

Actel

DOCKET FILE COPY ORIGINAL

DOCKET FILE COPY ORIGINAL

June 29, 1996 DOCKET FILE

Office of the Secretary
Federal Communications Commission
Washington, DC 20554
Attn: William F. Caton, Acting Secretary

RECEIVED
JUL 1 1996
FCC

Dear Mr. Caton:

Please find enclosed fifteen (15) originals entitled "Response of ACTEL, Inc. to Federal Communications Commission....CC Docket No.96-128....In the matter of: Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications ACT of 1996."

I have submitted sufficient documentation to provide each Commissioner a personal copy.

Under separate cover, I have submitted two additional originals to the Common Carrier Bureau, Enforcement division.

Also enclosed is a diskette containing two (2) files comprising these comments. One file ("Response of ACTEL - FCC") represents the main body of this document. The second file ("ACTEL Charts") represents Exhibits A, B & C included in the comments.

If you have any questions please contact me at (201) 989-9012.

Thank you for your attention.

DOCKET FILE COPY ORIGINAL

Sincerely,
ACTEL, Inc.



Arthur Cooper
President
Enclosures: 15

0414



RECEIVED
JUL 19 1996
FEDERAL BUREAU OF INVESTIGATION

**RESPONSE
OF
ACTEL, INC.
TO FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554
CC Docket No. 96-128**

In the matter of:

**Implementation of the Pay Telephone Reclassification and Compensation
Provisions of the Telecommunications Act of 1996**

ACTEL, Inc. ("ACTEL") is a New Jersey corporation in the business of providing public pay telephone services throughout the State. All public pay phones that ACTEL owns and operates are installed and maintained in New Jersey by employees in New Jersey. ACTEL installed its first public pay telephone on November 21, 1987. As of this writing, ACTEL operates approximately 260 public pay telephones. Of these, approximately 65% of these phones are installed in public locations in "inner-city" areas including Newark, Jersey City, Paterson, the Oranges, Elizabeth, and New Brunswick (see Exhibits A and B). From the very beginning ACTEL sought to provide service to the inner-city due to an estimated 20% of inner-city residents who do not have residential service. In addition, ACTEL noted that these areas are "under-served" by the dominant carrier, Bell Atlantic of New Jersey ("BA-NJ").

I am President and owner of ACTEL. I am a member and Trustee of New Jersey Payphone Association (NJPA). I am also a member in good standing with American Public Communications Council (APCC). It is estimated that there are approximately 20,000 pay phones, in New Jersey alone, installed by competing non-local exchange companies ("non-LEC") providing service to 123 million callers per year. While ACTEL provides service to approximately 1.2% of this total, we are proud of the service we have provided. We employ 3 full time service people responsible for maintaining service of the phones (6 days a week throughout the year), my wife, and myself, who are responsible for management / executive responsibilities of the business. I have personally invested my life savings into ACTEL and have had few days off since starting this business. My commitment to ACTEL, the industry, and ultimately the consuming public can be unquestioned.

ACTEL wishes to comment upon the Notice of Proposed Rulemaking (NPRM) commenced by the Federal Communications Commission (FCC) with respect to payphone service providers (PSPs). I am pleased to agree and support the FCC in its efforts to develop a competitive marketplace designed to result in improved service at lower prices. Many of the provisions and tentative conclusions contained in the NPRM are wholeheartedly supported by ACTEL. For the most part, the NPRM effectively addresses the pay telephone issues that are contained in the Telecommunications ACT of 1996. After nine (9) years in the business, I believe, dedication, commitment, and

enforcement of these provisions will go a long way towards leveling the playing field between companies like ACTEL and incumbent Local Exchange Carriers (LECs). The key elements of a level playing field as it pertains to the pay telephone industry can be summarized as follows:

1. Non-discriminatory availability and pricing for elements of pay telephone service.
2. Non-discriminatory access to available revenue streams.
3. Non-discriminatory treatment for support services available.

Since the inception of this industry, all three (3) key elements have been unreachable due to one inescapable and devastating truth: ACTEL's sole provider for essential elements of pay telephone service that are sold to the public is the same entity which is our chief competitor, namely, Bell Atlantic of New Jersey (BA-NJ). BA-NJ owns and operates eighty thousand (80,000) pay telephones in the state while ACTEL operates two hundred sixty (260). This discrimination that I refer to has been the "rule" from the beginning, despite the fact that State of New Jersey passed and enacted the Telecommunications ACT of 1992. Although the Act specifically prohibits cross subsidization unfairly benefiting the Coin Operation of the LEC, and, requires that "non-competitive services" be provided to competitors at terms and conditions including price, identical to the LEC itself, nothing....I repeat....nothing has changed. ACTEL continues to pay an estimated 1500 percent above the LEC's cost for local calls and line charges. In fact, the line charge that ACTEL has no choice but to purchase from BA-NJ is almost 250

percent higher than the retail business rate that I pay for my business line in my office. While 411 information is available to the public at no charge from the LEC's pay phone, the same service provided to my customers carries a charge to ACTEL of twenty (20) cents a call; a charge which ACTEL does not pass on to the consumer.

Since the FCC clearly understands the inequities of the business based on the key elements of the NPRM, I will forego further background and address those issues ACTEL wishes to comment on in the format requested.

**COMPENSATION FOR EACH AND EVERY INTRASTATE AND
INTERSTATE CALL ORIGINATED BY PAYPHONES**

Paragraphs 16-23

ACTEL firmly agrees that per-call compensation should not include 0+/0- calls as those calls are already compensated by OSPs and IXC's. It should be noted however that this class of calls has dwindled now to 2.6% of all calls from ACTEL's pay phones. There are clear and important reasons for this. The remaining 97.4% of the calls ACTEL provides service for is provided to the public at a loss. Sixty-seven (67) percent of the total call volume comes from coin calls. Due to the astronomical rates charged by BA-NJ for local and toll calls along with the absurd rate for monthly line charges, ACTEL actually operates the coin segment of its pay telephone

business at a slight loss. Approximately three (3) percent of calls are free calls (911,411,211); there is a direct cost for 411, as mentioned earlier, and 211 (repairs and refunds). The remaining twenty-seven (27) percent consist of the various categories of dial-around calls (subscriber 800, access calls, debit card calls, vanity numbers, etc). Bearing in mind that only 5% of these dial-around calls are compensated to any degree through previously ordered "per-phone dial around compensation," ACTEL provides these calls for no revenue. Therefore the sole source of profit for the entire business is focused on those 2.6% of 0+/0- calls. This has resulted in ACTEL's absolute necessity to charge significantly higher rates for 0+/0- calls to carry the burden of costs already described. These higher rates along with the tens of millions of dollars spent by the dominant carriers promoting the vanity numbers (800-COLLECT, 800-CALLATT, 10288, etc.) have seriously eroded the number of calls made directly via 0+/0-. Over the past four (4) years the impact has been dramatic and devastating; ACTEL phones average only 0.8 calls per phone per day compared with 3.0 calls per phone per day in 1992. With implementation of adequate dial around compensation, the consuming public can once again have the convenience of dialing only "0" to get operator assistance at low rates. Adequate compensation for all dial-around calls (which must include all toll free numbers now and in the future such as 888), along with other provisions contained in the NPRM will allow ACTEL to lower rates to the consumer for these 0+/0- calls.

It is clear to me that FCC recognizes that when a dial-around call is made from an ACTEL pay phone, ACTEL, and only ACTEL, is the only entity not receiving compensation. It is ACTEL, and only ACTEL, that has made the significant investment of installing and maintaining the pay phone making the "access" to the consumer possible. The LEC and IXC including RBOC are receiving revenue due to ACTEL's investment (see Exhibit C).

Clearly, international calls should be included in the range of calls that are eligible for dial-around compensation. One of the most significant phone debit card markets is the international phone calling market.

In response to FCC's concern regarding fraudulent generation of dial-around calls using available technology, swift and stiff penalties can be the only real response to this type of activity. The potential for fraud seems to always exist in the telecommunications / computer industry. However, rather than stifle progress, the best method is vigilance, enforcement, and punishment for those unscrupulous individuals who seek to take advantage of good policy for their own greedy ways.

Paragraphs 24-28

ACTEL supports the per-call method of dial-around compensation. ACTEL further agrees with the "carrier pay" procedure as it will minimize cost of administration and is the most likely method of achieving routine accuracy. The optional method is "consumer unfriendly" as the need to

deposit coin is in direct conflict with the need of the caller to make a "coinless" call in the first place.

Paragraphs 35-40

As mentioned earlier, the promotion and use of vanity numbers has had serious impact on the number of calls made via the "0" route. It is estimated that twenty-five (25) percent of all dial around calls are made through access codes such as vanity numbers. These numbers simply did not exist just a few years ago. Seventy-five (75) percent of all dial around is made up of subscriber 800 and 888 as well as pre-paid phone debit cards. While from a convenience standpoint, dialing "0" is preferable, the costs associated with it have become excessive due to all of the factors already discussed.

Based on ACTEL's data, the net compensation for all dial-around calls should be set at fifty (50) cents per call. This would immediately bring to ACTEL revenue for 27% of all the calls generated from its pay telephones; calls that have been provided for no revenue for the past nine (9) years. It, when combined with other enforcement provisions, would further result in very competitive rates for "0+/0-" calls.

ACTEL does not support the notion that dial-around compensation should be tied to the local coin rate as there is no discernible relationship between the two types of calls. Dial-around calls are typically 2-3 times the duration of local coin calls. Presently, the coin rate is far too low as the

current rate of twenty (20) cents does not cover my costs, which, as mentioned earlier, are astronomically high.

Since the FCC proposes to adopt rules governing virtually all key aspects of the "cash flow scheme," ACTEL strongly urges the adoption of a "national coin rate" of thirty-five (35) cents for the first five minutes for local calls. As mentioned earlier, local coin calls represent 67% of ACTEL's business and is, I believe, typical of pay phones at least in New Jersey. Without the setting of this rate level, the economic picture needed to create a level playing field, providing a reasonable return on investment, will remain clouded.

The fifty (50) cents per call compensation for all dial-around calls provides adequate compensation to overcome some of the discrimination that presently exists. Based on financial models that ACTEL has developed, this level of compensation is the minimum needed based on the call volume and patterns to earn a reasonable return on the investment.

Future compensation levels should be left to the open market. In other words, if MCI wishes to promote 1-800-COLLECT from an ACTEL pay phone through advertising / signage, MCI could agree with ACTEL to pay a higher amount to ACTEL for the promotion space provided by ACTEL. Similarly, competing companies may attempt to secure this business.

Interim compensation is necessary and, of course, desirable. We have waited long enough. My data indicates that the average ACTEL phone completes 195 dial-around calls per month. The interim compensation can be

provided by multiplying the per call compensation, such as fifty (50) cents, by the average dial-around completions times the number of ANIs. This model should be based on the aggregate of all dial-around calls without discrimination based on category of call, intrastate, or interstate.

RECLASSIFICATION OF INCUMBENT LEC-OWNED PAYPHONES

Paragraphs 42-48

ACTEL adamantly agrees with FCC that incumbent LEC pay phones should be classified as Customer Premises Equipment (CPE). Similarly, we support the non-discriminatory availability of all functionalities used in a LEC's delivery of pay phone services.

Clearly, classification of LEC pay phones as CPE is absolutely essential towards eliminating cross subsidies. However, and I can't overstate this, ACTEL feels strongly that ultimate effectiveness towards non-discrimination by the LECs at all levels absolutely necessitates that the Coin Division be required to be structurally separate from the LEC itself. This is the only way to ultimately insure that a LEC pay phone will be faced with the same opportunities and challenges that a PSP pay phone is faced with. It is the LEC's ability to bury their true cost of operation that has been so devastating to my industry. My average monthly bill for a pay phone from BA-NJ is \$64.76. The same service provided on my business line with the identical call pattern and volume would cost me \$12.75. FCC specifically

states that it does not intend to require the LECs to structurally separate the pay phone division of the LEC into its own affiliate. I believe this is the most serious error in judgment made in the entire NPRM and I urge the FCC to alter the rules to require a structurally separate affiliate for the pay phone operation of the LECs.

While ACTEL pays well over \$200,000.00 per year to BA-NJ, I am not treated as a customer. I am treated as a competitor. What an absurd situation! Yet, I have no choice currently or in the past. When one of my phone lines goes down on a Friday, it does not get repaired until Monday due to LEC policy. The same LEC repairs my office line and my home line seven (7) days a week. Remember, ACTEL operates almost two-thirds of its phones in poor, under-served inner city areas whose residents do not have residential service. An outage of 3 days is just not acceptable and certainly not fair. When I want a new line in my office, I get it within a few days. When I order a new pay telephone line, my order is sometimes not even acknowledged as received for over a week.. Only constant vigilance seems to result in action. I can assure FCC that I can provide "war stories" to the FCC that will cause virtual horror indicating the anti-competitive practices of BA-NJ. My point: only a structurally separate affiliate will be faced with the same situation. Nothing less will have the desired non-discriminatory result.

**NON-STRUCTURAL SAFEGUARDS FOR BOC PROVISION OF
PAYPHONE SERVICE**

Paragraphs 58-66

I refer the FCC to comments just made for referral purposes. Let me just summarize by saying that the discrimination by BA-NJ is clear and cannot be seriously disputed. This is strictly due to the fact that BA-NJ cross-subsidizes its pay phone operation discriminating in every conceivable way against ACTEL , a customer / competitor. ACTEL fully supports all of the safeguards included in Computer III plus all of the elements described that eliminate discrimination to access for products and services available by LEC but not available to ACTEL.

**ABILITY OF BOCs TO NEGOTIATE WITH LOCATION PROVIDERS
ON THE PRE-SUBSCRIBED INTERLATA CARRIER**

Paragraphs 71-73

While, on the surface this provision seems fair and equitable, the exact opposite is true. This provision will result in the LEC choosing itself for all call transmission, intrastate and interstate, based on the new realities we face. Since the LECs are supremely dominant in the local marketplace, this provision will let the fox loose in the hen house. The LEC will have the first opportunity (since they know who their customers are already) to pick

themselves. The end result would be more dominance not what ACTEL or the FCC wants. This is just further rationale to require the structurally separate affiliate that is faced with the same problems and opportunities as ACTEL. This "structurally separate LEC pay phone operator" will have to make the same economic and service decisions the PSPs do.

ABILITY OF PAY PHONE SERVICE PROVIDERS TO NEGOTIATE
WITH LOCATION PROVIDERS ON THE PRE-SUBSCRIBED
INTRALATA CARRIER

Paragraphs 74-75

ACTEL is in full agreement with the rationale and specific provisions here. With undoubtedly increasing competition that will occur in the intralata / intrastate marketplace, the ability to negotiate with location providers for the best product at the lowest cost will benefit everyone. Of course all intralata carriers must meet certain minimum standards as noted by the FCC.

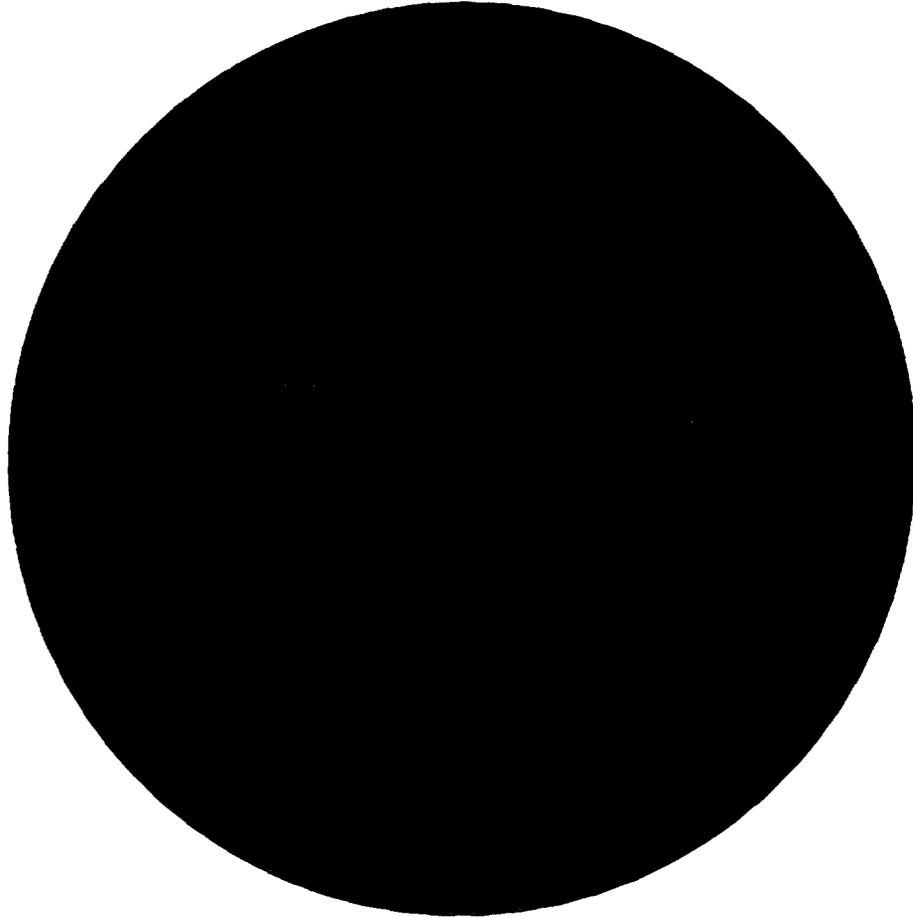
Paragraph 87

ACTEL shares FCC's concern regarding the "numbered" keypads. The lack of alphanumeric characters is clearly designed to minimize dial-around activity. ACTEL has not, nor ever intends, purchase these devices. Frankly with full enactment and enforcement of the provisions contained herein,

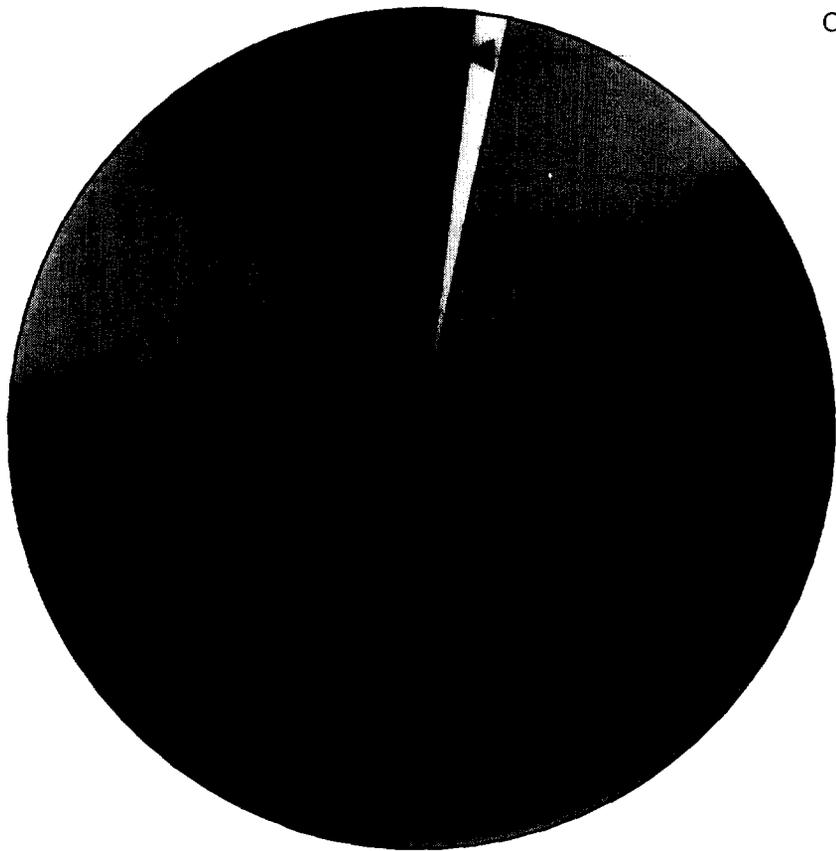
these devices will “self-destruct” as it will be economically poor judgment for any PSP to use these devices since it would minimize dial-around activity. Actually this goes to the heart of what my own frustrations and aspirations have been for ACTEL and this industry. It was never ACTEL’s intention to have an interest in the dialing pattern of the consumer. Rather ACTEL has always sought to be a “gateway access provider” without any economic interest in what type of call was being made from the pay phone itself. The provisions contained in the NPRM will go a long way to making my dream of being a “gateway access provider” for my customers a reality.

Finally, ACTEL urges adoption of all the provisions contained herein with the notable exception that FCC must require LECs to create structurally separate affiliates. This will help insure that FCC’s desired goal of maximizing competition can be achieved.

WHERE ACTEL PROVIDES SERVICE

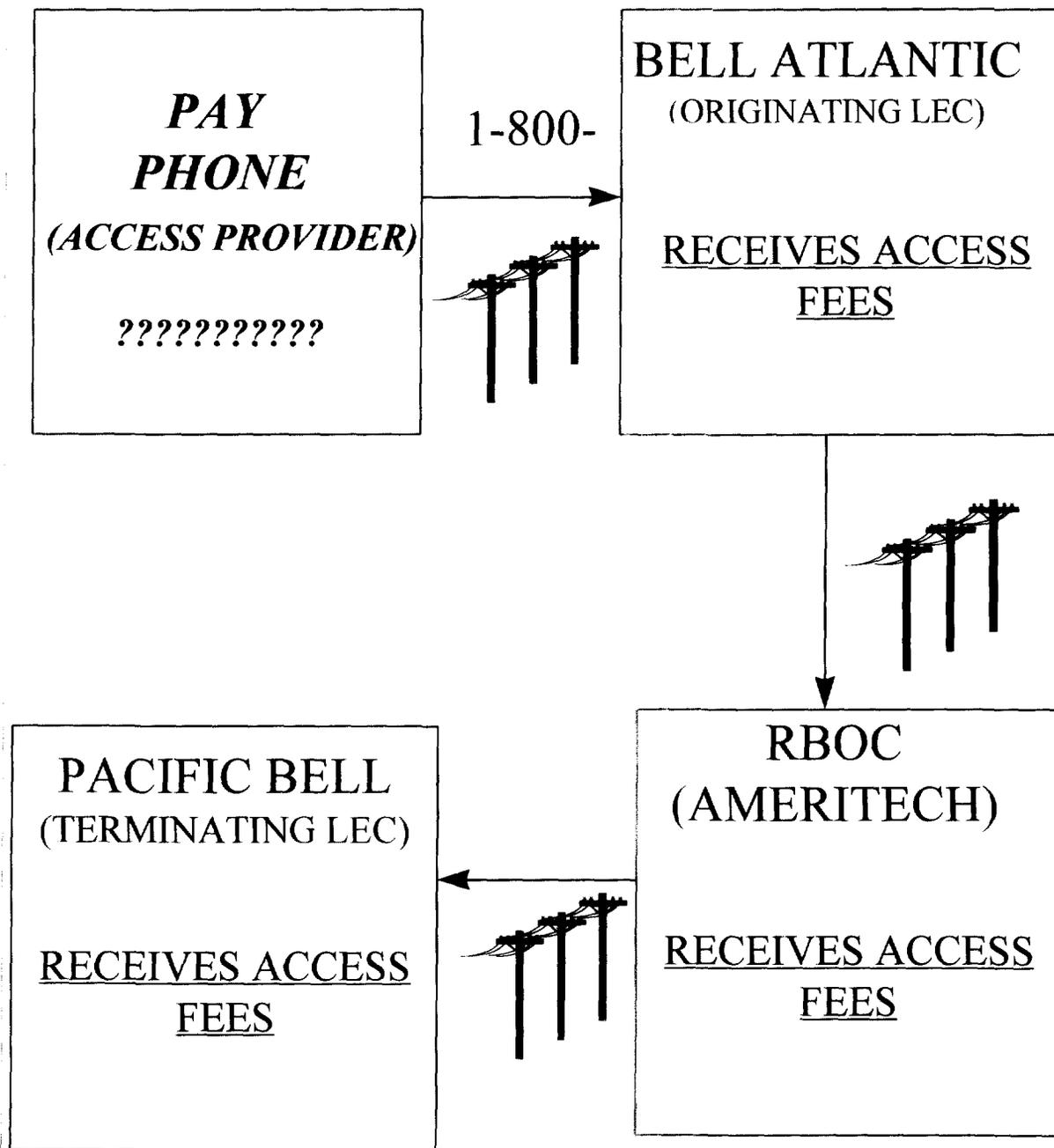


**NEW JERSEY CITIES RECEIVING SERVICE FROM
ACTEL**



Others

WHO'S PROVIDING ACCESS VS. WHO'S RECEIVING REVENUE



DOCUMENT OFF-LINE

This page has been substituted for one of the following:

o An oversize page or document (such as a map) which was too large to be scanned into the RIPS system.

o Microfilm, microform, certain photographs or videotape.

o Other materials which, for one reason or another, could not be scanned into the RIPS system.

DISKETTE

The actual document, page(s) or materials may be reviewed by contacting an Information Technician. Please note the applicable docket or rulemaking number, document type and any other relevant information about the document in order to ensure speedy retrieval by the Information Technician.