

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
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Policy and Rules Concerning the)
Interstate, Interexchange)
Marketplace)
)
Implementation of Section 254(g))
of the Communications Act of)
1934, as amended)

CC Docket No. 96-61

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**COMMENTS OF THE
AMERICAN PUBLIC COMMUNICATIONS COUNCIL**

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**COMMENTS OF THE
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The American Public Communications Council ("APCC") submits the following comments on Section III (Regulatory Forbearance) of the Commission's March 25, 1996 Notice of Proposed Rulemaking ("Notice") in this proceeding. APCC is a national trade association of more than 1,200 independent public payphone ("IPP") providers. APCC seeks to promote competition and high standards of service in the pay telephone industry.

As IPP providers, APCC members operate their pay telephones independently of the pay telephone operations of the local exchange carrier ("LEC"). Service is provided to the public either by reselling the service of the LEC and

interexchange carriers ("IXCs"), or by routing calls to such carriers. In those instances where interstate service is provided by IPPs on a resale basis, the payphone owner is usually subject to the tariff filing requirements of Section 203. While some IPP providers operate several thousand payphones, most have far fewer. Most APCC members operate less than 1,000 payphones, and many operate as few as 50 - 100 payphones. Especially for these smaller companies, the preparation, filing and revision of Section 203 tariffs imposes a substantial economic and administrative burden.

Except as discussed in Section II of these comments, APCC agrees with the Commission's tentative conclusion in Section III of the Notice that, pursuant to Section 10 of the Communications Act of 1934, as amended ("the Act"), 47 U.S.C. § 160, the Commission should forbear from requiring the filing of Section 203, 47 U.S.C. § 203, tariffs for domestic services offered by non-dominant interstate interexchange carriers. Notice, ¶ 27. If, however, the Commission determines that it cannot justify forbearing from requiring Section 203 tariff filings by all non-dominant IXCs offering domestic service, APCC submits that the Commission can and should do so with respect to the provision of coin long-distance service by IPP providers.

At the same time, APCC urges the Commission not to take action in this proceeding that would prejudice the outcome of the Commission's ongoing inquiry into "benchmark" regulation of operator services.

I. THE COMMISSION SHOULD FOREBEAR FROM APPLYING THE SECTION 203 TARIFF FILING REQUIREMENT TO IPP PROVISION OF COIN LONG-DISTANCE SERVICE

IPP providers engage in the resale of domestic interstate interexchange service whenever a caller places a domestic interstate coin call from an IPP payphone. Interstate coin calls are made relatively infrequently. Typically, a payphone user wishing to make an interstate long-distance call does so with a calling card or by placing a collect call. Thus, interstate coin calls account for only a very small portion of IPP providers' revenue. Nevertheless, IPP providers must bear the expense and administrative burden of preparing and filing tariffs governing their provision of coin long-distance service.

Section 10 of the Act requires the Commission to:

forbear from applying any regulation or any provision of this Act to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services, in any or some of its or their geographic markets, if the Commission determines that --

(1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunicatinos carrier or telecommunicatinos service are just and reasonable and are not unjustly or unreasonably discriminatory;

(2) enforcement of such regulation or provision is not necessary for the protection of consumers; and

(3) forbearance from applying such provision or regulation is consistent with the public interest.

47 U.S.C. § 160(a).

APCC submits that, in the case of IPP domestic interstate coin calls, the Commission can and should make the determination that each of the three Section 10 factors is satisfied, and that the Commission must therefore forbear from requiring the filing of tariffs governing the provision of such service. First, tariff filings are not necessary to ensure that the charges and practices of IPP providers are "just and reasonable" and not "unjustly or unreasonably discriminatory." 47 U.S.C.

§ 160(a)(1). Since IPP providers lack market power, none of them is in a position to set unreasonable or discriminatory rates for coin calls because such behavior would result in the loss of customers. See Notice, ¶ 28. IPP payphones represent a small percentage of the overall public payphone market and face robust,

entrenched competition from the LEC payphones as well as other IPP providers. If an IPP provider offers coin long-distance at rates that are unacceptable to customers, those customers have a number of alternatives, including use of a competitor's payphone, placing a dial-around, collect or calling card call, or placing the call on a cellular or PCS phone.

Second, enforcement of the Section 203 tariff requirement for IPP interstate coin calls "is not necessary for the protection of consumers." 47 U.S.C. § 160(a)(2). Because of the unique nature of the service, consumers are apprised directly and immediately of the rates charged by IPPs for interstate coin calls prior to the placement of a call. After the consumer dials the desired number, the payphone calculates the call rate and then prompts the customer to deposit the appropriate amount for the initial calling period. If the caller is, for any reason, dissatisfied with the rate, he or she is free not to place the call. There is thus no need for public tariff filings of the rates charged for IPP coin long-distance; IPP consumers are themselves in a position to evaluate coin long-distance rates.

Finally, forbearing from imposing tariff filing requirements on IPP interstate coin calls would be in the public

interest. 47 U.S.C. § 160(a)(3). As the Commission recognized generally in the Notice, forbearance will minimize any chance of price coordination by IPP providers. Notice, ¶ 30. Moreover, detariffing coin long-distance will benefit the public by relieving IPP providers from burdensome and unnecessary administrative expenses, thereby increasing the ability of IPP providers to install additional public payphones in new or currently under-served locations.

II. The Commission Should Not Prejudice Its Inquiry into "Benchmark" Regulation of Operator Services

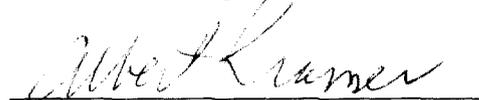
The Notice states that the Commission is not addressing here the issue of forbearance from applying Section 226 of the Act, which requires operator service providers ("OSPs") to file informational tariffs. Notice, ¶ 20; 47 U.S.C. § 226. However, the Commission does not disclaim that its forbearance proposal, if adopted, would relieve OSPs of Section 203 filing requirements. 47 U.S.C. § 203. Unlike Section 226, Section 203 requires tariffs to be filed in advance of their effective date, thereby making it possible for the Commission to suspend and investigate tariffs in appropriate cases. The Commission is currently considering, in Docket No. 92-77, various proposals for exercising its Title II powers to apply "benchmark" regulation to

operator service rates that appear to be excessive. Public Notice, DA 95-473, released March 13, 1995. Some actions the Commission has been urged to take in those proceedings may be inconsistent with forbearance from applying Section 203 of the Act to operator services.

APCC urges the Commission not to take any action in this proceeding that would prejudice the outcome of the Commission's inquiry into "benchmark" regulation of operator services. Any determination regarding forbearance from applying Section 203 (as well as Section 226) tariffing requirements by operator service providers would be more appropriately made in Docket No. 92-77.

April 25, 1996

Respectfully submitted,



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