

from the notification, access, correction and amendment provisions of the Privacy Act under subsection (k)(2) concerning records compiled for law enforcement purposes. 49 FR 14107 (April 10, 1984).

Pursuant to the notification of a new system of records (SOR), published in the **Federal Register** on September 6, 2002 (67 FR 57011), OCR implemented a new system of records, Program Information Management System (PIMS), HHS/OS/OCR (09-90-0052). PIMS is used by OCR staff and consists of an electronic repository of information and documents and supplementary paper document files. PIMS effectively combines and replaces OCR's two former systems of records (CIMS and Complaint File and Log) into a single integrated system with enhanced electronic storage, retrieval and tracking capacities. While the types of information collected and stored in PIMS are the same as those stored in CIMS and Complaint File and Log, PIMS allows OCR to more effectively manage the data it collects.

OCR investigative files maintained in PIIMS either as paper records or electronic documents are records compiled for law enforcement purposes. In the course of investigations, OCR often has a need to obtain confidential information involving individuals other than the complainant. In these cases, it is necessary for OCR to preserve the confidentiality of this information to avoid unwarranted invasions of personal privacy and to assure recipients of Federal financial assistance that such information provided to OCR will be kept confidential. This assurance is often central to resolving disputes concerning access by OCR to the recipient's records, and is necessary to facilitate prompt and effective completion of the investigations.

Unrestricted disclosure of confidential information in OCR files can impede ongoing investigations, invade personal privacy of individuals, reveal the identities of confidential sources, or otherwise impair the ability of OCR to conduct investigations. For these reasons, the Department published a notice of proposed rulemaking, 67 FR 56252 (September 3, 2002) to exempt all investigative records maintained in PIMS from the notification, access, correction and amendment provisions under subsection (k)(2) of the Privacy Act. The Department received no public comments.

#### List of Subjects in 45 CFR Part 5b

Privacy.

■ For reasons set out in the preamble, the Department's Privacy Act Regulation,

part 5b of 45 CFR Subtitle A, is amended as follows:

#### PART 5b—PRIVACY ACT REGULATIONS

■ 1. The authority citation for part 5b continues to read as follows:

**Authority:** 5 U.S.C. 301; 5 U.S.C. 552a.

■ 2. Section 5b.11 is amended by adding paragraph (b)(2)(ii)(G) to read as follows:

#### § 5b.11 Exempt systems.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(ii) \* \* \*

(G) Investigative materials compiled for law enforcement purposes for the Program Information Management System, HHS/OS/OCR.

\* \* \* \* \*

Dated: August 29, 2003.

**Richard M. Campanelli**,  
*Director, Office for Civil Rights.*

Dated: October 28, 2003.

**Tommy G. Thompson**,  
*Secretary.*  
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#### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 64

[CC Docket No. 96-128; FCC 03-235]

#### The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document adopts new payphone compensation rules that place liability on the facilities-based long distance carrier to compensate payphone service providers (PSPs) for payphone-originated calls that are completed on that facilities-based long distance carrier's platform. The Commission also establishes a payment mechanism for switch-based resellers (SBRs) to compensate PSPs for this liability. In satisfying its liability obligation to a PSP, the SBR must establish its own call tracking system, have a third party attest that the system accurately tracks payphone calls to completion, and pay a PSP directly based on the SBR's own call tracking data. Other facilities-based long distance carriers in the call path, if any, must provide reports to the PSPs of payphone-originated calls switched to

another facilities-based carrier's platform.

**DATES:** This Report and Order readopts, on an interim basis until the effective date of the final rules in this document, those rules initially adopted at 66 FR 21105, April 27, 2001 in the *Second Order on Reconsideration*. These rules, currently set forth at 47 CFR 64.1300(a), 64.1310(a), and 64.1310(b), are effective November 6, 2003. The final rules in this document contain information collection requirements that are contingent upon approval of the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of these final rules.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order (R&O) in CC Docket No. 96-128, FCC 03-235, adopted September 30, 2003, and released October 3, 2003. Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

**FOR FURTHER INFORMATION CONTACT:** Henry L. Thaggert, Attorney-Advisor, Competition Policy Division, Wireline Competition Bureau, at (202) 418-7941, or via the Internet at [henry.thaggert@fcc.gov](mailto:henry.thaggert@fcc.gov).

#### Synopsis of the Report and Order

1. The Commission adopts these rules to ensure that PSPs are "fairly compensated" for all SBR completed calls made from their payphones under section 276 of the Communications Act of 1934, as amended. These rules satisfy section 276 by identifying the party liable for compensation and establishing a mechanism for PSPs to be paid. These rules are based on what the Commission has learned from input over the past seven years from the payphone and SBR industries, and from experience in implementing section 276 in various orders addressing problems raised by the parties over the years.

2. *Background.* This R&O is the result of a court remand of an earlier attempt by the Commission to remedy problems in the payphone compensation rules. In January 2003, on a petition for review, the United States Court of Appeals for the District of Columbia Circuit (DC Circuit) vacated and remanded this

proceeding's *Second Order on Reconsideration* (66 FR 21105, April 27, 2001) on the grounds that parties were not afforded proper notice and opportunity for comment. The DC Circuit held that the Commission violated the Administrative Procedure Act (APA) when it modified its rules without proper notice. The DC Circuit vacated the Commission's order, but stayed its mandate and its vacatur of the *Second Order on Reconsideration* through September 30, 2003. As a result, the rules promulgated in the *Second Order on Reconsideration* remain in effect through September 30, 2003, but are vacated after that date.

3. On May 28, 2003, in response to the DC Circuit's decision, the Commission issued a *Further Notice of Proposed Rulemaking (Further Notice)* (68 FR 32720, June 2, 2003) to seek comment on whether the rules adopted in the *Second Order on Reconsideration* satisfied section 276's requirements or whether other new rules would be necessary. In this R&O, the Commission adopts new final rules to address both the problems that PSPs have experienced in obtaining compensation from SBRs, and the problems that interexchange carriers have experienced prior to and after the adoption of the *Second Order on Reconsideration*. The Commission cannot, however, make these final rules effective before September 30, 2003, when the rules adopted in the *Second Order on Reconsideration* were vacated. Additional time is needed to obtain clearances from the OMB and to permit carriers sufficient time to take the steps necessary to come into compliance with the new rules. Thus, the Commission must adopt interim rules to ensure that PSPs continue to receive compensation during this transition period. For this purpose, for the limited period until the final rules become effective, the Commission adopts the rules originally adopted in the *Second Order on Reconsideration*, and currently set forth at 47 CFR. 64.1300(a), 64.1310(a), and 64.1310(b).

4. *Prior Compensation Regimes.* The Commission affirms the *Further Notice's* tentative conclusion that, prior to the regime adopted in the *Second Order on Reconsideration*, the PSPs suffered compensation shortfalls. The Commission finds that PSPs experienced these shortfalls because: (1) The PSPs had insufficient information about the identity of the SBRs and the number of calls they completed; and (2) the SBRs lacked an incentive to voluntarily identify themselves as the liable parties and to pay compensation for every completed call. These

shortfalls are addressed in the new rules in a way that will more effectively result in "fair compensation" under section 276 than did the rules adopted in the *Second Order on Reconsideration*.

5-6. *Carrier Reporting Duties.* The Commission adopts new reporting obligations for all facilities-based long distance carriers in the call path that own or lease a switch and transfer payphone-originated calls to other facilities-based long distance carriers. The Commission refers to these carriers for purposes of these rules as the "Intermediate Carriers" to distinguish them from the last facilities-based long distance carrier that completes the call on a switch that it owns or leases. The reporting obligations adopted in this R&O apply to a larger class of carriers than those affected by the *Second Order on Reconsideration*, and require the submission of more detailed information. The Commission concludes that these newly adopted rules resolve two principle concerns: (1) The inability of PSPs to obtain information about the identity of the SBRs and the number of SBR completed calls; and (2) the incentive of the SBRs to avoid detection and compensating the PSPs.

7. *Interim Rules.* Due to information collection and exchange requirements pursuant to OMB procedures and the need to provide carriers time to transition to our new rules, the new rules will not take effect immediately. On average, OMB approval requires as few as 120 and up to 150 days from the release of an order. Moreover, as described above, carriers have indicated that they need at least one full quarter after notice of the new rules to make necessary changes to their networks, and that it would be disruptive if the new rules were to go into effect on a day other than the first day of a quarter. Accordingly, the Commission finds it reasonable to adopt, for an interim period, the rules initially adopted in the *Second Order on Reconsideration*. These interim rules will remain in effect until the effective date of the final rules. Following OMB approval of the information collections in the final rules, the Commission will publish a notice in the **Federal Register** announcing the effective date for these rules. This effective date will be the first day of the first full quarter after the final rules receive OMB approval.

#### **Final Paperwork Reduction Act Analysis**

8. This Report and Order contains conclusions that have been analyzed as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13, and

contains collections of information subject to OMB review. The information collection requirements for the final rules adopted in this item are contingent upon approval by OMB.

#### **Final Regulatory Flexibility Analysis**

9. *Interim Rules.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 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 Small Business Administration (SBA). The Commission certifies that, under the Regulatory Flexibility Act, 5 U.S.C. 605(b), there will not be a significant economic impact on a substantial number of small business entities resulting from the interim rules established in this R&O. These rules, adopted in the *Second Order on Reconsideration*, will remain in place until the new rules become effective. The Commission finds that the interim rules, while not optimal, have, as a practical matter, worked reasonably well, and there is no reason to believe that small businesses would be burdened by a brief continuation of these rules during a transition period. Additionally, in the absence of interim rules, it is likely that the industry would nevertheless continue to follow the rules adopted in the *Second Order on Reconsideration* pursuant to their existing contracts. Moreover, it would be burdensome to adopt a third set of rules that would be effective for only a brief interim period. Thus, the Commission adopts interim rules to ensure that PSPs continue to receive compensation during the transition period.

10. The Commission will send a copy of this final certification, along with this R&O, in a report to Congress pursuant to the Congressional Review Act, and to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this certification will be published in the **Federal Register**.

11. *Final Rules.* As required by the RFA, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the **Federal Register** summary of the *Further Notice*. The Commission sought written public comments on the proposals in the *Further Notice* including comments on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

#### **Need for, and Objectives of, the Rules**

12. *Final Rules.* This Order fulfills the commitment the Commission undertook in the *Further Notice* to examine the need to amend our payphone compensation rules, and responds to a court remand of an earlier attempt by the Commission to remedy problems with the rules.

#### **Summary of Significant Issues Raised by Public Comments in Response to the IRFA**

13. There were no comments raised that specifically addressed the IRFA. Nonetheless, the agency considered the potential impact of the rules proposed in the IRFA on small entities and reduced the compliance burden for all small entities in order to reduce the economic impact of the rules enacted herein on such entities.

#### **Description and Estimate of the Number of Small Entities to Which the Actions Taken Will Apply**

14. *Final Rules.* The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 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 Small Business Administration (SBA).

15. *Incumbent Local Exchange Carriers.* Neither the Commission nor the SBA has developed a specific definition of small providers of incumbent local exchange services. 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. According to the most recent *Telephone Trends Report* data, 1,335 incumbent local exchange carriers reported that

they were engaged in the provision of local exchange services. Of these 1,335 carriers, 1,037 reported that they have 1,500 or fewer employees and 298 reported that, alone or in combination with affiliates, they have more than 1,500 employees. The Commission does not have data specifying the number of these carriers that are either dominant in their field of operations or are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of incumbent local exchange carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that 1,037 or fewer providers of local exchange service are small entities that may be affected by the rules and policies adopted herein.

16. *Competitive Local Exchange Carriers.* Neither the Commission nor the SBA has developed a specific definition for small providers of competitive local exchange services. 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. According to the Commission's *Telephone Trends Report* data, 349 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 349 companies, 297 reported that they have 1,500 or fewer employees and 52 reported that, alone or in combination with affiliates, they have more than 1,500 employees. The Commission does not have data specifying the number of these carriers that are either dominant in their field of operations or are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of competitive local exchange carriers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that fewer than 297 providers of competitive local exchange service are small entities that may be affected by the rules.

17. *Competitive Access Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access providers (CAPS). 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. According to the Commission's most recent *Telephone Trends Report* data,

349 CAPs or competitive local exchange carriers and 60 other local exchange carriers reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 349 competitive access providers and competitive local exchange carriers, 297 reported that they have 1,500 or fewer employees and 52 reported that, alone or in combination with affiliates, they have more than 1,500 employees. Of the 60 other local exchange carriers, 56 reported that they have 1,500 or fewer employees and 4 reported that, alone or in combination with affiliates, they have more than 1,500 employees. Consequently, the Commission estimates that there are 297 or fewer small entity CAPS and 56 or fewer other local exchange carriers that may be affected by the rules.

18. *Local Resellers.* 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. According to the Commission's most recent *Telephone Trends Report* data, 87 companies reported that they were engaged in the provision of local resale services. Of these 87 companies, 86 reported that they have 1,500 or fewer employees and one reported that, alone or in combination with affiliates, it had more than 1,500 employees. Consequently, the Commission estimates that there are 86 or fewer local resellers that may be affected by the rules.

19. *Toll Resellers.* 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. According to the Commission's most recent *Telephone Trends Report* data, 454 companies reported that they were engaged in the provision of toll resale services. Of these 454 companies, 423 reported that they have 1,500 or fewer employees and 31 reported that, alone or in combination with affiliates, they have more than 1,500 employees. Consequently, the Commission estimates that there are 423 or fewer toll resellers that may be affected by the rules.

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. According to the Commission's most recent *Trends in Telephone Service* data, 758 PSPs reported that they were engaged in the provision of payphone services. Of these 758 payphone service providers, 755 reported that they have 1,500 or fewer employees and 3 reported that, alone or in combination with affiliates, they have more than 1,500 employees. Consequently, the Commission estimates that there are 755 or fewer PSPs that may be affected by the rules.

20. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services. 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. According to the most recent *Telephone Trends Report* data, 204 carriers reported that their primary telecommunications service activity was the provision of interexchange services. Of these 204 carriers, 163 reported that they have 1,500 or fewer employees and 41 reported that, alone or in combination with affiliates, they have more than 1,500 employees. Consequently, we estimate that there are 163 or fewer small entity IXC's that may be affected by the rules.

21. *Operator Service Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to operator service providers. 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. According to the Commission's most recent *Telephone Trends Report* data, 21 companies reported that they were engaged in the provision of operator services. Of these 21 companies, 20 reported that they have 1,500 or fewer employees and one reported that, alone or in combination with affiliates, it had more than 1,500 employees. Consequently, the Commission estimates that there are 20 or fewer local resellers that may be affected by the rules.

22. *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. According to the Commission's most recent *Telephone Trends Report* data, 21 companies reported that they were engaged in the provision of prepaid

calling cards. Of these 21 companies, 20 reported that they have 1,500 or fewer employees and one reported that, alone or in combination with affiliates, it had more than 1,500 employees. Consequently, the Commission estimates that there are 20 or fewer local resellers that may be affected by the rules.

#### **Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

23. *Final Rules.* The new rules the Commission adopts will enable a PSP to identify SBRs that are not compensating it and to challenge the payments in instances where the PSP may believe that the data provided by other facilities-based long distance carriers are out of proportion to the data provided by the final SBR in the call path. The new rules will have no adverse impact on small carriers. Specifically, the new rules contain reporting obligations for an "Intermediate Carrier" (defined as any facilities-based long distance carrier in the call path that switches coinless payphone calls to another facilities-based long distance carrier). The new rules require each "Intermediate Carrier" to maintain, and provide to the PSP, a quarterly report that includes, for each facilities-based long distance carrier to which the Intermediate Carrier switched a toll-free or access code call: (1) A list of all the facilities-based long distance carriers to which the Intermediate Carrier switched toll-free and access code calls dialed from each of that payphone service provider's payphones; (2) a list of all the toll-free and access code numbers dialed from each of that payphone service provider's payphones that all local exchange carriers have delivered to the Intermediate Carrier and that the Intermediate Carrier switched to the identified facilities-based long distance carriers; (3) the volume of calls for each toll-free and access code number, e.g., "800" and "888" numbers, that the Intermediate Carrier has received from each of that PSP's payphones, identified by their ANIs, and switched to the facilities-based long distance carrier; and (4) the name, address, telephone number and other identifying information for the person or persons for each of the facilities-based long distance carriers that serve as the Intermediate Carrier's contact at each listed facilities-based long distance carrier.

24. Our rules also require a "Completing Carrier" (defined as a long distance carrier or switch-based long distance reseller that completes a coinless access code or subscriber toll-

free payphone call) to establish a call-tracking system, subject to an auditing requirement to ensure accuracy, to track coinless access code or subscriber toll-free payphone calls to completion, and to compensate the PSP for these calls on a quarterly basis. With its payment, the Completing Carrier must include a sworn declaration from its Chief Financial Officer certifying that the payment amount is accurate and is based on 100 percent of actual calls completed. To support this certification, the Completing Carrier also must submit quarterly reports to the PSP, which must include the following information: (1) A list of the toll-free and access numbers dialed from each payphone and the ANI for each payphone; (2) the volume of calls for each listed number that the completing carrier completed; (3) the name, address, and phone number of the person or persons responsible for handling the completing carrier's payphone compensation; and (4) the carrier identification code of all facilities-based long distance carriers that routed calls to the SBR.

#### **Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

25. The RFA requires an agency to describe any significant, specifically small business, 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.

26. The new rules impose a minimal burden on the facilities-based long distance carrier to compensate PSPs for all calls that are completed on that facilities-based carrier's platform. As the record indicates, facilities-based long distance carriers in the call path already collect the data necessary to comply with these reporting requirements as part of their own call tracking and billing systems. Thus, the Commission does not impose any new collecting responsibilities, and we find that the additional reporting obligations the new rules impose are minimal in nature. Furthermore, the facilities-based long distance carrier that does not wish to establish its own call tracking system may instead enter into private

contractual arrangements with other parties, outside of the established rules. Moreover, the rules established herein provide carriers with ample time in which to establish a verifiable call tracking system. To the extent that a PSP affirmatively declines the need for such information, the PSP is free to negotiate alternative arrangements with the relevant carriers. Lastly, the new rules will benefit PSPs, many of which may be small businesses, because they give PSPs greater means to pursue payment from carriers that switch their payphone calls.

#### **Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules**

27. None.

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

#### **Ordering Clauses**

29. Pursuant to authority contained in sections 1, 4, 201–205, 215, 218–220, 226, and 276 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 201–205, 215, 218–220, 226, and 276, that the policies, rules, and requirements set forth herein are adopted.

30. Part 64 of the Commission's rules, 47 CFR Part 64, is amended by revising §§ 64.1300, 64.1310, and 64.1320, as set forth in the Final Rules of this document.

31. The final rules contained in this document are contingent upon approval of the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of these final rules.

32. Until the effective date of the Final Rules, the Commission readopts, on an interim basis, those rules initially adopted in the *Second Order on Reconsideration*.

These rules, currently set forth at 47 CFR 64.1300(a), 64.1310 (a), and 64.1310(b), are effective November 6, 2003.

#### **List of Subjects in 47 CFR Part 64**

Communications common carriers, Telecommunications, Telephones.

Federal Communications Commission.

**Marlene H. Dortch**,  
*Secretary.*

#### **Final Rules**

■ Part 64 of the Code of Federal Regulations is amended to read 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); secs. 403(b)(2)(B), (c), Public Law 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 225, 226, 228, and 254(k) unless otherwise noted.

■ 2. Section 64.1300 is revised to read as follows:

#### **§ 64.1300 Payphone compensation obligation.**

(a) For purposes of this subpart, 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.

(b) Except as provided herein, 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.

(c) The compensation obligation set forth herein shall not apply to calls to emergency numbers, calls by hearing disabled persons to a telecommunications relay service or local calls for which the caller has made the required coin deposit.

(d) In the absence of an agreement as required by paragraph (b) of this section, the carrier is obligated to compensate the payphone service provider at a per-call rate of \$.24.

3. Section 64.1310 is revised to read as follows:

#### **§ 64.1310 Payphone compensation procedures.**

(a) Unless the payphone service provider agrees to other compensation arrangements, each Completing Carrier identified in § 64.1300(a) shall compensate the payphone service provider as follows:

(1) Each Completing Carrier shall establish a call tracking system that accurately tracks coinless access code or subscriber toll-free payphone calls to completion.

(2) Each Completing Carrier shall pay compensation to payphone service

providers on a quarterly basis for each completed payphone call identified in the Completing Carrier's quarterly report required by paragraph (a)(4) of this section.

(3) At the conclusion of each quarter, the chief financial officer of 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.

(4) At the conclusion of each quarter, the Completing Carrier shall submit to the payphone service provider, in computer readable format, a report on that quarter that includes:

(i) A list of the toll-free and access numbers dialed from each of that payphone service provider's payphones and the ANI for each payphone;

(ii) The volume of calls for each number identified in paragraph (a)(4)(i) of this section that were completed by the Completing Carrier;

(iii) The name, address, and phone number of the person or persons responsible for handling the Completing Carrier's payphone compensation; and

(iv) The carrier identification code ("CIC") of all facilities-based long distance carriers that routed calls to the Completing Carrier, categorized according to the list of toll-free and access code numbers identified in paragraph (a)(4)(i) of this section.

(b) For purposes of this subpart, an Intermediate Carrier is a facilities-based long distance carrier that switches payphone calls to other facilities-based long distance carriers.

(c) Unless the payphone service provider agrees to other reporting arrangements, each Intermediate Carrier shall provide the payphone service provider with quarterly reports, in computer readable format, that include:

(1) A list of all the facilities-based long distance carriers to which the Intermediate Carrier switched toll-free and access code calls dialed from each of that payphone service provider's payphones;

(2) For each facilities-based long distance carrier identified in paragraph (c)(1) of this section, a list of the toll-free and access code numbers dialed from each of that payphone service provider's payphones that all local exchange carriers have delivered to the Intermediate Carrier and that the Intermediate Carrier switched to the identified facilities-based long distance carrier;

(3) The volume of calls for each number identified in paragraph (c)(2) of

this section that the Intermediate Carrier has received from each of that payphone service provider's payphones, identified by their ANIs, and switched to each facilities-based long distance carrier identified in paragraph (c)(1) of this section; and

(4) The name, address and telephone number and other identifying information of the person or persons for each facilities-based long distance carrier identified in paragraph (c)(1) of this section who serves as the Intermediate Carrier's contact at each identified facilities-based long distance carrier.

(d) Local Exchange Carriers must provide to carriers required to pay compensation pursuant to § 64.1300(a) a list of payphone numbers in their service areas. The list must be provided on a quarterly basis. Local Exchange Carriers must verify disputed numbers in a timely manner, and must maintain verification data for 18 months after close of the compensation period.

(e) Local Exchange Carriers must respond to all carrier requests for payphone number verification in connection with the compensation requirements herein, even if such verification is a negative response.

(f) A payphone service provider that seeks compensation for payphones that are not included on the Local Exchange Carrier's list satisfies its obligation to provide alternative reasonable verification to a payor carrier if it provides to that carrier:

(1) A notarized affidavit attesting that each of the payphones for which the payphone service provider seeks compensation is a payphone that was in working order as of the last day of the compensation period; and

(2) Corroborating evidence that each such payphone is owned by the payphone service provider seeking compensation and was in working order on the last day of the compensation period. Corroborating evidence shall include, at a minimum, the telephone bill for the last month of the billing quarter indicating use of a line screening service.

(g) Each Completing Carrier and each Intermediate Carrier must maintain verification data to support the quarterly reports submitted pursuant to paragraphs (a)(4) and (c) of this section for 18 months after the close of that quarter. This data must include the time and date that each call identified in paragraphs (a)(4) and (c) of this section was made. This data must be provided to the payphone service provider upon request.

4. Section 64.1320 is revised to read as follows:

**§ 64.1320 Payphone call tracking system audits.**

(a) As a precondition to tendering payment pursuant to § 64.1310(a), all Completing Carriers must undergo a system audit of their § 64.1310(a)(1) tracking system by an independent third party auditor whose responsibility shall be, using audit methods approved by the American Institute for Certified Public Accountants, to determine whether the call tracking system accurately tracks payphone calls to completion.

(b) By the effective date of these rules, each Completing Carrier in paragraph (a) of this section must file an audit report from the auditor (the "System Audit Report") regarding the Completing Carrier's compliance with § 64.1310(a)(1) as of the date of the audit with the Commission's Secretary in CC Docket No. 96-128 and with each payphone service provider for which it completes calls and with each facilities-based long distance carrier from which it receives payphone calls.

(c) The Completing Carrier must comply with, and the third-party auditor must verify, the Completing Carrier's compliance with the following factors in establishing a call tracking system pursuant to § 64.1310(a)(1):

(1) Whether the Completing Carrier's procedures accurately track calls to completion;

(2) Whether the Completing Carrier has a person or persons responsible for tracking, compensating, and resolving disputes concerning payphone completed calls;

(3) Whether the Completing Carrier has effective data monitoring procedures;

(4) Whether the Completing Carrier adheres to established protocols to ensure that any software, personnel or any other network changes do not adversely affect its payphone call tracking ability;

(5) Whether the Completing Carrier has created a compensable payphone call file by matching call detail records against payphone identifiers;

(6) Whether the Completing Carrier has procedures to incorporate call data into required reports;

(7) Whether the Completing Carrier has implemented procedures and controls needed to resolve payphone compensation disputes;

(8) Whether the independent third-party auditor can test all critical controls and procedures to verify that errors are insubstantial; and

(9) Whether the Completing Carriers has in place adequate and effective business rules for implementing and

paying payphone compensation, including rules used to:

(i) Identify calls originated from payphones;

(ii) Identify compensable payphone calls;

(iii) Identify incomplete or otherwise noncompensable calls; and

(iv) Determine the identities of the payphone service providers to which the Completing Carrier owes compensation.

(d) Consistent with standards established by the American Institute of Certified Public Accountants for attestation engagements, the System Audit Report shall consist of:

(1) The Completing Carrier's representation concerning its compliance; and

(2) The independent auditor's opinion concerning the Completing Carrier's representation of compliance. The Completing Carrier's representation must disclose

(i) Its criteria for identifying calls originating from payphones;

(ii) Its criteria for identifying compensable payphone calls;

(iii) Its criteria for identifying incomplete or otherwise noncompensable calls;

(iv) Its criteria used to determine the identities of the payphone service providers to which the completing carrier owes compensation;

(v) The identity of any clearinghouses the Completing Carrier uses; and

(vi) The types of information that the Completing Carrier needs from the payphone service providers in order to compensate them.

(e) At the time of the filing of System Audit Report with the Commission, the Completing Carrier shall file with the Commission's Secretary, and the facilities-based long distance carriers and payphone service providers identified in paragraph (b) of this section, a statement that includes the name of the Completing Carrier, and the name, address and phone number for the person or persons responsible for handling the Completing Carrier's payphone compensation and for resolving disputes with payphone service providers over compensation, and this statement shall be updated within 60 days of any changes of such persons.

(f) One year after the filing of the System Audit Report, and annually thereafter, the Completing Carrier shall engage an independent third-party auditor to:

(1) Verify 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) If a material change has occurred concerning the Completing Carrier's compliance with the prior year's System Audit Report, verify that the material changes do not affect compliance with the audit criteria set forth in paragraph (c) of this section. The Completing Carrier must fully disclose any material changes concerning its call tracking

system in its representation to the auditor. The Completing Carrier shall file and provide copies of all System Audit Reports pursuant to the procedures set forth in paragraph (b) of this section.

(g) Subject to protections safeguarding the auditor's and the Completing Carrier's confidential and proprietary

information, the Completing Carrier shall provide, upon request, to the payphone service provider for inspection any documents, including working papers, underlying the System Audit Report.

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