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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

EX PARTE

William F. Caton
Acting Secretary
Federal Communications Commission
Mail Stop 1170
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Dear Mr. Caton:

Re: RM-8181, Inmate Payphone CPE

Yesterday, Polly Brophy, Senior Attorney, Pacific Telesis Legal Group, Ray Ruiz, Regulatory Case Manager, Pacific Bell, and I met with the following to discuss issues summarized in the attached document: John Nakahata, Senior Legal Advisor, Office of Chairman Hundt; James L. Casserly, Senior Legal Advisor, Office of Commissioner Ness; Richard K. Welch, Legal Advisor, Office of Commissioner Chong; Suzanne Tetreault, Associate General Counsel, and Sonja Rifken, Office of General Counsel, and Alan Alden Thomas, Staff Attorney, Network Services Division, Common Carrier Bureau. Please associate this material with the above-referenced proceeding.

We are submitting two copies of this notice in accordance with Section 1.1206(a)(1) of the Commission's Rules.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,



Attachment

cc: James L. Casserly
John Nakahata
Sonja Rifken
Suzanne Tetreault
Alan Alden Thomas
Richard K. Welch

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INMATE PUBLIC TELEPHONES:

ANOTHER VIEW

**INMATE PUBLIC TELEPHONES ARE REGULATED UNDER
FIFTEEN-YEAR OLD PRECEDENT; DURING THAT PERIOD
COMPETITION HAS THRIVED**

- **1980: Commission ruled that LEC public telephones are not CPE. Second Computer Inquiry, 77 FCC 2d 384, 447 n. 57 (1980).**
- **1985: Commission reaffirmed original ruling: “We . . . conclude . . . that the coin and non-coin pay telephone terminals made available by [LECs] do not constitute CPE for purposes of Computer II.” Tonka Tools, 58 RR 2d 903 at para. 14 (1985).**
- **Inmate public telephones have been offered as part of the LECs’ regulated services during this fifteen-year period. During that time, the regulated status of LEC inmate public telephones has not impeded competition.**
- **IXCs, LECs and IPPs all compete for the right to place public telephones in correctional institutions and pay commissions to correctional institutions for that right (LECs pay on intraLATA usage only).**
- **LECs, unlike IPPs, cannot recommend an IXC to a correctional institution or negotiate with the correctional institution for the right to PIC the IXC.**

**THE TONKA ANALYSIS APPLIES TO LEC INMATE
PUBLIC TELEPHONES**

- **Tonka applied to both public and semi-public telephones and was premised upon (1) functional integration of instrument and network and (2) use of public telephones by members of the general public or some segment thereof. 58 RR at para. 12.**
- **Inmates are a segment of the general public, just as are military base personell, students at a school, and employees at a factory. To inmates, like other users of public telephones, the service and the instrument are functionally integrated and the user cannot separately select or pay for the equipment, or control access to it.**
- **Tonka specifically rejected the argument that the location of functionality in the instrument or the network is a basis for classifying public telephones as CPE. 58 RR at n. 28.**

ICSPTSF'S "CROSS-SUBSIDY" ARGUMENT IS A RED HERRING

- **ICSPTSF argues that the LECs are "cross-subsidizing" inmate public telephones because LECs receive revenues from the payphone element of the carrier common line charge ("access charges").**
- **The cross-subsidy argument assumes wrongly that inmate public telephones are not regulated. As explained above, inmate public telephones have always been regulated.**
- **Access charges are assigned pursuant to a prescribed formula as part of the jurisdictional separations process. This process provides a mechanism to recover the non-traffic sensitive costs of placing and maintaining sets and lines.**
- **Recovering costs pursuant to this mechanism is not a "cross-subsidy." Since inmate public telephones are regulated, no unlawful cross-subsidy can occur.**
- **If inmate public telephones are deregulated, there will be no means for LECs to recover the costs of placing and maintaining newly deregulated equipment.**

**THIS IS NOT AN APPROPRIATE CASE FOR A
DECLARATORY RULING**

- **The purpose of a declaratory ruling is to clarify an unclear or ambiguous ruling. 47 C.F.R. { 1.2. It is not the appropriate means to review a settled decision, nor is it a substitute for a petition for reconsideration. In re PSC of Maryland, 4 FCC Rcd 4000, 4004 (1989).**
- **If the Commission is inclined to reconsider Tonka, it should do so through an omnibus proceeding that would allow full consideration of the effect of deregulation of LEC inmate public telephones on competition.**