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October 29, 1996

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, NW, Room 222  
Washington, DC 20554

RE: Ex Parte Presentation, CC Docket No. 96-128

RECEIVED  
OCT 29 1996  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Dear Mr. Caton:

Today I delivered copies of the attached material, concerning the above-captioned docket, to J. Nakahata of Chairman Hundt's office, J. Casserly of Commissioner Ness' office, L. Belvin of Commissioner Quello's office, D. Gonzalez of Commissioner Chong's office, and M. B. Richards and J. Muleta of the Common Carrier Bureau.

Two copies of this Notice are being submitted to the Secretary of the FCC in accordance with Section 1.1206(a)(1) of the Commission's rules.

Sincerely,

attachment

cc: J. Nakahata  
J. Casserly  
L. Belvin  
D. Gonzalez  
M. B. Richards  
J. Muleta

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**Excerpts from AT&T Position on the FCC's Order in the Payphone Dockets**  
CC Docket No. 96-128, CC Docket No. 91-35

**The Order's rejection of a TSLRIC-based compensation system is inconsistent with the Commission's Local Competition Order, contrary to the record, and is based upon the false premise that there could be an effective "market" for 800 subscriber and access code calls from payphones.**<sup>1</sup>

AT&T's Reply provided specific information on the costs relevant to the provision of payphone access for non-coin calls, including costs of the installation and maintenance of the payphone set (without coin features), additional costs associated with the Subscriber Line Charge, and blocking and screening functions used to support the provision of payphone services. These include all of the costs associated with a PSP's provision of payphone access to carriers for 800 subscriber and access code calls, and thus include all relevant joint and common costs. The Order fails to explain why this proposal would undercompensate PSPs for any specific joint and common cost.

The \$.35 default amount adopted by the Order substantially overstates the "fair" per-call compensation that should be assessed for non-coin 800 subscriber and access code calls<sup>2</sup>, and will lead to radical increases in carriers' costs and consumers' prices. It also leads to a windfall -- a 650% increase in compensation payable to independent payphone providers, even though the record suggests that IPPs are already receiving sufficient total compensation for their payphones because substantial premiums are being paid for the purchase of payphone placements.

The Order's statement that "if a rate is compensatory for local coin calls, then it is an appropriate compensation amount for other calls as well, because the cost of originating the various types of payphone calls are similar" is wrong. Sprint's Comments and AT&T's Reply demonstrated at length why a PSP's costs for providing local coin calls are significantly greater than a PSP's costs to provide customers with the ability to place subscriber 800 and access code calls, which do not require the use of coins. APCC's Comments directly support this view, recognizing that "[a]rguably, the local coin rate should be higher than the rate for a non-sent paid call because of the usage and coin collection costs typically associated with local coin calling" (emphasis in original). The Order ignores that, even by the RBOC Coalition's estimates, its members' average cost for providing payphone access for all types of calls -- including coin calls -- "ranges from \$.25 to \$.32." These amounts, which are based not on TSLRIC methodology but on an undescribed "fully embedded asset base," include not only all of the RBOCs' costs for providing coin services but also an unstated "reasonable" rate of return and marketing costs the RBOCs incur to promote the use of their payphones for local calls.

The Order's assumption that the market could effectively set a "fair" rate for per-call compensation is also unfounded, especially if the compensation amount is based on the local coin rate. There is no reason to expect that consumers will ever see effective price competition among PSPs for local coin rates, yet without such competition the rates for local coin calls could never be "market-based." Virtually all coin phones are placed on the premises of a third party -- a location owner -- that receives revenue in return for allowing the PSP to place phones on its premises. Both the PSP and the location

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<sup>1</sup> In Petitions for Reconsideration, many parties seek reconsideration of the Commission's decision to link payphone compensation with "market based" local coin rates. See AT&T Reply to Petitions for Reconsideration, pp. 2-5 for a listing and discussion.

<sup>2</sup> See AT&T, pp. 5-6 for a listing and discussion of Petitions for Reconsideration that agree.

owner have an economic interest in maintaining the exclusivity of the coin phone placements, because that maximizes the revenue potential for each. PUCs that filed for Reconsideration agree. See, e.g., California's statement: "there is no showing that market forces can develop fair and reasonable rates" for local coin calls. New York states that the "situational monopolies" of location owners and PSPs make payphone users "'captive' consumer[s]." <sup>3</sup>

It is impossible to develop a unitary "market" price that would be applicable to both access code and 800 subscriber calls. The record shows that carriers' charges for 800 subscriber calls -- which appear to be a majority of the calls that would be covered by per-call compensation -- are only about one-fifth of their charges for access code calls. Given the wide differential in revenues, no rational market would assign the same value to payphone access for 800 subscriber calls as for access code calls. In contrast, under a cost-based approach, it would be reasonable to assign a constant rate for per-call compensation, as long as the costs of providing payphone access are similar for the various types of compensable calls -- which the record shows they are. Accordingly, the only "fair" compensation amount is one that is based on the PSPs' costs for making payphone access available, just as the Notice proposed. There is no record support for the Commission's moving away from its proposal in the Notice to the idea of "Market-based" rates. <sup>4</sup>

**The per-call compensation rules are unadministrable and will subject carriers and consumers to significant abuses.** <sup>5</sup>

Setting the default rate based on local coin rates at specific payphones creates administrative complexities and adds to the cost of calculating carrier payments because the compensation rate could vary from phone to phone, from day to day, or even at different times of the day. There is no reason to expect that market rates for local coin calls will drive all PSPs to charge the same rate at all phones. Indeed, rational PSPs will seek to charge the highest amount that consumers are willing to pay for local coin calls from a specific location. Thus, while the market will drive all PSPs to charge rates that at least recover the efficient TSLRIC costs of providing local coin services, there will be no cost-related ceiling on such rates. For example, it should be assumed that a rational market will generate higher prices for local coin calls in remote or monopoly locations than for similar calls in areas where consumers have more choices.

**The interim compensation rules unlawfully exclude LECs and small IXC's from the duty to pay compensation and unreasonably require interim compensation for low usage payphones and semi-public phones.**

Section 276 specifically requires the Commission to establish a plan that provides PSPs with compensation for "each and every completed interstate and intrastate call" from payphones (emphasis added). Thus, all carriers, large and small, are obliged to pay compensation, and no carrier should be required to pay for calls handled by other carriers. Petitions for Reconsideration agree that the Order is contrary to the statute on this point. <sup>6</sup> Even the RBOC coalition Reply agrees that LECs should be required to pay per-call compensation on intraLATA toll calls.

<sup>3</sup> See also, Consumers Union, p.3; PUCO, p.5; DC People's Counsel, pp. 7-9. There is no record support for the Order's assumption that there could be market-based coin rates.

<sup>4</sup> See AT&T, p.7, for a discussion of petitions making this point.

<sup>5</sup> Several Petitions for Reconsideration make this point. See AT&T, p. 6, for a listing and discussion.

<sup>6</sup> See CWI, pp. 10-13; LDDS, pp. 4-7; MCI, p. 22; Sprint, pp. 8-10, AT&T, pp. 15-18.

In addition, the record shows that there are hundreds of thousands of semi-public and public interest payphones, which, by their nature, generate low revenues, and even more "ordinary" public phones that generate relatively few calls. It is unreasonable to expect that these phones produce any significant amount of traffic for carriers. In contrast to the relatively modest \$6.00 per month obligation that was imposed with respect to interstate dial-around calls, a \$40.00 increase in monthly compensation can only serve to provide uneconomic incentives for PSPs to install new payphones for the sole purpose of obtaining interim compensation.

**If the Commission persists in avoiding a cost-based system, the payment mechanism must provide a semblance of market discipline over the compensation rate.**

The Order adopts a "carrier pays" mechanism to implement per-call compensation. Such a system would be reasonable -- but only if per-call compensation were cost-based. In a cost-based system, carriers can treat payphone compensation as one of the external costs they must incur and recoup in their rates. Under a "market-based" system, however, payphone users -- the actual cost causers -- may or may not be willing to absorb the flow-through of a PSP's charges, depending upon the rate charged by the PSP. But the method adopted by the Order hides from payphone users critical information necessary to enable them to exercise any market discipline over the situational monopolies of PSPs. Accordingly, if the Commission insists upon applying a "market-based" approach to per-call compensation, carriers should not be placed in the middle between the competing economic interests of the PSP suppliers and users.

The most effective way to assure that consumers understand the costs associated with their decision to use a payphone is to require them to pay the PSP directly through a payphone coin charge at the phone itself. This removes carriers from the decision of whether a customer wants to pay the costs of making calls from payphones, and it is also the only way of ensuring that payphone users are aware of the costs they are causing.<sup>7</sup> AT&T recognizes, however, that a "coin in the box" system could create inconvenience for many consumers. Therefore, if the Commission determines not to assess payphone usage charges directly at the phone, it should adopt a payment mechanism that applies directly to access code callers and 800 subscribers, modeled on the Pay Station Service Charge adopted for intraLATA access code calls in California. Under such a system, carriers would be responsible, as agents for PSPs, to collect a specified charge for use of the PSPs' payphones. Under these conditions, customers would have an opportunity to review the payphone usage charges and respond through appropriate market actions.

**Other issues requiring clarification: LEC access charge filings.**

The Order requires LECs to file tariffs in January, 1997 that will result in the removal of payphone subsidies from interstate access charges. In anticipation of these filings, the Commission should clarify how it expects the LECs to remove certain costs. In particular, the Commission should clarify that LECs must reduce their CCL rates by an amount equal to the additional Subscriber Line Charges that will be received from the LEC payphone entity. Any other result would retain existing payphone subsidies that the statute requires to be removed.

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<sup>7</sup> The SDN User's Group and several Petitions for Reconsideration make this point. See AT&T, p. 8-10, for a listing and discussion.