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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

*DOCKET FILE COPY ORIGINAL*

**PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION  
PETITION FOR RECONSIDERATION**

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October 21, 1996

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**PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION  
PETITION FOR RECONSIDERATION**

The Personal Communications Industry Association ("PCIA")<sup>1</sup> respectfully petitions for reconsideration of the *Report and Order* in the above-captioned docket.<sup>2</sup> PCIA specifically requests that the Commission reconsider its decision to order a "carrier pays" compensation scheme for payphone service providers ("PSPs") and instead order a calling party pays -- or coin drop -- compensation scheme. The Commission also should revise its market-based payphone provider compensation scheme, at least as applied to 800 number messaging calls. Finally, should the Commission nonetheless retain its carrier pays scheme,

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<sup>1</sup> PCIA is the international trade association created to represent the interests of both the commercial and the private mobile radio service communications industries. PCIA's Federation of Councils includes: the Paging and Narrowband PCS Alliance, the Broadband PCS Alliance, the Specialized Mobile Radio Alliance, the Site Owners and Managers Association, the Association of Wireless System Integrators, the Association of Communications Technicians, and the Private System Users Alliance. In addition, as the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of licensees.

<sup>2</sup> FCC 96-388 (Sept. 20, 1996) ("*Report and Order*").

it should either determine that a portion of the subscriber line charge ("SLC") will be used to compensate PSPs, or require interexchange carriers ("IXCs") to spread the costs among all 800 number users.

## **I. SUMMARY**

PCIA respectfully requests that the Commission reconsider its decision not to adopt a calling party pays approach to compensating payphone providers. A calling party pays -- or coin drop -- plan is in the public interest because it is equitable, consistent with customer expectations, and easily administered. In addition, the Commission has provided no factual basis for its assertion that a coin drop approach unduly burdens transient users. Finally, at least as far as 800 calls to messaging subscribers are concerned, neither the plain language nor the intent of TOCSIA prohibits a coin drop approach to PSP compensation.

PCIA also urges the Commission to revise its market-based compensation scheme, at least as applied to 800 number messaging services. The Commission's plan does not comport with the Congressional requirement that payphone providers be fairly compensated, since under the scheme approved by the Commission such providers would receive a windfall in connection with 800 number messaging use of payphones. Although the Commission has assumed that all uses of payphones impose equivalent costs, other petitions for reconsideration being filed in this docket demonstrate that this assumption is unfounded.

If the Commission refuses to sanction a calling party pays approach, it should consider using subscriber line charges to compensate payphone providers. Such a scheme would be appropriate because the entire general public benefits from the existence of

payphones, and especially benefits from the ability to place 800 calls from payphones. Further, as an already established funding mechanism, utilizing the SLC to fund payphones does not create any new administrative overhead costs. Alternatively, the Commission should direct IXCs to spread the costs for compensating payphone providers across all users of 800 numbers.

## **II. BACKGROUND**

In its opening round comments and reply comments in this proceeding, PCIA focused solely on the issue of which entities should be required to pay compensation to payphone service providers, and requested that the Commission adopt a calling party pays compensation scheme. Under such a plan, the party placing a call from a payphone would be responsible for compensating the payphone provider. PCIA pointed out that the advantages of such a program are as follows: (1) it is consistent with the economic principle that the cost-causer should pay for a resource; (2) it is consistent with consumer expectations that payphones are not free commodities; and (3) it is consistent with compensation schemes adopted by the states of Illinois, Michigan, North Carolina, and Ohio.

A number of other commenters,<sup>3</sup> especially messaging service providers,<sup>4</sup> joined PCIA in backing a calling party pays scheme. These parties also pointed out that this compensation scheme was easy to administer and equitable. In their opening pleadings,

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<sup>3</sup> See, e.g., Scherers Communications Group, Inc. Comments at 3-4, 6; Excel Telecommunications, Inc. Comments at 8; One Call Communications Inc. Comments at 6.

<sup>4</sup> See Paging Network, Inc. Comments at 7-8 ("PageNet"), AirTouch Paging Comments at 13-15 ("AirTouch"); Arch Communication Group Comments at 6.

PCIA and AirTouch Paging<sup>5</sup> further noted that a coin drop approach would not conflict with the Telephone Operator Consumer Services Improvement Act ("TOCSIA").<sup>6</sup> Finally, a number of parties proposed that, instead of compensating payphone service providers by levying a charge on either callers or carriers, these entities should be compensated through an increase in the subscriber line charge.<sup>7</sup>

In the *Report and Order*, rather than authorizing a coin drop approach, the Commission chose to adopt a "carrier pays" system, stating that such a scheme "places the payment obligation on the primary economic beneficiary in the least burdensome, most cost effective manner."<sup>8</sup> The FCC further found that a "carrier pays" approach gives IXCs "the most flexibility" to recover costs, allowing them to choose between: (1) increasing their rates to all customers; (2) directly charging access code or subscriber 800 number customers; or (3) negotiating contractual agreements with individual customers.<sup>9</sup>

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<sup>5</sup> AirTouch Comments at 14 n.52.

<sup>6</sup> 47 U.S.C. § 226.

<sup>7</sup> Intellicall Comments at 21; MobileMedia Reply at 10-11; PageNet Comments at 7.

<sup>8</sup> *Report and Order*, ¶ 83.

<sup>9</sup> *Id.*

**III. THE COMMISSION SHOULD RECONSIDER ITS DECISION NOT TO AUTHORIZE A COIN DROP APPROACH, AT LEAST FOR 800 NUMBER MESSAGING SUBSCRIBERS**

The Commission premised its denial of commenters' requests to institute a coin drop, or caller pays, approach on two factors. First, the Commission asserts that such a system "would appear to unduly burden many transient payphone callers by requiring them to deposit coins in addition to providing call-billing information."<sup>10</sup> Second, the Commission alleges that a coin drop approach is barred by TOCSIA because "TOCSIA expressly prohibits the Commission from adopting compensation rules for interstate access code calls that require advance payment by consumers," and this approach "would contradict the Congressional intent, and possibly the plain language of Section 226(e)(2) of the Act."<sup>11</sup>

Neither of these grounds for rejection withstands close scrutiny and should therefore be reconsidered. First, other than citing to its statement from the *Notice* in this proceeding, the Commission fails to document precisely why depositing coins in a pay telephone is unduly burdensome for transient callers. To the contrary, it would seem that transient callers -- and indeed all payphone users -- expect to deposit coins in payphones. Further, as pointed out in PCIA's opening comments, a coin drop approach is both administratively simple and places the burden for financing payphones on the cost causer -- the payphone user.

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<sup>10</sup> *Id.*, ¶ 85 (quoting Notice of Proposed Rulemaking, CC Dkt. No. 96-128, 11 FCC Rcd 6716, 6730 (1996) ("*Notice*").

<sup>11</sup> *Report & Order*, ¶ 85.

Second, PCIA agrees with AirTouch Paging that at least some 800 number messaging services fall outside of Section 226(a)(7)'s definition of "operator services."<sup>12</sup> Therefore, TOCSIA does not prohibit an advance compensation rule for 800 number calls made to messaging subscribers from payphones. Specifically, Section 226(a)(7) defines "operator services" as "any interstate telecommunications service initiated from an aggregator location that includes, as a component, any automatic or live assistance to a consumer to arrange for billing, or completion, or both, of an interstate telephone call . . . ." Thus, subscriber 800 number messaging services fall outside of this definition because calls are completed upon the dialing of the last digit of the messaging subscriber's number, and the messaging subscriber is billed for the call without any automatic or live assistance.

Further, even if all messaging service providers were technically within the definition of operator service providers -- and PCIA asserts they are not -- Congress intended TOCSIA to allow for the compensation of PSPs by non-presubscribed or "dial around" voice carriers, not by 800 number messaging providers. This is demonstrated by the fact that Section 226(e)(2) allows the Commission the option to prescribe non-advance payment compensation for PSPs when a caller utilizes a non-presubscribed (by the PSP) operator service provider. This section is intended to ensure that payphone providers are compensated for two-way voice calls placed from their payphones if such calls utilize the facilities of operator service providers with which the payphone provider has no contractual relationship.<sup>13</sup> Calls to

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<sup>12</sup> AirTouch Comments at 14 n.52.

<sup>13</sup> See H.R. Rep. 101-213, at 11 (1990) ("when a consumer uses an interstate interexchange carrier's access code . . . to access the carrier from a competitively provided (continued...)

messaging subscribers, on the other hand, do not represent the "dial around" two-way voice communications that Congress sought to address.

**IV. IMPOSITION OF THE MARKET-BASED COMPENSATION RATE FOR PAYPHONE PROVIDERS IN CONNECTION WITH 800 NUMBER MESSAGING CALLS DOES NOT RESULT IN FAIR COMPENSATION AS CONTEMPLATED BY CONGRESS**

The Commission concluded that "the appropriate per-call compensation amount ultimately is the amount the particular payphone charges for a local coin call, because the market will determine the fair compensation rate for those calls. . . . If a rate is compensatory for local coin calls, then it is an appropriate compensation for other calls as well, because the cost of originating the various types of payphone calls are similar."<sup>14</sup> The Commission then determined that, "for the limited purpose of calculating compensation for PSPs for the first two years of compensation (one year of flat-rate and one year of per-call compensation), we will use a default rate of \$.35 per call . . . . For coinless payphones, which by definition do not have a local coin rate, the default rate will remain \$.35 per call for as long as this rate is fairly compensable under Section 276(b)(1)(A)."<sup>15</sup>

As demonstrated in petitions for reconsideration being concurrently filed by PCIA members, application of this compensation standard to 800 number messaging subscribers

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<sup>13</sup>(...continued)

payphone or the call is otherwise routed to a carrier other than the designated provider of operator services, the owner of the phone typically receives no compensation"); S. Rep. No. 101-439, at 1582 (1990) ("the FCC must . . . consider the need to prescribe compensation for owners of competitive public pay telephones for calls made using an access code").

<sup>14</sup> *Report & Order*, ¶ 70.

<sup>15</sup> *Id.*, ¶ 72.

does not result in "fair" compensation to a payphone provider. In fact, the payphone provider receives a windfall that is inappropriate and that will undercut effective competition in both the payphone and messaging industries. Thus, in the event that the Commission does not adopt a "caller pays" funding mechanism, the Commission must recalculate the compensation amounts to be paid payphone providers in connection with calls involving 800 number messaging subscribers.

As PageNet points out, the compensation methodology adopted in this proceeding does not seem to be consistent with the Commission's policies enunciated in the *First Report and Order* in CC Docket No. 96-98.<sup>16</sup> The rationale offered by the Commission simply does not support the different funding mechanisms relied upon the Commission in these proceedings -- this one and CC Docket No. 96-98 -- both designed to implement the Telecommunications Act of 1996.<sup>17</sup>

Furthermore, the effect of the Commission's action is to impose costs on messaging service providers and their customers in connection with services from payphone providers that are neither requested nor received. The Commission has assumed, without any analysis to support that assumption, that all uses of all payphones impose the same costs on all payphone providers, thus resulting in a uniform compensation rate. As pointed out in other petitions for reconsideration being filed today, the services provided by payphone providers and the costs incurred by such entities are not identical for all types of calls originated from

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<sup>16</sup> Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, FCC 96-325 (Aug. 8, 1996).

<sup>17</sup> See *Report & Order*, ¶ 68.

payphones. Moreover, there are real differences in the costs incurred in connection with coin pay telephones and coinless pay telephones. Nonetheless, the effect of the *Report and Order* is to require messaging operators and their subscribers to pay for service elements and costs that are not incurred in connection with 800 number messaging calls.

The statute requires that payphone providers be fairly compensated for *calls*. There is no requirement that payphone providers be compensated for their CPE. Yet, the effect of the Commission's plan is to require 800 number subscribers to pay for CPE not associated with the telecommunications service to which they have subscribed.

In sum, retention of the Commission's compensation mechanism contravenes the requirements of Section 276 regarding fair compensation to payphone providers as well as requirements that pricing practices not be unjust or unreasonable.

**V. IF A COIN DROP APPROACH IS REJECTED, THE COMMISSION EITHER SHOULD RECONSIDER ITS REFUSAL TO SANCTION AN INCREASE IN THE SUBSCRIBER LINE CHARGE IN ORDER TO COMPENSATE PAYPHONE SERVICE PROVIDERS OR SHOULD REQUIRE IXCS TO SPREAD THE COSTS AMONG ALL 800 USERS**

The Commission also rejected the proposal that an increased SLC be used to compensate PSPs for the use of their payphones, stating that "raising the SLC for this purpose would be contrary to the goals of the Act, because these payments would not be borne by either the primary economic beneficiary of payphone calls or the cost causer."<sup>18</sup> The FCC should reconsider this decision because the general public is in fact a "primary economic beneficiary" of payphone calls. Such is the case because payphones are by

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<sup>18</sup> *Report & Order*, ¶ 85.

definition available for the use of the general public. This is especially true for 800 numbers called from payphones, as many of these 800 numbers are associated with federal agencies (*e.g.*, Social Security Administration, Internal Revenue Service) and public health services (*e.g.*, AIDS hotline) whose constituents are likely to use payphones as a common means of communication.<sup>19</sup>

Further, the funding mechanism for the SLC is already in place. Therefore, additional expenditures to establish a funding mechanism are unnecessary. Such reduced administrative overhead will allow more of the monies collected from telephone subscribers to be used for funding payphones. This more streamlined funding mechanism will impose less of an overall financial burden on telecommunications users, thereby affording the general public greater access to telecommunications services, including payphone services.

Alternatively, the Commission should require IXCs to spread the costs of compensating payphone providers across all 800 users. As demonstrated in other petitions for reconsideration, 800 carriers may not be able, as a practical or legal matter, to bill their customers to compensate payphone operators on a per-call basis. Moreover, individual 800 number users would be subjected to per-call charges despite the fact they cannot refuse to accept calls from payphones. Having IXCs spread the costs across all 800 users will result in a more equitable shouldering of the burden.

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<sup>19</sup> See PageNet Comments at 5-6.

**VI. CONCLUSION**

The Commission should reconsider its decision to institute a carrier pays compensation scheme for PSPs. Instead, it should institute a calling party pays or coin drop approach to such compensation. Such a scheme would not unduly burden transient payphone users, and -- at least for 800 number paging services -- would be fully consistent with TOCSIA. The Commission should also revise its market-based compensation scheme. Finally, the Commission should spread the burden for financing payphones over the entire general public by utilizing a portion of the subscriber line charge to compensate PSPs, or by requiring IXCs to spread the costs over all 800 users. Such action will result in more equitable compensation of payphone providers without unfairly disadvantaging the users of 800 numbers.

Respectfully submitted,  
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