

Unable to mount an attack on the plain language of the statute -- and unable to dispute that the Commission's decision is consistent with that language -- the APCC simply ignores the statute and relies on a snippet of legislative history instead. But the legislative history on which the APCC relies does not nearly carry the weight the APCC places on it. Noting that the Conference Report happens to reference the "transfer[]" of payphone operations to "unregulated books," the APCC argues that Congress intended to require the use of separate books. APCC at 11-14. But there is no indication anywhere in the legislative record that Congress meant this stray remark to introduce the highly technical distinction between reallocating assets on one set of books and transferring assets to a separate set of books as a requirement of the statute. Indeed, if Congress had intended to introduce such a requirement -- which goes *beyond* the requirements of Computer III -- it surely would *not* have declared the Computer III safeguards to be acceptable *in the text of the statute*.²⁵

2. *The APCC's So-Called Policy Justifications Are Transparently Irrational.*

Unable to construct a statutory argument to force the transfer of payphone investments to a separate set of books, the APCC strives to construct a public policy argument instead.

First, the APCC argues that failure to require revaluation of assets will deprive ratepayers of the ability to recover "the value of sums they have invested in regulated payphone equipment that is now being deregulated at a substantial gain." APCC at 15-16; see also id. at 20. But each and every premise contained in this assertion is false. First, as the Coalition has pointed out, the ratepayers *never* "invested" in the intangible assets that (according to the APCC) have appreciated in value. To the contrary, those assets were created at the expense of shareholders -- who forewent extra earnings

²⁵The APCC also argues that the "transfer" to "unregulated books" language of the Conference Report refers to the *removal of subsidies* (Section 276(b)(1)(C)) and not to the non-structural safeguards (Section 276(b)(1)(B)). According to the APCC, this reconciles the Conference Report with the language of the statute by demonstrating that Congress intended to require assets to be *transferred* to a separate set of books under Section 276(b)(1)(C), even if there was no requirement that they remain there under Section 276(b)(1)(B). It is hard to imagine why Congress would have required assets to be transferred to a separate set of books if it did not require that they remain there afterward. Surely the Commission is not required to ascribe to Congress an intent to require such a meaningless shifting of assets back and forth between accounts.

by reinvesting in the business under price caps and *underearned* on these assets in year after year. This distinction is critical. Court after court has reversed agency decisions that attempt to transfer the value of appreciated assets to ratepayers where the ratepayers have not made the equivalent of capital contributions toward their purchase.²⁶

Second, it is far from clear why the APCC believes that a change in the federal accounting treatment of these assets will result in differential results on federal rates. Since almost all of the RBOCs are under price caps, any paper "gains" -- and they truly are only paper gains because no cash changes hands -- will have no effect on rates.²⁷

Nor is the APCC able to identify a plausible competitive effect of leaving the assets at net book value. The behaviors the APCC identifies are all based on a belief that reliance on net book value will somehow mislead investors and managers alike. See APCC Pet. at 22 (overinvestment based on shareholder and bondholder misperception; poor management decisions based on managerial misperception). But the uniform accounting rules to which most investors and corporations subscribe -- and which are universally believed to best reflect actual value, to the extent accounting measures can -- have *rejected* use of the valuation method the APCC seeks to impose *unless* there is an arms-length market transaction. As Arthur Andersen has explained, GAAP principles *prohibit* the use of any valuation method other than net book -- even where there is a transfer to an affiliate -- absent an

²⁶See Reassignment of RBOC Payphone Assets at 3-4 & n.3 (Aug. 30, 1996) ("Asset Valuation White Paper") (attached to Ex Parte Letter from Michael K. Kellogg to William F. Caton, Secretary (Aug. 30, 1996)).

²⁷APCC appears to be under the mistaken impression that, because the *removal* of payphone costs from regulated books triggers an "exogenous cost" adjustment, any "gain" will be given exogenous treatment, and change rates, as well. APCC at 17 n.11. But there is no such thing as an exogenous "gain adjustment," just exogenous "cost adjustments," and recognizing a "gain" in no way affects RBOC costs. To the contrary, the Commission already has determined the precise mechanism through which the exogenous adjustment to RBOC rates will take place, and that mechanism *nowhere* provides for an adjustment based on phantom "gains" triggered by the revaluation process. See Order ¶¶ 180-187.

actual market transaction.²⁸ How the APCC can claim that relying on non-standard accounting practices will be less misleading than use of the accounting practices with which all businesses comply is simply a mystery.²⁹

Finally, the APCC (at 18-21) argues that treating assets that are transferred to an affiliate differently from assets that are left on RBOC books might alter RBOC decisions regarding the use of a separate affiliate. This, the APCC argues at great length, might result in the uneconomic retention of integrated operations, or even encourage RBOCs not to sell the payphone operations if it would be profitable to do so. But the Commission's Part 32 and Part 64 rules long have applied different treatments to affiliate transactions and cost allocations, and the APCC surely cannot contend that those rules are irrational. Moreover, the APCC utterly fails to explain *why*, if differential treatment is problematic, the answer is to create additional paperwork and regulation for integrated operations rather than allow affiliates to operate under standard GAAP principles, as the Coalition has urged.³⁰

B. Removal of Subsidies [¶¶ 152-172;173-187]

Sprint, AT&T, and the USTA argue that the Commission should clarify how it expects LECs to remove payphone costs from their networks. AT&T Pet. at 24; Sprint Pet. at 19; USTA Pet. at 1-4. The RBOC Payphone Coalition fully supports the USTA methodology proposed in its PFR as the proper treatment of payphone subsidy removal.

²⁸See Arthur Andersen, L.L.P., Calculation of Per-Call Compensation and Review of Accounting and Regulatory Treatment for Payphone Asset Reclassification 18 (attached to RBOC Payphone Coalition Comments (July 1, 1996)); Asset Valuation White Paper at 1-2.

²⁹The APCC's estimates of how much various assets are worth, APCC at 8-9, are grossly inflated and inapplicable to RBOC payphones (which have lower call volumes and often are wholly unprofitable), as the Coalition has explained before. Coalition Reply Comments at 12-15. Unable to meet these substantial objections, the APCC simply repeats its prior assertions.

³⁰Accordingly, the Coalition has urged the Commission simply to clarify that the usual Part 32 and Part 64 rules will apply. See RBOC Payphone Coalition Petition for Clarification at 9-10.

C. Nonstructural Safeguards [¶¶ 192-207]

Various parties have proposed changes to the Computer III safeguards. New Jersey Payphone Ass'n Pet. at 2-15 ("NJPA"); Inmate Coalition Pet. at 14-18. NJPA, for instance, requests that the Commission require LECs to offer coin rating services so PSPs can select the coin rates they charge on so-called "dumb sets." The NJPA also requests (at 7) that the LECs be required to provide unbundled answer supervision. But these requests are best resolved as specified the Order: "when requested by payphone providers," and "based on the specific criteria established in the Computer III and ONA proceedings." Order ¶ 147. Nor is it necessary for the Commission to require that joint marketing, installation, maintenance, and billing and collection all be provided to PSPs on a nondiscriminatory and cost allocated basis. NJPA Pet. at 9-15. The LEC has no competitive advantage in these competitive markets. See Sprint Pet. at 19-20 (Commission should not extend nondiscrimination requirement to LEC installation and maintenance of payphones). And as the RBOC Coalition explained in their opening comments (at 37-40), existing accounting regulations and price cap rules adequately ensure against cross-subsidy from regulated to unregulated operations. This Commission, the courts and the Department of Justice have repeatedly so found. RBOC Payphone Coalition Comments at 38-40.

Various states urge the Commission to clarify which state unbundling requirements have been preempted, Okla. Corp. Comm'n. Pet. at 7, Texas PUC at 6, and argue that the states should retain control over the degree of unbundling, Ohio PUC at 2-5. But the Commission made this delineation back in Computer III, noting that "[w]ith respect to nonstructural safeguards, variations among the states that are inconsistent with the safeguards we have adopted would . . . be impracticable and would effectively negate federal policies." Report and Order, Amendment of Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), 104 F.C.C.2d 958, 1127-28 (1986). The Commission should hew to this precedent and clarify that the Order preempts any inconsistent nonstructural requirements.

Finally, both the Ohio PUC (Pet. at 3) and BellSouth (Pet. at 6-19) urge the Commission to reconsider its requirement that LECs tariff coin transmission services in their interstate access tariffs. NYNEX, Pacific Telesis, SBC, and U S WEST support BellSouth on this issue.

V. PUBLIC INTEREST PAYPHONES [¶¶ 277-286]

APCC (Pet. at 6-7) asks the Commission to modify its rules to ensure that the public interest payphone category "cannot include payphones located within 200 yards of another payphone unless there is some physical barrier to access." Such a rule would unduly hamper the flexibility of the states in providing for the public health, safety and welfare. There may be good reasons for having multiple public interest phones in the same area. For example, many states have designated areas for residents to assemble in the event of a natural disaster. Numerous public interest payphones are needed in such an area. The use of those phones may only be occasional, and hence market forces would not place any phones there, much less multiple phones, but the need for multiple phones will be great when the occasion arises.³¹

At the same time, states should not have the authority to order the placement of non-public interest payphones. CalPUC Pet. at 4-5. Free entry and exit are critical to permitting market forces to work in this industry. Indeed, the whole point of deregulating the payphone industry is to allow market forces, rather than regulatory fiat, to determine entry and exit. Consequently, the states must be limited to placing phones "in the interest of public health, safety, and welfare, in locations where there would otherwise not be a payphone," and to ensuring that such phones are supported "fairly and equitably." 47 U.S.C. § 276(b)(3). A state can certainly order as many payphones as it wants, just like it can order any other competitive product, as long as it is willing to pay for them. But it cannot

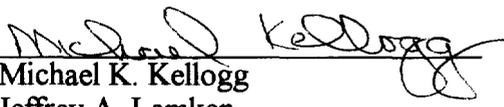
³¹But states have no authority to place public interest phones in areas where there are already competitive phones simply because the state PUC makes a judgment that market forces are not keeping rates low enough. See Ohio PUC Pet. at 8. The statute permits regulators to install public interest payphones only "in locations where there would otherwise not be a payphone." Section 276(b)(2). A state may, however, be able as part of its police powers to forbid payphones in certain high crime areas where the phones are used to promote drug traffic.

otherwise compel the placement of payphones. That would directly circumvent the public interest payphone provisions of the statute.

CONCLUSION

The Coalition believes that the Commission's order generally sets forth a suitable framework for an even more competitive and fully subsidy-free payphone marketplace. It hereby requests only that the Commission confirm its meaning and intent in the limited respects identified above and in the Coalition's Petition for Clarification.

Respectfully submitted,

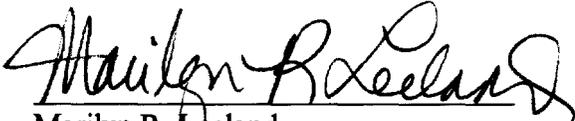

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I hereby certify that on this 28th day of October, 1996, I caused copies of the RBOC PAYPHONE COALITION'S OPPOSITION TO PETITIONS FOR RECONSIDERATION to be served upon the parties listed on the attached service list by first-class mail, postage prepaid.


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Implementation of the
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CC Docket No. 96-128

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George E. Young
Vermont Public Service Board
Drawer 20
Montpelier, VT 05620

Sheldon M. Katz
Vermont Department of
Public Service
Drawer 20
Montpelier, VT 05620

Virginia State Corporation
Commission

Edward C. Addison
Robert M. Gillespie
Virginia State Corporation
Commission
Division of Communications
1300 East Main Street, 9th Flr
P.O. Box 1197
Richmond, VA 23218

Voice Telephone Company

Jerry W. Hendricks
Telecard Regulatory Services
Consultants
11655 SW Allen Boulevard, #23
Beaverton, Oregon 97005

Wisconsin Pay Telephone
Association, Inc.

Andrew J. Phillips
Yakes, Bauer, Kindt & Phillips
141 North Sawyer Street
PO Box 1338
Oshkosh, WI 54902-1338

Wisconsin Public Communications
Association

Roger B. Skrypczak
Wisconsin Public Communications
Association
W6246 County Trunk BB, Suite B
Appleton, WI 54915

Yuma International Airport

E.M. Thurmond, A.A.E.
Yuma International Airport
2191 East 32nd Street
Yuma, AZ 85365

Common Carrier Bureau
1919 M Street, N.W.
Room 500
Washington, DC 20554

ITS

International Transcription
Service
2100 M Street, N.W.
Suite 140
Washington, DC 20037

ADDITIONAL ADDRESSES TO BE COMPLETED

SDN Users Association, Inc.

Reginald R. Bernard
SDN Users Association, Inc.