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FEDERAL COMMUNICATIONS COMMISSION
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Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of Amendment of Policies and Rules Concerning Operator Service Providers and Call Aggregators	CC Docket No. 94-158 DOCKET FILE COPY ORIGINAL

COMMENTS OF THE
AMERICAN PUBLIC COMMUNICATIONS COUNCIL

The American Public Communications Council ("APCC") submits the following comments on the Commission's Notice of Proposed Rulemaking ("Notice") in this proceeding, FCC 94-352, released February 8, 1995. APCC's comments address the Commission's proposed rule changes regarding collect call branding and emergency calls, and its notice of inquiry regarding the time limit for updating consumer information posted on public telephones.

STATEMENT OF INTEREST

APCC is a trade association made up of more than 1000 competitive providers of pay telephone and public communications equipment, services, and facilities. APCC seeks to promote competitive markets and high standards of service for pay telephones and public communications. APCC has actively participated in the Commission's various proceedings on operator

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services and the implementation of the Telephone Operator Consumer Services Improvement Act of 1990, Pub. L. 102-538, 106 Stat. 3543 (1992).

As independent public payphone ("IPP") providers, APCC members operate pay telephones in competition with each other and with the pay telephone operations of the local exchange carrier ("LEC"). Some IPP providers also provide automated operator services by means of microprocessors located inside payphones.

Some APCC members install and maintain pay telephones which are owned by location owners, or they themselves own and operate pay telephones pursuant to space rental agreements with location owners. There are also other variations on these themes. While some independent payphone providers operate several thousand payphones, most have fewer phones. Many APCC members operate less than 100 payphones each.

DISCUSSION

I. THE COMMISSION SHOULD ADDRESS COLLECT CALL BRANDING BY AMENDING ITS BRANDING RULE

The Commission proposes to amend its operator service rules in order to ensure that persons answering collect calls are informed of the identity of the operator service provider before making a decision whether to accept the call. This is a laudable objective: Called parties should be able to make informed decisions whether to accept collect calls. Moreover, APCC does not object to the substance of the Commission's proposal -- namely, to require that, on collect calls, the operator service provider ("OSP") "[i]dentify

itself, audibly and distinctly," to the party answering the call as well as the caller before charges are incurred. 47 CFR § 64.703(a)(1).

However, a more appropriate way to implement that proposal is by directly amending Sections 64.703(a)(1) of the Commission's rules. For example, the Commission could amend that provision to read:

> (a) Each provider of operator services shall:
>
> (1) Identify itself, audibly and distinctly, to the consumer, and on collect calls, to the party answering the call, at the beginning of each telephone call and before the consumer or called party incurs any charge for the call;

* * *

The Commission could adopt this change pursuant to its general Title II authority. 47 U.S.C. §201.

It is not appropriate, in APCC's view, to attempt to achieve this result by amending the definition of "consumer" in the Commission's rules so as to include the party answering a collect call. Changing the definition of "consumer" would affect a number of other provisions of the Commission's TOCSIA regulations, many of which use the term "consumer," in unpredictable and potentially undesirable ways.

For example, as a result of changing the definition of "consumer," the requirements of Section 64.703(a)(3) of the Commission rules, as well as Section 64.703(a)(1), would apply to parties answering collect calls. That provision requires OSPs to:

> (3) Disclose immediately to the consumer, upon request and at no charge to the consumer --

> (i) A quotation of its rates or charges for the call;
> (ii) The methods by which such rates or charges will be collected; and
> (iii) The methods by which complaints concerning such rates, charges, or collection practices will be resolved.

47 CFR § 64.703(a)(3).

Yet, altering the meaning of this section is not necessary in order to achieve the Commission's objective. It is not necessary for rate and complaint-procedure information to be provided "immediately . . . upon request" to the party answering a collect call, in order to allow that party to make an informed decision whether to accept the call. To achieve the Commission's purpose, it is sufficient to require the OSP to identify itself pursuant to Section 64.703(a)(1).

Further, the impact of the new definition of "consumer" on OSP obligations under this section is unclear, and could be very burdensome. On its face, Section 64.703(a)(3) only requires OSPs to respond to requests for rate or complaint information. It does not require OSPs to take any particular steps to assist called parties in making requests.[1] However, it may be arguable that some such steps are implied.

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[1] Under Section 64.704(b)(2) of the Commission's rules, aggregators are required to post a notice on their telephones informing consumers that they can obtain rate information from OSPs on request. This aggregator notice, of course, will not be seen by the called party. There is no comparable provision that would require an OSP to provide an oral notification or to take other steps. Thus, the existing requirements do not seem to require OSPs to take particular steps to assist called parties in making requests for rate information.

Such implied requirements for affirmative assistance would present difficult implementation issues when collect calls are processed using "automated operator" technology, which is increasingly being used by OSPs for collect calls. When automated technology is used to process collect calls, the party answering the call is informed that it is a collect call and is given a recorded prompt, such as "if you want to accept this call, press 1." There is not necessarily an opportunity for the called party to default to a live operator.

Further, some OSPs may not be able to provide such a live operator default option to the called party. For example, many independent payphones have a microprocessor located inside the payphone with the capability to process collect calls on an automated basis. When a collect call is processed by automated technology within the payphone itself, the interaction between the automated operator and the called party takes place over a direct connection between the payphone and the called party. There is no intervening operator or call processing platform involved in the call. Therefore, there is generally no means for defaulting the call to a live operator once the call has reached the stage of obtaining authorization from the called party.

Yet, the change proposed by the Commission, under some interpretations, might effectively require OSPs that use automated operators to provide such a default option, or else to provide a very cumbersome automated prompt that could negate the efficiencies

offered by automated operators.[2] Compliance with such requirements would be burdensome, and may be completely impractical for some OSPs.

While this is the most obvious example, other provisions of the TOCSIA regulations that use the word "consumer" could also be affected. APCC opposes changing the TOCSIA rules in a way that could result in imposing such unnecessary and burdensome requirements. In the event that the Commission does adopt its proposed definition of "consumer," the Commission should clarify that it does not intend, by that change, to impose any new affirmative obligations on OSPs or aggregators pursuant to Section 64.703(a)(3) or any other provision except Section 64.703(a)(1) and (2).

Moreover, to the extent that the Commission's proposal to amend the definition of "consumer" in its rules is based on an interpretation of the statutory definition of "consumer," the statute will not bear the interpretation proposed. Parties that <u>answer</u> collect calls do not "initiate" such calls within the ordinary meaning of the term.

These problems would be avoided by simply making a direct amendment to the branding provision in Section 64.703(a)(1) of the Commission's rules, as discussed above.

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[2] Simplicity is important in designing automated prompts for authorization of collect calls. Persons answering a telephone generally have had to interrupt what they are doing and it cannot reasonably be assumed that they are prepared to deal with lengthy recorded messages.

II. EMERGENCY CALLS

The Commission proposes to amend its rule on emergency calls to provide that aggregators, as well as operator service providers, should "ensure immediate connection of the call to the appropriate emergency service . . . ." Notice, Appendix. Clearly, access to emergency services is essential and should be freely available from payphones and other telephones. Aggregators should take all the steps they reasonably can to accommodate emergency calls. However, there is a limit to what can be reasonably achieved by manipulating the programming in the telephone. Amendments to the Commission's regulations should be carefully crafted to avoid subjecting aggregators to liability for occurrences beyond their reasonable control.

In the case of emergency calls placed by dialing "911," it is reasonable to prohibit an aggregator from interfering with "immediate connection of the call to the appropriate emergency service . . . ." APCC also supports a requirement that 911 calls be allowed without charge. However, aggregators should not be held responsible for how local exchange carriers route 911 calls. Once the aggregator has allowed the 911 call to proceed to the network as dialed, its responsibilities should be at an end.

If the Commission intends to extend aggregator requirements to other dialing sequences besides 911, it must ensure that "emergency dialing sequences" are clearly and reasonably defined, so that aggregators do not have to guess whether they are in compliance. Since 911 is the standard emergency dialing sequence, the rule

should apply only to 911 in those areas where 911 is recognized. In areas where 911 is not yet recognized, the rule should apply to those emergency dialing sequences for which access is required by state public utility commission regulations.

In the case of "0" calls, the responsibilities of an aggregator are largely determined by state regulation. In some states, "0" calls must always be sent to the LEC. In others, "0" calls may be routed to another OSP, or handled by a store-and forward mechanism in the payphone. In such cases, the Commission's previous rulings on OSP emergency responsibilities already determine the outcome. Therefore, there is no need for further regulations regarding an aggregator's handling of "0" calls.

III. TIME LIMIT FOR UPDATING CONSUMER INFORMATION

The Commission asks whether there should be a time limit for updating consumer information, such as the name of the presubscribed OSP, required to be posted on telephones. APCC agrees that updates should not be unreasonably delayed, and does not object to imposing a reasonable time limit. However, public payphone providers should be allowed to update information in accordance with regularly scheduled maintenance activities, such as coin collection. Any time limit should recognize that updating in the course of such regularly scheduled maintenance is a valid defense to alleged violation of the time limit.

Further, aggregators should not be held responsible for changes that result from "slamming" of which the aggregator cannot reasonably have been expected to be aware. Unlike local exchange carriers ("LECs"),[3] IPP providers do not physically control the primary interexchange carrier ("PIC") for their payphones, and thus should not be held responsible when slamming results in a PIC change that the IPP provider does not initiate or even learn about on a timely basis.

Respectfully submitted,

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[3] Compare New England Telephone and Telegraph Co., Notice of Apparent Liability for Forfeiture, File No. ENF-95-01, DA 94-1156, released October 14, 1994.