RECEIVED

JUN 1 1 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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

In the Matter of	)	
Implementation of the Telecommunications Act of 1996:	)	CC Docket No. 96-115
Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information	)	

DOCKET FILE COPY ORIGINAL

COMMENTS OF AMERICAN PUBLIC COMMUNICATIONS COUNCIL

Albert H. Kramer
Robert F. Aldrich
DICKSTEIN, SHAPIRO & MORIN, L.L.P.
2101 L Street, N.W.
Washington, D.C. 20554
(202) 828-2236

Attorneys for American Public Communications Council

No. of Copies rec'd 0+6

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

In the Matter of	)	
Implementation of the Telecommunications Act of 1996:	)	CC Docket No. 96-115
Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information	)	

COMMENTS OF
AMERICAN PUBLIC COMMUNICATIONS COUNCIL

The American Public Communications Council ("APCC") submits the following comments in response to the Commission's Notice of Proposed Rulemaking in these proceedings, FCC 96-221, released May 17, 1996 ("Notice").

STATEMENT OF INTEREST

APCC is a national trade association comprising over 1,200 manufacturers and providers of independent public payphones ("IPPs"). APCC's purpose is to promote fair competition and high standards of service in the payphone and public communications markets. APCC has actively participated in every major FCC proceeding affecting payphones.

SUMMARY

The Commission should clarify that, in the context of existing regulation of LEC public payphones, there is no "customer" subscribing to the payphone line.

Accordingly, information about the use of a LEC payphone is "aggregate customer information" and should be made available to IPP providers on the same terms as it is available to the LEC itself. 47 U.S.C. § 222(c)(3).

DISCUSSION

In the recently issued Notice of Proposed Rulemaking to implement the payphone reclassification provisions of the Telecommunications Act of 1996, 47 U.S.C. § 226, the Commission tentatively concluded that the rules adopted in this proceeding regarding customer proprietary network information ("CPNI") should apply to a Bell Operating Company's ("BOC") provision of payphone service. Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Notice of Proposed Rulemaking, CC Docket No. 96-128, FCC 96-254, released June 6, 1996 ("Payphone NPRM"). There are a number of CPNI-related issues concerning payphones that must be addressed by rules adopted in this proceeding or in CC Docket No. 96-128.

It is important to address who is the customer for purposes of payphone services. At present, when an IPP provider offers payphone service, the IPP provider is required to subscribe to exchange service, including an access line, provided by the local exchange carrier ("LEC"). Thus, the IPP provider is a "customer" of the LEC, and Section 222 requires the LEC to refrain from using information about the use of the payphone, without authorization, for any purpose other than the provision of the services subscribed to by the IPP provider.

BQ#F01I; 547431

When a LEC offers public payphone service, at present, by contrast, there is no "customer" subscribing to the payphone line. The typical public payphone is placed entirely at the discretion of the LEC, and no customer is billed for the connection of the payphone to the network.[1] Under these circumstances, information about the use of an individual payphone, such as traffic volume, etc. that does not identify individual end users is "aggregate" payphone information and must be available to other parties, including IPP providers, on the same basis as it is available for the LEC's own use. 47 U.S.C. § 222(c).

In the absence of Commission regulation, IPP providers increasingly have encountered unreasonable and discriminatory refusals by LECs to provide information about the traffic at locations currently served by LEC payphones. In the past, information about traffic at existing LEC payphones was often made available to IPP providers if they provided an authorization, usually in the form of a Letter of Agency ("LOA") from the location provider. In the last few years, however, a number of LECs have allowed or encouraged a new procedure whereby a location "agent" obtains authorization to handle decisions formerly made by the location provider regarding the services provided at the LEC payphone. These agents have been used by some Bell Companies as a device to aggregate locations and thereby to increase the level of interLATA commission payments offered to location providers. The agent has a

[1] Section 276 of the Act mandates a restructuring of payphone service so that, at least in the case of the Bell companies, the Bell payphone divisions will be required to at least impute the full cost of the lines serving their payphones. While it is questionable whether even at that time the LEC's payphone entity would become the "customer" of the services provided to its own payphones for purposes of Section 222, there is at least a colorable argument to that effect. At present, however, there is no "customer" or "subscriber" subscribing to a LEC payphone line.

contractual relationship both with the location provider and with the LEC, and consequently has a strong interest in keeping the LEC payphone at the location. Examples of such contracts are attached to these comments. In a number of areas, when IPP providers obtain authorization from the location provider and request information from the LEC regarding the use of the payphone, the LEC refuses to provide information on the grounds that the location agent has been granted the exclusive right to obtain the information.

Such refusal to provide competitively valuable information is unreasonable and discriminatory. Whatever rights a location "agent" may acquire from location providers regarding the selection of operator service providers serving a location, the "agent" cannot have the exclusive right to such information because neither the agent nor the location provider is the "customer" of LEC payphone service.

The Commission should adopt a regulation to clarify that, in the absence of a true "customer," usage information must be provided on a nondiscriminatory basis. This step is necessary and is consistent with the purposes of Section 222 of the Act to promote competitive equity while preserving individual customer privacy. As long as a LEC's public payphones remain integrated with its regulated local exchange service, IPP providers are subject to all the discrimination and cross-subsidization that the Act is intended to prevent. 47 U.S.C. § 276. Therefore, in the absence of a "customer" whose privacy must be protected, competitive equity requires the Commission to ensure that IPP providers have an equivalent opportunity to learn commercially valuable information about the usage of LEC payphone locations.

Such information should be available to IPP providers on reasonable and nondiscriminatory terms. At a minimum, the Commission should make clear that an IPP provider that has obtained the location provider's consent has a right to receive aggregate customer information, whether or not a location "agent" is asserting an exclusive right to such information.

Further, until the Section 276 proceedings are complete, and the new LEC payphone service structure emerges, the Commission should reserve decision on whether the LEC payphone service provider will be its own "customer" in the future for purposes of the CPNI rules.

CONCLUSION

For the foregoing reasons, the Commission's CPNI rules should make clear that information about use a of a LEC payphone is aggregate customer information and should be available to IPP providers if it is available to the LEC or others.

June 11, 1996

Respectfully submitted,

Albert H. Kramer
Robert F. Aldrich
DICKSTEIN, SHAPIRO & MORIN, L.L.P.
2101 L Street, N.W.
Washington, D.C. 20554
(202) 828-2236

Attorneys for American Public Communications Council

ATTACHMENT 1

AGREEMENT BETWEEN

A LEC AND A LOCATION "AGENT"

Contract No. [redacted]

PUBLIC TELEPHONE AGREEMENT

[redacted] into by and between [redacted] corporation, fdba [redacted], successor to [redacted] to [redacted], a corporation incorporated under the laws of the State of [redacted].

WHEREAS, [redacted] has or is entering into Letters of Agency Authorization (hereinafter "LOAA") with various principals (hereinafter "Space Providers") to manage the Space Provider's public telephone service;

WHEREAS, [redacted] desires [redacted] to provide the local and IntraLATA service for the Space Provider;

WHEREAS, [redacted] is willing to provide local and intraLATA public telephone service to [redacted] on behalf of the Space Providers; and

WHEREAS, the parties desire to enter into this Agreement to set forth their respective rights and obligations regarding the provisioning of the local and IntraLATA public telephone services.

C-1
2-14-92

1. **TERM**. Public Telephone service shall commence the 2ND day of MARCH, 1992, and shall continue in effect for a period of THREE (3) years ("initial term"). Upon completion of initial term, this Agreement may be extended or renewed for one (1) additional two (2) year period ("renewal period") by mutual written agreement of the parties at least thirty (30) days prior to the end of the initial term. In the event this Agreement is neither extended nor renewed, and service continues to be provided to [redacted], this Agreement shall continue on a month-to-month basis under the same terms and conditions unless terminated by either party upon thirty (30) days written notice.

2. **SCOPE OF AGREEMENT**. [redacted] has accounts within [redacted]'s telecommunications service area which are or will be available during the term of this Agreement for the placement of public telephones. This Agreement applies to public telephones currently installed and to future installations. Contracts now existing between [redacted] and [redacted] are superseded by this Agreement. [redacted] retains the right to establish rates for public telephone services.

3. **RESPONSIBILITY OF [redacted]**. [redacted] agrees to:

3.1. Install public telephones, associated equipment, wiring, hardware, and enclosures at locations mutually agreed upon by both parties.

3.2. Jointly determine with [redacted] the appropriate number and type of public telephones and enclosures to be installed at each location.

3.3. Service and repair public telephones and associated equipment at [redacted] expense, except as otherwise agreed upon herein.

3.4. Collect and count revenue from each public telephone installed.

3.5. Provide alphabetical and classified directories.

3.6. Notify Space Provider by mail that [redacted] has been designated as the customer of record pursuant to the LOAA and this Agreement.

3.7. Refer all inquiries made by Space Providers regarding [redacted]s service to [redacted] and provide Space Provider with the appropriate contact telephone number to reach [redacted]. [redacted] will advise Space Providers that [redacted] is a payphone management company and not an agent or representative of [redacted].

3.8. Upon written request from [redacted], will ensure all public telephones are switched to select [redacted] chosen interLATA carrier. [redacted] understands and agrees that [redacted] cannot participate in the evaluation and selection of interLATA carriers.

3.9. When available, [redacted] intends to convert commission reports to 9-track tape to be submitted to [redacted].

4. RESPONSIBILITY OF [redacted].

4.1. [redacted] agrees to:

a. Provide adequate space for public telephones which is easily accessible to the general public during the normal operating hours of Space Provider. In the event Space Provider is not the owner of the premises, [redacted] shall, where necessary, obtain permission from the building/property owner or owner's agent for the placement of [redacted]'s public telephones, and shall be responsible for any fees for use of required riser cable and electric power.

b. Maintain the area around the public telephones and enclosures and ensure safe and ready access by the public and [redacted].

c. Allow [redacted] access to collect revenues or perform maintenance during Space Provider's normal operating hours.

d. Exercise reasonable care to prevent the loss through theft of monies from the collecting devices and any damage to the equipment from any source.

e. Provide originals or certified copies of LOAAs to USWC. [redacted] agrees that LOAAs will not be accepted by [redacted] as notification of [redacted] renewal of an existing agreement between Space Provider and [redacted], and that official notification of non-renewal shall [redacted] pursuant to said agreement between Space Provider and [redacted].

4.2. [redacted] may, at its option, purchase and provide enclosures at their own expense for public telephones. In the event [redacted] elects to provide enclosures, [redacted] shall be responsible for installation and maintenance of said enclosures.

4.3. [redacted] warrants that it has [redacted] authority to enter into this Public Telephone Agreement with [redacted]. [redacted] further warrants that the public telephones covered by this Agreement are on property owned by the Space Provider or if Space Provider is not the owner of the premises, [redacted] has obtained permission from the building/property owner or owner's agent to enter into this Agreement.

4.4. [redacted] agrees not to publish or use any [redacted] trade mark, service mark, logo, advertising, sales promotions or publicity matter without prior express written authorization of [redacted].

5. [redacted]. [redacted] is and shall remain the owner of the public telephones, associated equipment, wiring, hardware, and enclosures provided by [redacted] whether or not physically attached to real estate.

6. COMMISSION.

6.1. [redacted] agrees to pay [redacted] a commission based upon [redacted] billed local and intraLATA revenue collected from each public telephone in accordance with Schedule A, attached hereto and incorporated herein by this reference, provided, that the average daily revenue (DAR) is equal to or greater than $4.00 per day.

6.2. For those accounts currently under contract with [redacted], [redacted] agrees to remit 100% of the commission specified in the contract between the Space Providers and [redacted]. [redacted] will continue to pay the contracted rates until such time that the agreement between the Space Providers and [redacted] expires. At such time, [redacted] will transfer the account to the commission plan set forth herein.

6.3. Payment shall be in the form of commission checks made payable to [redacted] covering all states within [redacted]'s serving area.

7. PUBLIC TELEPHONE LOCATIONS. All accounts known at the time of execution of this Agreement are specifically set forth in Schedule B, attached hereto and incorporated herein by this reference. Upon mutual agreement of the parties, accounts may be added at any time as need or desire may dictate by amending this Agreement. Any additions, regardless of date, during the term of this Agreement shall automatically expire on the same date as the expiration or termination date of this Agreement. [redacted] agrees to review any semi public telephones and/or shared payphones located in Space

Provider's premises and upon mutual agreement of both parties to this Agreement, those earning the minimum daily average revenue of $4.00 per day or greater will be converted to public telephones and paid commission as set forth herein.

8. <u>REMOVAL OF PUBLIC [redacted]</u>. [redacted] retains the right to remove any or all public tele[redacted] in the event that it is not financially* feasible, at [redacted]'s sole discretion, to continue providing public telephones at [redacted] Provider's premises upon thirty (30) days written notice [redacted]. If [redacted] removes public telephones under this paragraph, [redacted] shall not be liable for termination charges for the public telephones removed. [redacted] shall be entitled to receive any commissions earned before the [redacted] removal of such public telephones.

9. <u>TERMINATION</u>. In the event either party elects to terminate this Agreement in whole or in part under any provision of this Agreement, termination shall be effected by delivery of a "Notice of Termination" by "Certified" mail to the other party specifying the extent to which the Agreement is terminated, the reasons for such termination and the date upon which such termination becomes effective. The termination of this Agreement shall not affect the obligations of either party to the other under any then existing vested rights or causes of action which have accrued prior to the effective date of termination.

10. <u>TERMINATION LIABILITY</u>. If public telephones are removed by Space Provider during the initial term or renewal period of this Agreement, or if this Agreement is terminated by [redacted] for any reasons other than those excused reasons set forth herein, [redacted] shall be liable to [redacted] for a termination charge as set forth in Schedule C, attached hereto and incorporated herein by this reference.

12. <u>LIMITATION OF LIABILITY</u>. The obligation of [redacted] in the event of a service interruption shall be limited to the use of reasonable diligence under the circumstances for restoration of service.

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING LOST STATION REVENUES, LOSS OF PROFITS OR OTHER COMMERCIAL OR ECONOMIC LOSS ARISING OUT OF THE PERFORMANCE OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION NEGLIGENT PERFORMANCE OR FAILURE TO PERFORM, EXCEPT AS SET FORTH UNDER THE TERMINATION LIABILITY AND RESPONSIBILITY OF MARS PROVISIONS HEREIN.

13. <u>EXCUSED PERFORMANCE</u>. Neither party shall be held liable for any delay or failure in performance of any part of this Agreement caused by circumstances beyond the reasonable control of the party affected, including, but not limited to, acts of the elements or natural disasters, strikes, power failures, civil or military emergencies or acts of legislative, judicial or other civil authorities.

14. **DEFAULT**. If either party fails to perform its obligations under this Agreement, failure shall constitute a default and, in such event, written notice shall be given to remedy such default. Should the defaulting party fail to remedy such default within ten (10) days from date of such notice, the offended party shall have the right, in addition to all other rights and remedies available at law or in equity, to terminate this Agreement in whole or in part.

15. **INDEMNIFICATION**.

15.1. It is agreed by and between the parties that it is the responsibility of [redacted] to maintain the area around the public telephones and to maintain enclosures if provided by [redacted]. [redacted] specifically agrees to defend and indemnify [redacted] from any claims that may result from [redacted] failure to properly maintain the area or enclosures except to the extent that such failure is due to the negligence or willful acts of [redacted]'s employees or agents. [redacted] shall not be held liable for any act or omission whatsoever of Space Providers or for errors in judgment in the performance of [redacted] in its duties to the Space Providers, it being understood that decisions made by [redacted] on behalf of the Space Providers as to the advisability of any particular transaction shall be absolutely binding upon [redacted].

15.2. [redacted] agrees to defend and indemnify [redacted] from any claims that result from [redacted]'s failure to properly maintain or service public telephones, except to the extent that the claim results from the negligence or willful acts of [redacted] or Space Provider's employees or agents.

15.3. [redacted] will defend and indemnify [redacted] against any third party claims for interference with business relationships.

16. **NOTICES**. Any notices or other communications to be given under this Agreement shall be sent to the following persons:

FOR [redacted]

CBA 2-14-92

2-14-92

FOR [redacted]

Either party may change its address for communications by giving notice in writing.

17. **REGULATORY**. This Agreement is subject to [redacted]'s tariffs, catalogs or price lists, as filed with appropriate state and federal regulatory commissions.

18. **LAWFULNESS OF AGREEMENT**. This Agreement and the parties' actions under this Agreement shall comply with all applicable federal, state, and local laws, rules, regulations, court orders, and governmental agency orders including the Modification of Final Judgment ("MFJ"), as issued in United States v. Western Electric

Co., et al., Civil Action No. 82-0192, U.S. District Court for the District of Columbia, and all subsequent orders issued in or related to that proceeding. If a court or a governmental agency with proper jurisdiction determines that this Agreement, or a provision of this Agreement, is unlawful, or if [redacted] determines this Agreement or a provision of this Agreement is inconsistent with, or contradictory to, the "MFJ," this Agreement, or that provision of this Agreement, shall terminate on written notice to the [redacted] to that effect. If a provision of this Agreement is so terminated but the parties legally, commercially, and practicably can continue this Agreement without the terminated provision, the remainder of this Agreement shall continue in effect.

19. CONFIDENTIALITY. The terms and conditions of this Agreement will not be disclosed to persons other than [redacted] or Space Provider, and will be kept confidential during the term of this Agreement.

20. NONWAIVER. The failure of either party to enforce strict performance of any provision of this Agreement shall not be construed as a waiver of its right to assert or rely upon such provision or any other provision of this Agreement.

21. GOVERNING LAW. This Agreement shall be interpreted, construed and enforced in all aspects in accordance with the laws of the state in which the service is provided.

22. SUCCESSORS AND ASSIGNS. This Agreement shall be fully binding upon, inure to the benefit of and be enforceable by each party and its successors and assigns. No assignment of any right or interest in this Agreement (whether by contract, operation of law or otherwise) shall release or relieve either party of any of its obligations or liabilities under this Agreement.

23. ASSIGNMENT. Neither party shall assign its rights nor delegate its duties under this Agreement without the prior written consent of the other party; except, either party may assign this Agreement to a parent, subsidiary or affiliated company by providing thirty (30) days written notice to the other party.

24. AMENDMENTS AND MODIFICATIONS.

24.1. Amendments, modifications and supplements to this Agreement are allowed and will be binding upon [redacted] and [redacted] after the effective date, provided:

a. The amendments, modifications and supplements are in writing, signed by an authorized representative of each party herein; and

b. The amendments, modifications and supplements, by reference, incorporate this Agreement and identify the specific sections or provisions contained herein, which are amended, modified or supplemented.

24.2. The term "this Agreement" as used herein shall be deemed to include any future amendments, modifications and supplements made in accordance herewith.

25. [redacted]. This Agreement, together with all Schedules and supplementary documents incorporated by reference, shall constitute the entire agreement between the parties with respect to the services and facilities to be provided and shall supersede all prior agreements, proposals, understandings, representations, correspondence or communications relating to the subject matter hereof.

IN WITNESS WHEREOF [redacted] has caused this Agreement to be executed and hereby warrants and represents that its signatory whose signature appears below has been and is on the effective date of this Agreement duly authorized by all necessary and appropriate action to execute this Agreement on behalf of itself and the Space Providers listed herein.

[redacted]	[redacted]
By [redacted]	By [redacted]
Name [redacted]	Name [redacted]
Print/Type	Print/Type
Title President	Title Account Executive
Date 2-14-92	Date 2-14-92

Federal Tax ID Number: 48-1100201

FORM APPROVED
Date 2/17/92
By

SCHEDULE A

COMMISSION SCHEDULE

[redacted]

Commission will be paid based upon [redacted] billed local and intraLATA calls, pursuant to the following commission schedule which is based upon the daily average revenue per public telephone (operator handling charges are included in the revenues and as such will be included for use in determining commission levels):

1. ACCOUNTS EARNING AT LEAST $6.01 DAR AND ABOVE AND NOT CURRENTLY UNDER CONTRACT TO [redacted] FOR A DIFFERENT COMMISSION LEVEL:

[redacted] will pay [redacted] 20% of [redacted]'s local and intraLATA cash revenues and 20% of [redacted]'s 0+ and 0- dialed local and intraLATA billed revenues.

2. ACCOUNTS EARNING AT LEAST $5.01 DAR AND UP TO $6.00 DAR AND NOT CURRENTLY UNDER CONTRACT TO [redacted] FOR A DIFFERENT COMMISSION LEVEL:

[redacted] will pay [redacted] 17% of [redacted]'s local and intraLATA cash revenues and 17% of [redacted]'s 0+ and 0- dialed local and intraLATA billed revenues.

3. ACCOUNTS EARNING AT LEAST $4.00 DAR AND UP TO $5.00 DAR AND NOT CURRENTLY UNDER CONTRACT TO [redacted] FOR A DIFFERENT COMMISSION LEVEL:

[redacted] will pay [redacted] 13% of [redacted]'s local and intraLATA cash revenues and 13% of [redacted]'s 0+ and 0- dialed local and intraLATA billed revenues.

4. ACCOUNTS CURRENTLY UNDER CONTRACT WITH [redacted]:

Accounts currently under separate contract with [redacted] will continue to earn the same commission rate as they are currently receiving through the duration of the [redacted]C contract.

Mail commission checks to the following address:

[redacted]

Contract Number SEA-911216-0013

AMENDMENT ONE
TO
[redacted]

This Amendment modifies the Public Telephone Agreement Number [redacted] between [redacted] and [redacted] signed February 14, 1992 by amending the following provisions:

1. Preamble, CHANGE to read:

[redacted] fdba [redacted] successor to [redacted] a corporation incorporated under the laws of the [redacted]

2. Section 19. CONFIDENTIALITY, CHANGE to read:

This Agreement, its terms and conditions, may be disclosed to persons other than [redacted] or Space Provider with the exception of the items noted below. These items will not be disclosed to persons other than [redacted] or Space Provider, and will be kept confidential during the term of this Agreement.

Section 1.	Term, all will be kept confidential, except the title.
Section 6.	Commission, all will be kept confidential, except the title.
Section 7.	Public Telephone Locations, only the minimum daily average revenue of $4.00 per day or greater will be kept confidential.
Schedule A.	Commission Schedule, all will be kept confidential.
Schedule B.	Public Telephone Locations, all will be kept confidential.

Schedule C. Termination Liability, all will be kept confidential.

All other terms and conditions of this Agreement shall remain in full force and effect. The effective date of this Amendment One shall be the date of the last signature shown below.

[redacted]

By [redacted]

Name [redacted]
Print/Type

Date 3/24/92

[redacted]

By [redacted]

Name [redacted]
Print/Type

Date 3-31-92

Federal Tax ID Number: [redacted]

FORM APPROVED

ATTACHMENT 2

AGREEMENT BETWEEN

A LOCATION "AGENT" AND

A LOCATION PROVIDER

PUBLIC TELEPHC E MANAGEMENT AGRE MENT

This Public Telephone Manag[redacted] (the "Eff[redacted] Address[redacted] ("Agent"), and the principal[redacted] hereinafter referred to as "Principal"). Principal hereby appoint[redacted] sole and exclusive agent to manage all public te[redacted]ones (the "Public Phones") located at all premises owned, leased or otherwise controlled by Principal ("the Premises") including, without limitation, the premises described herein and on any "Letter of Agency and Authority" executed by Principal under this Agreement.

PRINCIPAL ______________________

CONTACT PERSON ______________________
Name Position Business Telephone

STREET ADDRESS ______________________

P.O. BOX __________ CITY __________ STATE ____ ZIP __________

Taxpayer Identification Number (Required) ______________________

☐ PARTNERSHIP ☐ CORPORATION ☒ SOLE PROPRIETORSHIP ☐ OTHER __________
Specify

[redacted] Monthly Revenue Received Per Public Telephone	PRINCIPAL'S PERCENTAGE Coin & Non-Coin Local & IntraLATA	[redacted] Monthly Revenue Received Per Public Telephone	PRINCIPAL'S PERCENTAGE Non-Coin InterLATA & Op. Services
$ 00.01 to $ 19.99	10%	$ 00.01 to $ 19.99	30%
$ 20.00 to $ 39.99	40%	$ 20.00 to $ 39.99	35%
$ 40.00 to $ 69.99	45%	$ 40.00 to $ 69.99	45%
$ 70.00 to $139.99	50%	$ 70.00 to $140.00	50%
$140.00 & over	55%	$140.00 & over	55%

1 phone was customer

____
Current Payphone Provider

Semi-Public ______
LEC Contract ______ Exp ______
IXC Contract ______ Exp ______

By: X ______________________

Printed Name: ______________________

Title or Position: ______________________

- THE INDEPENDENT SALES REPRESENTATIVE PRESENTING THIS AGREEMENT TO PRINCIPAL DID NOT REPRESENT HIMSELF OR HERSELF, HIS OR HER COMPANY OR AGENT TO BE AN AGENT OR EMPLOYEE OF A LOCAL BELL TELEPHONE COMPANY OR A LOCAL INDEPENDENT TELEPHONE COMPANY.
- I HAVE READ, FULLY UNDERSTAND AND AGREE TO THE TERMS AND CONDITIONS SET FORTH ON BOTH THE FRONT AND REVERSE SIDES OF THIS AGREEMENT.

Initial X ____ Date 5/20/95

Initial charges, if any, associated with a PIC change will be paid by Agent.

Control ID ☐☐☐☐☐☐

Rep ID ☐ - ☐☐☐☐

Accepted by Agent: (Home Office Use Only)

By: [redacted] Effective Date: 5/24/93

THIS AGREEMENT IS SUBJECT TO THE TERMS AND CONDITIONS SET FORTH ON THE REVERSE SIDE OF THIS AGREEMENT

IF ANY QUESTIONS PLEASE CALL

1-800-398-PHON

HOME OFFICE

TERMS AND CONDITIONS

1. Powers granted to Agent. The appointment of Agent to manage the Public Phones grants Agent all rights and powers possessed by Principal with respect to the Public Phones and the provision of public telephone services to the Premises including, without limitation, the exclusive and unencumbered right:

   (A) To negotiate and enter into contracts with local telephone companies ("LTCs") for local and intraLATA telephone services, to negotiate and enter into agreements with long distance carriers ("LDCs") for interLATA telephone services, to negotiate and enter into agreements with LTCs, LDCs, private pay phone companies ("PPCs") and others to provide public telephones and public telephone services and equipment to the Premises;

   (b) To request and receive from any LTC, LDC or PPC any information regarding the Public Phones which Principal is entitled to receive from such party including, without limitation, information regarding the historic revenues produced by the Public Phones, any agreements between Principal and any such party with respect to the Public Phones (including the right to receive copies of any such agreement) and the telephone number for any other public telephones located on the Premises;

   (c) To lock PIC the long distance carrier selected by Agent for the Public Phones so that such long distance carrier may not be changed without the written consent of Agent;

   (d) To direct that all billings, revenue reports and other information and data related to the public phones be sent directly to Agent, (any PIC charge will be paid by Agent);

   (e) To collect all revenues derived from the Public Phones including, without limitation, the right to require that all LTCs, LDCs and others send all revenue payments to Agent rather than Principal, and make all revenue checks payable to Agent, whether or not the agreement, arrangement or understanding under which the revenues are paid was negotiated by Agent (provided that Agent shall pay to Principal all amounts due to Principal under this Agreement);

   (f) To endorse any revenue checks received in Principal's name and to deposit the same into Agent's account (provided that Agent shall pay to Principal all amounts due to Principal under this Agreement);

   (g) To direct LTCs, LDCs, PPCs and others to list Agent as the customer of record for the Public Phones;

   (h) To make service requests, equipment orders, transfers of service and repair requests for the Public Phones;

   (i) To remove any Public Phones from the Premises and to install new or additional public telephones on the Premises; and

   (j) To take all other actions necessary, desirable or helpful to the proper management of the Public Phones and the provision of public telephone services to the Premises.

2. Term. This Agreement shall commence on the Effective Date and shall continue thereafter for a term of 72 months, unless sooner terminated by Agent pursuant to Section 5. Thereafter this Agreement shall be automatically renewed for successive 72 month periods unless either party delivers notice of non-renewal to the other party at least 90 days, but not more than 120 days, prior to the end of the then current term.

3. Compensation. Principal shall receive the percentage set forth on the reverse side hereof of all local, intraLATA, interLATA and operator services revenues paid on the Public Phones under any agreement, arrangement or understanding negotiated by Agent. All other revenues paid under any agreement, arrangement or understanding negotiated by Agent with respect to the Public Phones and the provision of public telephone services to the Premises shall be retained by Agent in consideration of the services rendered by Agent hereunder. Principal shall immediately remit to Agent any revenue checks received by Principal under any agreement, arrangement or understanding negotiated by Agent. All amounts due to Principal under this Agreement will be paid monthly if the total amount is $50.00 or more; otherwise, all amounts due to Principal under this Agreement will be paid quarterly. Principal shall receive 100% of all revenue received with respect to any agreement, arrangement or understanding entered into by Principal prior to the Effective Date.

4. Letters of Agency and Authority. Concurrently herewith Principal has executed, and from time to time in the future may execute, one or more Letter(s) of Agency and Authority ("LOAA") with respect to the Public Phones. All LOAAs are considered part of this Agreement and are incorporated herein by this reference. Principal grants Agent the right to correct any and all errors and omissions on any LOAAs.

5. Termination. Because Agent is required to enter into long term agreements with LTCs, LDCs, PPCs and others in order to maximize the amounts paid to Principal under this Agreement, Principal may not terminate this Agreement during the initial term or any renewal term of this Agreement. Inasmuch as Principal's termination of this Agreement other than according to its terms will cause serious and substantial damages to Agent and it will be difficult, if not impossible, to determine the exact amount of such damages, Principal agrees to termination as follows: a) If termination occurs within six months after the Effective Date, then the amount of liquidated damages shall be computed by multiplying the number of Public Phones by two hundred and fifty dollars; b) If termination occurs more than six months after the Effective Date, then the amount of liquidated damages shall be computed by multiplying the average monthly revenue that was received by Agent from the Public Phones (beginning with the first month in which such revenues were collected) by the number of months remaining under this Agreement, and then reducing this sum by the appropriate "Principal's Percentage" from the Commission Schedule on the front of this Agreement based on the average monthly revenue amount. Principal agrees that such liquidated damages calculated as set forth above are reasonable in light of the anticipated damage to be sustained by Agent.

6. Guarantee. Agent guarantees that the amount paid to Principal under any Agreement, arrangement or understanding negotiated by Agent will be greater than the amount received by Principal from any LTC during the six months immediately preceding the Effective Date for the same service and same dollar volume of collected revenues. The foregoing guarantee applies to all amounts paid to Principal under any agreement, arrangement or understanding negotiated by Agent, which are due within the first six months after the signing of this agreement. If Agent does not fulfill this guarantee, Principal can terminate this Agreement by giving ninety days written notice to Agent.

7. Covenants and Warranties. During the term of this agreement, Principal agrees not to appoint any other individual or entity to manage the Public Phones or to enter into any agreement with any LTC, LDC, PPC or other third party relating to the provision of public telephone services or equipment to the Premises. Principal warrants that the Principal has not previously appointed any other individual or entity to manage the Public Phones or the provision of public telephone services to the Premises. The individual executing this Agreement on behalf of the Principal represents and warrants to Agent that he or she has the authority to execute this Agreement on behalf of the Principal.

8. Indemnification and Release. Agent shall not be liable or responsible for, and Principal shall indemnify, defend and hold Agent harmless from and against, any and all liabilities, claims, damages and expenses (including reasonable attorney's fees) of every kind or nature whatsoever arising out of Principal's operations at the Premises or in any way related to the Public Phones (other than liabilities, claims, damages and expenses caused solely by the intentional or negligent conduct of Agent). Principal agrees to hold LTC's, LDC's, and PPC's (including BellSouth Telecommunications, Inc.) harmless from any claims and damages caused by or relating to the agency relationship between Principal and Agent. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors, and assigns.

9. Acceptance; Binding Contract. This Agreement shall be binding upon Principal and Agent only after it has been signed by Principal and by a duly authorized officer of Agent.

10. Independent Sales Representative. The independent sales representative presenting this Agreement to Principal and the company for whom he or she works are independent contractors and are not employees or agents of Agent. The independent sales representative and the company for whom he or she works have absolutely no authority to modify this Agreement or to bind Agent in any way. Agent is not responsible for any acts or omissions of the independent sales representative or his or her company.

11. Assignment. Principal may not assign or transfer any of its rights, duties or obligations under this Agreement without the prior written consent of Agent. Agent may freely assign this Agreement and its rights, duties and obligations hereunder.

12. General. This Agreement is the complete and exclusive statement of the understanding between the parties and supersedes all written or oral proposals and all communications between the parties relating to the subject matter of this Agreement. This Agreement may be amended, modified or supplemented only by a written agreement between Principal and Agent which is signed by a duly authorized officer of Agent. The waiver or failure of any party to exercise in any respect any right provided for in this Agreement shall not be deemed a waiver of any further right. If any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the other provisions of the Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas.

[illegible]

BTTC: 8 — 3

Type: [redacted]

Verified: LH 5/25

To Whom It May Concern:

The purpose of this Letter of A[redacted] to advise you that we (the undersigned) have entered into a P[redacted] Management Agreement (the "Management Agreement") w[redacted] a public telephone management and consulting company. [redacted] the Management Agreement, we have appointed Agent to act as [redacted] to manage all telephones located at all premises owned [redacted] controlled by us (the "Premises") including, without limitation, the premises listed below and the premises described on the Management Agreement and on any other LOAA executed by us under the Management Agreement. The terms and conditions of the Management Agreement are printed on the reverse side of this LOAA.

The following public telephones are among those covered by the Management Agreement:

PUBLIC TELEPHONE NUMBER	PHYSICAL ADDRESS	CITY	ST	ZIP	LEC	PIC
( ) -						
( ) -						
( ) -						
( ) -						
( ) -						
( ) -						
( ) -						
( ) -						

[redacted]

Pursuant to the Management Agreement, Agent has the right to take all actions, and to obtain all revenues and information, which we would be entitled to take and obtain with respect to all public telephones located on the Premises. In this regard, Agent is entitled to receive (and by presenting this LOAA to you hereby requests) the following information with regard to each of the above public telephones:

(a) whether the public telephone is currently in service;
(b) the name of the primary long distance carrier for the public telephone;
(c) the historical revenues produced by the public telephone;
(d) whether the public telephone is public, semi-public or private;
(e) whether the public telephone is currently under contract with you (if yes, a copy of the contract should be provided to Agent);
(f) detailed information as to when and how any contract with you expires and/or is renewed; and
(g) whether your records indicated that any other public telephones are located at any of the premises at which the above public telephones are located.

Pursuant to the Management Agreement, we have also granted Agent the right and authority to receive in its own name all revenues to which we are entitled with respect to the above public telephones. Agent also has the right to execute a lock PIC or protected authorization with respect to selection of a long distance carrier for the above public telephones. Agent also has the right to direct (and by presenting this LOAA to you hereby requests) that Agent be listed as the customer of record for the above public telephones. Initial charges, if any, associated with a change of long distance will be paid by Agent.

This LOAA supersedes any previous letters of agency and/or authority of lock PIC or protected authorizations that may exist with respect to the above public telephones. This LOAA shall remain in effect during the term of the Management Agreement unless and until canceled by Agent in writing.

Company/Principal _______________ Date _______________

Authorized Signature of Principal _______________ Title _______________

Printed Name _______________

Principal's Mailing Address/City/State/Zip _______________

Principal's Business Telephone _______________

Control ID # ☐☐☐☐☐☐
Home Office Use Only

Rep ID D - 8651 - ☐

Contract ID 45789 ☐

WHITE - HOME OFFICE YELLOW - CLIENT PINK - HOME OFFICE GOLD - SALES REPRESENTATIVE