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[FR Doc. 05-89 Filed 1-4-05; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 96-128; FCC 04-251]

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

AGENCY: Federal Communications
Commission.

ACTION: Final rule; petitions for
reconsideration.

SUMMARY: By this document, we consider four petitions for reconsideration of our *Report and Order* which established detailed rules (the "rules" or "Payphone Compensation Rules") ensuring that payphone service providers (PSPs) are "fairly compensated" for each and every completed payphone-originated call. This *Order on Reconsideration* does not change the compensation framework adopted last year, but rather refines and builds upon its approach. The Commission provides guidance on the types of contracts that it would deem to be reasonable methods of compensating PSPs, extends the time period that carriers must retain certain payphone records, and clarifies the rules' reporting, certification, and audit requirements.

DATES: Effective January 5, 2005, except for § 64.1310(g) which contains information collection requirements that are not effective until approved by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing the effective date of that section.

ADDRESSES: A copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to Judith-B.Herman@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Darryl Cooper Attorney-Advisor, Competition Policy Division, Wireline Competition Bureau, at (202) 418-7131, or via the Internet at darryl.cooper@fcc.gov or Denise A. Coca, Attorney-Advisor, Competition

Policy Division, Wireline Competition Bureau, at (202) 418-0574, or via the Internet at denise.coca@fcc.gov. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Judith B. Herman at 202-418-0214, or via the Internet to Judith-B.Herman@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order on Reconsideration*, CC Docket No. 96-128, FCC 04-251, adopted October 20, 2004, and released October 22, 2004. 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 copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 1 (800) 378-3160 or (202) 4880-5300, facsimile (202) 488-5563, or via e-mail at <http://www.bcpweb.com>.

Synopsis of the Order on Reconsideration and the Report and Order

I. Introduction

1. In this *Order on Reconsideration*, we consider four petitions for reconsideration of our *Report and Order* adopted on September 30, 2003, which established detailed rules ensuring that PSPs are "fairly compensated" for each and every completed payphone-originated call (Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, *Report and Order*, 68 FR 62751-01, (November 6, 2003)). This *Order on Reconsideration*, released on October 22, 2004, does not change this compensation framework, but rather refines and builds upon its approach. In the *Order on Reconsideration*, the Commission provides guidance on the types of contracts that it would deem to be reasonable methods of compensating PSPs, extends the time period that carriers must retain certain payphone records, and clarifies the rules' reporting, certification, and audit requirements.

II. Background

2. The *Report and Order* held that the last facilities-based long distance carrier in a call path—either an interexchange carrier (IXC) or a switched-based reseller (SBR)—is responsible for compensating PSPs. For local calls, where a local exchange carrier (LEC)

completes a call, that LEC is responsible for compensation. The Payphone Compensation Rules define these responsible carriers as "Completing Carriers" and require them to develop their own system of tracking calls to completion, the accuracy of which must be confirmed and attested to by a third party auditor. Completing Carriers are required to compensate the PSPs on a quarterly basis for calls that are completed on the Competing Carriers' platforms; to provide quarterly reports to the PSPs; and their chief financial officers (CFOs) must attest to the accuracy of the quarterly payment amount. The Payphone Compensation Rules also imposed reporting requirements on an "Intermediate Carrier," defined in the rules as "a facilities-based long distance carrier that switches payphone calls to other facilities-based long distance carriers." Additionally, the Payphone Compensation Rules also give parties flexibility to agree to alternative compensation arrangements (ACA) so that small Completing Carriers may avoid the expense of instituting a tracking system and undergoing an audit.

III. Discussion

3. In the *Order on Reconsideration*, the Commission considers four petitions for reconsideration filed in response to the *Report and Order* in this docket. The *Order on Reconsideration* clarifies and modifies the *Report and Order* by adopting the following changes: (1) Clarifying that a Completing Carrier must give a PSP adequate notice of an ACA prior to its effective date, with sufficient time for the PSP to object to an ACA, and prior to the termination of an ACA; (2) clarifying that, in a complaint proceeding under the Payphone Compensation Rules, a Completing Carrier may assert as an affirmative defense that the PSP's objection to an ACA was unreasonable; (3) clarifying that Completing Carriers are required to report only completed calls in their quarterly reports; (4) extending the time period that carriers must retain certain payphone records, for dispute resolution purposes, from 18 to 27 months; (5) clarifying that quarterly reports should use industry standard formats; (6) clarifying the responsibilities of LECs under the Payphone Compensation Rules; (7) clarifying that a Completing Carrier may post its System Audit Report and § 64.1320(e) statement on its website or on a clearinghouse's website, instead of transmitting these documents to every PSP; (8) clarifying that a Completing Carrier's CFO may issue a single blanket

certification addressed to all PSPs to which the carrier owes compensation, and such certification may be transmitted electronically or posted on the web; and (9) clarifying that where a clearinghouse is performing some of a Completing Carrier's compensation obligations, the Completing Carrier's auditor may rely upon, under certain circumstances, a third party's audit of the clearinghouse.

IV. Procedural Matters

4. *Final Paperwork Reduction Act Analysis.* This document 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 new or 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.”

5. In this present document, we have assessed the effects of extending the time period that carriers must maintain verification data. The amendment to § 64.1310(g), which extends the time carriers must maintain verification data from 18 to 27 months, will not adversely affect businesses with fewer than 25 employees. This amendment only requires carriers to maintain the data an additional 9 months and the cost and paperwork burden on carriers should be minimal. Furthermore, the amendment to § 64.1310(g) is in the public interest because it will help to ensure that the data is available throughout the statute of limitations period. We seek comment on this amendment.

6. The Commission will send a copy of the *Order on Reconsideration*, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act. In addition, the *Order on Reconsideration* and this final certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the **Federal Register**.

7. *Final Regulatory Flexibility Certification.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice-and-comment

rulemaking 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).

8. As required by the RFA, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the **Federal Register** summary of the *Further Notice of Proposed Rulemaking* (Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96–128, *Further Notice of Proposed Rulemaking*, 68 FR 32720, (June 2, 2003)). The Commission sought written public comments on the proposals in the *FNPRM*, including comments on the IRFA. On September 30, 2003, the Commission adopted a *Report and Order* that included a Final Regulatory Flexibility Analysis (FRFA) that conformed to the RFA. In response to four petitions for reconsideration of the *Report and Order*, the Commission adopted this *Order on Reconsideration*.

9. In this *Order on Reconsideration*, the Commission clarifies its payphone compensation rules in ways that will not have a significant economic impact on a substantial number of small entities. As described below, the *Order on Reconsideration* essentially refines and builds upon the payphone compensation rules by clarifying certain ambiguities in the rules and by decreasing certain administrative burdens on carriers.

10. Specifically, we clarify the conditions that a payphone service provider (PSP) may impose on an alternative compensation arrangement (ACA) between an interexchange carrier (IXC) and a switch-based reseller (SBR). In the preceding *Report and Order*, the rules give parties flexibility to agree to ACAs to avoid compliance with any or all of the payphone compensation rules. However, in this *Order on Reconsideration*, we clarify that an ACA may be posted on the web to give PSPs adequate notice and time to object to the ACA. We also clarify that notice of termination may be placed on the web.

This way, Completing Carriers will not be required to send a copy of the ACA and seek affirmative consent from as many as 5500 PSPs. We believe that these clarifications are merely administrative, and therefore the result of the use of the web will be to confer benefits rather than impose burdens on small SBRs. Therefore, these clarifications will not have a significant economic impact on small entities.

11. Additionally, the record in this proceeding demonstrates that PSPs might use their veto power over ACAs in a manner that would unreasonably interfere with an SBR's ability to enter into ACAs. For instance, demands by PSPs that an ACA contain a provision that forces IXCs to assume ultimate responsibility for the payphone compensation obligations of SBRs would undermine the Commission's determination in the *Report and Order* that IXCs are not liable for such payphone compensation. Such behavior would have the effect of deterring IXCs and SBRs from entering into ACAs. Accordingly, to ensure a level playing field for IXCs, SBRs, and PSPs, we clarify our rules to make clear that PSPs do not hold unlimited veto power over an ACA. This *Order on Reconsideration* therefore clarifies that, in a complaint proceeding under the rules, a Completing Carrier may assert as an affirmative defense that the PSP's objection to an ACA was unreasonable. We believe this clarification confers a benefit on small SBRs by allowing them to freely enter into ACAs, thereby avoiding the costs of maintaining a tracking system as well as the costs of a large audit liability. Small PSPs will not be burdened by this ACA procedure because they will likely receive compensation for 100% of all payphone-originated calls, regardless of whether they are completed. For these reasons, we believe this clarification will not impose a significant economic impact on small entities.

12. We also clarify that Completing Carriers are only required to report completed payphone calls and not uncompleted calls or the duration that a circuit is kept open for such calls. In the preceding *Report and Order*, the Commission had already placed extensive requirements on carriers to ensure that payment is based on accurate data: they were obliged to create tracking systems, file System Audit Reports, create a dispute resolution process, provide Completing and Intermediate Carrier Reports, and have their chief financial officer (CFO) certify their quarterly payments. With respect to uncompleted and call duration, we find that the burden and

cost to carriers to report this information outweigh any marginal, additional benefit to PSPs. By not adding additional costly reporting requirements on carriers, this clarification instead confers a benefit on small SBRs. Since no additional costs are being incurred or additional duties imposed on carriers, this clarification adopted in this *Order on Reconsideration* will not have a significant economic impact on small entities.

13. The rules also extend the data retention requirement for completed call data from 18 months to 27 months, because the statute of limitations for bringing lawsuits for payphone compensation is 24 months after the close of a calendar quarter, and because the PSPs need access to this data. Although a number of small SBRs will have to retain records for an additional 9 months, we believe the effect of this revision will not be economically significant. Carriers were already required to retain this data for 18 months under the rules we adopted last year and therefore the effect of this change will be minimal. As we explain in the *Order on Reconsideration*, no commenter provided any data to support its position that it would unacceptably increase the cost for small entities. Should there be a minor increase in costs, that burden is outweighed by having the benefit of a more efficient record-keeping system.

14. To encourage consistency between the various reports required by the payphone compensation rules, we also clarify that carriers should follow one of the standard industry formats established by national clearinghouses. In this *Order on Reconsideration*, we do not require carriers to follow a particular format because we believe that it is neither appropriate nor necessary for the Commission to make up a format. Furthermore, parties did not quantify the cost to update the reports. In the event a small SBR decides to update the reports to meet industry standards, we believe the cost to do so will be minimal and therefore this clarification will not have a significant economic impact on small entities.

15. Similarly, the Commission's clarification concerning the responsibilities of local exchange carriers (LECs) as Completing Carriers does not significantly impact small entities. This clarification addresses a concern that some LECs who pay PSPs through bill credits are not compensating PSPs when a PSP is not served by the LEC or when the LEC acts as an IXC. In this *Order on Reconsideration*, we simply clarify that

a LEC is responsible for compensation for calls made to access code numbers or subscriber toll-free numbers that a LEC maintains. We do not impose any additional responsibilities on LECs and therefore the clarification will not have a significant economic impact on small entities.

16. This *Order on Reconsideration* further clarifies and removes potentially burdensome paperwork requirements allowing the use of electronic methods to comply with our audit and CFO reporting requirements. First, we clarify that system audit reports may be posted on a website instead of requiring them to be sent to as many as 5500 PSPs. Second, these rules also clarify that a Completing Carrier CFO may certify the carrier's quarterly payments to all PSPs in a single document and may post this certification on the web, instead of sending individualized certifications to PSPs. The Commission believes that complying with the rules electronically is no more burdensome than submitting copies. It will also be less expensive for carriers to post the reports and certifications on the web rather than to send paper copies to PSPs. Therefore, these clarifications will not have a significant economic impact on small entities.

17. We also clarify that SBRs and other Completing Carriers may rely on a system audit of a payphone clearinghouse (instead of re-auditing the clearinghouse themselves). We expect that this clarification will benefit small SBRs economically because they will not have to pay for a separate audit of the clearinghouse.

18. Therefore, we certify that the requirements of the *Order on Reconsideration* will not have a significant economic impact on a substantial number of small entities.

Ordering Clauses

19. Accordingly, pursuant to authority contained in sections 1, 4, and 276 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, and 276, *it is ordered* that the policies, rules, and requirements set forth herein *are adopted*.

20. *It is further ordered* that part 64 of the Commission's rules, 47 CFR part 64, *is amended* by revising § 64.1310(a) and (g), and § 64.1320(a), (b), and (e) as set forth in Appendix B to this *Order on Reconsideration*.

21. *It is further ordered* that the Petition for Clarification or Partial Reconsideration filed by APCC *is granted in part and denied in part*, to the extent discussed herein.

22. *It is further ordered* that the petition for Clarification or, in the

Alternative, Reconsideration filed by AT&T *is granted*, to the extent discussed herein.

23. *It is further ordered* that the Petition for Reconsideration and Clarification filed by the RBOC Coalition *is denied*.

24. *It is further ordered* that the Petition for Reconsideration filed by Sprint *is denied*.

25. *It is further ordered* that the Request for Stay filed by APCC *is denied as moot*.

26. *It is further ordered* that for good cause found, the rules set forth in Appendix B *are effective* January 5, 2005, except for § 64.1310(g) which contains information collection requirements that are not effective until approved by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing the effective date of that section.

27. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Order on Reconsideration*, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Telephone, Telecommunications.

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, 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 64.1310 is amended by revising paragraphs (a) introductory text, (a)(3), (a)(4)(i) and paragraph (g) to read as follows:

§ 64.1310 Payphone compensation procedures.

(a) Unless the payphone service provider consents to an alternative compensation arrangement, each Completing Carrier identified in § 64.1300(a) shall compensate the payphone service provider in

accordance with paragraphs (a)(1) through (a)(4) of this section. A payphone service provider may not unreasonably withhold its consent to an alternative compensation arrangement.

* * * * *

(3) When payphone compensation is tendered for a 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. 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) * * *

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

* * * * *

(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 27 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.

■ 3. Section 64.1320 is amended by revising paragraphs (a), (b), and (e) to read as follows:

§ 64.1320 Payphone call tracking system audits.

(a) Unless it has entered into an alternative compensation arrangement pursuant to § 64.1310(a) that relieves it of its § 64.1310(a)(1) tracking system obligation, each Completing Carrier must undergo an audit of its § 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:

(1) With the Commission's Secretary in CC Docket No. 96-128;

(2) With each payphone service provider for which it completes calls and a Completing Carrier may comply with this paragraph's requirement to file copies of the System Audit Report with each payphone service provider by posting the System Audit Report on its website or a clearinghouse website; and

(3) With each facilities-based long distance carrier from which it receives payphone calls.

* * * * *

(e) At the time of filing of a System Audit Report with the Commission, the Completing Carrier shall file with the Commission's Secretary, the payphone service providers and the facilities-based long distance carriers 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. If a Completing Carrier chooses to notify payphone service providers of this statement and its System Audit Report by posting these two documents on its website or a clearinghouse website, then this statement shall include the web address for these two documents.

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[FR Doc. 05-173 Filed 1-4-05; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04-3849; MM Docket No. 00-226; RM-10001]

Radio Broadcasting Services; Fair Bluff, NC, Johnsonville, Litchfield Beach, and Olanta, SC

AGENCY: Federal Communications Commission.

ACTION: Final rule; dismissal of petition for reconsideration.

SUMMARY: At the request of Joint Petitioner Waccamaw Neck Broadcasting Company, licensee of Station WPDJ(FM), Channel 286A, Johnsonville, South Carolina this document dismisses the Joint Petition for Reconsideration of the *Report and Order*, 66 FR 18088 (October 24, 2001), in this proceeding, filed by Atlantic Broadcasting Co., Inc., permittee of Station WSIM(FM), Channel 287C3, Fair Bluff, North Carolina, and Waccamaw Neck Broadcasting Company.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Media Bureau (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order, MM Docket No. 00-226, adopted December 15, 2004, and released December 17, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 1-800-378-3160 or <http://www.BCPIWEB.com>. Document is not subject to the Congressional Review Act. The Commission, is, therefore, not required to submit a copy of this Report and Order to GAO, pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A) because the proposed rule was dismissed, herein.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05-116 Filed 1-4-05; 8:45 am]

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