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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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OFFICE OF THE SECRETARY

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| In the Matter of<br><br>Federal-State Joint Board on<br>Universal Service | ) | CC Docket No. 96-45 |

# PETITION FOR PARTIAL RECONSIDERATION

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**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

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| In the Matter of | ) | |
| | ) | CC Docket No. 96-45 |
| Federal-State Joint Board on Universal Service | ) | |

## PETITION FOR PARTIAL RECONSIDERATION

The American Public Communications Council ("APCC") hereby petitions for partial reconsideration of the Commission's Report and Order in this proceeding, FCC 97-157, released May 8, 1997 ("Order").

## SUMMARY

APCC requests that the Commission reconsider its decision to assess universal service contributions on payphone service providers' ("PSPs") gross "end user telecommunications revenues." As an "aggregator" service, payphone service -- even if provided by an entity that is also a telecommunications carrier -- *not* subject to a statutorily mandated contribution as the Commission supposed. Further, the Commission's contribution scheme effectively imposes a double payment requirement on revenues derived from payphone services, unfairly burdening payphone service providers and payphone consumers. Imposing such contributions is especially inappropriate because it inhibits the deployment of reasonably priced payphones, which in themselves offer a unique form of "universal service."

## BACKGROUND

APCC is a national trade association made up of some 1,200 independent providers of pay telephone equipment, services, and facilities. APCC seeks to promote competitive markets and high standards of service for pay telephones. APCC has an interest in ensuring that universal service contribution obligations are equitably apportioned so as not to unduly burden the provision of payphone service.

Payphone service providers ("PSPs") provide service by installing payphone equipment at a location and by reselling local and long distance service. The vast majority of calls at payphones are local coin calls.

Thus, in order to provide payphone service, a PSP must subscribe to a local exchange carrier's ("LEC") local exchange service. The form of local exchange service overwhelmingly used by independent (non-LEC) PSPs is basically a business line with some call screening options added. In local exchange tariffs, the line and usage charges applicable to this service are frequently set equal to, or based on, the business line and usage rates. See Attachment 1.

In addition to paying local exchange service charges, PSPs also must pay interstate subscriber line charges. Recently, in the Payphone Orders,[1] the FCC reaffirmed

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[1] Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Notice of (Footnote continued)

an earlier ruling[2] that PSPs are "end users" for access charges and are therefore required to pay subscriber line charges.

Pursuant to Section 276 of the Communications Act, 47 U.S.C. § 276, LECs that provide payphone service are now required to treat their payphone service operations as a separate accounting entity that is no longer integrated with the LEC's local exchange operation. In the Payphone Orders and the related Accounting Safeguards Order,[3] the FCC determined that LECs providing payphone service must classify their payphone service costs and revenues as nonregulated and must take service from the regulated local exchange operation, pursuant to tariff. Thus, LEC PSPs also are "end users" required to "pay" themselves SLCs as well as state-tariffed local service charges.

## DISCUSSION

### I. COMPETITIVE NEUTRALITY DOES NOT REQUIRE THE COMMISSION TO ASSESS CONTRIBUTIONS ON PAYPHONE SERVICE PROVIDERS

In a submission to the Commission prior to adoption of the Order, the RBOC Payphone Coalition (consisting of the payphone divisions of six of the seven Regional Bell

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(Footnote continued)
Proposed Rulemaking, 11 FCC Rcd 6716 (1996), Report and Order, FCC 96-388, released September 20, 1996 ("Payphone Order"), Order on Reconsideration, FCC 96-439, released November 8, 1996 ("Reconsideration Order").

2 C.F. Communications Corp. v. Century Telephone of Wisconsin, 10 FCC Rcd 9775 (1995), pets. for review pending.

3 Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996, Report and Order, CC Docket No. 96-150, FCC 96-490, released December 24, 1996.

Operating Companies) pointed out that payphone service providers ("PSPs") are "aggregators" under Section 226 of the Act, 47 U.S.C. § 226, are therefore excluded from the definition of telecommunications carriers. Therefore, the RBOC Payphone Coalition argued, PSPs need not and should not be required to contribute to or receive support from universal service support mechanisms. In rejecting this argument, the Commission reasoned:

> We agree with RBOC Payphone Coalition that payphone service providers are not telecommunications carriers because they are "aggregators." Payphone service providers do, however provide telecommunications and these are subject to our permissive authority to require contributions if the public interest so requires. Telecommunications carriers that provide payphone services must contribute or the basis of their telecommunications revenues, including the revenues derived from their payphone operations, because [p]ayphone revenues are revenues derived from end users for telecommunications services. If we did not exercise our permissive authority, aggregators that provide only payphone service would not be required to contribute, while their telecommunications carrier competitors would. We do not want to create incentives for telecommunications carriers to alter their business structures by divesting their payphone operations in order to reduce their contributions to the support mechanisms. Thus, we find that because payphone aggregators are connected to the PSTN and because they directly compete with mandatory contributors to universal service the public interest requires payphone providers to contribute to the support mechanisms.

Order, ¶ 797 (footnotes omitted).

Thus, the Commission reasoned that in order to preserve competitive neutrality between carrier-affiliated and independent PSPs, *all* PSPs must be subject to universal service contributions. This conclusion is premised on the Commission's belief that telecommunications carrier-affiliated PSPs are subject to mandatory contributions from their payphone service revenue under Section 255(d).

The Commission's premise is incorrect. Just because a PSP is affiliated with a telecommunications carrier, it does not follow that the PSP's revenues must be attributed to the company's telecommunications carrier operations. Rather, to the extent that a company operates as an "aggregator," the carrier is *not* operating as a telecommunications carrier and is *not* subject to the mandatory contribution requirement of Section 255(d).

Indeed, the Commission's treatment of carrier-affiliated aggregators as "carriers" rather than "aggregators" is inconsistent with its handling of information service providers and enhanced service providers in the immediately preceding section of the Order. The Commission "agree[d] with the Joint Board that information service providers ("ISP") and enhanced service providers are not required to contribute to support mechanisms to the extent that they provide such services." (Order, ¶ 788), even if they also provide service as "telecommunications carriers."

Like information services, payphone services have been defined as "nonregulated" services for purposes of Title II. In the Payphone Orders, as well as in the related Accounting Safeguards proceedings, the Commission implemented Section 276 of the Act by requiring LECs to treat their provision of payphone service as "nonregulated" activity and to segregate the costs and revenues associated with "nonregulated" payphone service from the costs and revenues associated with regulated carrier services. Further, as a result of changes made in the Payphone Order, the status of a PSP as a "telecommunications carrier" no longer protects the PSP from being defined as an "end user" and required to pay access charges.

Thus, there is no reason to believe that Congress intended nonregulated "aggregator" services, whether or not the provider is also a telecommunications carrier to be subject to the mandatory universal service contribution requirement of Section 255(d). Therefore, it is not necessary to access contributions on PSPs, and -- in order to avoid the "double payment" problem and other burdens described below -- the Commission should not impose a contribution requirement on payphone service providers.

## II. THE CURRENT REGULATIONS IMPOSE A DISCRIMINATORY AND INEQUITABLE DOUBLE PAYMENT ON PSPS

The imposition of a universal service requirement on payphone service providers would be less objectionable if the Commission had adopted the manner of assessing contributions that was proposed by the Joint Board. In considering the alternative approaches to assessing contributions on the industry in general, the Board recognized that assessing contributions based on gross revenues would create a "double payment" problem for resellers, because resellers would pay contributions based on their "retail" revenue ***and*** would pay higher rates assessed by their underlying carriers to recover those carriers' own universal service contributions based on their "wholesale" revenue from sales to resellers. Therefore, the Joint Board proposed assessing contributions based on a service provider's "net telecommunications revenues" -- i.e., the provider's gross revenues minus its payments to other carriers for telecommunications services. The net revenues approach is familiar to the industry because it is the same approach adopted by the Commission to govern the assessment of regulatory fees. Order, ¶ 842.

Instead of adopting the Joint Board's recommendation, the Commission -- "[b]ased on new information in the record" -- decided to assess contributions based on "end-user telecommunications revenues." Under this approach, the service provider would pay contributions based on their entire revenue derived from end users, with no deduction for payments made to other carriers. In addition, the Commission expressly ruled that the "end user telecommunications revenues" on which contributions are assessed "include revenues derived from [subscriber line charges]." Order, ¶ 844. The Commission reasoned that this end-user revenues approach would successfully eliminate the double payment problem identified by the Joint Board, and would be more administratively convenient than the Board's net-revenues proposal.

Whatever the merits of the end-user revenues approach for the industry generally, the effect of this approach on the payphone segment of the industry is to unfairly single out payphone service for imposition of precisely the double payment that the Joint Board and the Commission are seeking to avoid. As noted above, payphone service providers are differently situated from ordinary resellers because they are defined as "end users" under the access charge rules and are required to pay subscriber line charges ("SLCs"). Payphone Order, ¶ 187. The Commission has determined that SLC revenues are subject to universal service fund contributions, and has not distinguished between SLCs paid by true "end users" and SLCs paid by resellers such as PSPs who are defined as an "end user" for access charge purposes. Thus, PSPs end up with the worst of both worlds. While the true "end users" that pay SLCs are not directly assessed for universal service contributions, payphone service providers must pay both SLCs (which will incorporate LEC recovery of the LEC's universal service contribution) and their own directly assessed universal service contribution.

As a result, payphone service providers are effectively assessed a double payment -- first, on their own end-user revenues, and second, on the increase in subscriber line charges that results from LECs recovering their SLC revenue assessment from SLC payers.

This approach is inequitable and discriminatory with respect to payphone service providers, and is therefore inconsistent with section 255 of the Act.[4]

The impact of this inequity and discrimination extends beyond interstate revenue and SLCs. Under the Commission's Order, carriers and PSPs are also required to make universal service contributions from *intrastate* "end-user" revenues to the school, library and health care providers support programs.

As a practical matter, the local line and usage rates paid by PSPs -- which are frequently based on business line and usage rates -- are likely to include recovery of LECs intrastate contributions from intrastate "end user" revenue, just as SLCs will include

[4] It is also inequitable for the Commission to single out PSPs as apparently the only "aggregators" subject to universal service contributions. Other "aggregators" such as hotels, motels, universities, etc. that resell telecommunications service at room telephones apparently are not subject to universal service contribution requirements. Thus, while it may be that PSPs are treated "equitably" vis-a-vis each other, the payphone industry segment is subjected to inequity and discrimination vis-a-vis other industry segments that do not incur double-payment burdens. This is particularly unfair given the unique role of PSPs as providers of universal service. See Section III.

recovery of LEC contributions from interstate revenue. Even if LECs' revenue from intrastate SLCs paid by PSPs is not technically subject to contribution requirements, it is not likely that LECs will voluntarily pass on to PSPs any savings that result from the exemption of such line charge revenue from universal service contributions. The degree of local competition for service to PSPs has been extremely marginal to date. Although the Commission's Order assumes that resellers can "get" a lower price merely by notifying carriers that services are purchased for resale (Order, ¶ 848), reductions in the payphone line and usage charges assessed by LECs cannot be so easily obtained.

Payphones tend to be located at or near small retail businesses such as convenience stores. Apart from certain specialized locations such as airports and convention centers, few payphone locations provide enough concentrated traffic to be attractive to local competitors in the foreseeable future. APCC detects no sign that competition in the provision of local service to PSPs has "intensifie[d]" sufficiently to prevent ILECs from passing through universal service contributions to their PSPs.

## III. PAYPHONE CONSUMERS SHOULD NOT BE BURDENED WITH UNIVERSAL SERVICE CONTRIBUTION REQUIREMENTS

Apart from the inequitable double-payment obligations imposed by the Order it is simply unnecessary and inappropriate to burden payphone providers and payphone consumers with additional costs. The Commission recently concluded a proceeding in which it sought to implement a Congressional mandate to "promote widespread deployment of payphone services." Evidence submitted in CC Docket No. 96-128 showed payments, and contrary to the statutory requirement that contributions shall be assessed against service providers on an equitable and nondiscriminatory basis. To eliminate this inequitable double payment, the Commission should reconsider its Order and either (1) relieve payphone service providers from the universal fund contribution requirement or (2) allow payphone service providers to deduct from their calculation of "end user revenues" the subscriber line charges and local exchange line and usage charges paid to LECs, on which universal service contributions are already effectively assessed.

Dated: July 17, 1997

Respectfully submitted,

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that payphones themselves play a unique role in promoting universal service. Many people who cannot afford residential service depend on payphones to provide a substitute for residential service. Moreover, payphones provide a critical lifeline in emergency situations, as well as providing basic service to everyone when they are away from home. See Attachment 2.

When payphone costs increase, calling rates are likely to rise,[5] and payphones are likely to be removed from marginal locations with below-average call volumes. These "marginal" payphones often play a valuable role in the provision of emergency and substitute-residential service.

It would be counter-productive if the Commission's universal service contribution requirements caused an increase in payphone calling rates or a decrease in the number of payphones deployed that made this unique form of "lifeline" service less available or affordable.

## CONCLUSION

As discussed above, the current contribution requirement imposes a double payment on payphone services, contrary to the Commission's intent to avoid such double

[5] Because payphones rely on coin deposits as their primary source of "end-user revenue," payphone rates can be unusually sensitive to small changes in underlying costs. For example, suppose a payphone provider has average costs of 34 cents per call and charges a local coin calling rate of 35 cents per call. Suppose further that universal service contribution requirements increase the PSP's costs by two cents per call. It now costs the PSP 36 cents per call, forcing the PSP to increase its rate. However, because payphone equipment does not accept pennies as coin payment, it is not feasible for the PSP to charge 36 cents per call. In order to recover costs, the PSP must charge an extra nickel, or 40 cents per call.

# ATTACHMENT 1

EXAMPLES OF BUSINESS-LINE
LOCAL SERVICE RATES
ASSESSED ON PAYPHONE PROVIDERS

# A7. COIN TELEPHONE SERVICE

## A7.4 Access Line Service For Customer-Provided Public Telephones (Cont'd)

### A7.4.5 Rates And Charges

A. Access line service for customer-provided public telephones is provided on a usage rate basis where facilities are available, otherwise the service will be provided on a Fixed Usage Equivalent rate basis.

1. Usage Rate Service Monthly Charges Per Access Line[7]

a. Access line basic rate

The Business Standard Measured Service monthly rate for the exchange in which the service is located from Section A3. of this Tariff is applicable in addition to the charges in b. and c. following.

b. Local usage and local usage allowance

The rates and regulations for local usage and the monthly local usage allowance in Section A3. pertaining to Business Standard Measured Service apply. See A3.10.3 for additional local usage charges for Bridgeport, Phenix City, and Stevenson Extended Local Calling Plan.

c. The following access line feature charge is applicable (where available) in addition to the monthly charges in a. and b. preceding.

(1) Public telephone access line

| | | Monthly Rate | USOC | |
|---|---|---|---|---|
| (a) | Unrestricted, two way, each[5] | $- | 14Q | (T |
| (b) | Restricted, two way, each[1,5] | 2.00 | 12R | (T |
| (c) | Restricted, two way, each[1,2,5] | 3.00 | 1RQ | (T |
| (d) | Restricted, outward, each[1,2,5] | 3.00 | 1ZP | (N |
| (e) | Restricted, two way, each[1,2,3] | 4.00 | 1ZQ | (T |
| (f) | Restricted, outward, each[1,2,3] | 4.00 | 17J | (N |
| (g) | Restricted, two way, each[1,2,4] | 3.00 | 15Q | (T |
| (h) | Restricted, outward, each[1,2,4] | 3.00 | 17K | (N |

2. Fixed Usage Equivalent Rate Service Monthly Charges Per Access Line[6,7] (T

a. Public Coin Telephone Access Line Rate, each

1) The monthly access line rate is comprised of the following charges in addition to the access line rate in Section A3. of this Tariff and the appropriate charge in (2) following:

| | | | |
|---|---|---|---|
| (a) | A fixed local usage charge | 24.10 | NA |
| (b) | A charge for screening information used to prevent toll charges against the line | 2.00 | NA |

**Note 1:** Provides operator screening.

**Note 2:** Provides central office blocking of 011+ calls direct distance dialed to numbers outside the North American Numbering Plan.

**Note 3:** 1+900, 7 or 10 digit local, 1+DDD, and 976 are blocked from completion. (C

**Note 4:** 1+900, 1+DDD, and 976 are blocked from completion. (C

**Note 5:** For the Access Line Feature Options which do not offer central office blocking of 900 and 976 calls, the feature is available at the request of the subscriber as provided under Customized Code Restrictions (CCR) Option Number 4 defined in A13.20 of this Tariff. (N

**Note 6:** Fixed Usage Equivalent Rate Service will be converted to Usage Rate Service as it becomes available at no charge to the subscriber. (T

**Note 7:** N11 Service is not available for this service. (N

# A7. COIN TELEPHONE SERVICE

## A7.4 Access Line Service For Customer-Provided Public Telephones (Cont'd)

### A7.4.3 Reserved For Future Use

### A7.4.4 Reserved For Future Use

### A7.4.5 Rates And Charges

A. Rates and Charges Applied by the Company

1. Flat Rate Service Monthly Charges Per Access Line

a. Access line basic rate

The Business Flat Rate Service monthly rate for the exchange in which the service is located from tariff Section A3. is applicable in addition to the charges in A7.4.5.A.1.c. following.

b. The following access line feature charge is applicable in addition to the monthly charges in A7.4.5.A.1.a. preceding.

(1) Public telephone access line[1]

| | | Monthly Rate | USOC | |
|---|---|---|---|---|
| (a) | Unrestricted, outward, each | $- | 1ZB | |
| (b) | Unrestricted, two way, each | - | 1ZA | |
| (c) | Unrestricted, outward, each[2,3] | 2.00 | 1ZY | |
| (d) | Unrestricted, two way, each[2,3] | 2.00 | 1Z2 | |
| (e) | Restricted, outward, each[2,3,4] | 4.00 | 1Z3 | |
| (f) | Restricted, two way, each[2,3,4] | 4.00 | 1Z5 | |
| (g) | Restricted, outward, each[2,3,5] | 3.00 | 13D | |
| (h) | Restricted, two way, each[2,3,5] | 3.00 | 13E | |
| (i) | Restricted, two way, each[2] | 2.00 | 13R | (N) |

**Note 1:** For the Access Line Feature options which do not offer central office blocking of 900 and 976 calls, this feature is available at the request of the subscriber as provided under Customized Code Restriction (CCR) Option #4 defined in A13.20 of this Tariff for business line customers.

**Note 2:** Provides operator screening.

**Note 3:** Provides central office blocking of 011+ calls direct distance dialed to numbers outside the North American Numbering Plan.

**Note 4:** 1+900, 7 digit local, 1+DDD and 976 are blocked from completion.

**Note 5:** 1+900, 1+DDD, and 976 are blocked from completion.

# A7. COIN TELEPHONE SERVICE

## A7.4 Access Line Service For Customer-Provided Public Telephones (Cont'd)

### A7.4.2 Reserved For Future Use

### A7.4.3 Reserved For Future Use

### A7.4.4 Reserved For Future Use

### A7.4.5 Rates And Charges

A. Access line service for customer-provided public telephones is provided on a flat rate basis.

1. Flat Rate Service Monthly Charges Per Access Line

a. Access line basic rate

The access line service will be provided at the Business Flat Rate Service monthly rate as provided in A3.2.1 of this Tariff in addition to the charges in b. and c. following. These rates allow flat rate local calling for all calls placed within the basic local calling area.

b. Access Line Feature Charges[1]

(1) Public telephone access line

| | | Monthly Rate | USOC |
|---|---|---|---|
| (a) | Unrestricted, outward, each | $- | 1Z8 |
| (b) | Unrestricted, two-way, each | - | 1ZA |
| (c) | Restricted, outward, each[2,3] | 2.04 | 2O2 |
| (d) | Restricted, two-way, each[2,3] | 2.04 | 1FZ |
| (e) | Restricted, outward, each[2,3,4] | 3.13 | 1Z3 |
| (f) | Restricted, two-way, each[2,3,4] | 3.13 | 1Z5 |
| (g) | Restricted, outward, each[2,3,5] | 2.09 | 13O |
| (h) | Restricted, two-way, each[2,3,5] | 2.09 | 13E |

c. Local messages within the *Expanded* Local Calling Area will be charged as specified in *A3.32* of this Tariff.

(1) (DELETED)

**Note 1:** For the Access Line Feature options which do not offer central office blocking of 900 and 976 calls, this feature is available at the request of the subscriber as provided under Customized Code Restriction (CCR) Option #4 defined in A13.20 of this Tariff for business line customers.

**Note 2:** Provides operator screening.

**Note 3:** Provides central office blocking of 011+ calls direct distance dialed to numbers outside the North American Numbering Plan.

**Note 4:** 1+900, 7 digit local, *1+ to the Expanded Local Calling Area*, 1+DDD and 976 are blocked from completion.

**Note 5:** 1+900, 1+DDD, *1+ to the Expanded Local Calling Area* and 976 are blocked from completion.

# A7. COIN TELEPHONE SERVICE

## A7.4 Access Line Service For Customer-Provided Public Telephones (Cont'd)

### A7.4.5 Rates And Charges

A. Access line service for customer-provided public telephones is provided on a usage rate basis. (T

1. Usage Rate Service Monthly Charges Per Access Line

a. Access line basic rate.

(1) The ***appropriate business access line rate as described in A3.2.9 or A3.10.5*** is applicable in addition to the charges in b. and c. following. (T

| | Monthly Rate | USOC | |
|---|---|---|---|
| (a) Each | $- | NA | |
| b. Local usage and local usage allowance | | | |
| (1) The rates and regulations for local usage and the monthly local usage allowance in Tariff Section *A3.2.9 or A3.10.5* pertaining to ***Area Calling Plan or Enhanced Area Calling Plan, as appropriate*** apply. | | | (T |
| (a) Usage allowance | - | NA | |
| c. The following access line feature charge is applicable (where available) in addition to the monthly charges in a. and b. preceding. | | | |
| (1) Public telephone access line - ***Area Calling Plan Option 1 (Economy)*** | | | (C |
| (a) Unrestricted, outward, each[1] | - | P1D | (C |
| (b) Unrestricted, two way, each[1] | - | P1G | (C |
| (c) Restricted, outward, each[1,2,3] | 3.00 | P1K | (C |
| (d) Restricted, two way, each[1,2,3] | 3.00 | P1S | (C |
| (e) Restricted, outward, each[2,3,4] | 4.00 | P5A | (C |
| (f) Restricted, two way, each[2,3,4] | 4.00 | P5K | (C |
| (g) Restricted, outward, each[2,3,5] | 3.00 | P5N | (C |
| (h) Restricted, two way, each[2,3,5] | 3.00 | P5Q | (C |
| (2) Public telephone access line - Area Calling Plan Option 2 (Standard) | | | (N |
| (a) Unrestricted, outward, each[1] | - | P2B | (N |
| (b) Unrestricted, two way, each[1] | - | P2M | (N |
| (c) Restricted, outward[1,2,3] | 3.00 | P2N | (N |
| (d) Restricted, two way, each[1,2,3] | 3.00 | P2P | (N |
| | | | (M |

**Note 1:** For the Access Line Feature Options which do not offer central office blocking of 900 and 976 calls, this feature is available at the request of the subscriber as provided under Customized Code Restriction (CCR) Option Number 4 defined in A13.20 of this Tariff. (N

**Note 2:** Provides operator screening. (T

**Note 3:** Provides central office blocking of 011+ calls direct distance dialed to numbers outside the North American Numbering Plan. (T

**Note 4:** 1+900, 7 digit local, 1+DDD and 976 are blocked from completion. (T

**Note 5:** 1+900, 1+DDD, and 976 are blocked from completion. (T

## 5. EXCHANGE SERVICES

### 5.5 PUBLIC COMMUNICATION SERVICE - COIN AND COINLESS
### 5.5.7 PUBLIC ACCESS LINE SERVICE (Cont'd)

C. Rates and Charges

The monthly rate is billed on a per line basis. (C

| | USOC | NONRECURRING CHARGE | MONTHLY RATE PER RATE GROUP 1, 2 OR 3 | |
|---|---|---|---|---|
| | | | | (D |
| • PAL Flat Two-Way Service | 1KY | [1] | [1] | (T |
| • PAL Carrier Package[2] | 1N8 | [3] | $25.60 | (T |

(D

[1] Rates and charges for flat rated simple business service apply, as specified in 5.2.4. (T

[2] Outgoing only service commonly used by Interexchange Carriers, includes Call Screening and local Call Restriction. (T

[3] A nonrecurring charge from 5.2 applies per PAL equipped.

# 5. EXCHANGE SERVICES

## 5.5 PUBLIC COMMUNICATION SERVICE - COIN AND COINLESS

### 5.5.7 PUBLIC ACCESS LINE SERVICE

C.1. (Cont'd)

| | USOC | MONTHLY RATE PER EAS RATE GROUP 1, 2 OR 3[1] A | B | C | |
|---|---|---|---|---|---|
| | | | | | (D) |
| • PAL Flat Two-Way Service | 1KY | [2] | [2] | [2] | (T) |
| • PAL Carrier Package[3] | 1N8 | $25.65 | $26.35 | $26.50 | (T) |

| | USOC | MONTHLY RATE PER EAS RATE GROUP 1, 2 OR 3[1] D | E | F | |
|---|---|---|---|---|---|
| | | | | | (D) |
| • PAL Flat Two-Way Service | 1KY | [2] | [2] | [2] | (T) |
| • PAL Carrier Package[3] | 1N8 | $26.60 | $29.30 | $32.26 | (T) |

[1] Rate includes the monthly rate plus the EAS increment. Nonrecurring charge applies.

[2] Rates and charges for flat rated simple business service apply, as specified in 5.2.4. (D) (T)

[3] Outgoing only service commonly used by Interexchange Carriers, includes Call Screening and local Call Restriction. (T)

# ATTACHMENT 2

SUBMISSION IN
CC DOCKET NO. 96-128

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September 9, 1996

**BY COURIER**

Mr. John Muleta
Chief, Enforcement Division
Common Carrier Bureau
Federal Communications Commission
2025 M Street, Room 6010
Washington, D.C. 20037

Re: **Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128**

Dear Mr. Muleta:

Per your request, the American Public Communications Council ("APCC") submits this information regarding some of the important public service functions performed by payphones, and the impact on those vital functions of the Commission's decisions in this proceeding.

Section 276 of the Act requires the Commission to "promote competition . . . and . . . the widespread deployment of payphone services to the benefit of the general public. . . ." 47 U.S.C. § 276(b)(1). Widespread competitive deployment of payphones benefits the public by providing convenient access to telephone services to members of the public when they are "away from home." In addition, widespread deployment of payphones provides improved access to emergency calling services (e.g., 911), and also provides improved access to telephone service for those who cannot afford to subscribe to residential telephone service.

Performance of these vital functions has been enhanced by the emergence of payphone competition. In the last few years, LECs have frequently removed payphones that they consider to be underused and/or too expensive to maintain. See, e.g., Peter West, Legislator Criticizes Removal of Payphone, Peekskill Star, July 2, 1996, at D6 (Attachment 1). Independent public payphone ("IPP") providers have stepped in to fill public needs left open by LECs. This letter discusses numerous examples of how, in recent

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years, payphone competition has ensured that payphones are placed in locations where they are needed, including inner-city areas and remote rural communities, and that access to payphone service is available in emergencies.

However, the ability of payphone competitors to ensure adequate levels of service cannot be expected to continue in the absence of fair compensation for local as well as long distance calls. 47 U.S.C. § 276(b)(1)(A). LECs have continued to remove payphones in underserved areas. As LEC payphones are cut loose, under Section 276, from support from regulated revenues, this trend will undoubtedly continue unless alternative means of support are ensured.

In the paragraphs that follow, we detail some specific instances where IPP providers have moved in to fill service gaps left by the LECs and to provide new services. But we must emphasize that IPP providers are finding it increasingly difficult to fill the gap because of the growing difficulty of earning sufficient revenues to meet costs. Neither IPP providers nor LECs will be able to provide payphones to underserved areas unless the issue of adequate compensation for all calls, including local coin calls, is addressed. If the Commission is to fulfill the statutory mandate to ensure "widespread deployment" of public payphones, and make sure critical public health and safety needs are addressed, it must act to ensure adequate levels of compensation for all calls.

Services to Underserved Urban Areas

The New Jersey Payphone Association ("NJPA") has estimated that more than 120 million calls were carried by IPPs in New Jersey in 1995 -- more than 340,000 calls per day. About sixty percent of these IPPs are located in lower income areas. Response of New Jersey Payphone Association to Proposed Rule-Making, Docket No. TX95100518, Proposal No. PRN 1996-16 (March 12, 1996), at 3-4 (Attachment 2) ("NJPA Comments"). In Newark alone, approximately 13,000 households or 15% of the population lack home telephones. Thus, payphones are needed to provide disadvantaged people vital access to emergency health and safety services. Id. at 4. NJPA has estimated that more than 400,000 "911" calls are made yearly on independent payphones. Id.[1]

[1] See also, e.g., September 13, 1996 correspondence from Clifton M. Craig, Jr., President of South Carolina Public Communications Association, to John Muleta, Chief of Enforcement Division, Common Carrier Bureau (Attachment 3) (stating that independent payphone operators fill the increasing void being left in South Carolina by LEC removal of payphones, providing essential telecommunications service to persons having no other access to telecommunications service); Texas Independent Payphone Companies Install
(Footnote continued)

In 1994, the Empire State Payphone Association ("ESPA"), which represented IPP providers in New York state, noted that a majority of its members have as many as 90% of their telephones located in neighborhoods where IPP providers are the sole providers of public telecommunication services, connecting those who cannot afford a private telephone with necessary emergency services such as fire, police, and emergency medical service personnel. See Good Deeds: Service Beyond Duty, Persp. on Pub. Comm. (APCC), July/Aug. 1994, at 19, 21-22 (Attachment 5).[2]

Clearly, pay telephones are necessary to provide crucial communications service to disadvantaged, inner city communities. See, e.g., "Strategies for the Future" Conference Addresses Access and Success, Connections (IPANY, Scarsdale, N.Y.), Inaugural Issue, at 6 (stating that IPPs account for 20% of all calls completed in inner cities) (Attachment 9). On March 13, 1996, Seymour H. Miller, President of SYS Telephone Corp., submitted written testimony to the New Jersey Board of Public Utilities ("Miller Testimony") (Attachment 10). Of his 43 payphones, many are located in areas where people have no home telephones. He cites one example of a "neighborhood phone," the only payphone located within a five block area. When he makes a service call to the neighborhood phone, he finds people lined up and asking how long it will take to repair the payphone because it "is their link to the outside world." Miller Testimony at 4.

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(Footnote continued)

Public Interest Payphones, Tex. Calling (Texas Payphone Ass'n), Jan. 1993, at 6-7 (Attachment 4) (discussing examples of independent payphone providers sacrificing profit to satisfy public needs left unfilled by GTE).

[2] As another example, Peoples Telephone Company, Inc. ("PTC") estimates that approximately 30% of its 40,000 phones are located in low income urban or inner-city regions. See August 29, 1996 correspondence from Steve Alexander, Director of Regulatory Affairs for PTC, to Greg Haledjian of APCC (Attachment 6). See also Response of ACTEL, Inc., Implementation of Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128 (July 1, 1996) (Attachment 7) (stating that of ACTEL's 260 public payphones, approximately 65% are installed in inner-city areas because, as an estimated 20% of inner-city residents do not have home phones, ACTEL has sought to provide this much needed service).

## Emergency Services

Payphones are needed to provide access to critical emergency and public safety services. See, e.g., Pay Telephones Will Be Installed in Two City Parks, Dunkirk-Fredonia Observer, Mar. 31, 1995, at D14 (Attachment 11); Payphones to Replace Fireboxes, N.Y. Daily News, Sept. 12, 1995, at D7 (Attachment 12) (payphones have been installed to replace fire alarm boxes in effort to reduce false alarms).

IPP providers have provided critical communications service during natural disasters. For example, in October of 1994, Payphone Management Co. of Houston, Texas provided free local phone calls from the only payphone available in a flooded area of approximately 15 miles. Devastating October Flooding Affects Payphone Companies in Southeast Texas, Tex. Calling (Texas Payphone Ass'n), Nov. 1994, at 1-2 (Attachment 13). Chronometric Telecommunications Inc. provided an emergency heat complaint number during New York City's blizzard of 1996, free of charge. CTI's Good Deeds Warm the Heart, Persp. on Pub. Comm. (APCC), Mar. 1996, at 18 (Attachment 14). Most recently, South Carolina IPPs are donating emergency payphone service to hurricane shelters in the wake of Hurricane Fran. See Attachment 15, a recent Press Release from the South Carolina Public Communications Association (Darlington, S.C.). "The phones will be installed at no cost. Any profits made from these phones will be donated to Relief Agencies to aid victims of Hurricane Fran. Callers will be charged only $1.00 for a four minute call anywhere in the Continental United States." Id.

## Service to Rural Areas

IPP providers also provide essential service to rural communities. In rural Chama Valley, Wyoming, for example, GTE removed a number of public payphones on which the community had heavily relied, because GTE found that the payphones had failed to generate enough revenue in this overwhelmingly rural area. After GTE removed the only public payphones in each of several locations, an IPP provider placed several new public payphones to provide service in the locations GTE had abandoned. See GTE Yanks Payphones/New Payphones in Valley, High Country Roundup, Sept. 22, 1992 (Attachment 16).

In recent years, GTE removed its payphones from the town of Marble Falls, Texas, and refused to install payphones for free in new locations. An IPP provider installed several payphones at apartment complexes in Marble Falls where many individuals have limited incomes and have been unable to afford private phone service. Another IPP provider operating in the Marble Falls area installed payphones at several locations where GTE removed its facilities. The one payphone on Main Street in Marble Falls was installed by an IPP provider outside the Marble Theater. According to the owner of the Marble Theater, GTE had refused to install a payphone at his business. See A Typical Texas Town Served By The Independent Payphone Industry, Tex. Calling (Texas Payphone Ass'n), July 1994, at 10-11 (Attachment 17).

Another IPP provider, T&T Communications also provided the only public payphone in Lytton Springs, located in Central Texas. Placed in the general store that functions as the central gathering place for the small town (population 150) and the surrounding rural countryside, this IPP is the only way many of the residents can contact local businesses, doctors, or relatives. See Private Payphones Benefit Callers In Small Towns Throughout Texas, Tex. Calling, (Texas Payphone Ass'n), Oct. 1992, at 9 (Attachment 18). See also, e.g., Everyone Lends a Helping Hand at 4M Communications, Persp. on Pub. Comm. (APCC), Mar. 1996, at 21 (Attachment 14) (payphone provider established students' home phone numbers as free calls from school payphones located more than 40 miles from home); Southwest Texas Town Welcomes Its First Payphone in Recent Years, Tex. Calling (Texas Payphone Ass'n), Oct. 1991, at 9 (Attachment 19) (payphone provided much needed service to stranded motorists and local residents).

## Payphones and Crime

Because people so heavily rely on payphones, Commissioner Garcia of the Florida PSC believes that payphones should not be summarily removed when they are suspected of being used for criminal activity such as drug trafficking. He recognizes that people in high-crime neighborhoods need payphones the most when they are threatened with crime or otherwise need to obtain emergency services through "911" calls. Moreover, he notes that approximately six percent of all households cannot afford a home telephone, and removing payphones can deprive these less fortunate people of access to communications. Removing Payphones Is Not the Answer, Persp. on Pub. Comm. (APCC), Apr. 1995, at 55-56. (Attachment 20).

In fact, payphone providers have helped stem criminal activity. For example, under IPANY's SPIN Program, payphones have been programmed so that police can dial their precincts at no cost. Moreover, where police suspect payphones are used for criminal activity, they notify IPANY, which contacts the owner who will take steps to relieve the problem, such as blocking incoming calls and changing payphones to pulse dialing. IPANY Takes a Stand on Crime, Persp. on Pub. Comm. (APCC), Mar. 1996, at 29 (Attachment 12). See also, e.g., TPA Initiates Program to Reduce Drug Dealing at Payphones, Tex. Calling (Texas Payphone Ass'n), Jan. 1995, at 10-11 (Attachment 21) (describing success of Austin Program designed to prevent the use of payphones for drug trafficking); One-Way Conversion of Payphones Suspected of Being Utilized for Illicit Drug Activities,