Revenue Level (years 1995, Aug to 2016, Aug)”; and For: “2016, Aug” then selecting “Show Results”.

¹⁸ 5 U.S.C. § 601(5).

¹⁹ See 13 U.S.C. § 161. The Census of Government is conducted every five (5) years compiling data for years ending with “2” and “7”; see also Program Description Census of Government <https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=program&id=program.en.CO G#>.

²⁰ See U.S. Census Bureau, 2012 Census of Governments, Local Governments by Type and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG02.US01>. Local governmental jurisdictions are classified in two categories - General purpose governments (county, municipal and town or township) and Special purpose governments (special districts and independent school districts).

²¹ See U.S. Census Bureau, 2012 Census of Governments, County Governments by Population-Size Group and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG06.US01>. There were 2,114 county governments with populations less than 50,000.

²² See U.S. Census Bureau, 2012 Census of Governments, Subcounty General-Purpose Governments by Population-Size Group and State: 2012 - United States - States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG07.US01>. There were 18,811 municipal and 16,207 town and township governments with populations less than 50,000.

²³ See U.S. Census Bureau, 2012 Census of Governments, Elementary and Secondary School Systems by Enrollment-Size Group and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG11.US01>. There were 12,184 independent school districts with enrollment populations less than 50,000.

²⁴ See U.S. Census Bureau, 2012 Census of Governments, Special District Governments by Function and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG09.US01>. The U.S. Census Bureau data did not provide a population breakout for special district governments.

²⁵ See U.S. Census Bureau, 2012 Census of Governments, County Governments by Population-Size Group and State: 2012 - United States-States - <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG06.US01>; Subcounty General-Purpose Governments by Population-Size Group and State: 2012 - United States-States - <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG07.US01>; and Elementary and Secondary School

(continued....)

12. *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 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.”²⁷ 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.²⁸ 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.²⁹ Thus, under this size standard, the majority of firms in this industry can be considered small.

13. *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 for Wired Telecommunications Carriers, as defined in paragraph 11 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees.³⁰ 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.³¹ The Commission therefore estimates that most providers of local exchange carrier service are small entities that may be affected by the rules adopted.

14. *Incumbent Local Exchange Carriers (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 in paragraph 11 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees.³² According to Commission data, 3,117 firms operated in that year. Of this total, 3,083 operated with fewer than 1,000 employees.³³ Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and

(Continued from previous page)

Systems by Enrollment-Size Group and State: 2012 - United States-States.

<https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG11.US01>. While U.S. Census Bureau data did not provide a population breakout for special district governments, if the population of less than 50,000 for this category of local government is consistent with the other types of local governments the majority of the 38, 266 special district governments have populations of less than 50,000.

²⁶ *Id.*

²⁷ U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Categories,”

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

²⁸ See 13 CFR § 120.201, NAICS Code 517110.

²⁹ 2012 U.S. Economic Census, NAICS Code 517110,

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

³⁰ See 13 CFR § 120.201, NAICS Code 517110.

³¹ 2012 U.S. Economic Census, NAICS Code 517110,

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

³² See 13 CFR § 120.201, NAICS Code 517110.

³³ 2012 U.S. Economic Census, NAICS Code 517110,

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

policies adopted. One thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers.³⁴ Of this total, an estimated 1,006 have 1,500 or fewer employees.³⁵

15. *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 in paragraph 11 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees. 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.³⁶ Based on this data, the Commission concludes that the majority of Competitive LECs, 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.³⁷ Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. 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.³⁸ In addition, 72 carriers have reported that they are Other Local Service Providers.³⁹ Of this total, 70 have 1,500 or fewer employees.⁴⁰ Consequently, 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 that may be affected by the adopted rules.

16. *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 in paragraph 11 of this FRFA. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.⁴¹ According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.⁴² Of this total, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees.⁴³ Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted.

17. *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 business is small if it has 1,500 or fewer employees.⁴⁴ 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

³⁴ See Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service at 5-5, Tbl. 5.3 (2010), (*Trends in Telephone Service*).

³⁵ *Id.*

³⁶ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

³⁷ See Trends in Telephone Service at 5-5, Tbl. 5.3.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ 13 CFR § 121.201, NAICS code 517110.

⁴² See Trends in Telephone Service at 5-5, Tbl. 5.3.

⁴³ *Id.*

⁴⁴ 13 CFR § 121.201, NAICS code 517110.

or fewer employees and two have more than 1,500 employees.⁴⁵ Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by the adopted rules.

18. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard 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 in paragraph 11 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁴⁶ 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.⁴⁷ Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage.⁴⁸ Of these, an estimated 279 have 1,500 or fewer employees.⁴⁹ Consequently, the Commission estimates that most Other Toll Carriers that may be affected by our rules are small.

19. *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.⁵⁰ According to the Commission's Form 499 Filer Database, 1,100 PSPs reported that they were engaged in the provision of payphone services.⁵¹ The Commission does not have data regarding how many of these 1,100 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 1,100 or fewer PSPs that may be affected by the rules.

20. *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.⁵² According to the Commission's Form 499 Filer Database, 500 companies reported that they were engaged in the provision of prepaid calling cards.⁵³ 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.

21. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves, such as cellular services, paging services, wireless internet access, and

⁴⁵ *Trends in Telephone Service*, Tbl. 5.3.

⁴⁶ 13 CFR § 121.201, NAICS code 517110.

⁴⁷ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

⁴⁸ See *Trends in Telephone Service* at 5-5, Tbl. 5.3.

⁴⁹ *Id.*

⁵⁰ 13 CFR § 121.201, NAICS code 517110.

⁵¹ See <http://apps.fcc.gov/cgb/form499/499a.cfm> (last visited May 19, 2017).

⁵² 13 CFR § 121.201, NAICS code 517110.

⁵³ See <http://apps.fcc.gov/cgb/form499/499a.cfm> (last visited May 19, 2017).

wireless video services.⁵⁴ The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.⁵⁵ For this industry, Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had fewer than 1,000 employees.⁵⁶ Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small 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 (PCS), and Specialized Mobile Radio (SMR) services.⁵⁷ Of this total, an estimated 261 have 1,500 or fewer employees.⁵⁸ Consequently, the Commission estimates that approximately half of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

22. *All Other Telecommunications.* “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.⁵⁹ 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.⁶⁰ 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 Bureau data for 2012 show that there were 1,442 firms that operated for the entire year. Of those firms, a total of 1,400 had annual receipts less than \$25 million.⁶³ Consequently, we conclude that the majority of All Other Telecommunications firms can be considered small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

23. *Completing Carriers.* The Order finds that eliminating the Commission’s payphone call tracking system audit and associated reporting requirements reflects changes to the current communications landscape. The Order determines that due to the substantial decline in payphone use, Completing Carriers, and the corresponding decline in payphone compensation, removing the costly audits and associated requirements outweigh any benefits to PSPs and will ease the burden on small carriers. The Order also determines that it is reasonable to allow a company official responsible for

⁵⁴ NAICS Code 517210. See <https://www.census.gov/econ/isp/sampler.php?naicscode=517210&naicslevel=6#>.

⁵⁵ 13 CFR § 121.201, NAICS code 517210.

⁵⁶ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

⁵⁷ See Trends in Telephone Service at 5-5, Tbl. 5.3.

⁵⁸ *Id.*

⁵⁹ See U.S. Census Bureau, 2017 NAICS Definitions, NAICS Code “517919 All Other Telecommunications”, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517919&search=2017+NAICS+Search&search=2017>.

⁶⁰ *Id.*

⁶¹ <https://www.census.gov/econ/isp/sampler.php?naicscode=517919&naicslevel=6>.

⁶² 13 CFR § 121.201; NAICS Code 517919.

⁶³ U.S. Census Bureau, 2012 *Economic Census of the United States*, Table EC0751SSSZ1, Information: Subject Series - Establishment and Firm Size: Receipts Size of Firms for the United States: 2012 NAICS Code 517919, http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ1&prodType=table.

payphone compensation for the carrier, as opposed to requiring a carrier's CFO, to provide quarterly sworn statements that compensation to PSPs is accurate in section 64.1310(a)(3).⁶⁴ Additionally, the Order finds it appropriate to eliminate sections 64.1301(a)-(d), the interim and intermediate per-phone compensation rules, as they expired and no longer apply to any entity.

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered

24. The RFA requires an agency to describe any significant alternatives that it has considered in developing its 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 and reporting requirements under the rule for such 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 such small entities.”⁶⁵

25. In this Order, the Commission modifies its payphone rules to reduce costs for Completing Carriers, reform quarterly sworn statements procedures, and eliminate expired interim and intermediate rules. Overall, we believe the actions in this document will reduce burdens on small carriers.

G. Report to Congress:

26. The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.⁶⁶ In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Order and FRFA (or summaries thereof) will also be published in the Federal Register.⁶⁷

⁶⁴ See 47 CFR § 64.1310(a)(3).

⁶⁵ 5 U.S.C. § 603(c)(1)-(4)

⁶⁶ See 5 U.S.C. § 801(a)(1)(A).

⁶⁷ See 5 U.S.C. § 604(b).

**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.

A blue sign attached to the side of a CVS on the corner of Main Street and Central Row in Hartford, Connecticut, marks the 1889 installation of the “World’s First Pay Telephone.”¹ While “pay telephones” had a good run through the 20th century, their star has fallen in the 21st. As noted when we adopted the *Notice* in this proceeding, the changing communications landscape has resulted in a more than 95% decline in the number of payphones between 1999 and today.

So today’s *Order* is another welcome step toward modernizing outdated rules. And it’s a good reminder that we need to keep up with an always-changing communications marketplace. This case illustrates why. The record clearly showed that, because of the dramatic decline in payphone revenues, the fixed costs of conducting audits and certifications outweighed any benefits associated with the regulations. This good-government reform won’t make headlines, but it’s good government nonetheless.

I’d like to thank the staff who contributed to this item, including Michele Berlove, Madeleine Findley, Lauren Garry, Dan Kahn, Pam Megna, and Terri Natoli of the Wireline Competition Bureau; Valerie Hill and Rick Mallen of the Office of General Counsel; Kate Mataves and Joe Wyer of the Wireless Telecommunications Bureau; and Maura McGowan of the Office of Communications Business Opportunities.

¹ See Jimmy Stamp, *The Pay Phone’s Journey from Patent to Urban Relic*, Smithsonian (Sept. 18, 2014), available at <http://bit.ly/2Fiv0Wg>.

**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.

Times truly are a-changin'. I can remember when the only way to report, say, a traffic accident by calling 9-1-1, was to find a working payphone. There must be at least one person in this room, who can recall dropping a quarter in the wall phone coin slot to call home, so your parents could pick you up after that Friday night high school football game or social (a social in my day, was a dance or school sponsored party). And—fast-forward to today—I never imagined that, at a recent social event, I would be the only one that has ever heard a telephone dial tone.

But here I am, and here we are, and in less than 20 years, the number of functioning payphones in this country has shrunk to 100,000—down from 2.1 million in 1999. This is how far and how fast we have come—relatively speaking—in mobile phone penetration and use, and this is why as these industries change, our rules must change as well. Today, we will make the payphone audit process more efficient by improving, reassessing, and eliminating outdated reporting requirements.

To be clear, this Order does not disrupt fundamental protections that ensure completing carriers are adequately compensated. It guarantees that the Commission retains its authority to investigate any pay phone compensation compliance issues. And as my fellow Commissioners have heard me say, we must not forget that there are still communities that rely on these devices in the case of emergencies. But by eliminating these unnecessary audit requirements, some of which expired 18 and 20 years ago, we will cut unnecessary regulatory expenditures, which will free up revenue that can be spent on improving quality of service in underserved communities.

And while today's actions are not targeted to this payphone customer class, I would be remiss if I did not mention the need for the FCC to further reform the inmate calling services regime. The one population in our country that still uses payphones daily, has no omnibus federal protection from exorbitant rates and fees. This Commission has the ability to act, but to date, has done nothing. That needs to change.

I, nonetheless, wish to thank the Wireline Competition Bureau for their efforts in addressing these outdated payphone regulations.

**STATEMENT OF
COMMISSIONER MICHAEL 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.

Payphone audit obligations and the associated reporting requirements no longer make any sense. In fact, payphones themselves have basically evaporated before our eyes as consumers have switched to mobile services, meaning our rules have outlived their usefulness. The record of the proceeding confirms that the cost of an audit significantly exceeds the amount paid for payphone compensation.

To be clear, I would have gone further than this item does. Specifically, some commenters proposed that the sworn statements regarding payphone compensation be submitted annually or eliminated altogether rather than be done quarterly. We should have addressed this today, but I am pleased that the Chairman is open to considering further deregulation in this area in the future.

Fortunately, we will soon have occasion to do so. The outdated payphone audit requirements came to the Commission's attention, in part, through comments submitted in response to the Commission's 2016 Biennial Review Public Notice. With the next Biennial Review set to commence later this year, we can build on the incredible progress that has already been made under the Chairman's leadership to streamline regulatory burdens and eliminate unnecessary rules. I trust that the Commission and commenters will take full advantage of the opportunity to identify and discard additional regulations that no longer serve their intended purposes.

**STATEMENT OF
COMMISSIONER BRENDAN CARR**

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 my time on the Commission, people often stop and ask me what Commissioner Rosenworcel, the payphone, and the lead singer for Sugar Ray, Mark McGrath, all have in common. I used to find that to be a peculiar and rather specific question, but I now have an answer: They all got their start in Hartford, Connecticut.

That is right. In 1888, the first payphone was invented in Hartford by one William Gray. Gray needed to call a doctor for his ailing wife, but he did not have a phone at home. He ultimately persuaded a factory to allow him to make a phone call, but he was struck by the idea that connectivity could – and should – encompass more than home telephone service. In a sense, Gray’s invention paved the way for the unprecedented growth in connectivity that we take advantage of today.

While Gray’s vision has endured, his invention has seen better days. The number of payphones in the U.S. has rapidly decreased, from more than 2 million at their peak in 1999 to less than 100,000 in 2016.

Given changes in technology, it makes sense for us to revisit our payphone compensation rules to eliminate unnecessary requirements. In this item, we remove rules from our books that expired two decades ago and do not apply to a single carrier. We also eliminate burdensome audit requirements that, in some cases, cost carriers hundreds of thousands of dollars—several times more than the compensation actually owed to payphone service providers.

Like Sugar Ray’s 1999 hit *Someday*, the heyday of payphones is now “so far, so long, so far away.” Our regulations should reflect that fact, so this item has full support. I look forward to continuing to work with my colleagues to update our rules to keep pace with technology.

**STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL**

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.

It can be difficult to find a payphone anymore. There's one in the hallway here—but hey, we're the Federal Communications Commission. Just about everywhere else, the ascendancy of mobile devices and increase in site-specific restrictions have combined to render the service less necessary and more antiquated.

For this reason, I support today's Order, which removes outdated requirements for the carriers that connect to payphones. This reduces the cost of carrier compliance in a manner consistent with Section 276 of the law.

There is one place, however, where payphones remain essential. That is in prisons. For those who are incarcerated and their loved ones, talk does not come not cheap. Inmates are often separated from their families by hundreds of miles, and families may lack the time and means to make regular visits. So calls from payphones are the only way to stay connected. But the price of individual calls can be as much as most of us pay for unlimited monthly plans. This makes it hard for the families of prisoners to stay in touch. This is not just a strain on the household budget. It is a cruel strain on the millions of families and children of the incarcerated—and it harms all of us because regular contact with kin can reduce recidivism.

This agency should be ashamed. Fifteen years ago, Martha Wright filed a petition calling on the FCC to do something about the exorbitant rates charged to inmates and their families. But it took this agency nearly a decade before launching a proceeding to do so. Over the course of a handful of years and as many orders, the FCC gave it a shot. We put in place limits on usurious rates and brought to an end some of the most abusive fees tacked on to the cost of every call. But last year the FCC gave up and refused to even defend this effort in court.

There is something profoundly wrong here. The moral compass of this agency is broken. We can fix this problem—it is within our power and capacity. We only need to exercise our influence and do something about it. And we should.