

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

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

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

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

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

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

Final Paperwork Reduction Act Analysis

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

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

Final Regulatory Flexibility Analysis

9. *Interim Rules.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). The Commission certifies that, under the Regulatory Flexibility Act, 5 U.S.C. 605(b), there will not be a significant economic impact on a substantial number of small business entities resulting from the interim rules established in this R&O. These rules, adopted in the *Second Order on Reconsideration*, will remain in place until the new rules become effective. The Commission finds that the interim rules, while not optimal, have, as a practical matter, worked reasonably well, and there is no reason to believe that small businesses would be burdened by a brief continuation of these rules during a transition period. Additionally, in the absence of interim rules, it is likely that the industry would nevertheless continue to follow the rules adopted in the *Second Order on Reconsideration* pursuant to their existing contracts. Moreover, it would be burdensome to adopt a third set of rules that would be effective for only a brief interim period. Thus, the Commission adopts interim rules to ensure that PSPs continue to receive compensation during the transition period.

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