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AT&T

E. E. Estey
Government Affairs Vice President

Suite 1000
1120 20th Street, NW
Washington, DC 20036
202 457-3895
FAX 202 457-2165

April 11, 1997

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

APR 11 1997

Re: CC Docket No. 96-128

Dear Mr. Caton:

This letter responds to the April 10, 1997 letter from Michael Kellogg, counsel for the RBOC Payphone Coalition, to Mary Beth Richards, Deputy Bureau Chief, Common Carrier Bureau. In that letter, the RBOC Coalition requested that the Bureau extend the waiver in its April 4 Order to include a waiver of the time within which LECs must have effective cost-based intrastate tariffs for basic payphone lines.

There is no basis for the RBOCs' claim that they did not understand that basic payphone tariffs had to comply with the Commission's "new services" test. Paragraph 146 of the Commission's September 20, 1996 Report and Order states:

> "[W]e require that incumbent LEC provision of coin transmission services on an unbundled basis be treated as a new service under the Commission's price cap rules. . . . [W]e conclude that the new services test is necessary to ensure that central office coin services are priced reasonably."

That paragraph also specifically requires LECs to file cost support for such services. Moreover, paragraph 147 of the Report and Order concludes that "Computer III tariff procedures and pricing are more appropriate for basic payphone services provided by LECs to other payphone providers" and that "any inconsistent state requirements with regard to this matter are preempted." Nevertheless, AT&T takes no position on the merits of the RBOCs' request, provided that all necessary cost-based tariffs are in place within the waiver period established by the Bureau's April 4, 1997 Order.

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AT&T's principal concern, however, is with an issue for which the RBOCs have not sought -- and the Bureau has not granted -- any waiver. In the Bureau's April 4 Order (¶ 30), the Bureau restated the Commission's earlier conclusion that LECs are not entitled to receive payphone compensation until the "states ensure that payphone costs for unregulated equipment and subsidies [are] removed from the [LECs'] intrastate local exchange service and exchange access service rates (emphasis added)."[1] For the reasons described below, AT&T believes it is critical that the states affirmatively indicate they have completed this responsibility before LECs are entitled to receive any payphone compensation.

Section 276 clearly provides that payphone compensation for LECs is to be in lieu of any subsidies that the LECs currently receive to support their payphone operations. Section 276(b)(1)(B) specifically states that the Commission "shall take all necessary action . . . to discontinue the intrastate and interstate carrier access charge payphone service elements . . . and all intrastate and interstate payphone subsidies from basic exchange and exchange access revenues, in favor of a [payphone] compensation plan." Thus, it is indisputable, both under the statute and the Commission's Payphone Orders, that LECs may not receive any form of payphone compensation until all such subsidies have been terminated.[2]

The Commission's Orders required LECs to remove all intrastate payphone subsidies by April 15, but there is virtually no evidence that the LECs have done so. As the attached chart shows, the RBOCs and major independent LECs removed approximately $240 million in costs from their interstate rates as a result of the reclassification of their payphone equipment. Using ordinary separations principles, the reclassification of such equipment should have resulted in a reduction of about $720 million in intrastate costs at the same time.[3] The chart shows that there is a wide gap between the expected reductions -- which were anticipated and required by Section 276 -- and evidence of actual intrastate rate reductions (to date less than $20 million). Moreover, with very few exceptions, LECs do not appear even to have asked the states to consider this important matter.

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1 See also April 4 Order, ¶ 2 ("the Payphone Reclassification Proceeding required states to ensure that payphone costs for unregulated equipment and subsidies are removed from the intrastate local exchange service and exchange access service rates").

2 The RBOCs concurred with this view last week in their April 7 brief before the D.C. Circuit in connection with the appeals of the Commission's Payphone Orders, stating that "the 1996 Act required the FCC to 'discontinue' this . . . system of 'intrastate' and 'interstate' subsidies for payphones 'in favor of a compensation plan.'" Illinois Public Telecommunications Association v. FCC, Case No. 96-1394, Initial Brief for the RBOC and NCTA Intervenors, p. 2.

3 Separations rules generally require a 25%/75% allocation of costs between the interstate and intrastate jurisdictions.

Given the wide and unexplained gap between the reasonably expected rate impacts of the removal of LEC payphone equipment from their regulated accounts and recent actual intrastate rate reductions, LECs should not be permitted to self-certify that their "states [have] ensure[d]" that intrastate payphone subsidies have been eliminated. In fact, the available evidence suggests that LECs have not removed intrastate payphone subsidies. Accordingly, the Commission should reiterate that a LEC has not fulfilled its statutory obligation -- and is not entitled to receive payphone compensation -- until it has provided proof of state action verifying the LEC's compliance with Section 276.

Specifically, the Commission should make it clear that no LEC is entitled to receive payphone compensation in any state[4] until (1) it provides evidence that its state commission has actually considered these matters and (2) the state has affirmatively determined that all payphone subsidies have been eliminated from intrastate rates. Until such time, of course, LECs should be permitted to receive their current payphone subsidies, both interstate and intrastate.[5]

Any other procedural solution would create chaos, both in the marketplace and in the regulatory arena. Major IXCs face significant cost increases as soon as LEC payphones become eligible for payphone compensation. In the aggregate, IXCs will owe LEC PSPs over $80 million in increased payphone compensation during each month of the interim compensation period, and carriers must plan rate actions necessary to cover these additional expenses.[6] Unless there is reasonable certainty as to when these increases will take effect, carriers will have to assume that their liability may later be judged to have accrued beginning April 16, even though virtually no LECs will have fulfilled the Commission's (and the statute's) requirements by that time. Although carriers can make future rate adjustments to reflect reductions in payphone compensation, it is most desirable for customers to avoid rate increases until the LECs have fulfilled their obligations. It should also be recognized that the present uncertainty does not result from any action by IXCs or their customers. Rather, it is solely the result of the LECs' failure to take actions that were mandated by Section 276 and by Commission Orders that were issued last fall.

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4 The Order (¶ 33) recognizes that compliance with the intrastate aspects of the Commission's Payphone Orders must be decided on a state-by-state basis.

5 Accordingly, the Commission should defer the effective date of (or permit LECs to defer) LEC interstate access tariff reductions to coincide with the date that the LEC provides proof that its state commission has verified removal of all payphone subsidies.

6 The Commission's Report and Order (¶ 83) and its Order on Reconsideration (¶89) both assume that IXCs may pass such additional costs on to their customers.

In addition, lack of clear guidance now will also likely lead to scores, if not hundreds, of FCC formal complaints between LECs and IXCs over the time at which individual LECs become entitled to receive interim compensation in each state. Most of these disputes could be avoided by requiring the LECs to obtain state verification of their compliance with the statute before they become eligible to receive payphone compensation.

The available evidence strongly indicates that the LECs have not yet removed all payphone subsidies. If the LECs are permitted -- contrary to law and the Commission's Orders -- to receive payphone compensation before these subsidies are eliminated, they will lose all incentives to lower their intrastate rates to the extent required. The procedure suggested above will not only provide LECs with the appropriate incentives, it will also enable them to qualify for payphone compensation as soon as they demonstrate compliance with the Commission's Orders.

Yours truly,

attachment

copy to:

Mary Beth Richards		
Dan Abeyta	Christopher Heimann	Brent Olson
Thomas Boasberg	Radhika Karmarkar	Michael Pryor
Craig Brown	Regina Keeney	James Schlichting
Michelle Carey	Linda Kinney	Blaise Scinto
Michael Carowitz	Carol Mattey	Anne Stevens
James Casserly	A. Richard Metzger	Richard Welch
James Coltharp	John B. Muleta	Christopher Wright
Rose M. Crellin	Judy Nitsche	Dan Gonzalez

STATE	LEC	LEC CPE Costs INTERSTATE AS FILED (1000's)	LEC CPE Costs INTRASTATE ESTIMATED (see end notes) (1000's)	AS FILED STATE RATE REDUCTIONS (1000's)
ALABAMA	GTE	$127	$382	$0
ALABAMA	GTE-C	$82	$247	$0
ALASKA	ATU	NECA	$1,302	$400
ALASKA	GTE	$41	$147	$66
ALL	BELL SOUTH	$39,381	$118,142	$18,200
ALL	US WEST	$12,416	$37,248	$0
ARIZONA	GTE-C	$9	$26	(Small)
ARKANSAS	S.WEST	$3,098	$9,294	$0
ARKANSAS	GTE	$97	$290	$0
ARKANSAS	GTE-C	$114	$343	$0
CALIFORNIA	GTE	$4,698	$14,095	$0
CALIFORNIA	GTE-WC	$64	$192	$32
CALIFORNIA	GTE-C	$524	$1,572	$127
CALIFORNIA	PACBELL	$18,774	$56,322	$0
DC	BELL ATLAN.	$1,800	$5,400	$0
DELAWARE	BELL ATLAN.	$664	$1,992	$0
FLORIDA	GTE	$2,894	$8,683	$0
HAWAII	GTE	$1,795	$5,385	$0
IDAHO	GTE	$125	$374	$0
ILLINOIS	AMERITECH	$7,936	$23,808	$0
ILLINOIS	GTE	$485	$1,455	$0
ILLINOIS	GTE-A	$44	$133	
ILLINOIS	GTE-C	$113	$339	$0
INDIANA	AMERITECH	$2,402	$7,206	$0
INDIANA	GTE	$671	$2,014	$0
INDIANA	GTE-A	$7	$21	(Small)
INDIANA	GTE-C	$129	$388	$0
IOWA	GTE	$3	$9	$0

STATE	LEC	LEC CPE Costs INTERSTATE AS FILED (1000's)	LEC CPE Costs INTRASTATE ESTIMATED (see end notes) (1000's)	AS FILED STATE RATE REDUCTIONS (1000's)
IOWA	GTE-C	$8	$25	$0
KANSAS	S.WEST	$3,762	$11,286	$0
KENTUCKY	GTE	$417	$1,251	$0
KENTUCKY	GTE-C	$47	$141	$0
MAINE	NYNEX	$1,107	$3,321	$0
MARYLAND	BELL ATLAN.	$4,928	$14,784	$0
MASS	NYNEX	$6,076	$18,228	$0
MICHIGAN	AMERITECH	$6,818	$20,454	$0
MICHIGAN	GTE	$598	$1,793	$0
MICHIGAN	GTE-A	$65	$195	$0
MICRONESIA	GTE	$13	$39	(Unknown)
MINNESOTA	GTE	$1	$3	$0
MINNESOTA	GTE-C	$83	$248	$0
MISSOURI	S.WEST	$8,250	$24,750	$0
MISSOURI	GTE	$158	$473	$0
MISSOURI	GTE-C	$276	$827	$0
N. HAMPSH	NYNEX	$1,167	$3,501	$0
NEBRASKA	GTE	$32	$96	$0
NEVADA	NEV. BELL	$784	$2,352	$0
NEVADA	GTE-C	$41	$123	$0
NEW JERSEY	BELL ATLAN.	$14,705	$44,115	$0
NEW MEXICO	GTE	$25	$75	$0
NEW MEXICO	GTE-C	$28	$85	$0
NEW YORK	NYNEX	$31,284	$93,852	$0
NO. CAR.	GTE	$175	$525	$0
NO. CAR.	GTE-C	$82	$245	$0

STATE	LEC	LEC CPE Costs INTERSTATE AS FILED (1000's)	LEC CPE Costs INTRASTATE ESTIMATED (see end notes) (1000's)	AS FILED STATE RATE REDUCTIONS (1000's)
OHIO	AMERITECH	$5,979	$17,937	$0
OHIO	GTE	$738	$2,215	$0
OKLAHOMA	S.WEST	$4,642	$13,926	$0
OKLAHOMA	GTE	$108	$323	$0
OREGON	GTE	$297	$890	$0
PENNSYLV.	GTE	$408	$1,223	$0
PENNSYLV.	GTE-C	$81	$242	$0
PENNSYLV.	BELL ATLAN.	$10,242	$30,726	$0
RHODE ISL	NYNEX	$838	$2,514	$0
SO. CAR.	GTE	$322	$967	$0
SO. CAR.	GTE-C	$8	$23	$0
TEXAS	S.WEST	$24,899	$74,697	$0
TEXAS	GTE	$1,392	$4,177	$0
TEXAS	GTE-C	$89	$268	$0
VERMONT	NYNEX	$792	$2,376	$0
VIRGINIA	BELL ATLAN.	$4,127	$12,381	$0
VIRGINIA	GTE	$29	$86	$0
VIRGINIA	GTE-C	$494	$1,482	$0
WASHING.	GTE	$300	$899	$0
WASHING.	GTE-C	$92	$276	$0
WEST VIRG.	BELL ATLAN.	$1,348	$4,044	$0
WISCONSIN	AMERITECH	$3,179	$9,537	$0
WISCONSIN	GTE	$252	$755	$0
TOTAL		**$240,078**	**$721,560**	**$18,826**

NOTES:

(1) The CPE costs exclude all new regulated revenue amounts that will flow to the LEC from its payphone affiliate(s). The RBOC Coalition estimated that their regulated entities would receive an additional $683.76 M. from these affiliates, virtually all of which will be intrastate revenues. (See Page 5, RBOC Coaition Ex-Parte dated August, 12, 1996)

(2) The AMERITECH revenue requirement is per transmittal # 1055

(3) The GTE and GTE-Alltel (GTE-A) revenue requirement is per GTE transmittal # 1085.
GTE-CONTEL (GTE-C) is per transmittal # 201.

(4) BELL ATLANTIC revenue requirement is per transmittal # 931

(5) BELL SOUTH revenue requirement is per transmittal # 385

(6) SOUTHWESTERN BELL revenue requirement is per transmittal # 2608

(7) NYNEX revenue requirement is per transmittal # 443

(8) PACIFIC BELL revenue requirment is per transmittal # 1905

(9) NEVADA BELL revenue requirement is per transmittal # 223

(8) NYNEX - Transmittal #443

(9) US WEST revenue requirement is per transmittal # 823. AT&T believes that
US WEST has recently filed to reduce some rates in Oregon. At this time we are unable to determine the magnitude of the filing.