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Federal Communications Commission
Office of Secretary

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

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

COMMENTS DOCKET FILE COPY ORIGINAL

BellSouth Corporation, on behalf of its affiliated companies ("BellSouth"), hereby files its comments to the Notice of Proposed Rulemaking released on June 6, 1996.[1]

INTRODUCTION

BellSouth is a member of the RBOC Payphone Coalition which has submitted Comments in this proceeding addressing the major issues set forth in the NPRM. BellSouth files these separate comments to emphasize that in enacting the pay telephone provisions of the Telecommunications Act of 1996[2] Congress intended that the industry be deregulated and that there should be immediate regulatory parity for all pay telephone providers.

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[1] In the Matter of Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Notice of Proposed Rulemaking, FCC 96-254 (rel. Jun. 6, 1996) (hereinafter "NPRM"). By subsequent Order, the Commission modified the comment and reply comment dates. See Order, DA 96-983 (rel. Jun. 20, 1996).

[2] Pub. L. No. 104-104, 110 Stat. 56 (1996) (codified at 47 U.S.C. § 276) (hereinafter "1996 Act").

I. THE LOCAL COIN RATE SHOULD BE SET BY THE MARKET

A. Jurisdictional Authority to Set Local Coin Sent-Paid Rates.

Section 2(b)(1) of the Communications Act of 1934 provides, in pertinent part, that "nothing in this Act shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier."[3] The Commission has recognized that state commissions have the authority to regulate the charges, terms and conditions of local and intrastate payphone service.[4] The rate for the most common type of call, the local coin call, is set by state commissions.[5]

The pay telephone compensation provision of the Telecommunications Act of 1996, however, directs the Commission to "take all actions necessary . . .to prescribe regulations that . . .establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate . . .call using their payphone . . ."[6] To the extent that any State requirements are inconsistent with the Commission's regulations promulgated pursuant to Section 276(b)(1)(A), the Commission's regulations "shall preempt such State requirements."[7]

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[3] 47 U.S.C. § 2(b)(1).

[4] NPRM at ¶ 5, and n. 19.

[5] NPRM at ¶ 19.

[6] 47 U.S.C. § 276(b)(1)(A).

[7] 47 U.S.C. § 276(c).

BellSouth agrees with the Commission's statement that Section 276 of the Act requires the Commission to ensure that the payphone provider receives fair compensation for each interstate and intrastate call, including local coin sent-paid calls.[8] Because the rates for these calls are set by state commissions, and because Section 276(c) instructs that the Commission's per call compensation plan regulations shall preempt State requirements "[t]o the extent that any State requirements are inconsistent with the Commission's regulations," the Commission seeks comment on "a range of options" for ensuring "fair compensation for PSPs with respect to local coin sent-paid calls."[9] Each of the three options suggested by the Commission would have a regulatory agency, at either the federal or state level, continue to set rates for local coin-sent paid calls. Such regulation is unnecessary and is inconsistent with the deregulatory thrust of the Telecommunications Act of 1996.[10]

B. Conditions in the Payphone Services Market Mandate Immediate Deregulation.

As demonstrated in the economic analysis attached hereto for the purpose of being entered into the record of this proceeding,[11] but for regulatory constraints, the coin payphone market is already structured to operate competitively. Given the essentially competitive conditions of the

[8] NPRM at ¶ 20 ("sent-paid" refers to those payphone calls which are paid by the end-user at the payphone, rather than by alternate billing).

[9] Id.

[10] "The purposes of the bill are to revise the Communications Act of 1934 to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector development of advanced telecommunications and information technologies and services for all Americans by opening up all telecommunications markets to competition, and for other purposes." Senate Report on 5.652 (Report No. 104-230) SR-1 - SR-2.

[11] Haring, Jackson & Monson, *Economic Report on FCC Resolution of Payphone Regulatory Issues,* Strategic Policy Research (Jul. 1, 1996).

payphone services market as well as Congress's directive to immediately deregulate the industry,[12] in BellSouth's view there is little need for additional federal or state intervention in this market, other than to act quickly to remove vestigial constraints on free market behavior. Local coin sent-paid call rates set by states and developed pursuant to implicit and explicit subsidies from regulated services are an example of such constraints. In prescribing its regulations to establish a per call compensation plan that will ensure fair compensation for all PSPs for local coin-sent paid calls, the Commission should declare that local coin sent-paid rates may not be set or maintained in reliance on any subsidy that has been terminated by the Telecommunications Act of 1996. Any rate set or maintained in reliance on such subsidy would, as a matter of law, be inconsistent with the Commission's regulations and thus be preempted by them.

C. Rate-Setting is Not Deregulatory

There is nothing in the payphone compensation provisions of Section 276, or in any other provision of federal law, that directs the Commission to set local coin sent-paid rates. Nevertheless, when it confronts the dilemma posed by the existence of state-set local coin sent-paid rates with Section 276(b)(1)(A)'s requirement to prescribe regulations establishing a per call compensation plan that will ensure fair compensation for local calls and Section 276(c)'s express preemption language, the three options proposed by the Commission all involve setting rates. In BellSouth's view, such action is inherently de-regulatory and unnecessary. The Commission should express a preference that local coin-sent paid rates be determined by competition in the open market.

[12] See, e.g., 47 U.S.C. § 276(b)(1)(B).

Accordingly, rather than encouraging the states to set local coin sent-paid rates, either according to guidelines established by the FCC or at their own discretion, the FCC should establish a rule of decision in this proceeding in favor of market based rates. It should then encourage states to deregulate and allow the local coin rate to be set according to market conditions. Where a state continues to find authority to set a local coin rate, and in so doing sets a rate that denies fair compensation to PSPs, that rate would be automatically preempted by the express language of Section 276(c). In the event of such preemption, the state-set rate would fall, and rates would be set by the market.

D. <u>Ensuring Fair Compensation for All Local Coin Calls</u>.

In BellSouth's view, the regulations which the Commission is required to prescribe pursuant to Section 276(b)(1)(A), in order to establish a per call compensation plan that will ensure that all PSPs are fairly compensated for each and every completed intrastate call using their payphone, should serve three primary objectives. First, the regulations should announce a rule of decision favoring market based pricing for local coin calls and prohibit any local call rate to be determined in reliance on the subsidies which are required to be terminated under Section 276(b)(1)(B). Any existing local coin rates that were developed pursuant to those subsidies should be declared preempted at a date certain, at which point the pricing should be determined according to market conditions. Second, the regulations should provide guidance for states who desire to set transitional rates to be effective until the date that existing subsidy-based rates are preempted. Such transitional rates, if set according to the Commission's regulations prescribed in this proceeding, should be presumed to be consistent with those regulations, but may be challenged on petition to the FCC. Petitioners should have the burden of demonstrating that transitional rates set in this manner are inconsistent with the Commission's regulations and thus preempted. Finally, the regulations should embody the standards which the Commission should use to adjudicate any complaints or petitions brought by a PSP that are grounded in Section 276's express preemption clause. When a petition is brought concerning a rate which is set after existing rates based on terminated subsidies are preempted and transitional rates expire, a state shall have the burden to overcome the presumption that its rate, as non-market based, is *prima facie* inconsistent with the Commission's regulations.

The standards the Commission ultimately adopts to review such expedited petitions should ensure that any state prescribed rate covers costs plus fair compensation for the PSP. In making this determination, the Commission should not combine revenues from different call streams; such an analysis is inconsistent with Congress's mandate that PSPs be fairly compensated for "each and every call" and requires extensive regulatory scrutiny. The Commission should also determine that a reduction in the number of general payphones caused by such rate is not primarily a local matter, but contrary to Congress's general purpose to "promote the widespread deployment of payphone services to the general public." The Commission should resolve such petitions in 120 days.

II. PSPs SHOULD RECEIVE INTERIM PER-CALL COMPENSATION

The Commission seeks comment on whether it should provide private payphone owners ("PPOs") some measure of interim compensation, to be paid until the effective date of the final rules adopted in this proceeding, for the growing volume of dial-around calls originated from their payphones. BellSouth believes that the benefits to the public from full market parity in the payphone industry will only be achieved when all PSPs have the ability to participate in the selection of the interLATA and intraLATA carriers who serve their payphones, and when all PSPs have the ability to be compensated for the use of their payphones.

In light of this, BellSouth strongly supports interim per call compensation, effective immediately. The Commission can build upon its existing per call compensation plans, or adopt a flat-rate, monthly amount based on an average number of calls per payphone set at a flat per call rate. In the event that the Commission allows the current effective date of its Order detariffing inmate only payphones to remain in effect,[13] then RBOC PSPs should also receive, beginning on the effective date of that Order, the same interim compensation for calls made on their inmate only payphones as PPOs are granted.

III. GRANTING BOC PSPs THE SAME RIGHTS TO NEGOTIATE WITH LOCATION PROVIDERS ON THE SELECTION OF THE PRESUBSCRIBED INTERLATA CARRIER AS INDEPENDENT PSPs WILL FOSTER INCREASED COMPETITION AND REGULATORY PARITY

True regulatory parity must mean that all PSPs, BOC and non-BOC alike, have the freedom to negotiate with or on behalf of location providers to aggregate traffic from payphone stations, to shop this traffic on the open market to interexchange carriers in return for a freely negotiated commission, to receive the per-call compensation required under Section 271 for each and every intrastate and interstate call using a payphone, and to resell telephone toll service as an operator service provider ("OSP"), subject to all applicable laws, including branding requirements under TOCSIA. Of course, both independent and BOC PSPs will be subject to the ultimate authority of the location provider to pick the carrier of choice; as the legislative history makes

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[13] In the Matter of Petition for Declaratory Ruling by the Inmate Calling Services Providers Task Force, Declaratory Ruling, RM-8181, FCC 96-34 (rel. Feb. 20, 1996) 2 Comm. Reg. (P&F) 476 (petitions for waiver and for partial consideration or stay pending).

clear: "the location provider has the ultimate decision-making authority in determining interLATA services in connection with the choice of payphone providers."[14]

It is in the public interest to allow such parity immediately, without regard to whether or not a BOC is authorized to provide in-region interLATA service under Section 271 of the 1996 Act. Had Congress intended to delay regulatory parity in the payphone services market, it could have, and would have, expressly linked full parity under Section 276 with Section 271. The appropriate public interest standard is that expressly called out in Section 276: the promotion of competition in the payphone services market and the widespread deployment of payphones. Nothing could be more inimical to the public interest identified by Congress than continuing to quarantine BOC PSPs from an essential and lucrative part of the payphone services market, especially in light of the Act's termination of all subsidies, including access charge contributions. On a going-forward basis, BOC payphones will be subject to the same expenses as independent payphones, and parity demands that BOC payphones have access to the same revenue opportunities as independent payphones. Indeed, true regulatory parity between BOCs and IPPs will not be obtained until this critical right to negotiate with location providers is assured.

The Commission need not adopt rules in addition to the structural and accounting safeguards mandated under Sections 271 and 272 of the 1996 Act in order to prevent any hypothetical anticompetitive conduct on the part of BOC PSPs as they obtain the ability to provide interLATA service. In this respect, the Commission has not required AT&T to be subject to such safeguards, nor has it been concerned that AT&T will direct interLATA service from AT&T payphones to itself. BOCs which obtain the authority to provide interLATA service and

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[14] NPRM at ¶ 68.

who participate in the PSP market may be able to provide competition to AT&T and other entrenched interexchange carriers and resellers, thus fulfilling Congress's explicit mandate to promote competition in the payphone market. BellSouth recognizes, of course, that nothing in Section 276 shall act to shortcut the requirements of Section before a BOC's long distance affiliate can offer service in a particular state.

Ultimately, there will always be three major checks on BOC presence in the payphone services market. First, the location provider will always ultimately control the selection of the presubscribed interexchange carrier through the selection of the PSP. Second, entrenched interexchange carriers not only will enjoy their current grandfathered contracts for many years to come, but will also continue to operate their payphone units and/or market and brand their dial-around services which have achieved a high level of public recognition. Third, the tremendous number of non-BOC PSPs reflects that there will continue to be intense competition which will assure fair and equitable competitive opportunities in the future The Commission must take immediate action by announcing a rule of decision granting BOC PSPs the same rights as independent PSPs to negotiate with or on behalf of location providers on the selection of the presubscribed interexchange carrier, and to otherwise participate fully in the PSP services market to the same extent that independent PSPs have been allowed to do.

CONCLUSION

The Commission should prescribe regulations framed as follows: (1) the public interest is served by allowing rates for local coin calls to be market based; (2) all local coin rates based on subsidization prohibited by the Telecommunications Act of 1996 should be eliminated by a date certain; (3) until the date these rates are eliminated, states may proceed to transition local rates to market pricing by setting rates which conform to guidelines prescribed by the Commission; after such date, any rate set by a state shall be presumed inconsistent with the Commission's regulations; (4) in the event a rate is determined to be in violation of Section 276, it will be declared null and void and the local call rate in such state shall be subject to market pricing. State prescribed rates must cover PSP costs plus fair compensation and must not consider revenues from different call streams.

The Commission should provide non-LEC PSPs interim per-call compensation. If the Commission allows its Order in RM 8181 to take effect as written, it should further grant BOC PSPs interim compensation for calls made on their inmate only payphones from the effective date of that Order. Finally, the Commission should grant BOC PSPs the immediate and unequivocal right to negotiate with and on behalf of location providers on the selection of the presubscribed interexchange carrier and to otherwise participate fully in the payphone services market, to the same extent that non-LEC PSPs do so today.

Respectfully submitted,

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Economic Report on FCC Resolution of Payphone Regulatory Issues

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Summary

With a supportive regulatory scheme (*viz.*, suitable regulatory fixes *re* nonstructural safeguards and support of public-interest phones), there is little basis for predicting a market failure justifying continued regulation of payphone industry operations. The competitive structure of the payphone industry provides a compelling economic basis for the presumption that effective competition can be relied upon to serve consumers well in this market sector. In our view, government would be well advised to find ways to promote market-based compensation rates. Since conditions of supply and demand vary significantly across different operating environments, any simplified government administrative scheme will likely fail to reflect underlying complexities and is thus liable to distort marketplace results. Because the payphone industry is competitively structured with high mobility of resources, any attempt to peg a rate administratively will predictably prompt adjustments in other factors of production. Low rates of compensation will thus likely result in degradation of service manifested in a reduced number of stations.

I. Introduction

In implementing provisions of the Telecommunications Act of 1996 (the "Act") relevant to payphone industry operations, the Federal Communications Commission ("FCC") should seek to establish a policy framework that will permit efficient competition in the provision of payphone services and an efficient and rapid transition to completely market-determined resource allocation in this sector of the industry. The payphone industry is itself competitively structured in economic terms with numerous competing firms, no significant economic barriers to entry and no significant economies of scale. Economic analysis thus suggests that there is little basis for government intervention to improve economic efficiency or prevent competitive market forces from operating freely, a conclusion that has been reached in at least one other notable national jurisdiction (*viz.*, the United Kingdom).[1] Indeed, the principal reason why government is now called upon to establish a rate for per-call compensation on dial-around calls is precisely its own earlier intervention (in different circumstances) to require dial-around capability.

The task before the Commission is thus most appropriately conceived as the establishment of operating ground rules that will contribute effectively to the operation of efficient competition in the market for payphone services. With a suitable set of ground rules in place, the Commission should then allow the competitive process itself to produce efficient outcomes in this marketplace. Where marketplace competition cannot be prudently relied upon to produce socially optimal

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[1] Office of Telecommunications, *Pricing of Telecommunications Services From 1997, OFTEL's Proposals for Price Control and Fair Trading*, June 1996, p. 37:

> OFTEL has not considered it necessary to control payphone prices before, and it would be perverse to do so now as competition both direct and from near substitutes is stronger than ever before and growing rapidly. Feedback to OFTEL from consumers generally indicates that public payphone prices are not the issue: the concern is more with payphone availability.

outcomes (*e.g.*, where the social benefits of payphone placement exceed the private benefits that payphone operators can effectively appropriate as well as the costs of station placement, and where private benefits are insufficient to support the placement of a payphone station), governments in the future will need to find new methods to support the supply of otherwise uneconomic services. A principal tenet of the new Act is that payphone operations be subsidy-free.

This submission reports on basic economic conditions of supply and demand in the market for payphone services. With the timely implementation of a suitable set of operating groundrules as contemplated in the Act, basic conditions of supply and demand in this industry sector appear to be eminently conducive to effective competition with prospective need for only a modicum of rationally conceived government intervention to meet public interest objectives. With a supportive set of regulatory ground rules, competition is plainly workable and can be prudently relied upon to produce efficient results. To implement the necessary supportive set of operating ground rules, the Commission basically needs only to establish the nondiscrimination and nonstructural competitive safeguards Congress has mandated in the Act.

This rulemaking thus affords the Commission an excellent opportunity to establish the regulatory framework for effectively self-policing competition in the payphone industry on a going-forward basis and, in this manner, to realize the essential objective and visionary promise of the new Act as it relates to this industry segment. If the Commission establishes a sound foundation at the outset, there should be little need (apart from monitoring and enforcement of competitive ground rules) for continuing regulatory intervention in this marketplace, and a prompt transition to market-mediated exchange would be warranted and worth explicitly outlining in the Commission's Report and Order in this proceeding. By the same token, failures of regulatory omission or commission may result in market performance failures undermining efficient competition and creating additional regulatory headaches.

The call-compensation issue is highly complex and it will be difficult for the Commission to duplicate through administrative means the complex outcomes that would likely characterize fully market-mediated outcomes. Nevertheless, the Commission ought to come as close as it can in fashioning a compensation scheme to mimicking the arrangements that the market would likely produce if it were permitted to operate freely. In doing so, the Commission needs to take careful account of the consequences of its decisions regarding compensation. Because the payphone industry is characterized by rivalrous competition and will prospectively operate on a subsidy-free basis, the consequences of different compensation arrangements will be directly manifested in service quality variations and, in particular, the number of payphone stations that are deployed.

From an economic perspective, optimal compensation arrangements are, generally speaking, most likely to result from bargaining negotiations among the various suppliers of relevant factors of production in a competitive marketplace. As long as the government interposes itself and sets rules which alter the ability of business negotiations to produce mutually acceptable terms and conditions for voluntary exchange and productive coordination among different input suppliers, the government is necessarily burdened with the obligation to ensure fair compensation and must necessarily weigh the consequences of different compensation arrangements. In so doing, it should understand that the principal performance consequence of its decisionmaking is quality of service rather than profitability. Because there are no barriers to resource mobility in this industry sector, variations in compensation are primarily reflected in business decisions to place or remove phones, not in higher or lower profitability. The absence of barriers to resource mobility implies that the Commission is incapable of determining profitability. The market determines profitability. Variation in service quality is the adjustment mechanism that ensures no more or less than a competitive rate of return.

II. The Market for Payphone Services

The basic economic conditions of supply and demand prevailing in the market for payphone services indicate that in most circumstances freely functioning, competitive market arrangements can generally be relied upon to supply convenient, reasonably priced payphone service to the consuming public.[2] The analytical basis for this conclusion is premised primarily on the existence of effectively competitive conditions for the supply of payphone services in most market settings, particularly on a prospective basis after the requirements of the Act affecting the supply of payphone services have been satisfied.

There are, of course, a fairly delimited set of specific settings in which demand and supply alternatives may be limited because of special conditions and where, as a consequence, market failures might occur. These types of settings typically involve circumstances where physical location sites possess special characteristics which permit the site provider/administrator to extract locational rents deriving from the ability to limit the availability of convenient supply alternatives and where consumers of payphone services for various reasons possess circumscribed demand alternatives. Correctional facilities and intercity transportation terminals, for example, represent physical locales where prospective consumers may be limited in terms of the supply alternatives to which they can

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[2] This is not to imply that pricing will necessarily or usually be uniform throughout all geographic regions and specific locations. Where costs of production are higher because opportunity costs of necessary inputs are higher or because additional inputs are necessary to provide an effective service (or a service of higher quality), prices will tend to be higher. Local variations in natural and man-made environmental conditions may give rise to variations in costs of production.

readily turn and where there may thus be nonnegligible locational rents. We discuss these idiosyncratic settings presently. For the vast majority of relevant marketplace locales, locational rents are not likely to loom largely and prospective consumers are likely to possess reasonably good demand alternatives.

From a policymaking perspective, both general and special conditions prevailing in the marketplace are relevant, but it is important in establishing public policies to address special circumstances not to burden unduly normal and salutary methods of operating in more typical operating environments. In the latter circumstances, the policy cure (for special conditions) may be worse than the likely harm from market failure (for typical conditions). Thus, for example, price controls which prevent locational rent extraction/monopoly exploitation in one setting may well cause shortages of supply in other, perhaps more typical operating circumstances where locational rents and monopoly exploitation are not likely problems.[3] In establishing appropriate ground rules for payphone industry operations, the Commission ought to take operating conditions that widely prevail as its primary reference point. Special or extraordinary circumstances deserve special treatment.

With respect to the latter, we would suggest that problems deriving from intolerable exploitation of locational advantages are perhaps best addressed directly rather than through, say, per-call

[3] By way of analogy, metal detectors are utilized at airports and entrances to buildings which might be potential targets for terrorists or troublemakers. The benefits of extending the use of metal detectors "universally" would not exceed the costs of either the detectors, the inconvenience or the potential harms. Note well that unless regulators can control the quantity and quality of output, price controls will predictably result in service deterioration. Thus, attempting to prevent the exploitation of locational advantage through imposition of price controls may merely result in the disappearance of service. With price controls, the number of phones available to place calls will predictably decrease; the problem is not a high price for service, but simple lack of service.

compensation policy. The root cause of the problem does not lie in any imperfection in the supply of payphones, but rather imperfections in the supply of suitable sites. Remedies should be directed at the source of the problem rather than where the symptoms are manifested. In analogous settings, the public policy response is often simply to allow competition and consumer complaint to discipline conduct. If a hotel restaurant charges outrageous prices relative to the quality of the fare it offers, it will tend to attract less custom and render itself vulnerable to competition from other eating establishments or hotels offering better value for money. Public policy can also help protect against exploitation by ensuring that consumers have good information about terms and conditions of sale, an issue the Commission is currently addressing.

We also note that where there is market power associated with locational advantage, that power may actually be exercised in such a way as to advantage callers. For example, there are circumstances where callers may benefit from and, therefore, have a stake in any locational rents. Thus, it is noteworthy that correctional facilities often use commission receipts to establish trust funds to support good works for inmate populations. Competition for the right to supply service could focus on the supplier willing to charge the lowest price for calling rather than pay the highest rent. For public facilities, where the administrator's objective function may depend more on the quality of service supplied to the public than the amount of rent extracted from concessionaires (*i.e.*, where nonprofit incentives may operate or predominate), the administrative remedy may lie with constraints on the administrator's discretion or a different incentive structure rather than limitations on legitimate business conduct by suppliers of payphone service.

A. Determinants of Demand

Because the value of a payphone call is frequently high relative to its price or, alternatively, because its cost is often small relative to the total cost of a communication (*i.e.*, taking into account the opportunity cost of the caller's time and, in some cases, the cost of a long-distance connection), demand for payphone services may often tend to be inelastic at currently prevailing prices. By the same token the fact that many communications may easily be postponed at small cost or themselves be of only small value (or require more change than the caller has in his or her pocket) implies that there may often be considerable elasticity of demand for payphone service. There are, in addition, a number of economic factors operating to increase the elasticity of demand for payphone calling.

The elasticity of demand for a product or service depends importantly on the price and availability of substitute offerings. The ongoing revolution in mobile telephony, which is rapidly and substantially expanding the supply and lowering the price of convenient mobile communications services is thus a powerful force operating to increase the elasticity of demand for payphone calling. Cellular, airphone, mobile workgroup communications and PCS (in quantity) now are all offering increasingly effective demand substitutes for payphone calling at the margin, and imply increasing restrictions on the ability to profit through an effective restriction of the market output of payphone services (in the unlikely event that could be accomplished given effective competition on the supply side in the relevant market).

Demand need not be perfectly elastic at prevailing prices to render incentives to restrict output of a service inoperative. A perfectly elastic demand at the prevailing price implies complete loss of business consequent upon a vanishingly small price increase and, as a result, zero incentive to restrict output/raise price. Needless to say, there are very few economic goods in the real world displaying this kind of extreme sensitivity to price fluctuation. In general, demand conditions are usually deemed inhospitable to monopolistic output restriction/price increases when they imply that suppliers will suffer such a significant loss of business as to render an output restriction/price increase unprofitable even if it could be effected. If demand is merely sufficiently elastic that enough consumers seek alternatives at a higher price to reduce net revenues, incentives to restrict output do not operate.

As indicated above, different considerations affecting prevailing demand conditions for payphone services have radically contradictory and, therefore, mixed implications in aggregate for any summary assessment of demand elasticities. Further complicating any overall assessment is the fact that demand elasticities are also likely to vary systematically depending on the type of call (*i.e.*, *e.g.*, local versus long distance). Obviously demand for payphone calling may in some circumstances (*viz.*, emergencies) be highly inelastic, while in other circumstances (*viz.*, where calls have low value or are easily postponed) demand may be highly elastic at prevailing prices. In a rough sense, the question is which circumstance is more prevalent and weighs more tellingly in the aggregate. However sensitive current demands are to price, demand is going to become increasingly more elastic as more effective substitutes for payphone calling become increasingly widespread.

Whatever the impact of demand-side considerations, basic conditions affecting the competitiveness of payphone service supply create a powerful presumption against the likelihood of competitive market failure in this industry sector. As we now describe, the economic structure of the payphone industry appears to be eminently conducive to effective competition. It thus appears that a freely-functioning competitive market is both feasible and capable of producing the kind of high-level performance for consumers for which competitive markets are widely and justifiably reputed.

B. Conditions of Supply

From a supply-side perspective, the fundamental conditions determining market competitiveness are those which affect the mobility of resources. If the character of relevant resources and production processes is such that supply capabilities can be readily marshaled to meet market demands, competitive problems for which regulation can supply economical remedies are likely to be few. In this regard, a salient fact is that literally thousands of competing firms have entered the market for payphone services since competition has been permitted in this industry segment. Interestingly, what were initially perceived as technical disabilities associated with independent entry — in particular, reliance upon distributed rather than switch-based intelligence — have often turned out to be a source of competitive advantage. The actual entry of a large number of competing firms reflects the absence of economic barriers to competition in this industry segment.

The fact that a prospective entrant must actually produce a product in order to compete does not formally constitute an entry barrier in economic terms. In economic terms, an entry barrier is something which prevents or inhibits a prospective seller from incurring necessary costs of production, creating productive capacity and bringing a good to market. In economic terms, the quintessential economic barrier to entry is government restriction of entry. Governmental restriction of entry into the payphone business has largely disappeared. Freedom from governmental restriction to compete is now the rule rather than the exception. Moreover, whatever vestiges of governmental restrictions on payphone competition remain will presumably not be able to withstand legal scrutiny under procompetitive provisions of the new Act.

Besides legal control of entry, there are two other types of entry barriers to which economic analysis frequently makes reference: differences in productive factors and economies of scale. We consider each in turn as they relate to payphone services.

Sometimes superior resources occur in such small quantities that a significant barrier to the expansion of an industry is provided by the unavailability of other good sources of resource supply. This argument is usually broached in the context of competition in various mineral resource industries, where variations in the quality of different resource deposits imply that owners of rich deposits may possess market power in some circumstances.[4] We have previously referred to the occasional existence of special circumstances which might endow particular physical locations with "superior-resource" status in the context of payphone service.

Travelers at mass-transit facilities or inmates at correctional facilities may possess limited supply alternatives given their respective circumstances. More typically, buyers themselves possess greater mobility (both in a physical and temporal sense) and, hence, possess a larger number of effective substitute alternatives. Different physical locations in reasonable proximity to one another thus effectively compete with one another. Placing calls earlier or later are temporal alternatives. Unless a service supplier could lock-up all the locations within a particular relevant market area, it would be impossible to restrict output effectively. That, in general, seems infeasible given the ubiquity of potential sites, but even if it were conceivable, note that buyers might well adjust their behavior on a dynamic basis to avoid an overcharge (*viz.*, communicating earlier or later, avoiding particular locations, *etc.*), thus rendering the profitability of an overcharge business strategy questionable.[5] We thus conclude that, other than in a fairly circumscribed set of special circumstances where callers' mobility is significantly constrained, the supply of physical location sites should not properly be regarded as a serious barrier to competition in the payphone industry.

Most other inputs used in the production of payphone services are competitively supplied in well-organized markets. The American Public Communications Council (APCC) supplies an effective

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4 Usually, subsequent discoveries of resource deposits of comparable or higher quality have invalidated the argument that superior resources constitute an entry barrier.

5 We note again the possibility that charges for calling in some areas may need to be higher than in other areas in order to recover higher costs of production caused by differences in the operating environment, and that the Act requires subsidy-free operations.

service support infrastructure for independent payphone service providers.[6] In addition to representing the industry in relevant public policy venues,[7] the APCC provides its members with up-to-the-minute information on public policy issues affecting the ways its members do business and offers an extensive set of informational and educational seminars.[8] In addition to the APCC, there are a variety of enterprises with Internet sites offering information on payphone industry-related topics, including equipment for sale, business opportunities, trade associations, products and services.[9] An institution

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6 At the APCC's recent trade show in Las Vegas, more than 80 companies exhibited their wares. According to APCC's conference brochure, products and services displayed by exhibitors included: advertising displays, billing, collection and validation services, board components, booths and enclosures, card readers, casings and housings, cellular payphones, charge-a-call payphones, coin payphones, coinboxes and mechanisms, credit card payphones, debit card payphones and equipment, desktop payphones, directory covers and binders, education and training, financing and leasing, handsets, inmate products and services, keypads and dials, local and long distance services, lighting, locks and security, operator services, payphone parts, prepaid cards and equipment, public information terminals, publications, refurbished equipment, retrofit kits, security equipment, signage, smart card payphones, software, switches, TDD equipment, testing and diagnostic equipment, universal payphones, and voice messaging.

7 The APCC describes itself as "dedicated to protecting the interests of the public communications industry." *APCC's 1996 Western Conference & Expo*, April 10-12, Las Vegas, Nevada, MGM Grand Hotel.

8 At its recent meeting in Las Vegas, the APCC offered three concurrent seminar tracks providing attendees over 20 educational seminars and workshops. These included a New Revenues/Technologies track ("Computer Software for Your Business," "Revenue Opportunities in Prepaid/Debit Cards," "Reselling Long Distance," "Maximizing Network Options," "Telecom Technology: Origination to Termination," "International Callback,"and "Emerging Public Communications Technologies"), a Government/Regulatory track ("Telecom Reform: An Overview," "Choices in Local and intraLATA Access," "Local Coin Rate Trends," "Status of FCC Proceedings," "State PUC Initiatives," "Payphone Compensation Channels," and "Coping With City Ordinances"), and a Business Strategies track ("Understanding Your Revenue Sources," "The Financial Picture of the Industry," "How to Close the Sale," "LEC/IXC Strategies," "Life After Rate Caps," "Getting Started in the Payphone Industry," and "How to Market for New Locations").

9 <http://www.payphones.com> contains a wide variety of information on the payphone industry and pointers to other Internet resources.

called the US Payphone School ("The Institute of Higher Earnings") offers a veritable "how-to-enter-the-industry" course of training.[10]

There would thus appear to be virtually no specialized factors of production which inhibit entry into the payphone industry. To the contrary, equipment components are available off-the-shelf as well as in an organized secondary market, business information and technical support are readily available, and there are national and regionally oriented trade associations that serve as clearing houses for information and focal points for organizing joint action to cope with industrywide concerns. Again, the actual record of competitive entry by numerous firms would appear to belie the existence of any barrier to entry in this industry segment.

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[10] Its course includes information on Payphone Manufacturers ("Discussion of the newest technologies and manufacturers to assist you in your evaluation of the best equipment for your business needs), Computer/Modems ("Learn how to choose the right computer/modem and software for your business payphones"), Contracts/Forms/Paperwork ("Save Thousands of dollars in legal fees by using forms and contracts that have been tried and tested"), Setting Up Your Business, Bookkeeping, Taxes and Banking ("Save Thousands of dollars in accounting fees. Learn tax planning and how to work with the banking community"), Sales Training ("Learn the most important aspect of our industry: Location, Location, Location and the ways to generate different income streams"), Operator Service Providers ("Learn the various ways of earning money on credit card, collect calls, and third party billing"), Fraud/Vandalism ("Learn the proven ways to protect your investment and profits"), Installation, Service, and Testing ("Learn 'hands-on' procedures for payphone installations, how to diagnose problems, assemble and disassemble phones. Learn testing procedures for your lines/phones"), Compliance ("Protect your investment by learning the rules and regulations to stay in compliance"), and Location Management and Banking ("Learn how to set up your locations, manage them with ease and be able to give your banker the information they require to finance your future business").

Besides the US Payphone School, Payphone Consultants 1-800-213-6754 ("The Payphone Business can offer Financial Independence, Freedom from the daily grind of an ordinary job and a lot of Flexibility in one's lifestyle. It requires a little investment capital, a little smarts and some work, but the rewards can be considerable! The great thing about Payphones is that they can be out there making money for you at all hours of the day.") also offer training and education to start a "Payphone Route of your own, regardless of where you are," including some essential payphone topics: "How Much Money ($$$) Can You Make (many different income streams . . .)?"; "What to do with all of those quarter, dimes & nickels (it's a cash business)"; "Payphone Equipment Manufacturers & Suppliers (the good stuff, the bad stuff, the prices)"; and "Discount Long Distance for your Payphones (& for your business, & for your home, etc.)."