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June 30, 1997

BY HAND DELIVERY

Mr. William Caton  
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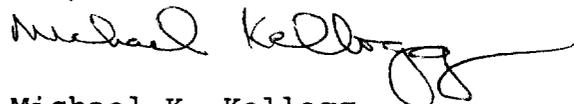
Re: In the Matter of the Pay Telephone Reclassification  
and Compensation Provisions of the Telecommunica-  
tions Act of 1996, CC Docket No. 96-128

Dear Mr. Caton:

Please find enclosed for filing the original and fourteen  
copies of the RBOC Payphone Coalition's Comments on and Oppositions  
to Applications for Review of the Payphone CEI Plan Orders.

Attached is an extra copy to be date-stamped and returned.

Sincerely,

  
Michael K. Kellogg

Enclosures

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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Implementation of the Pay Telephone	)	
Reclassification and Compensation	)	CC Docket No. 97
Provisions of the	)	
Telecommunications Act of 1996	)	

**ORIGINAL**

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**THE RBOC PAYPHONE COALITION'S  
COMMENTS ON AND OPPOSITIONS TO APPLICATIONS  
FOR REVIEW OF THE PAYPHONE CEI PLAN ORDERS**

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June 30, 1997

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## EXECUTIVE SUMMARY

Repeating the same arguments that were properly rejected in the payphone rulemaking proceedings, the American Public Communications Council (“APCC”) and the Inmate Calling Service Providers Coalition (“Inmate Coalition”) challenge the Common Carrier Bureau's decision approving the Bell Operating Companies' Comparably Efficient Interconnection (“CEI”) Plans.

I. The APCC first complains about the extent of BOC unbundling and federal tariffing. Under the payphone orders, BOCs need to *unbundle* only those features or functions that are “*used by a LEC's operations*” on an unbundled basis.<sup>1</sup> Further, “the requirement to file federal tariffs applies only to *payphone-specific, network-based, unbundled* features and functions *provided to others or taken by a LEC's [payphone] operations.*”<sup>2</sup> U S WEST thus properly declined to tariff CUSTOMNET federally because CUSTOMNET is not “payphone specific.” (Moreover, the APCC failed to raise the CUSTOMNET issue before the Bureau, and consequently is barred from raising it here. 47 C.F.R. § 1.115(c)). Similarly, NYNEX properly makes available to all other PSPs the same functions and features, in the same packages, as are taken by NYNEX's PSP. And BellSouth properly declined to file federal tariffs for the screening and blocking services about which the APCC complains, because those features and functions are not offered to any PSP -- affiliated or unaffiliated -- on an unbundled basis.

II. The APCC also claims injury because BOCs have not reprogrammed their switches to provide unique ANI ii coding digits for COCOT lines. The Bureau, however, correctly concluded that this is not a CEI issue. BOCs offer to competing PSPs, on a non-discriminatory basis, all coding digits

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<sup>1</sup>See Order on Reconsideration, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket 96-128, at 76, ¶ 162 (rel. Nov. 8, 1996) (emphasis added).

<sup>2</sup>Order, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket 96-128, at 9, ¶ 18 (rel. April 4, 1997) (emphasis added).

available to BOC PSPs. Thus, the parity in service and feature availability required by Computer III has been provided. Besides, the issue of coding digits is critical to all LECs (which must *all* send the same, uniform coding digits) and all IXCs (which must recognize them). As a result, this issue cannot be resolved in the context of CEI plans, which are submitted only by BOCs. Instead, it must be considered -- and is being considered -- in proceedings that involve all interested parties.

**III.** The APCC also complains that BOC CEI plans do not specify how BOCs will transfer service when a LEC PSP-affiliated payphone is replaced by a non-LEC payphone. But the BOCs have shown that their mechanized service transfers will be non-discriminatory, and there is no requirement for the type of minutiae the APCC demands.

**IV.** The Inmate Coalition's challenge to the Bureau's orders misapprehends how different BOC-affiliated PSPs provide inmate calling services. Contrary to the APCC's contention, the BOCs have properly treated PSP inmate calling equipment as deregulated CPE. The APCC's further contention -- that BOCs must treat collect calls from inmate facilities as deregulated calls, even when priced and billed by the BOC OSP -- has no basis in the payphone orders. Those orders deregulated facilities associated with payphone services, not operator services. Consequently, OSPs may continue to treat collect calls as regulated calls, even where they originate in an inmate facility. In effect, the Inmate Coalition is demanding that BOCs uniformly integrate their PSPs and OSPs so that the PSP controls, prices, and bills collect calls (so as to make them unregulated calls). BOCs are free to adopt such a structure -- and some do -- but the payphone orders do not compel them to do so.

Besides, because the BOCs offer operator services to all PSPs, any advantages the Inmate Coalition sees in BOC OSP services are equally available to all PSPs. Moreover, since handling collect calls from inmates generates a profit for OSP operations -- and all transactions between BOC PSPs and BOC OSPs are governed by the Commission's cost-allocation and affiliate transaction rules -- there can be no serious claim of cross-subsidization.

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**THE RBOC PAYPHONE COALITION'S  
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Section 276 of the Telecommunications Act of 1996 directed the Commission to ensure that any Bell Operating Company that provides payphone service: (1) shall not subsidize its payphone service directly or indirectly from its telephone exchange service operations or its exchange access service operations; and (2) shall not prefer or discriminate in favor of its payphone service. 47 U.S.C. § 276(a). To accomplish this goal, the 1996 Act also mandated that the Commission adopt a set of nonstructural safeguards that, at a minimum, include the nonstructural safeguards adopted in the Computer III proceeding. Id., § 276(b)(1)(B).

In its first payphone order, the Commission determined that the Computer III<sup>1</sup> and Open Network Architecture (ONA)<sup>2</sup> nonstructural safeguards would “provide an appropriate regulatory

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<sup>1</sup>Report and Order, Amendment of Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), 104 F.C.C.2d 958, 1040, ¶ 158 (1986) (“Computer III”).

<sup>2</sup>See Memorandum Opinion and Order, Filing and Review of Open Network Architecture Plans, 4 FCC Rcd 1 (1988) (“BOC ONA Order”), recon., 5 FCC Rcd 3084 (1990) (“BOC ONA Reconsideration Order”); 5 FCC Rcd 3103 (1990) (“BOC ONA Amendment Order”), erratum, 5 FCC Rcd 4045, pets. for review denied, California v. FCC, 4 F.3d 1505 (9th Cir. 1993), recon., 8 FCC Rcd 97 (1993) (“BOC ONA Amendment Reconsideration Order”); 6 FCC Rcd 7646 (1991) (“BOC ONA Further Amendment Order”); 8 FCC Rcd 2606 (1993) (“BOC ONA Second Further Amendment Order”).

framework to ensure that BOCs do not discriminate or cross-subsidize in their provision of payphone service.” Report and Order, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket 96-128, at 100, ¶ 199 (rel. Sept. 20, 1996) (“Report and Order”). Accordingly, the Commission required the BOCs to file “CEI plans describing how they will comply with the Computer III unbundling, CEI parameters, accounting requirements, CPNI requirements as modified by Section 222 of the 1996 Act, network disclosure requirements, and installation, maintenance, and quality nondiscrimination requirements.” Id. at 101, ¶ 199.

Pursuant to these requirements, the Bell Operating Companies filed CEI plans detailing how they would meet the Computer III requirements. On April 15, 1997, the Common Carrier Bureau approved all of these CEI plans.<sup>3</sup> The American Public Communications Council (“APCC”) and the Inmate Calling Service Providers Coalition (“Inmate Coalition”) now challenge the Bureau's orders. But most of the arguments the APCC and the Inmate Coalition raise were considered and rejected by the Commission in the payphone orders. Having lost this issue conclusively in the payphone orders, the APCC and the Inmate Coalition are simply trying to obtain reconsideration by reinterpreting the Commission's orders. The orders, however, will not

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<sup>3</sup>Order, Bell Atlantic Telephone Companies' Comparably Efficient Interconnection Plan for the Provision of Basic Payphone Services, CC Docket 96-128 (rel. Apr. 15, 1997) (“Bell Atlantic CEI Plan Order”); Order, BellSouth Corporation's Offer of Comparably Efficient Interconnection to Payphone Service Providers, CC Docket 96-128 (rel. Apr. 15, 1997) (“BellSouth CEI Plan Order”); Order, The NYNEX Telephone Companies' Offer of Comparably Efficient Interconnection to Payphone Service Providers, CC Docket 96-128 (rel. Apr. 15, 1997) (“NYNEX CEI Plan Order”); Order, Southwestern Bell Telephone Company's Comparably Efficient Interconnection Plan for the Provision of Basic Payphone Services, CC Docket 96-128 (rel. Apr. 15, 1997) (“SWBT CEI Plan Order”); Order, Pacific Bell and Nevada Bell Comparably Efficient Interconnection Plan for the Provision of Basic Telephone Service Order, CC Docket 96-128 (rel. Apr. 15, 1997) (“Pacific/Nevada CEI Plan Order”); Order, U S West's Comparably Efficient Interconnection Plan for Payphone Services, CC Docket No. 96-128 (rel. Apr. 15, 1997) (“U S West CEI Plan Order”).

bear the construction the APCC and the Inmate Coalition give them. And the few arguments raised by the APCC and the Inmate Coalition that do rely on correct constructions of the Commission's orders fail to acknowledge facts showing that the BOCs have complied with the Commission's requirements. Accordingly, the members of the RBOC Payphone Coalition -- the Bell Atlantic telephone companies, BellSouth Corporation, NYNEX Corporation, Pacific Telesis Group, Southwestern Bell Telephone Company, and U S WEST, Inc. -- hereby oppose the APCC's and Inmate Coalition's petitions for review.

**I. THE BELLSOUTH, NYNEX AND U S WEST CEI PLANS COMPLY FULLY WITH ALL FEDERAL TARIFFING REQUIREMENTS**

**A. The Commission's Payphone Orders Do Not Require the Unbundling of Payphone Features and Services Proposed by the APCC**

The APCC's application for review argues, for the most part, that the BOC CEI plans have failed sufficiently to unbundle and tariff the services and functions associated with payphone lines. But it proceeds from a flawed premise -- that the Commission's payphone orders somehow required fundamental unbundling of all payphone features and functions. See Consolidated Application of the American Public Communications Council for Review of the CEI Orders, at 12 (May 15, 1997) (hereinafter "APCC App.") (arguing that all features that "are available but not automatically provided with the basic payphone line" are considered "unbundled"). In this way, it demands that payphone service providers ("PSPs") be able to build any type of line they may want by selecting the piece-parts *a la carte*.

1. This "interpretation" of the payphone orders is pure fantasy. The Commission did not require the creation of a single, basic payphone line for all payphones; nor did it require that all of the various constituent features that make up the various line types be unbundled and offered separately. To the contrary, the payphone orders recognize that there will be at least *two* basic

payphone lines -- a “dumb” line for “smart” payphones, and a “smart” line for “dumb” payphones. See Report and Order at 74, ¶ 146 (requiring the provision of basic services enabling PSPs to use either “instrument-implemented 'smart payphones’” which use the dumb line or “'dumb' payphones that utilize central office coin services”). The “smart” line is by definition a bundled offering, as it includes both call screening and coin supervision functions that operate out of the central office switch.

The payphone orders do not require any further unbundling except where an RBOC's own PSP uses a feature or function on an unbundled basis. The Order on Reconsideration explains that, “as required by the Report and Order, any basic network services or unbundled features *used by a LEC's operations* to provide payphone services must be similarly available to independent payphone providers on a nondiscriminatory, tariffed basis. *Those* unbundled features or functions must be tariffed in the state and federal jurisdiction.” Order on Reconsideration, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket 96-128, at 76, ¶ 162 (rel. Nov. 8, 1996) (emphasis added) (“Recon. Order”). Three paragraphs later, the Order on Reconsideration reiterates the point: “We clarify that any unbundled network features *provided to a LEC payphone operation* must be available on a nondiscriminatory basis to independent payphone providers and must be tariffed in the federal and state jurisdictions.” Id. at 77, ¶ 165 (emphasis added).<sup>4</sup>

2. These conclusions flow not merely from the plain language of the Commission's orders but also from the Commission's Computer III requirements themselves.

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<sup>4</sup>The “Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements” exhibits the *same* understanding. It states: “Any basic network services or unbundled features *used by a LEC's operations to provide payphone services* must be similarly available to independent payphone providers on a nondiscriminatory, tariffed basis and must be tariffed in the state and federal jurisdiction.” Recon. Order at 114, ¶ 263 (emphasis added).

The Commission's Computer III orders require that “the basic services and basic service functions that underlie the carrier's enhanced service offering must be unbundled [as well as] any options that are available to a carrier in the provision of such services or functions.” Computer III at 1040, ¶ 158. CEI plans do not have to include unbundling or federal tariffing for features that the LECs themselves do not use. See, e.g., Memorandum Opinion and Order, NYNEX CEI Plan for Voice Messaging Services, 4 FCC Rcd 554, 555, ¶ 15 (Com. Carrier Bureau 1989) (“For CEI purposes a BOC must only make available to others the same basic services that it uses . . . . [No] further unbundling . . . is required to satisfy CEI requirements.”).

The Commission's payphone orders make it clear that the Commission intended to require application of these basic, fundamental CEI principles. Indeed, the Commission expressly declined to impose *any* requirements beyond those normally imposed under its usual CEI/ONA/Computer III precedents:

[W]e conclude that the Computer III and ONA nonstructural safeguards will provide an appropriate regulatory framework to ensure that BOCs do not discriminate or cross-subsidize in their provision of payphone service. . . . We conclude that we do not have to adopt any additional safeguards beyond Computer III and ONA because of the comprehensive nature of that regulatory structure and the lack of a record necessary to conclude that a more burdensome framework should be adopted and is in the public interest.

Report and Order at 100, ¶ 199.

3. If the APCC truly wants the BOCs to implement additional costly changes to their switches so that a COCOT line can be provisioned with every conceivable additional feature on an “unbundled” or *a la carte* basis, the APCC should submit an appropriate request under ONA. Pursuant to the ONA process, a BOC is to consider such a request in light of “market demand, utility as perceived by [PSPs], and costing and technical feasibility.” BOC ONA Order, 4 FCC Rcd at 207, ¶ 396. Indeed, this is precisely the process the Commission expected the APCC to

follow if it wanted further unbundling of payphone features.<sup>5</sup> Contrary to the APCC's assertions, the payphone orders simply do not require LECs to unbundle all payphone services regardless of cost.

4. Perhaps recognizing that its attempt to gain further unbundling is groundless, the APCC focuses its individual attacks on the tariffing requirements. But as the Common Carrier Bureau recently indicated, federal tariffs are not required for each and every feature or line that might conceivably be used by a payphone. To the contrary, "the requirement to file federal tariffs applies only to *payphone-specific*, network-based, *unbundled* features and functions *provided to others or taken by a LEC's [payphone] operations*." Order, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket 96-128, at 9, ¶ 18 (rel. April 4, 1997) (emphasis added) ("Clarification Order"). Thus, federal tariffing does not apply to non-network services such as inside wiring, or to features and functions that are "generally available to all local exchange customers and only are incidental to payphone service, such as touchtone service and various custom-calling features." Id. Nor does it apply to features or functions that have not been unbundled. Ibid.

Although the APCC contends that three RBOC Coalition members -- NYNEX, U S WEST, and BellSouth -- failed to comply with the federal tariffing requirements, the Bureau correctly rejected these arguments. Each of these members has fully complied with the Commission's requirements and currently offers under federal tariff each and every unbundled network feature and function that is payphone specific and offered to affiliated or unaffiliated PSPs.

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<sup>5</sup>See Report and Order at 75, ¶ 148. Indeed, in its April 15 Orders approving the CEI plans, the Bureau expressly noted that this process was available to the APCC and its members. See, e.g., U S WEST CEI Plan Order at 16, ¶ 18; NYNEX CEI Plan Order at 11, ¶ 19.

**B. The Bureau Correctly Determined That U S WEST Has Tariffed Appropriate Services**

The APCC's attack on U S WEST focuses almost exclusively on U S WEST's decision not to tariff federally its "CUSTOMNET" service. But the APCC's attack is both procedurally improper and substantively meritless.

1. It is a fundamental principle of FCC practice that a party cannot raise an issue in an application for review unless it raised the issue before the Bureau. As 47 C.F.R. § 1.115(c) explains, "[n]o application for review will be granted if it relies on questions of fact or law upon which the designated authority has been afforded no opportunity to pass." This makes sense. A party should not be permitted to sandbag the Bureau by raising an issue only *after* the Bureau's order has been issued.

Yet that is precisely what the APCC seeks to do here. The APCC nowhere suggests that it raised the CUSTOMNET issue in front of the Bureau before the Bureau issued the order under review. To the contrary, the APCC concedes that it did not raise the issue,<sup>6</sup> asks for relief "whether or not the Bureau had an opportunity to consider" the question, APCC App. at 10 n.18, and proposes raising the matter before the Bureau *in the future* by filing an "Opposition" to U S WEST's Amendment of its CEI plan, *id.* at 10. But this does not meet the requirements of the Commission's rules. *Before* raising the CUSTOMNET issue before the full Commission on an application for review, the APCC was required to afford the Bureau the opportunity to pass on this

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<sup>6</sup>APCC App. at 10 n.18 (admitting that "[t]here is no indication that the Commission's CEI review Staff considered" the CUSTOMNET issue).

question -- by way of reconsideration if necessary.<sup>7</sup> Because the APCC failed to do so, it is barred from raising the issue here.

2. In any event, the APCC's claims regarding CUSTOMNET are wholly unfounded. See Opposition of U S West Communications, Inc., Implementation of Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, No. 96-128 (filed May 20, 1996). While the APCC speculates that CUSTOMNET is a “payphone-specific, network-based, unbundled feature[] [or] function[]” to which the federal tariffing requirement applies, it makes no effort to describe what CUSTOMNET does, or how the APCC or its members would like to use it.

There is a reason for this. Far from being the type of “payphone-specific . . . feature[] [or] function[]” for which federal tariffing is required, Clarification Order at 9, ¶ 18, CUSTOMNET service is “generally available to all local exchange customers and . . . [is] only incidental to payphone service, such as touchtone services and various custom-calling features.” Id. Indeed, it is used by hotels, hospitals, universities, other business establishments, and by residential customers as well. In total, over seventy percent of the lines using CUSTOMNET are not associated with PSPs. How the APCC can contend that the feature is payphone specific when the vast majority of users are not PSPs is a mystery.

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<sup>7</sup>The APCC complains a great deal that U S WEST initially filed a federal tariff for CUSTOMNET, but withdrew it after the conclusion of the formal comment period (with tariff division approval). See APCC App. at 9-10. This does not excuse the APCC from complying with the exhaustion requirement of 47 C.F.R. § 1.115(c). To the contrary, the proper procedure was for the APCC to file a petition for reconsideration based on this new information. As the Commission's rules make clear, a petition for reconsideration is appropriate whenever a party seeks to “rel[y] on facts which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters.” 47 C.F.R. § 1.106(b)(2)(i); id. § 1.106(c)(1).

Besides, U S WEST does offer other payphone-specific call screening and call blocking services, like Billed Number Screening, Call Blocking for 10XXX1+/10XXX011+, and International Blocking. As U S WEST's CEI plan reveals, all of these services have been unbundled and made available under state and federal tariffs. The decision not to file a federal tariff for CUSTOMNET -- which is not a payphone-specific service -- was thus entirely proper.

**C. The Bureau Correctly Concluded that NYNEX's CEI Plan Includes the Filing of Appropriate Federal Tariffs**

The APCC contends that NYNEX's CEI plan improperly fails to unbundle and tariff call blocking and call screening services. APCC App. at 12. But, as explained above, the payphone orders do not require unbundling except where the LEC offers a service to an affiliated PSP on an unbundled basis: “[A]ny basic network services or unbundled features *used by a LEC's operations* to provide payphone services must be similarly available to independent payphone providers on a nondiscriminatory, tariffed basis. *Those* unbundled features must be tariffed in the state and federal jurisdiction.” Recon. Order at 76, ¶ 172 (emphasis added). And unless the feature is available on an unbundled basis, there is no federal tariffing requirement. Clarification Order at 9, ¶ 18 (“the requirement to file federal tariffs applies only to payphone-specific, network-based, *unbundled* features and functions *provided to others or taken by a LEC's payphone operations.*” (emphasis added)).

NYNEX has complied precisely with the Commission's orders. Its CEI plan details how it will offer the two basic types of payphone lines, as well as four other types of payphone lines that are used to provide NYNEX payphone services.<sup>8</sup> Each of these services was tariffed at the state

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<sup>8</sup>These services are One-Way Basic Coin Access Line (outgoing-only service with full central office-based coin functionality), Two-Way Basic Coin Access Line (allows both incoming and outgoing service with full coin functionality), Inmate Public Access Line (outgoing-only coinless service limited to collect calls only), and Charge-a-Call Public Access

level. NYNEX further indicated it “did not intend to use or provide any [further] unbundled . . . services” and, more specifically, that “NYNEX does not use any network functions for its Payphone Services that are not available to all PSPs under the same rates, terms and conditions.” NYNEX Comparably Efficient Interconnection Plan for Payphone Services, In re NYNEX Telephone Companies, CC Docket 96-128, at 4 n.11, 6 (Jan. 3, 1997). By tariffing the basic services used by its payphone operations, NYNEX has done all that the payphone orders and Computer III require.<sup>9</sup>

**D. The APCC's Contentions Regarding BellSouth's CEI Plan Are Frivolous**

In an attack most notable for its vagueness, the APCC also appears to complain about the extent of BellSouth's federal tariffing. APCC App. at 14-16. According to the APCC, BellSouth was required to tariff certain blocking and screening services, but failed to do so. The blocking and screening services, the APCC claims, are “payphone specific.” Id. at 15.

The APCC conveniently ignores a critical point: Neither BellSouth nor any other LEC is required to tariff *any* feature at the federal level *unless* it takes that feature on an unbundled basis itself or offers that feature to PSPs on an unbundled basis. See Clarification Order at 9, ¶ 18 (“the requirement to file federal tariffs applies only to payphone-specific, network-based, *unbundled* features and functions *provided to others or taken by a LEC's [payphone] operations*” (emphasis added)). The services the APCC complains about, however, are neither taken by BellSouth's PSP,

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Line (allows outgoing-only coinless calls to 0+ for calling card billing).

<sup>9</sup>Nor was further unbundling required. As the Bureau indicated in approving NYNEX's CEI plan, unbundling is required only when the LEC provides a service on an unbundled basis to an affiliated PSPs. NYNEX CEI Plan Order at 9-10, ¶ 18. And since NYNEX PayPhone Services does not obtain call blocking or call screening (or any other) services on an unbundled basis, neither the payphone orders nor Computer III require unbundling or tariffing of those services.

nor offered to other PSPs, on an unbundled basis. Moreover, they are not payphone specific. See Letter from Ben G. Almond, BellSouth, to William F. Caton, Secretary, FCC, at 1 (Apr. 9, 1997) (pointing out that, in general, “there are no payphone-specific, network-based, unbundled features and functions provided to others or taken by BellSouth's payphone operations that are tariffed” at the state level).

Thus, while the APCC vaguely complains that BellSouth has not federally tariffed call screening and blocking services, it neglects to mention the fact that BellSouth offers payphone-specific blocking and screening services only as a bundled part of basic payphone lines. It was precisely for this reason that the Bureau correctly rejected the APCC's contentions below:

“BellSouth is not required at this time to unbundle from its basic payphone service offerings any features that BellSouth does not offer on an unbundled basis to itself or to others.” BellSouth CEI Plan Order at 10, ¶ 17. This conclusion, uncontradicted by the APCC, is fatal to the APCC's application for review.<sup>10</sup>

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<sup>10</sup>It is not clear whether or not the APCC complains about BellSouth's tariffing of answer supervision. See APCC at 15. To the extent APCC does, its complaint is without merit. Simply put, BellSouth does not offer answer supervision to affiliated or unaffiliated PSPs on an unbundled basis in any state in its region. The one exception is Florida, where state regulators required that BellSouth offer answer supervision to PSPs on an unbundled basis. Even though answer supervision is not, in BellSouth's view, payphone specific -- and even though no Florida PSP has *ever* subscribed to this service -- BellSouth undertook to file a federal tariff for this service with respect to the state of Florida. By so doing, BellSouth complied with any conceivable federal tariffing obligation. See NYNEX CEI Plan Order at 10, ¶ 19 (rejecting the argument that, if a LEC offers an unbundled feature in one state, it is required to offer that unbundled service in all of the states it serves). In some other states (namely Alabama, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee), BellSouth does offer answer supervision for use *only* with line side terminated PBX trunks. Because it is not even available for use with payphones, this service clearly is not *payphone-specific*. Likewise, because BellSouth does not offer the service to any PSP (whether affiliated or not), Computer III does not require that BellSouth unbundle the service or tariff it at the federal level.

## **II. THE APCC'S ALLEGATIONS CONCERNING THE PROVISION OF CODING DIGITS EXCEED THE SCOPE OF CEI PLAN REVIEW AND ARE WITHOUT MERIT**

Seeking review of another issue not passed upon by the Bureau, the APCC alleges that the BOCs' CEI plans do not provide appropriate coding digits for COCOT lines (dumb lines used with smart phones). As currently configured, LEC networks provide two different codes to identify the two basic lines used with payphone sets. First, they use ANI ii code "27" to identify calls originated on "smart lines" (lines that provide coin control and other functions) used with "dumb payphones" (hereinafter, "coin lines"). Second, LECs use ANI ii code "07" to identify calls originating on "dumb lines" typically used with "smart payphones" (hereinafter "COCOT lines"). Lines used for hospital phones, hotel phones, dormitory telephones, and other telephones for which calling restrictions are appropriate also generate the same "07" code.<sup>11</sup>

The APCC complains that the use of a "07" code for COCOT lines is inappropriate because it does not uniquely identify the line as being a payphone line; instead, it indicates only that the line is restricted. See APCC App. at 16. But the APCC's claim is entirely premature, since the question of coding digits is not within the scope of CEI plan review.

### **A. The Question of Coding Digits Is Not a CEI Issue**

According to the APCC, the provision of "27" coding digits for "coin lines" and a "07" coding digit for "COCOT lines" is discriminatory and thus inconsistent with CEI requirements. But nothing could be further from the truth. The "27" coding digit is available to every user of the "coin line," and the "07" is available to all users of the "COCOT line," regardless of the affiliation

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<sup>11</sup>These two distinct codes are essential to the proper handling of payphone calls. If a single ANI ii digit code were assigned to all payphones, the network would be unable to distinguish between smart and dumb payphones, and hence would be unable to recognize when coin control is required.

of the user. Thus, as the APCC itself notes, almost all of BellSouth's payphones are identified with "07" codes, because almost all of them use COCOT lines. APCC App. at 20 n.36. Similarly, all of the coin lines belonging to an independent PSP using "dumb phones" would be identified with the "27" code.

The BOCs thus make available "07" and "27" codes to their own payphone operations. But -- as the CEI Orders require -- the BOCs make the very same services available to independent PSPs. Consequently, the APCC's complaint is not one of discrimination. Instead, the APCC is arguing that the BOCs have not reconfigured their network to make a *new* and *previously unused* screening code available to distinguish COCOT lines from other restricted lines. See APCC App. at 20 ("BOCs must be required to reconfigure the existing screening codes associated with access services . . . .").

But the Commission's CEI Orders provide absolutely no support for such a requirement. Those orders require that "the basic services and basic service functions that underlie the carrier's enhanced service offering must be unbundled [as well as] any options that are available to a carrier in the provision of such services or functions." Computer III, 104 F.C.C.2d at 1040, ¶ 158; see also Recon. Order at 94, ¶ 213. The APCC itself concedes, however, that a discrete code identifying COCOT lines does not "underlie" any BOC's payphone service offering; nor is any such service "available to" a BOC-affiliated PSP. The Bureau thus properly concluded that the APCC's request is outside the scope of the CEI plan proceedings.<sup>12</sup>

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<sup>12</sup>This is not to say that a PSP cannot request that the BOCs unbundle new features or functions it considers important. As the Bureau noted, a PSP can always request that a BOC provide additional features and functions through the 120-day ONA request process. See, e.g., NYNEX CEI Plan Order at 10, ¶ 19. Pursuant to this process, a BOC is to consider such a request in light of "market demand, utility as perceived by [PSPs], and costing and technical feasibility." BOC ONA Order, 4 FCC Rcd at 207, ¶ 396; see Recon. Order at 94, ¶ 213.

**B. The Question of Coding Digits Will Be, and Must Be, Addressed in Proceedings Other Than CEI Plan Review**

Besides, as the Bureau pointed out, the screening codes issue must be handled in the payphone rulemaking or in another rulemaking proceeding. In Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, 11 FCC Rcd 17,021 (1996) (“OLS Order”), the Commission addressed the question of additional screening codes. There, certain carriers requested that additional identifying digits be passed as part of the ANI ii, much as the APCC demands here. But the Commission rejected those requests. It explained:

The ANI ii technology is only capable of offering five codes at the present time and we do not believe that it will be economically feasible for the LECs to provide additional OLS codes with that technology.

OLS Order at 17036, ¶ 26. Accordingly, the Commission determined that LECs would be permitted to provide screening codes and information by one of two technologies -- FLEX ANI or LIDB/OLNS. Id. at 17,040, ¶ 34.

In APCC's application for review, however, the APCC demands the expansion of ANI ii technology, even though the Commission previously found it infeasible. The APCC further rejects the use of FLEX ANI and LIDB/OLNS solutions, even though the Commission previously approved them. See APCC App. at 19. Surely the Bureau could not have been expected to overrule the Commission's OLS Order under the guise of reviewing CEI plans. Yet it is precisely the Bureau's failure to do this that the APCC complains of in its application for review.

Indeed, addressing the question of screening codes in the context of the CEI plans would be wholly inappropriate. The question of how to provide line identification information -- and the resulting changes to LEC switches that may prove necessary -- is not unique to the BOCs. To the contrary, it is a question that must be resolved on an *industry-wide* basis, as *all LECs would have to make the same changes to their switches, and all LECs would have to provide the same codes.*

Moreover, the issue profoundly affects interexchange carriers, the two largest of which -- AT&T and MCI -- are in disagreement. In fact, if additional digits were provided in the manner that the APCC currently demands, it would disrupt network operations: Some interexchange carriers would find themselves unable to carry payphone calls. See LEC ANI Coalition Whitepaper on the Provision of ANI Coding Digits at 9-13 (ex parte filed June 16, 1997) ("ANI Whitepaper").

Consequently, it would be wholly inappropriate to resolve the coding digits question in the context of CEI plans. Because CEI plans are submitted only by BOCs, other LECs that have a profound interest in the issue normally would not be expected to participate in CEI plan review proceedings. Similarly, the issue affects interexchange carriers, who must equip their networks to receive any new codes. But they too did not participate in CEI plan review proceedings. Rather than attempt to address the issue in an inappropriate proceeding in which many interested parties did not -- and reasonably could not be expected to -- participate, the Commission must address and resolve the coding digit question in a proceeding that involves all LECs and all interexchange carriers.

The APCC does not dispute the Bureau's conclusion that the issue can be, should be, and will be addressed in other fora. Instead, it argues that one order in the OLS proceeding (91-35) has declared that the coding digits issue should be resolved in the payphone proceeding. See APCC App. at 17 ("The OLS Waiver Order states that issues regarding the use of OLS screening code service in connection with per-call compensation requirements should be addressed in this docket, CC Docket No. 96-128" (emphasis omitted)). This argument is wrong for two reasons.

First, the APCC misreads the Bureau's order. The order on which the APCC relies -- Memorandum Opinion and Order, Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation Petitions Pertaining to Originating Line Screening Services, CC Docket

91-35, DA 96-2169 (rel. Dec. 20, 1996) (the “OLS Waiver Order”) -- *nowhere* states that the question of screening codes can be addressed *only* in the payphone docket. To the contrary, the OLS Waiver Order itself addresses the issue. In particular, it gives LECs additional time to provide enhanced screening services like LIDB/OLNS and FLEX ANI. Even under the new time frame, the Bureau reasoned, those services will be available “for possible use in connection with the per-call compensation requirements for payphone service providers established in the Payphone Order.” OLS Waiver Order at ¶ 12.<sup>13</sup>

Second, the APCC does not deny that the question of screening codes can be addressed -- and is being addressed -- in the payphone rulemaking itself. See generally Letter from E.E. Estey, Government Affairs Vice President, AT&T, to Regina M. Keeney, Chief, Common Carrier Bureau (May 23, 1997) (“AT&T ex parte”); Letter from Leonard S. Sawicki, Director, FCC Affairs, MCI, to William F. Caton, Secretary, FCC (Mar. 7, 1997) (“MCI ex parte”); ANI Whitepaper at 1-9. Nothing in the OLS Waiver Order or any other Commission order suggests that the screening code issue must be addressed as part of the CEI review process -- in which many LECs do not even

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<sup>13</sup>The APCC also references a footnote from the OLS Waiver Order in which the Bureau asserts that “[r]equirements concerning per-call compensation are set forth in [the Payphone Orders] and are not the subject of this proceeding.” See APCC App. at 17 n.32 (emphasis omitted). But this language does not mean that the *provision of screening codes* is outside the scope of the 91-35 OLS proceeding. It only means that questions surrounding per-call compensation -- such as the amount and the timing thereof -- are outside the scope of the OLS proceeding. Indeed, the footnote goes on to clarify: “In the Payphone Order the Commission required IXCs to provide compensation to payphone service providers (“PSPs”) for calls originating from payphones. For an interim period, the Commission allowed IXCs to compensate PSPs on a flat-rate basis; beginning October 7, 1997, IXCs are required to compensate PSPs on a per call basis.” OLS Waiver Order at 12 n.28.

participate -- as opposed to the larger rulemaking. And nothing in the APCC's application for review suggests that the Bureau erred by so concluding.<sup>14</sup>

### III. THE BOCS' PLANS FOR REPLACING PAYPHONES WERE PROPERLY ADDRESSED

In what is likely its most preposterous argument, the APCC contends that the BOCs' CEI plans should be rejected because they do not "specify in detail the precise service ordering procedures they would follow when a BOC payphone at a particular location is replaced by an

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<sup>14</sup>Recognizing that its claims do not fit within CEI parameters and are premature in any event, the APCC attempts to concoct a rationale for immediate action. According to the APCC, special coding digits for COCOT lines are necessary for per-call compensation. See APCC at 16 (claiming that a new, COCOT-specific code is "critical" for per-call compensation); id. at 17 (asserting that failure to provide this code results in under-counting). But, as explained in the ANI Whitepaper, interexchange carriers are fully capable of using the "07" and "27" coding digits, as well as the LEC-provided list of ANIs associated with payphone lines, to pay per-call compensation. See ANI Whitepaper at 2-3. Indeed, this is the procedure that the payphone orders contemplate, see Report and Order at 56, ¶ 110; this is the procedure that several interexchange carriers and resellers -- who have filed petitions for waivers to begin paying per-call compensation ahead of schedule -- are going to use, see ANI Whitepaper at 5 & n.6; this is the procedure LECs will use for intraLATA calls, id. at 5; and this is the procedure that AT&T and Sprint have used to pay per-call compensation in the past, id.

The APCC's further assertion -- that "undercounting" of independent PSP calls results from the use of the "07" screening code -- is similarly false. According to the APCC, the "27" screening code used to identify "coin lines" allows IXCs immediately to identify "coin line" calls as payphone calls, whereas the "07" code requires further verification. This extra verification, the APCC asserts, results in under-counting of calls and "substantial delays and costs in collecting compensation." APCC App. at 18. But this is not true. In fact, calls tagged with a "27," just like calls tagged with a "07," must go through the same process for per-call compensation to occur. Both must be segregated based on the fact that they are "07" or "27" calls. And both must be compared against the LEC-provided list of payphone line ANIs to determine which PSP (if any) must receive compensation for a call originating on that line. Only comparing the actual ANI of each call to the LEC list -- and not the screening codes -- will tell an interexchange carrier which PSP (if any) should be compensated. Because precisely the same process occurs when an interexchange carrier gets a call that is tagged with a "27," or a "07" -- the call is segregated, and its ANI compared to the LEC payphone ANI list to determine where compensation goes -- there can be no claim that using "07" and "27" coding digits results in discriminatory undercounting of "07" calls.

independent PSP payphone, or vice versa.” APCC App. at 21. But this argument has absolutely no support in the Commission's Computer III orders, which require only that “[t]he time periods for installation, maintenance and repair of the basic services and facilities included in a CEI offering must be the same as those the [BOC] provides to its own . . . operations.” Computer III, 104 F.C.C.2d at 1041, ¶ 161.

The BOCs have more than satisfied this requirement. The BOCs have in place highly automated systems for processing and scheduling installation, maintenance, and repair requests, and there is little possibility that a BOC could discriminate against an unaffiliated PSP. In addition, the BOCs will file reports comparing the quality of the basic payphone services provided to affiliated PSPs with the quality of services provided to unaffiliated PSPs, consistent with Commission requirements. Recon. Order at 95, ¶ 215. If the APCC detects some pattern of discrimination against independent PSPs, it can file a complaint with the Commission. But nothing in Computer III requires the BOCs to provide the sort of mind-numbing and senseless detail that the APCC demands here.

#### **IV. THE INMATE COALITION'S CLAIMS OF DISCRIMINATION AND IMPROPER ACCOUNTING ARE UNFOUNDED**

In opposing the BOCs' CEI plans, the Inmate Coalition<sup>15</sup> has displayed an obvious misunderstanding of how the different BOC-affiliated PSPs provide inmate calling services. This ignorance has resulted in a virtually incomprehensible -- and utterly meritless -- challenge to BOC CEI plans.

While apparently conceding that the BOCs properly deregulated their inmate calling equipment, the Inmate Coalition contends that some BOCs have failed to deregulate their inmate

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<sup>15</sup>See Consolidated Application for Review of the CEI Orders of the Inmate Calling Service Providers Coalition (May 15, 1997) (“Inmate App.”).

calling services.<sup>16</sup> Properly understood, this argument appears to break down into two components. First, the Inmate Coalition appears to contend that BOCs might be or are using special network-based call processing facilities that are not available to unaffiliated PSPs, and/or are improperly treated as regulated operations. Second, the Inmate Coalition appears to argue that BOCs are improperly treating collect calls from inmate phones as regulated calls. These arguments are wholly without merit.

**A. BellSouth's and Southwestern Bell's Handling of Inmate Phone Calls is Unchallenged in This Proceeding**

As the Inmate Coalition itself notes, neither the SWBT- nor BellSouth-affiliated PSPs use any network-based call control or call processing functions to serve inmate phones. Instead, these services are performed in customer premises equipment owned by the BOC-affiliated PSP. The sole services the SWBT- and BellSouth-affiliated PSPs purchase from their BOC affiliates to provide inmate services are the “smart” and “dumb” lines that are also made available to other PSPs on a tariffed and nondiscriminatory basis. Consequently, the Inmate Coalition has no objection to the way in which BellSouth's and SWBT's affiliated PSPs account for their equipment. Nor does the Inmate Coalition object to the way they handle collect calls.

As a result, the Inmate Coalition itself admits that BellSouth and SWBT have properly implemented their CEI plan obligations. Yet it requests that the Commission nonetheless modify the Bureau orders approving the two companies' CEI plans to require these two companies to maintain their existing treatment of call processing functions. This is absurd: Since the Inmate

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<sup>16</sup>According to the Inmate Coalition, inmate calling services include collect calling and the processing associated with such calls. Processing, the Inmate Coalition asserts, includes tasks as diverse as validating the called number, querying the called party as to whether they wish to accept the call, and generating a record of the call for billing purposes. Inmate App. at 4 & n.11.

Coalition does not dispute that the existing CEI plans already meet both the spirit and the letter of Computer III, the Bureau was correct to approve them without further conditions. Any changes in accounting or call processing that BellSouth and SWBT may propose in the future can be addressed if, and only if, such changes are proposed.

**B. The Inmate Coalition's Challenge to Bell Atlantic's CEI Plan Is Based on Mischaracterizations of the Terms of the Plan**

The Inmate Coalition's challenge to Bell Atlantic's CEI plan is virtually indecipherable. However, the general thrust appears to be that, if Bell Atlantic uses dedicated facilities to process collect calls from inmate facilities, it must allocate the costs of those facilities to unregulated accounts, and must make the facilities available to competitors under tariff. In addition, the Inmate Coalition appears to argue that, because Bell Atlantic treats collect calls from inmates as regulated OSP calls, these calls will be improperly subsidized, since the OSP will bear the risk of uncollectibles. Neither of these contentions has merit.

1. Some of the Inmate Coalition's argument is based on a flat-out mischaracterization of how Bell Atlantic handles, and accounts for, the costs of handling collect calls from inmate facilities.

In some locations, Bell Atlantic leases and maintains certain inmate premises equipment that is used *not* to process collect calls using store-and-forward technology, but rather to handle the security issues inherent in the inmate environment. This equipment performs PIN verification, and other security controls imposed at the request of the correctional institution. This leased equipment is treated as a deregulated expense. No one contends that treating this equipment cost as deregulated is improper.

In many locations, however, ancillary equipment -- equipment that is owned, maintained, and controlled by a third-party vendor at the inmate facility -- performs both the security functions