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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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

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COMMENTS ON PETITIONS FOR RECONSIDERATION

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SUMMARY

LCI International Telecommunications, Inc. ("LCI") strongly agrees with those petitioners who request that the Commission reconsider both the amount and the administration of its payphone compensation plans. The Commission's Report and Order is fundamentally flawed from both a legal and a policy perspective, and should be rescinded in its entirety.

First, the Commission errs by adopting a local coin rate as a surrogate for PSPs' costs in originating access code and subscriber 800 calls. Rather than establishing a "fair" compensation rate, the Commission's per-call compensation plan grants PSPs what is quite literally a blank check. They are authorized to charge access code and toll-free callers a hidden surcharge which is unavoidable and completely unconstrained by market forces. In effect, the Commission has sanctioned a return to the pre-TOCSIA environment of large, hidden surcharges being levied upon captive and unwitting callers, with the likely result being an increase in call blocking experienced from payphones. Moreover, the Commission commits reversible legal error in basing its compensation amount on a rate with incurs different -- and significantly higher -- costs that access code and subscriber 800 calls, while rejecting the same marginal cost standard it adopted in the Commission's seminal Interconnection proceeding. The Commission should replace this ill-conceived and arbitrary arrangement with a compensation plan that fairly and predictably compensates PSPs at their marginal costs for originating compensable calls.

Further, LCI agrees with several petitioners that the Commission has compounded its error in establishing a compensation amount by adopting an interim compensation plan that discriminates against large IXCs. By limiting the obligation to pay

interim compensation to large IXCs, the Commission arbitrarily and capriciously excludes a number of carriers who receive compensable calls from paying any compensation for those calls. Specifically, the Commission has no statutory or policy basis for exempting LECs and smaller IXCs from paying interim compensation, and has increased LCI's compensation obligation by nearly 25 percent as a result. This outcome contradicts the Commission's stated principle that the "primary economic beneficiary" of a call should pay compensation for it. Accordingly, LCI agrees with those petitioners that recommend the Commission require all carriers receiving compensable calls to pay a share of the interim compensation amount.

Finally, LCI agrees with Cable & Wireless that toll carriers should not be required to track compensable calls. In so doing, the Commission has again misapplied its primary economic beneficiary rationale, this time failing to recognize that the relevant activity is the receipt of compensation. In this context, the PSP, as the entity that is being paid, clearly is the primary economic beneficiary; IXCs are burdened, not benefitted, by the system. Therefore, applying the Commission's rationale, the PSPs should bear the responsibility of tracking calls for which they request compensation, and IXCs should not be required to pay the cost to bill themselves for receiving calls.

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COMMENTS ON PETITIONS FOR RECONSIDERATION

Pursuant to Section 1.429(f) of the Commission's Rules, 47 C.F.R. § 1.429(f), and paragraph 300 of the Report and Order,[1] LCI International Telecommunications, Inc. ("LCI"), by its attorneys, submits the following comments on petitions for reconsideration submitted in the above-captioned docket. LCI agrees with many petitioners that the R&O is fundamentally flawed because it awards a windfall to PSPs that greatly exceeds that which is appropriate to "fairly compensate" them, relies upon an interim compensation plan that unlawfully excludes LECs and smaller IXCs from the compensation obligation, adopts a permanent compensation plan that invites PSP rate gouging and/or fraud, and compels IXCs to undertake, at their own expense, to identify and record calls for the PSPs and, in effect, bill themselves for the privilege of paying compensation.

It is hard to imagine a plan which could so thoroughly thwart Congress' intent in enacting Section 276. LCI agrees with Sprint that the best thing to do with the R&O is to

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[1] See Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Report and Order ("R&O").

throw it out and start over.[2] In its place, the Commission should adopt a per call compensation plan that provides reasonable cost-based compensation to PSPs and assigns the billing obligation to those who benefit from the compensation -- the PSPs.

I. USE OF A LOCAL COIN RATE AS A SURROGATE WILL RESURRECT THE PRE-TOCSIA ERA OF HIGH HIDDEN SURCHARGES AND CONSUMER FRUSTRATION

Several petitioners ask the Commission to reconsider its use of the local coin rate as a surrogate for access code and subscriber 800 compensation.[3] LCI agrees that the use of such a surrogate is improper from both a legal and a policy perspective.

From a legal perspective, the Commission cannot rationally base compensation for access code and subscriber 800 calls on a rate which has different costs and is subject to the market power and manipulation of the entity requesting compensation. The Commission has failed to provide a reasoned basis for selecting the local coin rate as a surrogate while rejecting marginal cost-based compensation. As a result, it ordered a compensation amount which is not "fair" to all parties.

Moreover, from a policy perspective, it is poor public policy to reward the PSPs with hundreds of millions of dollars in windfall payments when the PSPs themselves have demanded the high 0+ commissions and hidden PIFs that caused end users to place access code calls in the first place. Now, having driven consumers away with their exorbitant 0+ rate demands, PSPs seek to capture additional profits from those same callers through a hidden access code surcharge. The "solution" adopted by the Commission will not solve the

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[2] Sprint Petition at 1.

[3] See, e.g., AT&T Petition at 8-13; Cable & Wireless Petition at 4-10; Sprint Petition at 2-8.

OSP rate problem and, in fact, will recreate many of the evils of the pre-TOCSIA operator services marketplace. PSPs will be given free reign to impose hidden surcharges on access code and subscriber 800 calls, and consumers will bear the impact of this through high rates and call blocking. LCI urges the Commission not to bring this legacy back to life.

A. The Commission's Plan Invites PSP Rate Gouging and Fraud

Under the Commission's plan, after a two year transition, compensation to PSPs for access code and subscriber 800 calls will be set at the same rate the PSP charges for local coin calls originating from the payphone.[4] This compensation arrangement will give PSPs a strong incentive to price local coin calls for strategic purposes, rather than based upon their costs. Put simply, the Commission's plan allows PSPs to impose a hidden surcharge on unwitting access code and subscriber 800 callers, and PSPs will have every incentive to bid up that surcharge, just like they have done with 0+ commissions. For example, in locations with relatively few local calls (e.g., truck stops, vacation resort hotels) LCI expects many PSPs would increase their local coin rates to $2 (or more) per call. While this might deter the few local calls received, the PSP will profit from a large surcharge -- which is completely hidden to end users -- it receives on other calls. Thus, the caller who decides not to use the 0+ carrier from the payphone (due to the high PIFs and commissions the PSP has demanded), now will be hit by the same type of surcharge from the PSP, only this time it will have no notice and no way to avoid it. Ironically, because the surcharge is completely

[4] R&O at ¶¶ 71-72. This rate will apply as a default rate, unless the PSP and the IXC agree upon a different rate. Id.

invisible to the caller, he or she might actually pay a higher rate to dial around than if he or she placed a 0+ call. In effect, the Commission blesses many of the practices Congress prohibited with TOCSIA. PSPs will charge high rates to unwitting callers without any notice whatsoever.

Further, as Sprint points out, the difficulties in verifying PSP local coin rates preclude effective challenge of PSP rate claims.[5] LCI is not aware of any source it can consult to determine what rate the PSP is actually charging. This invites unscrupulous PSPs to inflate their claims to compensation because few IXCs will have either the resources, information, or ability to verify the claimed compensation rate. Indeed, PSPs might even be able to collect the high hidden surcharges without suffering any decrease in local call volumes caused by a higher coin rate.

In addition to encouraging high hidden surcharges, the Commission's plan likely will detrimentally impact callers by increasing instances of call blocking. Although LCI is in the business of completing telephone calls and ordinarily would not turn away potential revenues, LCI will have to seriously consider whether it is in its best interests to block all calls from payphones. If LCI accepts these calls, it risks being charged rates which it cannot predict and which will be difficult to recover from end users of LCI services. If it chooses not to accept the financial risk imposed by these calls, on the other hand, callers surely will be inconvenienced. LCI does not want to return to the days of call blocking and caller frustration, yet that appears to be within the realm of potential results under the Commission's compensation plan.

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[5] Sprint Petition at 11-12.

In fact, it appears that even APCC is beginning to have second thoughts about the consequences of the compensation plan it successfully advocated. Recognizing that many carriers now must face a very difficult choice about whether to accept the PSP's high surcharges, APCC nevertheless proposes that the Commission take actions to absolve PSPs from any blame for their own actions. Specifically, it proposes that IXCs provide callers with a disclosure that will blame the IXC for "refusing" the call and assure the caller that the PSP's phone is working properly.[6] LCI sees no legal or public policy justification for insulating PSPs from disclosure of the hidden surcharges they assess. Therefore, the Commission should not deny IXCs the ability to decide the best way to inform their potential customers of the reason they cannot accept the call, and certainly should not impose a one-sided disclosure that ensures the PSPs' hidden surcharge will stay hidden to the caller.[7]

B. Local Coin Rates Are Not a Valid Surrogate for the Costs PSPs Incur in Originating Other Payphone Calls

The Commission asserts that the rate a PSP charges end users for placing a local call is the best surrogate for the cost of originating other types of calls from the payphone.[8] Although LCI strongly agrees with the Commission's conclusion that the compensation

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[6] APCC Petition at 2-3 (requesting a disclosure stating, "[name of carrier] is refusing to accept this call from this phone. The payphone is not malfunctioning.").

[7] A more accurate disclosure, if one is required, might be, "The phone owner has decided to impose a surcharge on this call which [carrier] finds unacceptable. Therefore, [carrier] has decided that it is unable to accept your call from this phone. To place your call without the phone owner's surcharge, please move to a different phone."

[8] R&O at ¶ 70.

amount must be consistent with payphone costs,[9] local coin rates are not a substitute for determining these costs.

As many petitioners demonstrated, there is a significant difference in the payphone marketplace between coin calls and non-coin calls. A local coin call generates different, and greater, costs than are associated with other types of calls placed from the payphone. The largest and most obvious difference is, of course, the cost of coin collection and administration. The record indicates that the cost of these calls is significantly greater than the cost of access code or subscriber 800 calls.[10] Furthermore, as explained by AT&T, a PSP's coin rate must also cover the cost of local switching and local call completion from COCOT lines.[11] That is, the local call incurs actual costs for the PSP, whereas an access code call does not. Again, this is a cost savings to the PSP compared to local coin calls. As a result, the Commission's decision to rely on the local coin rate to determine compensation for access calls and subscriber 800 calls is arbitrary and capricious.

C. The Commission Should Order Compensation to PSPs Based Upon Their Marginal Costs Incurred in Originating a Call

LCI agrees with AT&T that the Commission arbitrarily rejected compensation based upon the PSPs' marginal costs in originating compensable calls from their payphones.[12] The Commission's sole explanation for rejecting marginal cost pricing -- that,

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[9] See also id. at ¶ 67 ("PSPs should be compensated for their costs in originating . . . calls" from their payphones).

[10] See Sprint Petition at 3; AT&T Petition at 9 & n.11.

[11] AT&T Petition at 10; see also PageNet Petition at 11.

[12] AT&T Petition at 5-8.

"use of a purely incremental cost standard for all calls could leave PSPs without fair compensation for certain types of payphone calls"[13] -- is flatly inconsistent with the Commission's Interconnection Order. In the Interconnection Order, the Commission concluded that the TELRIC pricing methodology -- which is a marginal or incremental cost methodology -- will fully compensate ILECs for their costs in providing unbundled elements.[14] The Commission explained that forward looking cost models will replicate the workings of a competitive market by ensuring that rates are compensatory while driving rates toward incremental costs.[15] However, in the payphone proceeding, the Commission inexplicably did not follow its conclusions from the Interconnection proceeding. Instead, it summarily dismisses incremental cost-based pricing as noncompensatory. Nowhere in the R&O does the Commission confront its previous conclusion that incremental cost-based pricing will replicate a market outcome, even though this is the stated goal of the Commission's payphone compensation plan.[16] This failure to address a directly analogous -- and contradictory -- conclusion renders the Commission's decision arbitrary and capricious.

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[13] R&O at ¶ 68.

[14] Id. at ¶ 679-82.

[15] Id. at ¶ 679 ("[a]dopting a pricing methodology based on forward-looking, economic costs best replicates, to the extent possible, the conditions of a competitive marketplace.")

[16] See R&O at ¶ 70.

II. THE COMMISSION'S INTERIM PER-PHONE COMPENSATION PLAN IS FUNDAMENTALLY FLAWED BECAUSE IT EXCLUDES LECs AND SMALL IXCs FROM THE PLAN

Section 276 clearly requires the FCC to ensure compensation for "each and every" completed call originating from a payphone.[17] Moreover, as the Commission stressed in the R&O, Section 276 creates "no exceptions" for calls received by certain telecommunications providers.[18] LCI agrees with AT&T, WorldCom and others that the Commission's limitation of the interim per-phone compensation obligation to large interexchange carriers (over $100 million in annual toll revenues) violates both the clear mandate of Section 276 and the Commission's conclusion that the primary economic beneficiary of a call should pay compensation for it.

The Commission calculates that a typical payphone originates an average of 131 access code and subscriber 800 calls per month.[19] This calculation is based upon data which purports to include all access code and subscriber 800 calls, regardless of the carrier to whom it is routed.[20] These data, one must conclude, include the payphone-originated portion of the 24 billion intraLATA toll calls completed by LECs each year.[21] They also must include inter and intraLATA 800, and inter and intraLATA access code calls completed by IXCs with $0-$100 million in annual toll revenues and, increasingly, such calls completed by LECs (both BOC and non-BOC). It is irrational to include these calls in calculating the

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[17] 47 U.S.C. § 276(b)(1)(B).

[18] R&O at ¶ 87.

[19] R&O at ¶ 124-25.

[20] Peoples Comments at 9-10; APCC Comments at 5-6.

[21] See Statistics of Communications Common Carriers, 1994/95 Ed., Table 2.6.

amount of compensation, but exclude the beneficiaries of these calls when allocating the compensation obligation.

The magnitude of the Commission's error is significant. LCI estimates that its payment obligation is overestimated by nearly 25 percent. LCI should not have to fund a portion of the 24 billion intraLATA toll calls LECs complete each year, nor should it be saddled with a tax on behalf of its smaller IXC competitors. LECs and small IXCs receive a substantial share of compensable calls, and they, not LCI, are the primary economic beneficiaries of those calls. They should -- and under the statute must -- pay their fair share for these calls.[22] Elsewhere is the R&O, the Commission recognizes this, stating, "[E]xemptions from the obligation to pay compensation, *even on an interim basis*, would be contrary to the congressional mandate that we ensure fair compensation for 'each and every completed intrastate and interstate call.'"[23] The Commission must correct its inexplicable failure to adhere to this conclusion in establishing an interim compensation plan.

III. TOLL CARRIERS SHOULD NOT BE RESPONSIBLE FOR TRACKING COMPENSABLE CALLS

On top of the unknowable and uncontrollable PSP surcharges it must pay, LCI also will incur the expense of acquiring the capability to track originating calls from payphones. LCI currently pays compensation on a per-phone basis for access code calls received by non-LEC PSPs. LCI does not have the capability, however, to track calls on a per-call basis,

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[22] An alleged "administrative convenience" in structuring the plan this way does not cure the statutory defect. LCI cannot be compelled to pay 25 percent more than it should for the sake of "convenience."

[23] R&O at ¶ 87.

and acquiring that capability presents significant technical and financial obstacles. Moreover, imposing this obligation upon LCI, rather than on the PSPs who receive compensation, is contrary to standard business practice in almost every industry, and contradicts the principle the Commission purports to apply to assign this burden. Instead, LCI recommends that the PSPs, as the primary economic beneficiaries of the compensation, bear the responsibility and expense to track calls for which they request compensation.

In the R&O, the Commission places both the burden and the expense of tracking upon the carrier. The Commission explained that, in its view, the carrier receiving the call is "the primary economic beneficiary of the payphone calls," and should bear the responsibility associated with tracking its calls.[24] Both the LECs and the PSPs were relieved of this obligation, the Commission stated, because "neither LECs nor PSPs are the primary economic beneficiaries of payphone calls."[25]

In reaching this conclusion, however, the Commission misapplies its "primary economic beneficiary" standard. LCI does not contest that, for purposes of determining who should pay compensation for the call, carriers are the primary economic beneficiary of the activity giving rise to compensation. Therefore, LCI understands why it, rather than the consumer or some other party, is required to pay compensation to the PSP. However, in determining responsibility for administering the compensation system, the Commission's analysis must recognize that a different activity is involved. Now, the relevant activity is the receipt of compensation (not the carriage of a call). In this context, it is clear that LCI does not benefit from this activity (indeed, if anything, it is harmed by this activity because it

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[24] R&O at ¶ 97.

[25] Id.

results in an additional expense to it). It is the PSP who benefits from the activity of receiving compensation. Thus, applying the Commission's "primary economic beneficiary" standard, the PSP benefits from receiving compensation and should pay the cost of identifying the calls for which it is entitled to payment and for the cost of billing its customers for the compensation.

Even ignoring the practical difficulties with performing the necessary call tracking (which are significant), the Commission's decision is irrational under the standard that it purports to apply. LCI recommends that the Commission reconsider its decision to require carriers to bear this burden, and instead place the obligation of billing for payphone calls upon the party seeking that payment -- the PSP.[26]

CONCLUSION

For the foregoing reasons, the Commission should reconsider its Report and Order in this docket. The Commission's compensation plan provides grossly excessive payments to PSPs and is based upon erroneous information and faulty logic. If allowed to remain, the plan will resurrect a pre-TOCSIA operator services marketplace in which PSPs charge exorbitant, hidden surcharges at will, with consumers experiencing high rates and blocked calls in return. Furthermore, the Commission erroneously places the burden of tracking compensable calls upon toll carriers, rather than on the primary economic beneficiary of the

[26] LCI notes that it would be feasible for the access provider to perform the requisite tracking. It also may be feasible for at least some PSPs to perform such billing themselves through the phone instrument. Moreover, in the case of LEC PSPs, the access provider and the PSP are one and the same, so the LEC PSP should have additional information with which to identify compensable calls.

compensation, as the Commission concluded it should do. Accordingly, LCI urges the Commission to grant the petitions for reconsideration to modify the amount and administration of its payphone compensation plans.

Respectfully submitted,

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