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July 15, 1997

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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William F. Caton, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

In re Matter of Federal-State
Joint Board on Universal Service,
CC Docket No. ~~96-45~~
96-128

Dear Mr. Caton:

Enclosed for filing in this docket are the original and one copy of a letter to Michael Carowitz. I sent this letter to Mr. Carowitz today on behalf of the RBOC/GTE Payphone Coalition. I would ask that you include the letter in the record of this proceeding in compliance with 47 C.F.R. § 1.1206(a)(2).

If you have any questions concerning this matter, please contact me at (202) 326-7902. Thank you for your consideration.

Yours sincerely,



Michael K. Kellogg

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Michael Carowitz, Esquire
Enforcement Division
Common Carrier Bureau
Federal Communications Commission
2025 M Street, N.W.
Washington, D.C. 20554

In re Matter of the Pay Telephone Reclassification and
Compensation Provisions of the Telecommunications Act
of 1996, **CC Docket No. 96-128**

Dear Michael:

I appreciated the chance to meet with you last week on behalf of the RBOC/GTE Payphone Coalition¹ to discuss the pending remand of the Commission's Payphone Orders. I thought it might be helpful if I put in writing some of our thoughts on the remand proceedings.

As a preliminary matter, I would like to make two suggestions that I think would speed the remand process and lead to a successful, sustainable conclusion. First, in our view, it is critical that the Commission establish prompt deadlines for remand comments and reply comments. Only the promise of a quick decision will lead all parties to the process to eschew posturing and propose responsible, practical solutions to the issues open on

¹The RBOC Payphone Coalition has been expanded to include Ameritech and GTE. Thus, all seven RBOC PSPs and GTE are represented.

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remand. Moreover, it would simplify matters greatly if the Commission were to complete its work before the initial period of interim compensation expires on October 7, 1997. Accordingly, we would suggest a date of August 15 for opening comments and August 29 for replies.

Second, the D.C. Circuit remanded the Commission's rules governing interim and per-call compensation; it did not vacate them. As a consequence, the Commission's rules are still in force. See Allied-Signal Inc. v. Nuclear Regulatory Comm'n, 988 F.2d 146, 151 (D.C. Cir. 1995) (remanding without vacating avoids disruption by leaving rules in place). We therefore believe that it is imperative that the Commission make clear that carriers have a continuing obligation to meet their interim payment obligations during the remand proceedings. If the amount of interim compensation changes on remand, there will be a true-up at that time. But payment cannot wait until the remand is complete.

All the RBOCs and GTE have complied and have certified their compliance with the various requirements in the Commission's Payphone Orders. Under those Orders nothing further is required. Indeed, as the Bureau made clear in its April 4 Order, LEC certification triggers the payment obligation; once a LEC has provided certification, it is incumbent upon the IXC, if it believes that the LEC in question has not satisfied all the requirements, to file a section 208 complaint with the Commission. April 4, 1997 Bureau Order ¶ 30 & n.93. Similarly, in its April 15 Order, the Bureau rejected AT&T's suggestion that individual states must hold any particular types of proceeding and must certify LEC compliance. It is sufficient to trigger the payment obligation that the LEC itself is able to certify compliance. April 15, 1997 Bureau Order ¶¶ 16, 22.

This is a matter of some business urgency. Effective April 15, 1997, all the LECs have removed payphone charges from both their interstate and intrastate Carrier Common Line tariffs. Moreover, many IXCs have already raised their 800 rates and imposed surcharges on access code calls, allegedly to account for the payment of compensation to PSPs. Yet, so far as I know, the IXCs are simply refusing to pay compensation to the LECs and are, thus,

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pocketing a windfall. Accordingly, if the IXCs do not begin paying compensation in a timely manner, we will be forced to file complaints seeking not only interim compensation, but also interest, fees, and penalties. We would be loathe to have a flood of complaints complicate the Commission's work on remand. But, given the business necessities of the situation, the only way to avoid such complications would be for the Commission to make a clear statement of the IXCs' obligation to begin payment immediately.

As to the substance of the remand, as we understand it, the only issues for the Commission to deal with on remand concern compensation. (Although the D.C. Circuit also remanded the Commission's decision on the valuation of assets transferred to a separate subsidiary, there is really nothing to be done on remand other than to acknowledge that such assets are to be transferred at net book value.)

Per-Call Compensation

In its initial decision, the Commission concluded that market-based, not cost-based, rates were the most appropriate basis for interim and permanent compensation. Market-based rates eliminate the need for time-consuming and expensive cost-accounting; they are self-adjusting to economic conditions; and they most closely resemble the rates that would be set by competitive market conditions, thereby maximizing efficiency. By contrast, cost-based rates could severely reduce the number of payphones, contrary to Congress's mandate to "promote the widespread deployment of payphone services to the benefit of the general public." 47 U.S.C. § 276(b)(1). The Commission selected the local call rate as the best market-based proxy default rate because it concluded that the costs of local and dial-around calls were similar.

In remanding that decision, the D.C. Circuit did not disagree with the use of market-based proxies or the decision to link the per-call rate to the market rate as a general principle. Nor did the D.C. Circuit disagree that cost-based rates might be inadequate to ensure payphone ubiquity, or that IXCs have the power to reject calls to bargain for lower prices in the event the prices are, in

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their view, too high. But the D.C. Circuit did not believe that the Commission adequately considered record evidence when setting the default rate, which is the starting point at which negotiations would begin. The Commission reasoned that the local call rate was the appropriate proxy because the costs were similar to per-call dial-around costs, but failed to address record evidence to the contrary.

On remand, therefore, we do not believe that the Commission should abandon its search for an appropriate market-based proxy. The D.C. Circuit did not mandate a cost-based approach, and all of the Commission's reasons for not adopting such an approach are still valid. In our view, the best approach would be for the Commission to take comments on a variety of potential methodologies for calculating per-call compensation. This would include comment on the following:

- Any cost or other relevant economic differences (e.g., elasticity of demand) between local calling and dial-around calling. To the extent such differences are identified, commenters should quantify them to the greatest degree possible. And, to the extent such differences are identified, commenters should discuss possible ways to adjust, starting from the local coin rate to account for the differences and to produce a proxy rate that closely resembles the rate that would be produced by a competitive market.
- Other possible market-based proxies. Commenters should identify any cost or other relevant economic differences between the proxy and dial-around calling, quantify those differences, and address how the proxy price might be adjusted to account for these differences.
- The use of other methods of setting default or other rates for per-call compensation, including but not limited to cost-based rates.

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Interim Compensation

The Commission established interim compensation at a flat rate of \$45.85 per payphone per month for the first year and at \$.35 per call for the following year, until market-based local rates are firmly established. The amount of flat-rate compensation was calculated by multiplying the average number of dial-around and 800 calls per payphone by \$.35. This number, however, did not include 0+ calls from RBOC payphones and did not require compensation for RBOC inmate phones. Flat-rate compensation was then divided among carriers over a certain size based on toll volumes.

The D.C. Circuit concluded that the \$45.85 flat rate had to be remanded essentially for the same reasons that the per call amount had to be remanded. Reliance on the predominant, deregulated local coin rate in calculating the amount required further justification. The Court further pointed out that all carriers should contribute to interim compensation based, not on toll volume, but on the volume of dial around and 800 traffic on payphones. And the Court explained that the flat rate amount for RBOCs had to be recalculated to include 0+ traffic and inmate payphone calls that were not otherwise compensated.

Accordingly, on remand, the Commission should seek comment on the following issues:

- How to calculate the rate for interim compensation, both for the flat-rate, per-line period (now running) and for the fixed-rate, per-call period (beginning October 7, 1997).
- How to allocate charges among carriers for flat-rate, per-line compensation. This includes, but is not limited to, any relationship between toll call volume and the volume of subscriber 800 or access code calls received from payphones.

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- Commenters should submit data concerning the total volume of dial around payphone traffic from all payphones, and the volume of dial around traffic carried by each carrier. This data should be broken down between access code calls (including 1-800 access code calls) and subscriber 800 calls, where possible.

- Commenters should submit data on the volume of otherwise uncompensated subscriber 800 and access code traffic from RBOC payphones and RBOC inmate payphones.

In addition to the compensation issues discussed above, there may be other issues that have arisen since the Payphone Orders were issued on which the Commission may wish to seek comments. I would be happy to discuss any such issues with you.

I hope these thoughts are helpful, and I look forward to working with you on behalf of the RBOC/GTE Payphone Coalition throughout the remand process.

Sincerely,



Michael K. Kellogg

cc: Rose Crellin
Kathy Franco
Greg Lipscomb
John Muleta
Mary Beth Richards
Bob Spangler