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Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

CC Docket No. 96-122

In the Matter of)
)
Implementation of the)
Pay Telephone Reclassification)
and Compensation Provisions of)
the Telecommunications Act of 1996)

To: The Commission

**COMMENTS OF
ARCH COMMUNICATIONS GROUP, INC.**

Arch Communications Group, Inc. ("Arch"), by its attorneys and pursuant to Section 1.415 of the Commission's rules, hereby submits its Comments in response to the Notice of Proposed Rulemaking ("NPRM")^{1/} in the above-captioned proceeding in which the Commission proposes to implement the provisions of Section 276 of the Telecommunications Act of 1996. The following is respectfully shown.

I. Introduction

1. Arch provides wireless messaging services, primarily paging, to over 2.7 million units throughout the United States. Arch's operations include local, regional, and nationwide common carrier and private paging systems.

^{1/} FCC 96-254, released June 6, 1996.

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2. Arch will be affected by new rules implementing provisions of the Telecommunications Act of 1996 that have the effect of altering the Commission's existing policy that providers of payphones are not entitled to compensation for subscriber 800 calls placed from their payphones. Subscribers to Arch's services regularly use payphones to place toll-free 800 telephone calls to initiate a page or to access and retrieve messages after receiving a page. Arch makes 800 numbers available to its customers for this purpose, and consequently is itself an 800 subscriber.

**II. A User-Pays System Is Appropriate
for Subscriber 800 Calls**

3. The Telecommunications Act of 1996 mandates that the Commission, "[i]n order to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public,"^{2/} must

establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone....^{3/}

^{2/} 47 U.S.C. § 276(b)(1).

^{3/} 47 U.S.C. § 276(b)(1)(A).

4. The NPRM describes two options which the Commission believes satisfy the requirement that payphone service providers ("PSPs") be "fairly compensated". The first option is a "carrier pays" scheme whereby an IXC that receives a "dial around" call (i.e., a call that bypasses the local telephone company or the PSP's selected IXC) from a payphone would be required to pay a per-call charge to the PSP, and would then be free to establish (or not) a mechanism for recovering that cost. NPRM, para. 25. The second option is a "set-use fee" that the IXC would bill and collect from the payphone user and remit to the PSP. The NPRM suggests that in the case of subscriber 800 calls, the set-use fee could be collected from the subscriber. NPRM, para. 26. The NPRM also seeks comment on what rate of compensation PSPs should receive. NPRM, para. 38.

5. As an initial matter, Arch agrees with the NPRM's determination that the mandate of Section 276 to prescribe compensation for PSPs should be implemented "only when payphone providers are not already 'fairly compensated.'" NPRM, para. 16. The Commission should proceed to adopt rules requiring compensation for subscriber 800 calls only if the record gathered in this proceeding provides convincing evidence that it is fair to compensate PSPs for such calls. Furthermore, the Commission should

clarify that whatever plan is adopted will not affect existing interconnection arrangements or other contractual agreements regarding LEC-owned payphones, such as 800 set-aside codes for the radio common carrier industry and reverse billing arrangements for paging companies provided through coin-return payphones.

6. Should the Commission determine that subscriber 800 calls are compensable, Arch believes that PSPs would be "fairly compensated" by a plan that calls for each payphone user to pay directly for completed calls -- in the case of coin payphones, by depositing a coin, or, in the case of smart payphones, either by credit card or by some system devised by the PSP itself. The PSP should be entitled to establish the per-call compensation rate, and should be required to post a notice informing payphone users of the rate and how it is to be collected.

7. A user-pays PSP compensation plan has numerous advantages over the cumbersome and circuitous carrier-pay system outlined in the NPRM. First, it guarantees that the PSP will be compensated. Second, although the immediate transaction costs to the payphone user are increased, there are virtually no additional

transaction costs imposed upon other entities.^{4/} Moreover, while PSPs may incur additional costs, they also are the immediate and direct beneficiaries, and any additional costs likely would be more than offset by the substantial revenues that would be generated, as evidenced by the high volume of subscriber 800 calls placed from payphones. See NPRM, para. 39.

8. Third, a user-pays system that allows PSPs to determine the cost of each subscriber 800 call would further the goal of "promoting competition among payphone service providers"^{5/} because PSPs would be incented to compete for payphone users by establishing competitive rates.

9. Fourth, a user-pays system avoids fraudulent schemes to increase compensation through the use of auto-dialers and other devices. The Commission acknowledged this problem when it previously decided to make subscriber 800 calls non-compensable. Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, CC Docket No. 91-35, Report and Order and Further Notice of Proposed Rule Making, 6 FCC Rcd 4736, 4746 (1991), remanded

^{4/} Under the plans described by the Commission, the payphone user ultimately is likely to incur some cost. Direct payment accomplishes the same result in a more straightforward and less burdensome manner.

^{5/} 47 U.S.C. § 276(b)(1).

sub nom. Florida Public Telecommunications Association, Inc.
v. FCC, 54 F.3d 857 (D.C. Cir. 1995).^{6/}

10. Finally, a user-pays system avoids harm to companies such as Arch whose customer billing plans are based on flat rates, rather than per call rates. Arch has no mechanism in place to account for and recover costs generated by the use of subscriber 800 numbers placed from payphones, and the cost of developing, installing and implementing such a mechanism would be significant. In light of the highly competitive nature of paging services, and the flat fee basis on which such services are provided, Arch believes this burden cannot be justified.

^{6/} In remanding the Commission's decision that subscriber 800 calls "routed to" certain operator service providers are non-compensable, the Court did not hold that Section 226 of the Communications Act explicitly requires that PSPs be compensated for subscriber 800 calls. In light of Section 276's mandate that PSPs be "fairly compensated" for all payphone calls, however, it appears that the precise issue remanded by the Court is moot.

WHEREFORE, the foregoing having been duly considered, Arch respectfully requests that the Commission adopt rules in this proceeding consistent with the foregoing.

Respectfully submitted,

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