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

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In the Matter of	)	
	)	
Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-128

COMMENTS OF WORLDCOM, INC.

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SUMMARY

Nearly every carrier in the United States will play a role in the new per call compensation plan. Accordingly, the Commission must work carefully to minimize transaction costs for carriers and payphone service providers ("PSP"). In adopting a per call compensation plan, the Commission is not bound by the current compensation scheme involving direct billing by PSPs. Existing LEC billing relationships with PSPs and IXCs may be utilized to implement a per call plan.

The Commission must define "completed calls" to ensure that only calls billable to an end user using the payphone are subject to compensation. There is no basis for the Commission's plan to apply to international calls.

The Commission should not automatically reject the possibility that coin deposits may be used to comply with the compensation requirement. If the Commission rejects a coin deposit solution, it should implement a modified version of its "carrier pays" proposal. The statute does not foreclose use of a per minute rate for compensation. Local exchange carriers should service as the focal point for the collection mechanism.

The Bell Operating Companies have the ability to leverage their calling card assets to influence the selection of interexchange carriers serving their pay telephones. The Commission should therefore find that it is not in the public interest to permit the BOCs to negotiate with site owners for interLATA carrier selection.

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COMMENTS OF WORLDCOM, INC.

WorldCom, Inc. d/b/a LDDS WorldCom ("LDDS WorldCom"), by its undersigned counsel, hereby responds to and comments on the Commission's June 6 Notice of Proposed Rulemaking ("Notice"), FCC 96-254, in the referenced proceeding. Commission action contemplated by the Notice will affect both access code and toll free calling from payphones. As one of the four largest facilities-based providers of interexchange service, LDDS provides both toll free and access code-based services, and will be affected by any payphone compensation plan adopted in this rulemaking. LDDS WorldCom's comments are limited to compensation and BOC presubscription issues.

I. INTRODUCTION

Section 276 of the Telecommunications Act of 1996[1] ("96 Act") requires the FCC to fundamentally restructure the payphone business

[1] 47 U.S.C. § 276.

in the United States. Done correctly, restructuring will provide regulatory parity for all payphone service providers ("PSP"). This parity will be achieved by eliminating current subsidies for LEC-provided payphones, while adopting a compensation plan to ensure that all PSPs receive compensation for "each and every completed intrastate and interstate call" made from a payphone.[2] The new compensation plan will take the place of "per phone" compensation arrangement[3] for private payphone owners ("PPO") adopted after implementation of the Telephone Operator Consumer Services Improvement Act ("TOCSIA")[4] of 1990. However, the compensation requirements under the 96 Act will necessarily involve far more than a mere extension of the current compensation scheme. The current "per phone" plan applies only to interstate access code calls handled by providers of operator services and originating at non-LEC payphones. Individual PPOs and the few carriers required to pay compensation are required to work out payment arrangements.[5]

In contrast, the new statute requires a plan which applies to all access code calls and toll free calls originating from all

[2] 47 U.S.C. § 276(b)(1)(a).

[3] Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, CC Docket No. 91-35, Second Report and Order, 7 FCC Rcd 3251 (1992).

[4] 47 U.S.C. § 226.

[5] 47 C.F.R. § 64.1301(d).

payphones. Obviously, the number of participants, as well as the number of compensation transactions, will increase exponentially under any plan which complies with the new statutory framework.

The current collection mechanism, involving direct billing by the PPO, works poorly today and is unlikely to work well at all in the future. LDDS WorldCom believes the Commission should not view the current arrangements as binding or necessarily appropriate. The Commission should instead look for an alternative which will minimize transaction costs for callers, the PSPs, and carriers in general.[6] As discussed below, the Commission should adopt a compensation plan which is 1) competitively neutral; 2) applicable to all dial around and toll-free traffic of any carrier, including LECs; 3) feasible for smaller PSPs; and 4) not unduly burdensome to small interexchange carriers, resellers of interexchange service, and providers of prepaid service. LDDS WorldCom is concerned that certain of the Commission's proposals within the Notice are inconsistent with the principles described above. Accordingly, LDDS WorldCom offers comments on how the Commission should design a compensation plan and assign responsibilities for implementation.

Regarding BOC presubscription, LDDS WorldCom believes the public interest will not be served if the BOCs, which have *de facto*

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[6] *See Notice* at ¶ 28.

monopolies on the issuance of 0+ calling cards, are permitted to select themselves or a favored IXC to handle "0+" calls from the phones they operate.

II. COMPENSATION ISSUES

A. Today's Public Communications Market and the State of the Current Compensation Plan.

The Notice contains a detailed outline of the history of pay telephone compensation as well as the policy reasons underlying the Commission's treatment of LEC-provided payphones as part of the regulated communications network. In drawing distinctions between the ways in which LEC and non-LEC PSPs generate revenue, the Notice focuses on presubscription arrangements as the basis for the bulk of PSP revenue. In so doing, the Notice explains how the wide availability of public telephones benefits interexchange carriers and their customers. However, the Notice appears to draw a distinction between the payphone operations of the BOCs and the other LECs which may not exist.

The Notice suggests that the BOCs do not receive revenue from interLATA "0+" calls made from their telephones, while suggesting that non-BOC LECs do receive revenue on these calls in the form of Commissions.[7] LDDS WorldCom is unaware of such arrangements. The Notice further implies that CCL revenue is the only compensation

[7] Notice at ¶ 8.

the BOCs receive for calls originating at payphones.[8] While it may be true that the BOCs do not receive commissions from IXCs for payphone originated "0+" calls, the BOCs do receive substantial revenue, in the form of access payments, for these calls. This revenue is not limited to the "payphone element" of the Carrier Common Line Charge. BOCs also have a monopoly on "0+" intraLATA calls originating from their payphones.

The Notice also appears to misstate the status of competition for "0+" calls, specifically intraLATA calls originating at non-LEC PSPs, by implying that these calls are always routed to a carrier chosen by the PPO. This is simply incorrect. As discussed in Section II.B.1.a of our comments, in the absence of intraLATA competition for "0+" calls, LECs should be required to compensate PPOs for certain "0+" calls.[9]

Finally, the Notice omits pertinent history related to the current compensation plan and efforts of the PPO industry to impose per call compensation on all carriers subject to per phone compensation. In discussing the current status of dial around compensation for calls originating at private payphones, the Notice omits any discussion of the controversy concerning the ability of

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[8] Id.

[9] Notice at ¶ 16, n. 54.

IXCs to track completed interstate dial around calls originating from private payphones. While the Notice is correct in stating that in 1995 the Commission adopted a Notice of Proposed Rulemaking which tentatively concluded that large IXCs should be required to pay per call compensation, the Notice fails to note that a number of parties which responded to the Commission, including LDDS WorldCom, disputed whether the technical ability exists to track these calls. Comments on these issues were filed in October 1995 -- the Commission has never announced a decision. Thus, the Notice is misleading when it implies that IXCs other than AT&T and Sprint are able to pay compensation on a per call basis by doing their own tracking of these calls.[10] With this controversy unresolved, the Commission has now asked for comments on how to administer a "carrier pays" systems of compensation, and clearly appears predisposed toward a requirement that IXCs measure compensable calls.[11] LDDS WorldCom respectfully suggests that there are hundreds of IXCs which could not track such calls. Therefore, as discussed below, the Commission should not limit its consideration to a system whereby PSPs issue invoices and IXCs track their own calls. Rather, there may be other mechanisms which are technically and economically feasible, and capable of rapid implementation.

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[10] Notice at ¶ 10, 29.

[11] Notice at ¶¶ 28-31, 33.

B. **Implementation of Per Call Compensation.**

The compensation requirements prescribed by the Act are exponentially more complex than the current per phone compensation plan. The participants in the new plan will include every LEC, every PSP, and every IXC in the United States which provides its own toll free services and access codes. Every common carrier in the United States, including every LEC,[12] will be required to pay compensation for eligible calls it carries. The number of recipients of compensation will increase dramatically as LECs become eligible for compensation for certain calls originating at their telephones.

The compensation plan must include toll-free calling. Since both toll-free calls and access code calls often involve the use of an "800" number, the Commission will have to draw careful distinctions to define what is a "completed" call in both contexts. Finally, the new plan will include intrastate calls.

This radical restructuring will require a fresh look at implementation and administration options. LDDS WorldCom submits that the current mechanism whereby the carrier measures and reports

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[12]LECs, including BOCs, provide intraLATA 800 service, and are capable of issuing access codes for intraLATA calling. Indeed, NYNEX recently announced it will begin using 800 access for its own calling cards. "NYNEX, Sprint Reach '800' Calling Card Agreement" Telecommunications Reports, June 24, 1996.

its own traffic will simply not work in the new environment. Our proposal is offered below.

1. Scope of Payphone Calls Subject to Compensation

The compensation plan must apply to all completed intrastate and interstate access code calls, and completed toll free calls to subscriber 800 numbers.

(a) "0+" Calls

The Commission tentatively concludes that it need not prescribe per call compensation for "0+" calls because competition in this area ensures "fair" compensation for PSPs. However, there are still a number of states which require that "0+" intraLATA calls originating from all PSPs, including PPO sets, be routed to the LEC. In states where the LEC has been granted this monopoly on "0+" intraLATA calls, there would appear to be no business reason for the LEC to pay commissions to the PPO. Accordingly, in the absence of competition for presubscribed intraLATA "0+" calls and until all state policies prohibiting PPOs from routing "0+" calls to competing carriers are eliminated or preempted, § 276 would appear to require the Commission to prescribe LEC to PPO compensation for these intraLATA "0+" calls. LDDS WorldCom agrees, however, that there is no basis for the Commission to prescribe additional compensation for "0+" interLATA calls or for any intraLATA "0+" calls currently subject to competition because, presumably, commissions are paid on these calls.

(b) Completed Calls.

The Commission has not proposed a definition of "completed call." A reasonable definition will be needed to reduce disputes over which calls are properly compensable. LDDS WorldCom proposes the following standards. A completed access code call occurs when a caller reaches a carrier's calling card, debit card, or operator services platform and completes a call to another station. For purposes of determining what is a completed access code call, there is no basis to treat 800 access codes differently than 10XXX or 950-XXXX numbers. The Commission has held on several occasions that calls involving 800 switching must be treated, for jurisdictional purposes, as end-to-end communications.[13] It follows that an access code call involving 800 access is complete only when the called station answers. For the purposes of per call compensation, the Commission should further order than an access code call is not completed unless the call is billable by the carrier serving the caller. For example, assume a carrier subscribes to an LDDS WorldCom 800 number for purposes of ingress to its own network. Under this arrangement, the 800 call routed over the LDDS WorldCom network to another carrier's switch should

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[13] In the Matter of the Time Machine, Inc., 11 FCC Rcd 1186, (Comm. Carr. Bur. 1995); Long Distance/USA, Inc. v. Bell Tel. Co. Of Pa., 10 FCC Rcd 1634 (1995); Southwestern Bell Telephone Co. Transmittal Nos. 1537 and 1560, Revisions to Tariff No. 68, 3 FCC Rcd 2339 (1988).

not be viewed as a subscriber 800 call, and no "completed call" should be found to have occurred under this serving arrangement unless the caller reaches another station.

A subscriber 800 call is completed when the call is answered, or routed in any way which requires the terminating LEC or CPE to return answer supervision.[14] Thus, an 800 call terminating in a PBX or any switch not operated by a carrier should be viewed as a completed call, if treated in any manner which requires answer supervision.

(c) International Calls

LDDS WorldCom disagrees with the Commission's conclusion that compensation must extend to international calls. As the Commission concedes, in enacting the statute, Congress did not refer to international calls in § 271(b)(1)(a). Rather, Congress was very specific in denoting that only intrastate and interstate calls would be subject to compensation. If Congress intended that compensation apply to international calls, it could have said so, or, Congress could have stated that compensation would simply apply to all calls. The statute is not ambiguous. There is therefore no basis for the Commission to inquire beyond the clear language of the statute.[15]

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[14] See, e.g., 47 C.F.R. § 68.314(h).

[15] See National Resources Defense Council, Inc. v. Browner, 57 F.3d 1122, (D.C. Cir. 1995).

2. Entities Required to Pay Compensation

PSPs have long argued that they deserve compensation for the use of their equipment to make access code and toll-free calls using dialing sequences which are required to be unblocked from pay telephones. Not surprisingly, callers have long viewed public telephones as inseparable from the communications services they are used to obtain. The ability to make access code calls without a coin has reinforced this perception, to the detriment of PPOs who could not subsidize their equipment like their LEC competitors. Section 276 of the 96 Act requires the elimination of the subsidies which have created the erroneous public perception that payphones are free. With separation of BOC payphone assets, along with elimination of payphone subsidies generally, there appears to be no reason to prohibit -- and there may be good reasons to require -- that PSPs deal directly with callers to obtain the compensation they claim is deserved for use of their equipment. The easiest way to do this would be for all PSPs to require coin deposits on access code and subscriber 800 calls.

The Commission has tentatively concluded that it should reject any plan involving coin deposits to activate CPE. The Commission claims that a coin deposit approach would appear to unduly burden many transient payphone callers. LDDS WorldCom believes that requiring callers to deposit coins for use of the phone to make a long-distance call is no more burdensome than requiring coins for local calls. Such payment requirements would likely have been established years ago but for the fact that LEC payphone providers were able to subsidize their payphone equipment with access revenue instead. The Commission should not dismiss the possibility of using coin deposits as a method of complying with § 276. A regulatory policy which requires coin-free use of pay telephone equipment is simply inconsistent with treating payphones as CPE. If a payphone is merely CPE, its use is separable from underlying transmission service, and payment for use of the telephone should be collected by the equipment provider, not by the carrier providing only transmission services. In addition, a coin deposit solution would appear to be the fastest and least costly method to implement compensation, since the vast majority of pay stations installed today are coin phones.

The Commission also asks for comments on a "set use fee" system.[16] LDDS WorldCom strongly opposes a mandatory "set use fee" system. As the Commission discusses, under a "set use fee," carriers would be required to collect compensation directly from the customer who used a pay telephone to make a call. Essentially, this would make LDDS WorldCom the involuntary billing agent for

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[16]Notice at ¶¶ 26-27.

thousands of PSPs. As the Commission describes, the approach appears inconsistent with the general principle that the plan should minimize transaction costs on the caller and on the industry. LDDS WorldCom believes the market would be better served if individual carriers had the option to collect compensation costs from their access code and 800 service customers.

3. Tracking and Administrative Requirements

The Commission has tentatively concluded that it should adopt a "carrier pays" compensation mechanism that "builds on existing procedures."[17] While some variation on the "carriers pays" concept appears to be appropriate, LDDS WorldCom does not support an extension of the current payment system which involves generation of invoices by the PSPs. Such a procedure would be unduly burdensome for PSPs and the more than 1000 carriers the PSPs would have to bill.

The Commission has concluded, "[b]ased on [its] prior proceedings," that tracking mechanisms exist to support the complete per call compensation plan mandated by Section 276(b)(1)(A). The Commission has asked for comments on which parties should develop and maintain the tracking or surrogate

[17] Notice at ¶ 28.

methodologies in the event that there is no standard technology or mechanism already available.[18]

LDDS WorldCom submits that for the vast majority of interexchange carriers, there are no existing procedures which would permit carriers to identify, measure, and pay for access code and subscriber 800 calls originating from payphones. In CC Docket 91-35, LDDS WorldCom has already demonstrated that LDDS WorldCom currently lacks the ability to identify access code calls from pay telephones.[19] While two large IXCs apparently can measure dial around calls originating from private payphones, there is simply no evidence that there are existing procedures in use by IXCs which would enable them to generally implement measurement of dial around calls from LEC and non-LEC payphones.

LDDS WorldCom believes the Commission should explore whether the local exchange carriers which provide interconnection to payphones have or could readily develop the tracking capability to measure compensable calls which transit their networks. There are many reasons that the local exchange carriers are in the best position to track compensable calls. First, the LECs have a dual role as both future recipients and payors of dial around

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[18]Notice at ¶ 30.

[19]Comments of WorldCom, Inc. and WorldCom Network Services, Inc., CC Docket No. 91-35, filed October 10, 1995.

compensation. Second, LECs are unique in their role as providers of the access lines (and associated ANI information digits) used to interconnect their own payphones <u>and</u> payphones owned by competitors. Thus, LECs are in the best position to know when a call originates from a payphone. Finally, the LECs are the only carriers with the capability to track intraLATA access code and subscriber 800 calls which they carry, so, as the <u>Notice</u> explains, LECs will clearly have an obligation to develop tracking systems.[20] According to the <u>Notice</u>, LECs also may have the ability to track and measure compensable calls routed to interexchange carriers through LEC switches.[21] When an access code is used from a pay telephone, it is the LEC which provides translation and routes the call to the trunk groups associated with the access code. Similarly, for subscriber 800 calls, it is the LEC which launches the SMS/800 database query to identify the correct trunk groups for routing the call associated with a specific "800" number. There may be tracking mechanisms and surrogates which exist today, or which could be developed, based upon the routing platforms already established by the LECs. Thus, the Commission should focus not on the capabilities of IXCs to measure dial around calls, but on the

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[20] <u>Notice</u> at ¶ 31.

[21] <u>Notice</u> at ¶ 10.

capabilities of carriers which provide direct interconnection to PSPs.

Perhaps the best reason for LECs to serve as the focal point for administering per call compensation is that LECs have established billing relationships with PSPs and IXCs serving their exchanges. The use of LECs to measure and track compensable calls could simplify the payment administration process, and eliminate the potential for fraud which exists when PSPs issue their own invoices.

In contrast, requiring each PSP to send invoices to collect per call compensation will pose an administrative nightmare. First, unlike today's environment, where fewer than 16 carriers are required to pay compensation to all PPOs on a <u>per phone</u> basis, the new system may involve upwards of 2000 paying carriers. In addition, under an "invoicing" process, small, regional IXCs and resellers are likely to discover that although their overall compensation burden is relatively small, payment will include hundreds or thousands of minimal amounts to PSPs located all over the country.

For example, consider a hypothetical reseller whose "1+" customers are all located in a single state. If the reseller issues access codes to its customers who travel, or 800 numbers with nationwide origination, per call compensation burdens will accrue each time the access code is used or one of its customers'

800 numbers is dialed from any pay telephone, anywhere in the United States. If this small carrier is required to issue checks individually to PSPs, the administrative costs are likely to far exceed the amount of compensation paid. Clearly, this would be inconsistent with the Commission's intent to minimize transaction costs.

On the other hand, LECs may have the ability to use the existing carrier access billing system ("CABS") to flow through payphone compensation. Under such a scenario, the LEC could track all access code and "800" calls originating from payphones in its exchanges, identify both the PSP and the network the call is routed to, remit payment to the payphone provider (possibly as a credit to the payphone customer's line charges), then collect compensation from the access customer through CABS. Under this scenario, any carrier using LEC originating access, including LDDS WorldCom, would pay compensation for completed calls. All calls would be compensated, yet rebillers, switchless resellers, and most PSPs would be spared from the tracking and billing process. Billed carriers could then determine whether and how to pass these expenses on to their customers, including carrier customers. By utilizing existing billing relationships, the administration process for per call compensation could be greatly simplified.

LDDS WorldCom recognizes that the Commission has previously rejected a payphone industry proposal whereby LECs would administer dial around compensation.[22] In rejecting such a proposal, the Commission was concerned about the administrative burden on the LECs, which were neither obliged to pay dial around compensation nor eligible to receive it. Accordingly, the Commission sought to minimize the involvement of the LECs. In light of § 276 of the 96 Act, such concerns no longer exist. Under the new rules, LECs will be paying and receiving per call compensation, and will now have the economic nexus which the Commission found lacking before. The Commission should reconsider such a system because the reasons for rejecting it in 1991 no longer exist.

4. Amount of Compensation

Growth in the incidence of dial around calling may largely be attributed to public dissatisfaction with "0+" services provided from public payphones. This dissatisfaction is directly related to interstate rate levels for operator services, which have steadily increased as PPOs and location owners have insisted on higher and higher commissions and premises surcharges. It would be an unfortunate irony if the Commission rewarded PSPs with a financial windfall, in the form of excessive per call compensation, for having helped create the desire of consumers to dial around. In

[22] In the Matter of Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, CC Docket No. 91-35, Report and Order and Further Notice of Proposed Rulemaking, 6 FCC Rcd 4736 (1991).

setting a rate, the Commission must ensure not only that the compensation is not so great as to constitute a windfall, but also that it does not lead to uneconomic future investments in station equipment.

The Commission must also be wary of the possibility that overcompensation will merely insulate payphone owners from the economic consequences of selecting an Operator Service Provider ("OSP") whose rates are excessive. For example, if a PPO determines that per call compensation is more lucrative than the commissions obtainable from an OSP, the PPO may have a perverse economic incentive to block "0+" calling altogether or to select an OSP few callers will use. It would be far better to set the compensation rate low enough to constitute fair compensation while ensuring that PPOs do not discourage the continued use of "0+" calling from their payphones.

The Notice concludes that a cost-based approach should be used to determine the amount of compensation, and the Commission suggests that a marginal cost standard is appropriate. LDDS WorldCom agrees. The Commission has previously rejected arguments by PPOs that compensation should reflect the "opportunity costs" of permitting access code calls. Such a standard would overcompensate PSPs.

The Commission has also asked whether it should prescribe different per call compensation amounts for the different types of calls originated by payphones. LDDS WorldCom believes the same unit rate should apply to all calls absent a showing that marginal costs vary by call type. However, LDDS WorldCom believes that the statutory requirement of a "per call" compensation plan would not preclude the Commission from adopting a compensation rate which is based upon the duration of compensable calls, as long as each completed call is compensated. To the extent that marginal costs vary with duration, the fairest method to recover these costs would be with a duration-sensitive rate. If however, costs do not vary with call length, LDDS WorldCom would support a flat, per call charge, applicable to all calls. There are two other reasons to consider a per minute rate. First, allowing a per minute rate may reduce disputes over which calls were completed. Second, as the Commission notes, there is reason to be concerned about the improper use of subscriber 800 numbers to increase compensation.[23] To the extent that the prescribed compensation rate per call exceeds the minimum rate for a completed call using interstate 800 service, a PSP might have an incentive to subscribe to 800 service, place repeated calls to its own 800 number, and receive compensation which exceeds the amount paid for the service. The Commission's rules should permit carriers to withhold payment to

[23]Notice at ¶ 23.

PSPs who generate calls for the sole purpose of arbitraging per call compensation.

III. BOC PRESUBSCRIPTION

Section 276(b)(1)(D) leaves to the Commission the question of whether the BOCs should have the right to negotiate with location providers on the selection of interLATA providers for the BOCs payphones. The Commission asks, rhetorically perhaps, if there is a concern that, if the BOCs are permitted to provide interLATA services, they will select themselves as the carriers for their payphones.

LDDS WorldCom believes there are several potential problems with permitting the BOCs to influence the selection of carriers serving their payphones. First, because the BOCs control such a large number of telephones, they may have an ability unmatched by any other PSP to exert influence over premises owner selection of an interLATA provider. Second, the BOC may have the ability to bundle commissions for intraLATA 0+ traffic with those for interLATA calling. In the absence of full intraLATA "0+" presubscription, this practice would give unfair leverage to the BOC. Third, the BOCs have exclusive control over important assets -- their line number-based 0+ calling cards -- which may be a key ingredient in leveraging the selection of the presubscribed IXC. For example, the BOC may have the ability to favor a particular IXC by placing that IXC's access code on its calling cards. The BOC could then offer to pay commissions on dial around calls made using the card, but only from BOC phones presubscribed to the favored carrier. The BOC might also make arrangements with an IXC whereby the BOC's calling card customers receive special discounts for interLATA calls made from the BOCs phones, while customers using other LEC cards are charged a different, non-discounted rate. Such arrangements would allow the BOC to leverage its customer base to influence the location owner's selection of interLATA carrier, and to disadvantage competing payphone providers.

As long as the BOCs have a de facto monopoly on the issuance of "0+" calling cards to their subscribers, allowing them to influence the selection of the interLATA carrier is not in the public interest.