



**6712-01**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 64**

**[WC Docket No. 17-141, CC Docket No. 96-128, WC Docket No. 16-132; FCC 18-21]**

**Modernization of Payphone Compensation Rules**

**AGENCY:** Federal Communications Commission

**ACTION:** Final rule.

**SUMMARY:** In this document, a Report and Order takes a number of actions aimed at modernizing the Commission's payphone compensation procedure rules by eliminating costly requirements that are no longer necessary in light of technological and marketplace changes. These actions further the Commission's goal of regularly examining and updating its 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. These have no impact on Completing Carriers' continuing obligations under the Commission's rules to maintain accurate call tracking systems and to fully compensate payphone service providers for the calls covered by these rules.

**DATES:** Effective [**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**], except for the amendment to 47 CFR 64.1310(a)(3), which contains information collection requirements that have not been approved by OMB. The Federal Communications Commission will publish a document in the Federal Register announcing the effective date.

**FOR FURTHER INFORMATION CONTACT:** Wireline Competition Bureau, Competition Policy Division, Michele Berlove, at (202) 418-1477, [Michele.Berlove@fcc.gov](mailto:Michele.Berlove@fcc.gov). For additional information concerning the Paperwork Reduction Act information collection requirements

contained in this document, send an email to [PRA@fcc.gov](mailto:PRA@fcc.gov) or contact Nicole Ongele at (202) 418-2991.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission’s Report and Order in WC Docket No. 17-141, FCC 18-21, adopted and released February 22, 2018. The full text of this document is available for public inspection during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. It is available on the Commission’s Web site at [https://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2018/db0222/FCC-18-21A1.pdf](https://transition.fcc.gov/Daily_Releases/Daily_Business/2018/db0222/FCC-18-21A1.pdf).

## **Synopsis**

### **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, we eliminate rules that are no longer needed to ensure that payphone service providers (PSPs) receive the compensation to which they are entitled. 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. 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.” 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.” Finally, we eliminate expired interim and intermediate per-payphone compensation rules that no longer apply to any entity. 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, directs the Commission to ensure that PSPs are fairly compensated for all completed calls using their payphones. 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.

3. On June 22, 2017, the Commission adopted a *Notice of Proposed Rulemaking and Order (NPRM)* proposing and seeking comment on reforms to its payphone compensation procedures. The *NPRM* was published in the Federal Register on July 10, 2017 (82 FR 31743). Specifically, the *NPRM* proposed eliminating or revising the annual audit and associated reporting requirements. 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. The Commission received nine comments in response to its *NPRM*, all of which support revising the Commission’s payphone compensation procedures. The Commission initiated this proceeding in response to waiver petitions and to comments filed in the 2016 Biennial Review.

### **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. At the peak of payphone usage in 1999, over 2.1 million payphones were in service across the United States. By 2013, due to the rapid growth of mobile service subscribership, that number had dropped by more than 90 percent, 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. 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. 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. 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. 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.

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. 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. And Sprint asserts that since its peak in 2005, the amount of payphone compensation it pays each year has declined by 99.3 percent. 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.

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. Many Completing Carriers use clearinghouse vendors to calculate and distribute the compensation due to PSPs. These clearinghouses act as intermediaries between PSPs and Completing Carriers, and they have dispute resolution procedures in place in the event a disagreement regarding the accuracy of compensation should arise. 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 3<sup>rd</sup> 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.” 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. The requirement that Completing Carriers compensate PSPs for 100 percent of all completed calls originating from the PSPs’ payphones remains in place, 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.” There have been no formal or informal complaints filed with the Commission in recent years.

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. 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. For example, Puerto Rico Telephone’s audit cost is now 18 times the amount of payphone compensation it pays. 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. 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. Likewise, as noted

above, Verizon stated that its compensation payments decreased by 98.5 percent from 2004 to 2016. By comparison, Completing Carriers must pay PSPs \$0.494 per compensable call.

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. 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. 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.

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, no longer outweigh the burden imposed on Completing Carriers, 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.

11. *Initial Audit Requirement.* We likewise eliminate the initial audit and associated requirements. 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. Moreover, we agree with commenters that the industry has successfully developed systems that work to ensure accurate PSP call tracking. 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.

12. *Other Audit-Related Requirements.* Finally, because this Order eliminates both the initial and annual payphone call tracking system audit requirements, the remaining requirements associated with these audit requirements no longer serve any purpose. Consequently, we eliminate § 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 the Completing Carrier's payphone compensation. While one commenter suggests that the Commission may wish to retain this requirement to help protect PSPs' rights to full compensation, our rules already require that Completing Carriers provide this same information to PSPs on a quarterly basis, and that requirement remains in effect. 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. 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. 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.

#### **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. 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. 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. We note that no commenter opposed eliminating the CFO certification. Some Completing Carrier commenters do not object to retaining the CFO sworn statement obligation.

14. We decline to eliminate the quarterly sworn statement altogether, as some commenters request. Since PSPs have no contractual relationships with Completing Carriers, 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. 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, is the fact that the carrier's payphone call tracking system is necessarily operating effectively. And though we recognize such quarterly sworn statements impose some burden on carriers, our action today eliminating the CFO requirement reduces that burden substantially. But because "most completing carriers . . . have contracted with vendors to calculate their payphone compensation," they presumably already require and receive assurances from those vendors upon which they can rely in making their sworn statements. 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 *NPRM* and the record is accordingly sparse.

### **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. 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. 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.” Similarly, § 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.” No commenters opposed elimination of these rules, nor did they bring any similarly expired provisions warranting elimination to our attention.

#### **IV. FINAL REGULATORY FLEXIBILITY ANALYSIS**

16. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *NPRM* for the payphone compensation proceeding. 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.

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

17. In the *NPRM*, 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). 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. Additionally, the Commission proposed to eliminate the interim and intermediate per-phone compensation rules. 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.

18. 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**

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

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

20. 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.

21. 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**

22. 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 NPRM seeks comment, if adopted. 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. 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.” 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.

23. 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.

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

25. 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.” 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). 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.

26. 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.” U.S. Census Bureau data from the 2012 Census of Governments indicates that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. The Census of Government is conducted every five (5) years compiling data for years ending with “2” and “7.” Of this number there were 37, 132 General purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,184 Special purpose governments (independent school districts and special districts) with populations of less than 50,000. There were 2,114 county governments with populations less than 50,000. There were 18,811 municipal and 16,207 town and township governments with populations less than 50,000. There were 12,184 independent school districts with enrollment populations 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. 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. Based on this data we estimate that at least

49,316 local government jurisdictions fall in the category of “small governmental jurisdictions.”

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

28. *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 27 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees. 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. The Commission therefore estimates that most providers of local exchange carrier service are small entities that may be affected by the rules adopted.

29. *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 27 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 3,117 firms operated in that year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted. One thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers. Of this total, an estimated 1,006 have 1,500 or fewer employees.

*30. 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 27 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. 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. 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. In addition, 72 carriers have reported that they are Other Local Service Providers. Of this total, 70 have 1,500 or fewer employees.

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.

31. *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 27 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. According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of this total, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted.

32. *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. According to Commission data, 33 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 31 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by the adopted rules.

33. *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 27 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees. 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. 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. Of these, an estimated 279 have 1,500 or fewer employees. Consequently, the Commission estimates that most Other Toll Carriers that may be affected by our rules are small.

34. *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 Form 499 Filer Database, 1,100 PSPs reported that they were engaged in the provision of payphone services. 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.

35. *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 Form 499 Filer Database, 500 companies reported that they were engaged in the provision of

prepaid calling cards. 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.

36. *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 wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. 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. 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. Of this total, an estimated 261 have 1,500 or fewer employees. 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.

37. *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. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice

over Internet protocol (VoIP) services via client supplied telecommunications connections are also included in this industry.” 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. 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. 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**

38. *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 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 § 64.1310(a)(3). Additionally, the Order finds it appropriate to eliminate §§ 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**

39. 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.”

40. 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**

41. 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. 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.

### **V. PROCEDURAL MATTERS**

#### **A. Final Regulatory Flexibility Analysis**

42. As required by the Regulatory Flexibility Act of 1980 (RFA), the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to this Report and Order. The FRFA is contained in section IV above.

#### **B. Paperwork Reduction Act**

43. 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 will be 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.

44. 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.

#### **C. Congressional Review Act**

45. 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, *see* 5 U.S.C. 801(a)(1)(A). 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.

#### **D. Contact Person**

46. 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.

### **VI. ORDERING CLAUSES**

47. 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.

48. 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.

49. 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.

50. 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).

51. 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).

List of Subjects in 47 CFR Part 64

Common carriers, Communications, Telecommunications, Telephone.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch,  
Secretary.

## Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

### **PART 64 – MISCELLANEOUS RULES RELATING TO COMMON CARRIERS**

1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 202, 225, 251(e), 254(k), 403(b)(2)(B), (c), 616, 620, Pub. L. 104-104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 202, 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 revised to read as follows:

#### **§ 64.1301 Per-payphone compensation.**

In the absence of a negotiated agreement to pay a different amount, each entity listed in Appendix C of the *Fifth Order on Reconsideration and Order on Remand* in CC Docket No. 96-128, FCC 02-292, must pay default compensation to payphone service providers for access code calls and payphone subscriber 800 calls for the period beginning April 21, 1999, in the amount listed in Appendix C for any payphone for any month during which per-call compensation for that payphone for that month was or is not paid by the listed entity. A complete copy of Appendix C is available at [www.fcc.gov](http://www.fcc.gov).

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.

\* \* \* \* \*

**§ 64.1320 [Removed]**

4. Remove § 64.1320.

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