

United States Code Annotated [Currentness](#)

Title 47. Telegraphs, Telephones, and Radiotelegraphs

Chapter 5. Wire or Radio Communication ([Refs & Annos](#))

▣ [Subchapter II.](#) Common Carriers ([Refs & Annos](#))

▣ [Part III.](#) Special Provisions Concerning Bell Operating Companies

➡ **§ 276. Provision of payphone service**

(a) Nondiscrimination safeguards

After the effective date of the rules prescribed pursuant to subsection (b) of this section, any Bell operating company that provides payphone service--

- (1) shall not subsidize its payphone service directly or indirectly from its telephone exchange service operations or its exchange access operations; and
- (2) shall not prefer or discriminate in favor of its payphone service.

(b) Regulations

(1) Contents of regulations

In order to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public, within 9 months after February 8, 1996, the Commission shall take all actions necessary (including any reconsideration) to prescribe regulations that--

- (A) establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone, except that emergency calls and telecommunications relay service calls for hearing disabled individuals shall not be subject to such compensation;
- (B) discontinue the intrastate and interstate carrier access charge payphone service elements and payments in effect on February 8, 1996, and all intrastate and interstate payphone subsidies from basic exchange and exchange access revenues, in favor of a compensation plan as specified in subparagraph (A);
- (C) prescribe a set of nonstructural safeguards for Bell operating company payphone service to implement the provisions of paragraphs (1) and (2) of subsection (a) of this section, which safeguards shall, at a minimum, include the nonstructural safeguards equal to those adopted in the Computer Inquiry-III (CC Docket No. 90-623) proceeding;
- (D) provide for Bell operating company payphone service providers to have the same right that independent payphone providers have to negotiate with the location provider on the location provider's selecting and contracting with, and, subject to the terms of any agreement with the location provider, to select and contract with, the carriers that carry interLATA calls from their payphones, unless the Commission determines in the rulemaking pursuant to this section that it is not in the public interest; and

(E) provide for all payphone service providers to have the right to negotiate with the location provider on the location provider's selecting and contracting with, and, subject to the terms of any agreement with the location provider, to select and contract with, the carriers that carry intraLATA calls from their payphones.

(2) Public interest telephones

In the rulemaking conducted pursuant to paragraph (1), the Commission shall determine whether public interest payphones, which are provided in the interest of public health, safety, and welfare, in locations where there would otherwise not be a payphone, should be maintained, and if so, ensure that such public interest payphones are supported fairly and equitably.

(3) Existing contracts

Nothing in this section shall affect any existing contracts between location providers and payphone service providers or interLATA or intraLATA carriers that are in force and effect as of February 8, 1996.

(c) State preemption

To the extent that any State requirements are inconsistent with the Commission's regulations, the Commission's regulations on such matters shall preempt such State requirements.

(d) "Payphone service" defined

As used in this section, the term "payphone service" means the provision of public or semi-public pay telephones, the provision of inmate telephone service in correctional institutions, and any ancillary services.

CREDIT(S)

(June 19, 1934, c. 652, Title II, § 276, as added Feb. 8, 1996, [Pub.L. 104- 104, Title I, § 151\(a\)](#), 110 Stat. 106.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1996 Acts. [House Report No. 104-204](#) and [House Conference Report No. 104- 458](#), see 1996 U.S. Code Cong. and Adm. News, p. 10.

LIBRARY REFERENCES

American Digest System

[Telecommunications](#) ¶276, 323.
Key Number System Topic No. [372](#).

RESEARCH REFERENCES

Encyclopedias

[Am. Jur. 2d Telecommunications § 27](#), Special Provisions Concerning Bell Operating Companies.

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[1](#). Deregulation

Decision of Federal Communications Commission (FCC) to deregulate local coin rates for payphones was not arbitrary and capricious for failing to address possibility of "locational monopolies" held by certain payphone service providers (PSPs), since FCC did not ignore possibility of problematic monopolies, but, rather, concluded that FCC would deal with them if and when specific PSPs were shown to have substantial market power. [Illinois Public Telecommunications Ass'n v. F.C.C., C.A.D.C.1997, 117 F.3d 555, 326 U.S.App.D.C. 1](#), decision clarified on rehearing [123 F.3d 693, 326 U.S.App.D.C. 315](#), certiorari denied [118 S.Ct. 1361, 523 U.S. 1046, 140 L.Ed.2d 511](#), decided after remand [1997 WL 868694](#), corrected [1997 WL 622294](#), stay denied [1997 WL 751204](#), stay denied [1997 WL 775453](#), review granted in part, cause remanded [143 F.3d 606, 330 U.S.App.D.C. 92](#), on remand [1998 WL 323742](#), decided after remand [1999 WL 49817](#), corrected 1999 WL 713706, review denied [215 F.3d 51, 342 U.S.App.D.C. 51](#), on remand [2002 WL 122604](#), on remand [2002 WL 31374875](#). [Telecommunications](#) ¶[951](#)

[2](#). Preemption

Federal Communications Commission (FCC) could mandate that Bell operating companies (BOCs) price intrastate service lines provided to competing payphone service providers (PSPs) at forward-looking, cost-based rates; Telecommunications Act's requirement that FCC issue regulations implementing goal of promoting competition in payphone service industry unambiguously authorized agency to regulate BOCs' intrastate payphone line rates, preempting states' general statutory power to regulate intrastate charges and services. [New England Public Communications Council, Inc. v. F.C.C., C.A.D.C.2003, 334 F.3d 69, 357 U.S.App.D.C. 231](#), rehearing and rehearing en banc denied, certiorari denied [124 S.Ct. 2065, 541 U.S. 1009, 158 L.Ed.2d 618](#).
[Telecommunications](#) ¶894

Telecommunications Act provision requiring Federal Communications Commission (FCC) to establish regulations ensuring that payphone operators be "fairly compensated" authorized FCC to set local coin rates for payphones and thereby preempt states' power to regulate such rates. [Illinois Public Telecommunications Ass'n v. F.C.C., C.A.D.C.1997, 117 F.3d 555, 326 U.S.App.D.C. 1](#), decision clarified on rehearing [123 F.3d 693, 326 U.S.App.D.C. 315](#), certiorari denied [118 S.Ct. 1361, 523 U.S. 1046, 140 L.Ed.2d 511](#), decided after remand [1997 WL 868694](#), corrected [1997 WL 622294](#), stay denied [1997 WL 751204](#), stay denied [1997 WL 775453](#), review granted in part, cause remanded [143 F.3d 606, 330 U.S.App.D.C. 92](#), on remand [1998 WL 323742](#), decided after remand [1999 WL 49817](#), corrected 1999 WL 713706, review denied [215 F.3d 51, 342 U.S.App.D.C. 51](#), on remand [2002 WL 122604](#), on remand [2002 WL 31374875](#). [States](#) ¶18.81;
[Telecommunications](#) ¶754

Although Telecommunications Act provision requiring that payphone service providers (PSPs) be "fairly compensated" by interexchange carriers (IXCs) for dial-around calls provided private cause of action, Act did not completely preempt state laws providing means to collect dial-around compensation, so as to render federal court with federal question jurisdiction over PSP's removed quantum meruit actions against IXC; Act only displaced state laws that were inconsistent with it, and contained savings clause stating that remedies in Act were in addition to those existing at common law or by statute. [Precision Pay Phones v. Qwest Communications Corp., N.D.Cal.2002, 210 F.Supp.2d 1106](#). [Removal Of Cases](#) ¶25(1); [States](#) ¶18.81; [Telecommunications](#) ¶734

[3. Discrimination](#)

Federal Communications Commission (FCC) lacked authority to require non-Bell operating company (non-BOC) local exchange carriers (LECs) to price intrastate service lines provided to competing payphone service providers (PSPs) at forward-looking, cost-based rates; Telecommunications Act's requirement that FCC issue regulations implementing goal of promoting competition in payphone service industry expressly applied only to BOCs. [New England Public Communications Council, Inc. v. F.C.C., C.A.D.C.2003, 334 F.3d 69, 357 U.S.App.D.C. 231](#), rehearing and rehearing en banc denied, certiorari denied [124 S.Ct. 2065, 541 U.S. 1009, 158 L.Ed.2d 618](#).
[Telecommunications](#) ¶894

Telecommunications Act section providing that particular telecommunications operating companies that provided payphone service were not to prefer or discriminate in favor of its own payphone service did not require Federal Communications Commission (FCC) to prohibit all discrimination by such companies; thus, FCC could proscribe discrimination only in provision of basic services. [Illinois Public Telecommunications Ass'n v. F.C.C., C.A.D.C.1997, 117 F.3d 555, 326 U.S.App.D.C. 1](#), decision clarified on rehearing [123 F.3d 693, 326 U.S.App.D.C. 315](#), certiorari denied [118 S.Ct. 1361, 523 U.S. 1046, 140 L.Ed.2d 511](#), decided after remand [1997 WL 868694](#), corrected [1997 WL 622294](#), stay denied [1997 WL 751204](#), stay denied [1997 WL 775453](#), review granted in part, cause remanded [143 F.3d 606, 330 U.S.App.D.C. 92](#), on remand [1998 WL 323742](#), decided after remand [1999 WL 49817](#), corrected 1999 WL 713706, review denied [215 F.3d 51, 342 U.S.App.D.C. 51](#), on remand [2002 WL 122604](#), on remand [2002 WL 31374875](#). [Telecommunications](#) ¶890

[4. Compensation--Generally](#)

Telecommunications Act section providing that Federal Communications Commission (FCC) "within 9 months after February 8, 1996, shall take all actions necessary (including any reconsideration) to prescribe regulations to ensure that all payphone service providers are fairly compensated" did not remove FCC's discretion to deny reconsideration of petition challenging compensation rates for payphone service providers, even if FCC believed that granting such petition was necessary to ensuring fair payphone compensation. [AT&T Corp. v. F.C.C., C.A.D.C.2004, 363 F.3d 504, 361 U.S.App.D.C. 68](#). [Telecommunications](#) ¶890

Federal Communications Commission's (FCC's) exclusion, from independent payphone service providers' (PSPs') per-call compensation for "dial around" coinless calls, of amount for bad debt associated with collection of coinless call fees from interexchange carriers (IXC) was prudent and reasonable, where FCC decided that, on balance, data relating to bad debt was not reliable enough to warrant any educated guess as to future bad debt percentages, since it could not determine what percentage of uncollected compensation resulted from PSP billing errors as opposed to IXCs' refusal to pay. [American Public Communications Council v. F.C.C., C.A.D.C.2000, 215 F.3d 51, 342 U.S.App.D.C. 51](#). [Telecommunications](#) ¶890

Decision of Federal Communications Commission (FCC) that compensation rate to be paid to payphone service providers (PSPs) by interexchange carriers (IXCs) for toll-free and access code calls should be equal to deregulated local coin rate for payphones was arbitrary and capricious, even if rate was merely default rate which could be renegotiated by IXCs, because FCC's rationale for decision, that costs of such calls were similar, was contrary to evidence and FCC failed to acknowledge contrary data. [Illinois Public Telecommunications Ass'n v. F.C.C., C.A.D.C.1997, 117 F.3d 555, 326 U.S.App.D.C. 1](#), decision clarified on rehearing [123 F.3d 693, 326 U.S.App.D.C. 315](#), certiorari denied [118 S.Ct. 1361, 523 U.S. 1046, 140 L.Ed.2d 511](#), decided after remand [1997 WL 868694](#), corrected [1997 WL 622294](#), stay denied [1997 WL 751204](#), stay denied [1997 WL 775453](#), review granted in part, cause remanded [143 F.3d 606, 330 U.S.App.D.C. 92](#), on remand [1998 WL 323742](#), decided after remand [1999 WL 49817](#), corrected 1999 WL 713706,

review denied [215 F.3d 51, 342 U.S.App.D.C. 51](#), on remand [2002 WL 122604](#), on remand [2002 WL 31374875](#). [Telecommunications](#) ⇐866

Federal Communications Commission (FCC) did not act arbitrarily and capriciously by requiring interexchange carriers (IXCs) to "track" payphone calls as part of regulatory scheme promulgated under Telecommunications Act, which required FCC to establish regulations ensuring that payphone operators be "fairly compensated," since IXCs had ability to track calls. [Illinois Public Telecommunications Ass'n v. F.C.C., C.A.D.C.1997, 117 F.3d 555, 326 U.S.App.D.C. 1](#), decision clarified on rehearing [123 F.3d 693, 326 U.S.App.D.C. 315](#), certiorari denied [118 S.Ct. 1361, 523 U.S. 1046, 140 L.Ed.2d 511](#), decided after remand [1997 WL 868694](#), corrected [1997 WL 622294](#), stay denied [1997 WL 751204](#), stay denied [1997 WL 775453](#), review granted in part, cause remanded [143 F.3d 606, 330 U.S.App.D.C. 92](#), on remand [1998 WL 323742](#), decided after remand [1999 WL 49817](#), corrected 1999 WL 713706, review denied [215 F.3d 51, 342 U.S.App.D.C. 51](#), on remand [2002 WL 122604](#), on remand [2002 WL 31374875](#). [Telecommunications](#) ⇐890

Interim plan established by Federal Communications Commission (FCC) for compensation rate to be paid to payphone service providers (PSPs) by interexchange carriers (IXCs) for toll-free and access code calls, which was based on deregulated local coin rate for payphones, was arbitrary and capricious because there was no basis for linking compensation rate to local coin rate and plan required payments from only large IXCs for first year of plan. [Illinois Public Telecommunications Ass'n v. F.C.C., C.A.D.C.1997, 117 F.3d 555, 326 U.S.App.D.C. 1](#), decision clarified on rehearing [123 F.3d 693, 326 U.S.App.D.C. 315](#), certiorari denied [118 S.Ct. 1361, 523 U.S. 1046, 140 L.Ed.2d 511](#), decided after remand [1997 WL 868694](#), corrected [1997 WL 622294](#), stay denied [1997 WL 751204](#), stay denied [1997 WL 775453](#), review granted in part, cause remanded [143 F.3d 606, 330 U.S.App.D.C. 92](#), on remand [1998 WL 323742](#), decided after remand [1999 WL 49817](#), corrected 1999 WL 713706, review denied [215 F.3d 51, 342 U.S.App.D.C. 51](#), on remand [2002 WL 122604](#), on remand [2002 WL 31374875](#). [Telecommunications](#) ⇐890

Communications Act provision, directing Federal Communications Commission (FCC) to prescribe regulations that established a per call compensation plan to ensure that all payphone service providers were fairly compensated for each and every call, conferred a private right of action on payphone service providers to enforce their rights under the FCC regulation establishing per call compensation plan specifying precise level of compensation; the statute was not merely a directive to the FCC, it conferred upon payphone service providers a right to be fairly compensated, and the regulation, in turn, simply provided the details necessary to implement the statutory right. [APCC Services, Inc. v. Cable & Wireless, Inc., D.D.C.2003, 281 F.Supp.2d 52](#), motion to certify appeal granted [297 F.Supp.2d 101](#), motion to certify appeal granted [297 F.Supp.2d 90](#), reversed [418 F.3d 1238, 368 U.S.App.D.C. 79](#), rehearing denied, petition for certiorari filed [2005 WL 3438135](#). [Action](#) ⇐3

Statute which commands the Federal Communications Commission (FCC) to prescribe

regulations to establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed call using their payphones does not provide a private right of action for violations of the FCC regulations it orders.

[Phonetel Technologies, Inc. v. Network Enhanced Telecom, E.D.Tex.2002, 197 F.Supp.2d 720. Telecommunications ↩916\(1\)](#)

Telecommunications Act's grant of authority to Federal Communications Commission (FCC) to regulate payphone compensation plans did not create federal question permitting removal of suit by families of inmates against state alleging that state had entered into agreements for inmate phone service which charged recipients of inmates' collect calls uncompetitive rates and resulted in kickbacks in violation of state constitution and state law; Act created no private cause of action, state court would not have to interpret core terms of Act to decide whether families' claims could succeed, and FCC left it to parties to contracts for payphone services to determine rates of compensation. [Fair v. Sprint Payphone Services, Inc., D.S.C.2001, 148 F.Supp.2d 622. Removal Of Cases ↩19\(5\)](#)

[5. ---- Carrier pays scheme, compensation](#)

Establishment of "carrier pays" compensation scheme for toll-free telephone calls made from payphones was not arbitrary and capricious, as scheme would not preclude competitive market pricing, and scheme was based on balancing of competing concerns of administrative efficiency and consumer convenience, as well as Federal Communications Commission's valid judgment that carriers were primary economic beneficiaries of such calls. [Illinois Public Telecommunications Ass'n v. F.C.C., C.A.D.C.1997, 117 F.3d 555, 326 U.S.App.D.C. 1, decision clarified on rehearing 123 F.3d 693, 326 U.S.App.D.C. 315, certiorari denied 118 S.Ct. 1361, 523 U.S. 1046, 140 L.Ed.2d 511, decided after remand 1997 WL 868694, corrected 1997 WL 622294, stay denied 1997 WL 751204, stay denied 1997 WL 775453, review granted in part, cause remanded 143 F.3d 606, 330 U.S.App.D.C. 92, on remand 1998 WL 323742, decided after remand 1999 WL 49817, corrected 1999 WL 713706, review denied 215 F.3d 51, 342 U.S.App.D.C. 51, on remand 2002 WL 122604, on remand 2002 WL 31374875. Telecommunications ↩890](#)

Interlocutory review of district court's holding that Telecommunications Act provided private right of action was warranted in suit by payphone service providers (PSP) against interexchange carrier (IXC) seeking payment of dial-around compensation for certain long distance telephone calls originating from payphones; issue was dispositive and would be effectively unreviewable on appeal from final judgment, there was substantial difference of opinion on issue, and resolution of issue would conserve judicial resources and spare parties from possibly needless expense if ruling was reversed, would be dispositive of several cases before court, and would provide persuasive authority for courts in other jurisdictions, as well as for Federal Communications Commission (FCC). [APCC Services, Inc. v. AT & T Corp., D.D.C.2003, 297 F.Supp.2d 101. Federal Courts ↩576.1](#)

[6. ---- Market based plan, compensation](#)

Federal Communications Commission (FCC) could rely upon market forces to determine local coin rates for payphones, pursuant to Telecommunications Act provision requiring FCC to establish regulations ensuring that payphone operators be "fairly compensated," without making statutory findings on whether "forbearance" from regulating such rates was appropriate; FCC did not forebear from applying any regulation but merely established compensation plan in accordance with Act which was market-based. [Illinois Public Telecommunications Ass'n v. F.C.C., C.A.D.C.1997, 117 F.3d 555, 326 U.S.App.D.C. 1](#), decision clarified on rehearing [123 F.3d 693, 326 U.S.App.D.C. 315](#), certiorari denied [118 S.Ct. 1361, 523 U.S. 1046, 140 L.Ed.2d 511](#), decided after remand [1997 WL 868694](#), corrected [1997 WL 622294](#), stay denied [1997 WL 751204](#), stay denied [1997 WL 775453](#), review granted in part, cause remanded [143 F.3d 606, 330 U.S.App.D.C. 92](#), on remand [1998 WL 323742](#), decided after remand [1999 WL 49817](#), corrected 1999 WL 713706, review denied [215 F.3d 51, 342 U.S.App.D.C. 51](#), on remand [2002 WL 122604](#), on remand [2002 WL 31374875](#). [Telecommunications](#) ¶951

[7. Subsidies](#)

Federal Communications Commission's (FCC) adoption of certification scheme to effect Telecommunications Act mandate to discontinue intrastate and interstate payphone subsidies in favor of compensation plan, as opposed to requiring proof by local exchange carrier/payphone service provider (LEC PSP) of removal of subsidies as condition of entitlement to compensation, was reasonable under Act and thus entitled to deference; FCC employed same scheme for broad range of other statutory functions, and any false certification by a LEC PSP could be redressed by interexchange carrier's (IXC) separate complaint under Act and would expose LEC PSP to penalties as well as damages. [Global Crossing Telecommunications, Inc. v. F.C.C., C.A.D.C.2001, 259 F.3d 740, 347 U.S.App.D.C. 271](#). [Telecommunications](#) ¶890

Section of Telecommunications Act requiring that payphone subsidies be discontinued did not require that certain operating companies' payphone assets be transferred to its unregulated books, but required only that payphone assets not transferred to separate affiliate be accounted for under nonstructural safeguards designed to effectively protect against cross-subsidization. [Illinois Public Telecommunications Ass'n v. F.C.C., C.A.D.C.1997, 117 F.3d 555, 326 U.S.App.D.C. 1](#), decision clarified on rehearing [123 F.3d 693, 326 U.S.App.D.C. 315](#), certiorari denied [118 S.Ct. 1361, 523 U.S. 1046, 140 L.Ed.2d 511](#), decided after remand [1997 WL 868694](#), corrected [1997 WL 622294](#), stay denied [1997 WL 751204](#), stay denied [1997 WL 775453](#), review granted in part, cause remanded [143 F.3d 606, 330 U.S.App.D.C. 92](#), on remand [1998 WL 323742](#), decided after remand [1999 WL 49817](#), corrected 1999 WL 713706, review denied [215 F.3d 51, 342 U.S.App.D.C. 51](#), on remand [2002 WL 122604](#), on remand [2002 WL 31374875](#). [Telecommunications](#) ¶951

[8. Judicial Review](#)

Data from regional Bell operating companies (RBOCs) suggesting that calls per payphone had been declining over time was not new evidence warranting judicial review

of Federal Communications Commission's (FCC's) denial of long-distance carrier's petition for reconsideration of rule governing compensation of payphone service providers, as data did not relate to events occurring after FCC order at issue or facts unknown to carrier that could not have been known by it, and carrier had notice that such data would have been relevant to rulemaking that was subject of reconsideration request. [AT&T Corp. v. F.C.C., C.A.D.C.2004, 363 F.3d 504, 361 U.S.App.D.C. 68. Telecommunications ¶904](#)

9. Private right of action

Statute requiring Federal Communications Commission (FCC) to prescribe regulations establishing per-call compensation plan to ensure that payphone service providers (PSPs) were fairly compensated for all completed intrastate and interstate calls using their payphones, which was addressed to FCC only, and not to rights of PSPs or obligations of PSPs' interexchange carriers (IXCs), did not regulate IXCs or obligate them to pay dial-around compensation to PSPs, and thus did not create private right of action allowing PSP or its assignee to sue to recover dial-around compensation from IXC. [APCC Services, Inc. v. Sprint Communications Co., C.A.D.C.2005, 418 F.3d 1238, 368 U.S.App.D.C. 79. Telecommunications ¶890](#)

47 U.S.C.A. § 276, 47 USCA § 276

Current through P.L. 109-279 approved 08-17-06

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