levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies), Prisoners, Whistleblowing.

For the reasons stated in the preamble, Title 28, Part 0, Subpart K of the Code of Federal Regulations is amended as follows:

PART 0—[AMENDED]

1. The authority citation for Part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

2. Section 0.64–2 is amended as follows:

a. The phrase ''Public Law 95–44'' is removed and the phrase ''Public Law 95–144'' is inserted in its place;

b. The final sentence is revised to read as follows:

§ 0.64–2 Delegation respecting transfer of offenders to or from foreign countries.

* * * The Assistant Attorney General in charge of the Criminal Division is authorized to redelegate this authority to his Deputy Assistant Attorneys General, the Director of the Office of Enforcement Operations, and the Senior Associate Director and Associate Directors of the Office of Enforcement Operations.

Dated: April 15, 1998.

Janet Reno,

Attorney General.

[FR Doc. 98–10832 Filed 4–24–98; 8:45 am]

BILLING CODE 4410–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket 96–128; DA 98–481]

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

AGENCY: Federal Communications Commission.

ACTION: Final rule; clarification and waivers.

SUMMARY: The Common Carrier Bureau adopted a Memorandum Opinion and Order, which clarifies the requirements for the provision of payphone-specific coding digits by local exchange carriers (LECs) and payphone service providers (PSPs) to interexchange carriers (IXCs). The order also clarifies that automatic number identification indicators (''ANI ii'') and flexible automatic numbering identification (''FLEX ANI''), are the methods to provide payphone-specific coding digits that comply with the requirements of the *Payphone Orders*. In addition, the order clarifies the tariff requirements that LECs must file pursuant to the *Payphone Orders*. The order also grants a waiver of part 69 of the Commission's rules so that LECs can establish rate elements to recover the costs of implementing FLEX ANI to provide payphone-specific coding digits for per-call compensation. Additionally, this order provides limited waivers to LECs, PSPs, and IXCs, when appropriate, to facilitate the implementation of per call compensation.

DATES: Effective March 9, 1998.

FOR FURTHER INFORMATION CONTACT: Rose Crellin, Formal Complaints and Information Branch, Enforcement Division, Common Carrier Bureau (202) 418–0960.

SUPPLEMENTARY INFORMATION: This is a summary of the Bureau's Memorandum Opinion and Order in CC Docket No. 96–128 [DA 98–481], adopted on March 9, 1998, and released on March 9, 1998. The full text of the Memorandum Opinion and Order (''Order'') is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. The complete text of this decision also may be purchased from the Commission's duplicating contractor, International Transcription Services, 1231 20th Street, N.W., Washington, D.C. 20036.

Paperwork Reduction Act

The Federal Communications Commission has received Office of Management and Budget (OMB) approval for the following public information collections contained in the Order pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number.

OMB Control Number: 3060–0823.

Expiration Date: 09/30/98.

Title: Pay Telephone Reclassification Memorandum Opinion and Order, CC Docket No. 96–128.

Form No.: N/A.

Respondents: Business or other for-profit entities.

Information collection requirement	No. of respondents (approximately)	Est. time per response (hours)	Total annual burden
a. LEC Tariff To Provide FLEX ANI to IXCs	400	35	14,000
b. LEC Tariff To Recover Costs	400	35	14,000
c. LECS Must Provide IXCs on Payphones that Provide Payphone specific Coding Digits	400	24	9,600
d. LECs must Provide IXCs and PSPs Information on where FLEX ANI is Available Now and When it is to be Scheduled in the Future	400	16	6,400
e. Waiver; LECs to Provide Cost Analysis Upon Request	20	35	700

Total Annual Burden: 44,700 Hours.

Estimated Annual Reporting and Recordkeeping cost Burden: $0.

Needs and Uses: In the MO&O, the Bureau clarifies and provides waivers of requirements established in the Payphone Orders for the provision of payphone-specific coding digits by LECs and PSPs, to IXCs, beginning October 7, 1997. The information disclosure rules and policies governing the payphone industry to implement Section 276 of the Act will ensure the payment per-call

compensation by implementing a method for LECs to provide information to IXCs to identify calls, for each and every call made from a payphone. The Bureau has reviewed several methods of identifying payphone calls and has determined that among them, FLEX ANI is the most flexible and has the added capability of providing a number of additional coding digits, in real-time, that can uniquely identify a call as coming from a payphone. Obligation to respond: Required. Public reporting burden for the collections of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, D.C. 20554.

Summary of Memorandum Opinion and Order

1. In the *order*, the Bureau clarifies and waives certain requirements established in the *Payphone Orders* [1] regarding payphone-specific coding digits [2] to facilitate the transition for local exchange carriers (''LECs''), payphone service providers (''PSPs'') and interexchange carriers (''IXCs'') [3] to provide and receive payphone-specific coding digits to identify calls from payphones to pay payphone compensation for subscriber 800 and access code calls. In doing so, the Bureau concludes that the waivers granted therein to ensure the orderly transition for the requirements established in the *Payphone Orders* to implement Section 276 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (''1996 Act''), are in the public interest. The Bureau finds that the waivers granted therein reflect the transitional ''default per-call rate'' period established by the Commission in the *Payphone Orders* and extended in the *Second Report and Order*. In the *Order*, the Bureau notes that almost 80% of payphones are expected to provide payphone-specific coding digits by March 9, 1998, and the number of payphone digits for which payphone-specific coding digits are available will continue to increase over the next few months as technical problems are overcome by LECs.

2. In the *Order*, the Bureau clarifies requirements established in the *Payphone Orders* for the provision of payphone-specific coding digits by LECs and PSPs, to IXCs beginning October 7, 1997. Specifically, the *Order* explains that automatic number information indicators (''ANI ii'') and flexible automatic numbering identification (''FLEX ANI'') [4] are the methods that LECs can use to provide payphone-specific coding digits that comply with the requirements of the *Payphone Orders*. [5] The *Order* concludes that all LECs must implement FLEX ANI to comply with the requirements of the *Payphone Orders* subject to the limited waivers granted in the *Order*. (i) In concluding that hardcoding ANI ii payphone-specific coding digits and FLEX ANI, not line information database (LIDB), are the only approaches that comply with the requirements of the *Payphone Orders* for the provision of payphone-specific coding digits, the Bureau, in the *Order*, rejects the claim that LIDB also complies with those requirements because the implementation of FLEX ANI is too costly for LECs. In the *Order*, the Bureau explains that the mechanisms established by the Commission in the *Payphone Orders* and the *Second Report and Order*, as well as the waivers granted therein respond to those concerns.

3. The *Order* also clarifies the requirement to transmit payphone-specific coding digits applies only to payphone service provided by LECs to dumb, smart, and inmate payphones. It does not apply to any other LEC provided service such as business lines, PBX, or Centrex lines to which a payphone may be connected.

4. In the *Bureau Waiver Order*, the Bureau stated that payphones appearing on the LEC-provided lists of payphones (LEC ANI lists) will be eligible for per-call compensation even if they do not transmit payphone-specific coding digits. Although payphones on the LEC ANI lists are eligible for per-call compensation during the waiver period of the *Bureau Waiver Order*, and this *Order*, to ensure an orderly transition to the provision of FLEX ANI for all payphones on LEC payphone service lines, not just any LEC service line, PSP payphones must be on LEC payphones lines within 30 days of the release of this order to continue to be eligible for per-call compensation, even if the PSP payphones are on the LEC ANI lists.

5. In response to the concerns raised by LECs, PSPs, and IXCs, the *Order* further clarifies the tariffing requirements for the provision of payphone-specific coding digits established in the *Payphone Orders*. The *Order on Reconsideration* required that LECs ''must make available to PSPs, on a tariffed basis, such coding digits as

[1] *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96–128, Report and Order, 61 FR 52307 (Oct. 7, 1996), 11 FCC Rcd 20,541 (1996) (''*Report and Order*''); Order on Reconsideration, 61 FR 65341 (Dec. 12, 1996), 11 FCC Rcd 21,233 (1996) (''*Order on Reconsideration*'') (together the ''*Payphone Orders*''). The *Payphone Orders* were affirmed in part and vacated in part. See *Illinois Public Telecomm. Ass'n* v. *FCC*, 117 F.3d 555 (D.C. Cir. 1997) (''*Illinois Public Telecomm.*''). See also Second Report and Order, 62 FR 58659 (Oct. 30, 1997), CC Docket No. 96–128, FCC 97–371 (rel. Oct. 9, 1997) (''*Second Report and Order*''), *pets. for recon. pending, review pending, MCI Telecomm. Corp.* v. *FCC*, D.C. Circuit No. 97–1675 (filed Nov. 7, 1997); *Sprint Corp.* v. *FCC*, D.C. Circuit No. 97–1685 (filed Nov. 13, 1997); *Personal Communications Industry Association* v. *FCC*, D.C. Circuit No. 97–1709 (filed Dec. 1, 1997); *Illinois Public Telecommunications Association* v. *FCC*, D.C. Circuit No. 97–1713 (filed Dec. 3, 1997). In the *Payphone Orders*, the Commission adopted new rules and policies governing the payphone industry to implement Section 276 of the Communications Act of 1934, as amended, (''the Act'').

[2] Payphone-specific coding digits provide a method for LECs to transmit, with the automatic number identification (ANI), information (coding number or digits) identifying a call as having been placed specifically from a payphone. See Order on Reconsideration, 61 FR 65341 (Dec. 12, 1996), 11 FCC Rcd at 21,265–66, para. 64.

[3] For purposes of paying compensation for compensable calls and other associated obligations, such as tracking calls, we note that the term ''IXC'' includes a LEC when it provides interstate, intraLATA toll service. See Report and Order, 61 FR 52307 (Oct. 7, 1996), 11 FCC Rcd at 20,584, para. 83 n.293.

[4] FLEX ANI permits the association of additional digits with specific calling party classes of service (e.g. coin phone, hotel/motel, and prison service). FLEX ANI information digits provide information along with the calling party's directory number, which is useful for billing and paying compensation. FLEX ANI coding digits are transmitted as part of the ANI signaling sequence and are used by the receiving switch to identify the type of originating line or the type of call being made. ''Open Network Architecture User's Guide,'' June 1996 at 92.

[5] ANI ii as currently deployed by the LECs does not provide all the payphone-specific coding digits necessary to identify payphones for payphone compensation. Pursuant to the waivers provided in the *Bureau Waiver Order* and this order, ANI ii can be used to provide the ''27'' payphone-specific coding digit until either additional ANI ii codes are hardcoded or FLEX ANI is implemented in a switch. Based on the record before us regarding the additional costs and time it would require to hardcode additional ANI ii digits to provide all of the payphone-specific coding digits necessary for per-call compensation, we clarify in this order that the transmission of payphone-specific coding digits by LECs through FLEX ANI is required unless a LEC hardcodes into all of its switches all the payphone-specific coding digits discussed herein as necessary for identifying payphones calls for per-call compensation. Accordingly, we do not require the hardcoding of these additional ANI ii digits by LECs, although this is an approach that might be used by some LECs, in lieu of FLEX ANI, to transmit payphone-specific coding digits to satisfy their transmission obligations under the *Payphone Orders*. See *Order* paras. 23–25. Where a LEC chooses to employ hardcoding to provide payphone-specific coding digits and to recover the incremental costs from PSPs, as provided in this order, we assume that LEC would file an appropriate tariff as provided in other parts of this order.

part of the ANI for each payphone.'' [12] In the *Second Report and Order,* the Commission included the estimated cost of providing coding digits in the per-call default compensation rate to be paid by IXCs to PSPs for subscriber 800 and access code calls. To comply with the requirements of the *Payphone Orders,* LECs must provide FLEX ANI to IXCs through their interstate tariffs, so that IXCs can identify which calls come from payphones. The LEC Coalition, Bell South, and Bell Atlantic have proposed that LECs modify their interstate access tariffs to provide that IXCs may request FLEX ANI without charge if it is for the purpose of complying with the per-call compensation requirements of the *Payphone Orders.* The LEC Coalition also proposes that LECs recover the costs of providing FLEX ANI to IXCs for payphone compensation from PSPs through a new federal rate element to be applied to all payphone lines on a nondiscriminatory basis. That proposed rate is to be charged monthly on a per-line basis until the costs for implementation of FLEX ANI for payphone compensation are recovered. The *Order* concludes that this approach is consistent with the tariff requirements of the *Payphone Orders.*

6. PSPs will pay the costs incurred by LECs to implement FLEX ANI for payphone compensation through the rate applied to all payphones by the LECs. LECs must provide FLEX ANI to IXCs and the IXCs are charged for this service through the per-call payphone compensation rate which IXCs pay to PSPs. Thus, IXCs will not be charged directly for this service by the LECs. LEC FLEX ANI tariff revisions to provide FLEX ANI to IXCs must be filed no later than March 31, 1998, with a scheduled effective date of April 15, 1998, if a LEC is able to provide FLEX ANI to 25% or more of the smart payphones in its service area. Thereafter, within the waiver period granted in this order, a LEC must file its FLEX ANI tariff to provide FLEX ANI to IXCs no later than when it is able to provide FLEX ANI to 25% or more of the smart payphones in its service area. After filing the FLEX ANI tariff, LECs will continue to make FLEX ANI available as each end office becomes FLEX ANI capable.

7. Beginning March 27, 1998, until a LEC has implemented FLEX ANI for all payphones it serves, it must provide monthly to IXCs and PSPs, upon request, information on: (1) End offices where FLEX ANI is available; and (2) proposed dates for the availability of FLEX ANI by end office for all areas where it is not yet available. Beginning March 27, 1998, all LECs must provide on a monthly basis to IXCs, upon request: (1) The number of smart and the number of dumb payphones that are owned by the LEC PSP and independent PSPs in the LEC service area; and (2) the ANI for smart payphones and the ANI for dumb payphones owned by the LEC and independent PSPs that are providing payphone-specific coding digits and those that are not providing payphone specific coding digits in the LEC service area. Because many LECs have reported technical problems in transmitting payphone-specific coding digits even when FLEX ANI is available for a payphone, we require that in these two reports required herein, that LECs indicate which end offices and payphone ANI's are ''coding-digit-capable.'' A payphone is ''coding-digit-capable'' when it is able to transmit payphone-specific coding digits that are capable of reaching an IXC point of presence (POP) for subscriber 800 and access code calls from payphones using 10XXX and 101XXXX. LECs may provide these reports earlier and LECs do not have to provide this information to an IXC that indicates that it does not require this information to pay per-call compensation.

8. The Bureau required in the *Bureau Waiver Order,* and the *Order* requires therein, that LECs and PSPs must transmit payphone-specific coding digits as soon as they are technically capable, and no later than the waivers they have been granted. The *Order* notes, however, that IXCs must request, test, and coordinate with LECs to obtain this service under carrier to carrier procedures to ensure that there are no problems in providing and receiving the FLEX ANI digits for a particular IXC or LEC. The Bureau notes, however, that LECs will reduce the burden on IXCs of requesting FLEX ANI by simplifying the service request process. While PSPs are obligated, pursuant to the *Payphone Orders,* to compensate LECs for coding of the PSPs payphone lines for the transmission from the PSPs payphones of payphone-specific coding digits through LEC tariffed payphone services, PSPs are not required to request the LEC payphone-specific coding digits transmission service to IXCs.

9. LEC tariffs to recover the costs of implementing FLEX ANI from PSPs must be filed no later than 30 days after full implementation of FLEX ANI. The costs of implementing FLEX ANI can include, for example, generic upgrades excluding the costs of other software features, loading the software, paying a fee for usage of the software, translations and conditioning the trunks for each end office. These costs will be distributed over a reasonable period and be paid by all PSPs. Under § 69.4(g) of the Commission's Rules, 47 CFR 69.4(g), a LEC subject to price cap regulation may establish a switched access rate element for a new interstate service upon approval of a petition demonstrating that establishment of the new rate element would be in the public interest. Because Part 69 authorizes only a limited number of rate elements, a non-price cap LEC must still obtain a waiver of that Part to establish any rate element for a new interstate service. The *Order* grants a blanket waiver of Part 69.4(b) and (c) of the Commission's rules to enable those LECs to establish an appropriate new rate element in their interstate tariffs that reflects the incremental costs directly attributable to the implementation of FLEX ANI to transmit payphone-specific coding digits for the purposes of payphone compensation as described elsewhere in the *Order* and to file the necessary revisions to their interstate tariffs. Second, the *Order* grants to those price cap LECs that must secure it, blanket permission under Part 69.4(g) of the Commission's rules to establish a new rate element in their interstate tariffs that reflects those same incremental costs and to file the necessary revisions to their tariffs.

10. The Bureau also affirms its grant in the *Bureau Waiver Order,*[13] on its own motion, of a limited waiver of five months, until March 9, 1998, to those LECs and PSPs who assert that they cannot provide payphone-specific coding digits as required by the *Payphone Orders.*

11. The Bureau also grants in part the requests of USTA, TDS, and the LEC Coalition. USTA requested that LECs with digital, equal-access switches be given an additional nine months to provide the technology required to supply and accommodate the coding digits; that LECs with non-equal-access switches be exempt from providing payphone identification information until their switches are replaced or upgraded for equal-access; and that LECs be permitted to use whatever technology they select for digital, equal-access switches to provide information that will permit IXCs to track payphone calls in order to compensate PSPs. The

[12] The *Bureau Waiver Order* extended that period for LECs that were unable to provide coding digits until March 9, 1998. 62 FR 58659 (October 30, 1997), 12 FCC Rcd at 16,387, para. 1.

[13] *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996,* 62 FR 60034 (November 6, 1997), CC Docket No. 96–128, Order, 12 FCC Rcd 16,387 (Common Carrier Bureau 1997) (*Bureau Waiver Order*).

LEC Coalition requested that the Commission waive the October 7, 1997 deadline, stating that LECs would be unable to supply forty percent of payphone lines with the requisite coding digits by that date. The LEC Coalition requests a waiver of the payphone-specific coding digit requirements until the Commission clarifies the coding digit requirement. The LEC Coalition states that implementation of FLEX ANI requires loading of the software in switches that do not have it, provisioning, translations, and trunk conditioning. The LEC Coalition also indicates that LECs must test FLEX ANI with IXCs that wish to receive it and ensure proper functioning so that calls are not dropped. TDS, an owner of local exchange carriers, petitioned the Commission to extend the deadline for payphone-specific coding digits from October 7, 1997, until July 1, 1998 and to use LIDB. TDS states that it needs additional time to arrange agreements with database suppliers, and to complete transmission tests to IXCs selected by its subsidiaries.

12. All of the BOCs have indicated problems in implementing FLEX ANI, because of problems, for example, with software upgrades, certain switch types, and network configurations that required heavy vendor software development and network reconfiguration, and therefore, argue that they need additional time to implement FLEX ANI. The *Order* concludes that the LEC Coalition has shown that limited waivers are justified to allow for additional time to implement FLEX ANI. In the *Order*, the Bureau grants Bell Atlantic, SBC, Ameritech, and BellSouth no more than a 90 day waiver to resolve technical and other implementation problems with specific switch types and some call types. In addition, the *Order* grants US West a waiver to provide payphone-specific coding digits until June 30, 1998, to be able to provide FLEX ANI for 90 percent of the smart payphones in its service area and until December 31, 1998, to complete FLEX ANI implementation. With regard to all other LECs that may require additional time to implement FLEX ANI, including GTE and SNET, the *Order* grants each LEC a waiver until no later than September 30, 1998, to be able to provide FLEX ANI for 75 percent of the smart payphones in its service area and until December 31, 1998, to complete FLEX ANI implementation to be able to provide payphone-specific coding digits, subject to any additional waivers for which they may qualify as discussed in the *Order*. Those LECs and PSPs that are able to transmit the required coding digits by March 9, 1998, remain obligated to do so. Similarly, all LECs and PSPs are obligated to transmit the required coding digits as soon as they are technically capable, but in any event no later than the end of the waiver period for which they are eligible pursuant to this order.

13. The *Order* requires that LECs that have been granted a waiver for additional time beyond March 9, 1998, to implement FLEX ANI, must implement FLEX ANI first in locations where there are larger numbers of payphones owned by independent PSPs for which payphone-specific coding digits are not available.

14. The *Order* grants small and midsize LECs an extension to implement FLEX ANI until September 30, 1998, to be able to provide payphone-specific coding digits through FLEX ANI to 75 percent of the smart payphones in its service area and until no later than December 31, 1998, to complete FLEX ANI implementation. The *Order* grants a limited waiver to midsize and small LECs where a LEC is unable to recover its costs, through a monthly charge for no longer than a 10 year period, from all payphones in its serving area.[14] This waiver is specifically granted for small and midsize LECs for which the cost of implementing FLEX ANI would be unreasonably burdensome, despite provisions in the *Order* for cost recovery. The LEC is required to use the analysis set forth in the *Order* to determine whether it qualifies for the waiver. The LEC must perform the analysis on an annual basis. The LEC may assume that the payphone rate element established to recover the cost over a period not greater than 10 years would not be greater than 20% of the national average payphone line cost of $38.90,[15] or $7.78 per line per month. LECs must make this evaluation and qualify for this waiver individually and not as part of a holding company. LECs must make this evaluation within 30 days of the release of this order, and notify IXCs, upon request, that they will not be implementing FLEX ANI pursuant to this waiver. The *Order* required that a LEC delaying the implementation of FLEX ANI pursuant to this waiver provision, must be prepared to submit its analysis of cost recovery for implementing FLEX ANI, if the Bureau requests the analysis. The Bureau may at such time determine whether there continues to be a justification to grant a waiver to that LEC because it is unable to recover its cost of implementing FLEX ANI.

15. The *Order* grants LECs a waiver of the payphone-specific coding digit requirement through FLEX ANI for non-equal access switches until such switches are either upgraded to equal access or replaced.[16] In the *Order*, the Bureau concludes that USTA has shown special circumstances with regard to non-equal access switches and switches with Bell I signalling, because LECs are not able to implement FLEX ANI in those switches at reasonable costs. The Bureau concludes that it would not be in the public interest to require the replacement of these switches with the expenditure of substantial investment solely for the provision of payphone-specific coding digits. When LECs replace or upgrade these switches, however, the *Order* requires that FLEX ANI be implemented within 60 days unless they qualify for another waiver discussed herein. LECs with non-equal access switches must provide information as required above regarding payphones in their service areas.

16. In the *Order*, the bureau denies TDS's request that it be allowed to implement LIDB to comply with the payphone-specific coding digits requirement. TDS is eligible, however, for one or more of the waivers described above.

17. Some LECs indicate that it would be costly to implement FLEX ANI now for switches that they plan to replace in the near future. The *Order* concludes that it is not cost effective to require LECs to implement FLEX ANI in switches that are going to be replaced before October 6, 1999, the end of the default compensation period. Accordingly, the *Order* grants LECs that plan to replace switches before October 6, 1999, a waiver until that date to

[14] In making this evaluation, LECs should not include costs for switch replacements. Below, we grant a waiver for non-equal access switches until they are upgraded to equal access or replaced. If a switch is replaced, however, the costs incurred in implementing FLEX ANI can be included. This limited waiver for small and midsize LECs that are not able to recover their costs of implementing FLEX ANI over up to a 10 year period is not available to price cap, CLASS A, and Tier 1 LECs. In 1996, the Class A LECs included all price cap LECs. .

[15] In the *Second Report and Order* the Commission concluded that the average per line cost was 7 cents per call times an average of 542 calls resulting in an average per line rate of $38.90. *Id.* at para. 102. We conclude that up to a ten year recovery period to implement FLEX ANI would not be unreasonable for this limited waiver for small and midsize LECs to recover their costs.

[16] This waiver for non-equal access switches also covers switches that employ Bell I signaling. Bell I signaling must be used with non-equal access switches and uses a single information digit to identify classes of service. This type of signaling is not compatible with ANI ii coding digits.

provide FLEX ANI through those switches.

18. SBC, BellSouth, Ameritech, SNET, and Bell Atlantic have requested additional time to implement FLEX ANI to resolve specific problems with certain switches and call types, and request waivers because there are technical limitations in passing FLEX ANI payphone-specific coding digits on certain types of calls and switches, and the modifications cannot be completed by March 9, 1998.

19. The *Order* grants BOCs 90 days to resolve technical problems in implementing FLEX ANI. BOCs must provide payphone-specific coding digits earlier than the end of the waiver period for each technical problem, if these problems are resolved earlier than the end of the waiver period granted. BOCs must notify IXCs regarding the call and switch problems the BOCs are having on a monthly basis. With regard to these technical problems, BOCs and other LECs must notify IXCs regarding these problems in implementing FLEX ANI. With regard to problem (2), cited by SBC, FGB service, the *Order* notes that there is currently no standard to provide payphone-specific coding digits and carriers wishing to receive FLEX ANI must take FGD service. Thus, pending the development of standards, the *Order* grants all LECs a waiver and require that carriers taking FGB service pay PSPs per-call compensation using ANI lists or other means they may identify.

20. All LECs and PSPs are obligated to transmit the required coding digits as soon as they are technically capable, but in any event, no later than the end of the waiver period for which they are eligible, pursuant to the *Order*. During the period of the *Bureau Waiver Order* and the waivers granted in the *Orders*, the IXC obligation to pay per-call compensation established in the *Payphone Orders* remains in effect. Neither the *Bureau Waiver Order*, nor the *Order*, waives the per-call compensation requirements of the *Payphone Orders* and the *Second Report and Order*. As required in the *Bureau Waiver Order*, payphones appearing on the LEC-provided lists of payphones are eligible for per-call compensation even if they do not transmit payphone-specific coding digits. As required in the *Payphone Orders* and the *Second Report and Order*, absent a negotiated agreement, IXCs must pay per-call compensation of $0.284, for all calls they receive from payphones not otherwise compensated. Payments must be remitted at least on a quarterly basis. The payment for the October 1997 through December 31, 1997 period must be paid no later than April 1, 1998. LECs that have certified to the IXC that they comply with the requirements of the *Payphone Orders* must receive per-call compensation. The *Order* further states that there likely will be some disputes between IXCs and PSPs about the true number of compensable calls, but that these disputes should not be a basis for delay of payphone compensation payments. The *Order* states that whether a retroactive adjustment (true-up) of payphone compensation may be necessary for the waiver periods granted in the *Bureau Waiver Order* and this order will be addressed in a subsequent order in this proceeding if necessary. The *Order* also does not address AT&T's request, in response to the *Bureau Waiver Order*, that it and similarly situated IXCs receive a waiver to pay per-phone rather than per-call compensation for payphones that do not provide payphone-specific coding digits. Nonetheless, IXCs must still pay compensation on April 1, 1998.

21. The waivers granted in the *Order* are effective immediately in order to ensure that all PSPs continue to receive per-call compensation, as required by the *Payphone Orders*. Without these waivers, many PSPs would not receive per-call compensation, because the LECs servicing them are not yet able to provide the required payphone-specific coding digits.

22. In the *Order*, the Bureau rejects the argument that IXCs should not be required to compensate PSPs for the costs they incur in paying LECs to implement FLEX ANI for payphone compensation. The Commission concluded in the *Payphone Orders* that IXCs are the primary beneficiaries of dial-around calls and they should perform per-call tracking and pay per-call compensation. In addition, the Commission concluded in the *Second Report and Order* that the costs of providing coding digits to IXCs is a cost of doing business of PSPs for which IXCs must provide compensation as part of the per-call rate. In the *Order*, the Bureau also denies USTA's request that the Commission must authorize full cost recovery and additional time for LECs that implemented LIDB for CC Docket No. 91–35 stating that it is unclear what additional costs would have been incurred to implement LIDB to comply with the payphone-specific coding digit requirement of the *Payphone Orders*, separate from those incurred for CC Docket No. 91–35 and that there is insufficient information on the record to grant the request.

23. The *Order* concludes as did the *Bureau Waiver Order*, that it is in the public interest for IXCs to pay payphone compensation beginning October 7, 1997, despite the limited waivers of the requirement to provide payphone-specific coding digits provided in the *Bureau Waiver Order* and this order, because of the clear mandate of Section 276 that PSPs be paid compensation for each and every call. The *Second Report and Order* established a default per-call compensation rate and extended the period of its applicability to address the problem presented by the LECs, IXCs, and PSPs in these waiver requests. Pursuant to the waivers granted in the *Order*, if a payphone does not provide payphone-specific coding digits, the default per-call rate established in the *Second Report and Order* for the first two years of per-call compensation, $0.284 per-call, will continue to be the per-call default rate for that payphone until that payphone provides payphone-specific coding digits.

24. The *Order* also concludes that a continuing waiver of the rule requiring the provision of payphone-specific digits as a prerequisite to payphone compensation in the circumstances identified in the payphone proceeding will serve the public interest, because it will allow us to move forward in implementing the statutory requirement that PSPs receive fair compensation for calls placed from their phones while continuing to progress to a market-based structure for payphone compensation. The Bureau stated in the *Bureau Waiver Order* that the unavailability of the payphone-specific coding digits will not preclude IXCs from identifying payphone calls for the purpose of determining the number of calls for which compensation is owed. Nor will the waiver interfere with the payphones that currently are able to transmit payphone-specific coding digits.

25. The waivers the Bureau grants in the *Order* to LECs and PSPs are effective March 9, 1998, to ensure that all PSPs continue to receive per-call compensation after the expiration of the waiver granted in the *Bureau Waiver Order*. The immediate implementation of these waivers is crucial to the Commission's efforts to ensure fair compensation for all PSPs, encourage the deployment of payphones, and enhance competition among PSPs, as mandated by Section 276 of the Act. In the *Order* the Bureau grants these waivers to all similarly situated LECs and PSPs to avoid a significant administrative impact and further delay of the payment of payphone compensation as required by Section 276.

26. In the *Order*, the Bureau declines to waive the obligation of IXCs to pay per-call compensation during the waiver

period of the *Bureau Waiver Order* and the additional waivers granted within the *Order*. The *Payphone Orders* concluded that the primary economic beneficiaries of a subscriber 800 and access code call are the carriers that carry the call. The *Bureau Waiver Order* required that IXCs pay per-call compensation during the coding digit waiver period as required by the *Payphone Orders*. During that period, IXCs and their customers continued to use payphones to make calls that must be compensated pursuant to the *Payphone Orders* and the *Second Report and Order*. Moreover, IXCs already have implemented surcharges for per-call compensation and they would be benefiting unreasonably if the Bureau were to grant them a waiver of the payphone compensation obligations so that they do not have to pay per-call compensation when payphone-specific coding digits are not available.

27. In the *Order*, the Bureau denies ITA's petition for reconsideration of the obligation to pay compensation during the waiver period, and AirTouch's petition for waiver seeking similar relief, both of which were filed in response to the *Bureau Waiver Order*. The Bureau also denies the requests of ITA and AirTouch that they be granted relief from the payment obligations of the *Payphone Order and the Second Report and Order* until they can block calls. In denying AirTouch's petition, the Bureau notes that AirTouch has not shown special circumstances or that a waiver is in the public interest. The Bureau also declined to reconsider, in response to ITA's Petition, its decision in the *Bureau Waiver Order* to waive payphone-specific coding digit requirements while maintaining, and not waiving, the per-call compensation requirements during the waiver period.

28. Accordingly, pursuant to authority contained in Sections 1, 4, 201–205, 218, 226, and 276 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 201–205, 218, 226, and 276, that the policies and requirements set forth herein are adopted.

29. It is further ordered that this Order is effective immediately upon release thereof, and that the waivers included in this order are effective March 9, 1998.

30. It is further ordered that pursuant to Section 203 of the Communications Act, 47 U.S.C. 203, each of the LECs, absent a waiver, shall FILE tariff revisions to their interstate access tariffs to reflect the availability of FLEX ANI for IXCs for the purpose of payphone compensation no later than March 31, 1998, with a scheduled effective date of April 15, 1998, if FLEX ANI is available for 25% or more of the smart payphones in its service area. Thereafter, within the waiver period it is granted in this order, a LEC must file its tariff revision to provide FLEX ANI to IXCs no later than when it provides FLEX ANI to 25% or more of the smart payphones in its service area.

31. It is further ordered that pursuant to Section 203 of the Communications Act, 47 U.S.C. 203, each of the LECs providing FLEX ANI shall FILE tariffs to recover the cost of implementing FLEX ANI as required herein no later than 30 days after full implementation of FLEX ANI.

32. It is further ordered that LECs are granted a waiver of Part 69 of the Commission's rules to develop a rate element for recovery of costs incurred to implement FLEX ANI from PSPs for the requirements of this order to provide FLEX ANI to IXCs.

33. It is further ordered that the ITA Petition for Reconsideration and the AirTouch Petition for Waiver of the *Bureau Waiver Order* are denied.

34. It is further ordered that the waiver requests of USTA, the LEC Coalition, and TDS are granted to the extent described herein, and otherwise are denied.

Federal Communications Commission.

A. Richard Metzger, Jr.,

Chief, Common Carrier Bureau.

[FR Doc. 98–11163 Filed 4–24–98; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 980415098–8098–01; I.D.031998A]

RIN 0648–AK22

Fisheries Off West Coast States and in the Western Pacific; Western Pacific Crustacean Fisheries; Vessel Monitoring System; Harvest Guideline; Closed Season

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement three management measures governing the crustacean fisheries in the Exclusive Economic Zone around Hawaii. The first measure allows fishing vessels in the Northwestern Hawaiian Islands (NWHI) lobster fishery with vessel monitoring system (VMS) units to transit the prohibited Crustaceans Permit Area 1 VMS Subarea while returning to port following closure of the fishery. Because these vessels are under surveillance by NMFS, they are allowed to traverse the permit subarea. Lobster vessels without VMS units must be outside the permit area when the closure takes effect and be back in port as specified by the Administrator, Southwest Region, NMFS. The second measure changes the deadline by which NMFS must announce the NWHI lobster harvest guideline for the following fishing season from March 31 to February 28. This action gives fishermen additional lead time to prepare their vessels for the lobster season which opens on July 1. The third measure, which pertains to the main Hawaiian Islands crustacean fishery, adds another month (May) to the existing closed lobster season (June through August), which makes Federal regulations for the lobster closed season consistent with the State of Hawaii's closed season for State waters. This rule also contains a nonsubstantive clarification of the definition of Crustaceans Permit Area 1 VMS Subarea.

DATES: Effective May 27, 1998.

ADDRESSES: Copies of background material pertaining to this action may be obtained from Kitty Simonds, Executive Director, Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, or Alvin Katekaru, Resource Management Specialist, Pacific Islands Area Office, Southwest Region, NMFS, 2570 Dole Street, Honolulu, HI 96822,

FOR FURTHER INFORMATION CONTACT: Alvin Katekaru at (808) 973–2985 or Kitty Simonds at (808) 522–8220.

SUPPLEMENTARY INFORMATION: Following the 1997 NWHI lobster season, lobster fishermen reviewed the program and identified two issues that needed to be addressed. First, the requirement that VMS-carrying lobster vessels be outside the Crustaceans Permit Area 1 VMS Subarea when the fishery is closed (50 CFR 660.48), causes these vessels to take an indirect route back to port adding approximately 50 nautical miles to their return trip. Second, fishermen also requested more lead time to prepare (i.e, purchase and outfit lobster traps) for the lobster season and recommended that NMFS announce the next season's harvest guideline no later than 90 days following closure of the previous season.

These issues were initially discussed at the 92nd Council meeting held in April 1997. In August 1997, at its 93rd