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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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**AUG 26 1997**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
Implementation of the )  
Pay Telephone Reclassification )  
and Compensation Provisions of )  
the Telecommunications Act of )  
1996 )  
)  
Policies and Rules Concerning )  
Operator Service Access and )  
Pay Telephone Compensation )

CC Docket No. 96-128

CC Docket No. 91-35

**COMMENTS**

Mary J. Sisak  
Mary L. Brown  
1801 Pennsylvania Ave., N.W.  
Washington, DC 20006

Dated: August 26, 1997

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## SUMMARY

Payphone compensation for subscriber 800 and access code calls should be cost-based-- not market-based-- and should be determined by the cost to payphone providers of originating such calls or the cost of a coin call minus coin costs.

In light of the number of deficiencies found by the Court in the interim plan and the fact that the interim period is almost over, the Commission should simply abandon an interim compensation scheme. If the Commission does so, compensation for PSPs for the period November 1996 through October 7, 1997 would be the previously established compensation amount of \$6 per phone per month. If, however, the Commission proceeds with revising the interim compensation scheme, LECs must be included as payers.

The Court's decision concerning compensation for 0+ calls during the interim period is limited to the BOCs. Moreover, the Commission does not need to prescribe 0+ interim compensation for the BOCs because, for the most part, they are not yet eligible for compensation and, to the extent any BOC is eligible, it is able to ensure fair compensation through its ability to work with the location provider to select the presubscribed OSP.

The Commission should not prescribe any compensation for the inmate phones of any PSP, including the BOCs, during the interim period or otherwise, because all parties involved in providing inmate services have the ability to contract with the location provider for "fair" compensation for the services provided.

Finally, once a new interim compensation amount is established, carriers are entitled to a refund of all overpayments made since the effective date of the Commission's interim compensation rules. Where feasible, overpayments could be offset against future compensation

payments for PSPs. Where offsets against future compensation are not feasible, PSPs should be required to refund overpayment amounts.

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**COMMENTS**

MCI Telecommunications Corporation (MCI) hereby comments on the Public Notice released August 5, 1997, in which the Commission requests comments on the issues remanded by the Court in the payphone proceeding.

**I. DEFAULT COMPENSATION RATE**

The Commission asks for comments on the cost differences to payphone service providers (PSPs) in originating subscriber 800 and access code calls and local coin calls. The Commission asks whether and how these cost differences should affect a market-based compensation amount. The Commission also asks whether the local coin rate, offset for expenses unique to those calls, is an appropriate per-call compensation rate for calls not compensated pursuant to a contract or other arrangement, such as subscriber 800 calls and access code calls.

In the Payphone Order, the Commission concluded that the appropriate per-call

compensation amount “ultimately is the amount the particular payphone charges for a local call, because the market will determine the fair compensation rate for those calls,” and that a rate that is compensatory for local coin calls “is an appropriate compensation amount for other calls as well, because the cost of originating the various types of payphone calls are similar.”<sup>1</sup> The Court squarely rejected this conclusion and found that the Commission’s default compensation rate for subscriber 800 and access codes calls is arbitrary and capricious because the Commission ignored substantial record evidence demonstrating that there are significant cost differences between coin and non-coin calls -- such as subscriber 800 and access code calls. Thus, to comply with the Court’s Remand Decision, the Commission must consider these costs differences in determining the default compensation rate for subscriber 800 and access code calls in this remand proceeding. Accordingly, a proper compensation rate for non-coin calls must be considerably less than the rate for coin calls to reflect the cost differences.

As an initial matter, the Commission’s conclusions concerning competition in the payphone marketplace and the use of the local coin rate as “fair” compensation for access code and subscriber 800 calls are incorrect. As demonstrated in the payphone proceeding, “competition” in the payphone marketplace is between PSPs to be selected by the location provider to be able to place payphones on the premise. PSPs “compete” for this ability by promising to pay the most commissions to the premise owner. Thus, the competition in the payphone marketplace creates an incentive for the PSP to raise rates, including the local coin rate, as much as possible to be able to make higher commission payments to the location provider. As

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<sup>1</sup> Implementation of the Pay Telephone Reclassification and Compensation Provision of the Telecommunications Act of 1996, Report and Order, CC Docket 96-128 and 91-35, FCC 96-388, at para. 7 (released September 20, 1996) (Payphone Order).

acknowledged by the Commission, this “competition” for the location can, and in fact does, create a monopoly at the location for a particular PSP, which allows the PSP to charge supra-competitive rates because there is no alternative available to the consumer. Accordingly, the market forces in the payphone marketplace do not lead to “competitive prices.”

The Hatfield study submitted by MCI in this proceeding demonstrated that the per-call cost of completing access code calls from payphones, once coin-specific costs are eliminated, is approximately \$0.083--and this study did not include subscriber 800 calls. With the inclusion of subscriber 800 calls, this amount would be even lower. The evidence in the payphone proceeding clearly demonstrates that coin calls cost significantly more than subscriber 800 and access code calls because of costs unique to coin calls such as coin collection, coin equipment and call termination. As noted by the Court, AT&T estimated that the costs of local coin calls are three times higher than those of coinless calls.<sup>2</sup> In addition, in the Notice of Proposed Rulemaking,<sup>3</sup> the Commission estimated that coin costs equal approximately \$0.11 .

If the Commission uses a top-down approach for calculating the default compensation rate for subscriber 800 and access code calls, it should be determined by subtracting the coin-specific costs from the cost of a coin call-- not the market rate-- because a market-based rate for subscriber 800 and access code calls is not in the public interest. The Commission established a market-based compensation rate to ensure the wide deployment of payphones. The Commission

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<sup>2</sup> Illinois Public Telecommunications Association v. FCC, D.C. Circuit No. 96-1394, slip op. at 14-15 (July 1, 1997).

<sup>3</sup> Policies and Rules Concerning Operator Services Access and Pay Telephone Compensation, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 91-35, 6 FCC Rcd. 4736, 4747 (1991).

reasoned that carriers could prevent excessive market-based charges for subscriber 800 and access code calls and negotiate lower compensation rates by blocking such calls where the compensation rate is unacceptable. It is now clear, however, that the Commission's premise is incorrect because 800 subscribers are simply planning to block calls from payphones. MCI's 800 customers are demanding that calls from payphones are blocked. Similarly, it is MCI's understanding that AT&T has filed tariffs to accommodate 800 customer requests for blocking of calls from payphones. Although this will prevent carriers and 800 subscribers from incurring excessive payphone compensation rates, it clearly is not in the interest of consumers or in compliance with the intent of Congress to encourage the "deployment of payphones in the public interest." Congress could not have intended to encourage the placement of payphones that cannot be used to access certain types of calls-- such as 800 calls.

Moreover, carriers do not have the ability to negotiate lower compensation rates with payphone providers because, in part, of the sheer size of such an effort. There are thousands of PSPs-- many of whom are small "mom and pop" operations. Just as the Commission found that it is not feasible to "rate regulate" each one of these entities, it simply is not feasible for MCI to expend the resources to negotiate with each one of these entities. In addition, MCI's systems are not capable of selective blocking based on the compensation rate, at this time, and will not be capable of such blocking until approximately the third quarter of 1998. Clearly, therefore, it is not appropriate to impose a "market-based" compensation rate for subscriber 800 and access code calls.

Thus, in a top-down approach, the Commission must calculate compensation for subscriber 800 and access code calls based on the cost of a local call minus the coin costs. The

Commission does not have to rate regulate thousands of PSPs to determine the cost of coin calls. Rather, the Commission should determine the cost of coin calls based on the best available data. For example, in a proceeding before the Massachusetts Department of Public Utilities, NYNEX admitted that its cost of a local coin call is approximately \$0.17.<sup>4</sup> There may well be other state proceedings that include evidence of the cost of a local coin call-- in light of the local exchange carriers' obligation to remove payphone subsidies from rate base during the past year. In the absence of any additional evidence, however, the cost of a non-coin call should be determined by subtracting coin costs from \$0.17.

Finally, Commission prescribed compensation for subscriber 800 and access code calls should not vary when the rate for local coin calls varies beginning in October, 1998. Although it is theoretically possible, it will be extremely costly, difficult and time-consuming for carriers to be able to implement varying compensation amounts and blocking options for millions of payphones. In addition to the administrative problems associated with such an enormous task, switch software upgrades and call processing systems development will be necessary.

At a minimum, for a varying compensation amount to be feasible, the Commission must set some parameters. For example, PSPs must be required to provide to carriers the coin rate for each phone well in advance before any compensation is owed and PSPs should only be allowed to change the per call amount once a year.

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<sup>4</sup> Commonwealth of Massachusetts Department of Public Utilities, Order, D.P.U. 97-18, at 2, dated April 14, 1997.

## II. INTERIM COMPENSATION PLAN

The Commission asks for comment on the proper aggregate amount of compensation PSPs should receive per payphone during the period before per-call compensation becomes available. The Commission also asks how to properly allocate the interim compensation obligation, if any, among providers of interexchange service and how to establish the relative compensation obligations of smaller interexchange carriers (IXCs), since it does not have specific toll revenues for carriers with revenues under \$100 million. Finally, the Commission asks for comments on whether the local exchange carriers (LECs) that carry toll traffic should be included among the carriers required to pay interim compensation.

The Commission is not required to implement interim compensation for PSPs. Therefore, in light of the numerous deficiencies found by the Court in the interim plan, and the fact that the interim period is almost over, the Commission should simply abandon an interim compensation scheme. If the Commission does so, compensation for PSPs for the period November 1996 through October 7, 1997 would be the previously established compensation amount of \$6 per phone per month.

If, however, the Commission proceeds with revising the interim compensation scheme, LECs must be included as payers. The Commission set interim compensation based on an estimated number of 131 interstate and intrastate calls from payphones. LECs clearly benefit from the receipt of intrastate 800 and card calls from payphones. Therefore, any interim compensation plan that includes intrastate calls must include the LECs.

In the absence of other data, the Commission could determine the carriers' relative compensation obligations based on total toll revenues (interstate and intrastate). Carriers with toll

revenues of less than \$100 million could be assessed an equal amount of compensation based on their combined percentage of toll revenues. For example, if there are 100 carriers with revenues of less than \$100 million, and the revenues of these carriers combined represent 1% of toll revenues, each of the carriers would pay 1/100th of 1% of the total interim compensation amount.

Interim compensation could be set at an amount equal to the estimated number of calls from payphones (131 per month) times the new per-call compensation amount. Once the carriers' new interim compensation obligations are calculated, carriers that overpaid during the interim period are entitled to be reimbursed for such overpayments back to November 6, 1996--the effective date of the Commission's interim compensation rule.

### III. COMPENSATION FOR 0+ CALLS DURING THE INTERIM PERIOD

The Commission asks for comments on its interpretation that the Court's concern about a lack of compensation for 0+ calls in the interim period is limited to situations where such compensation is not paid pursuant to contract. The Commission asks how the Bell Operating Companies (BOCs) and other similarly situated PSPs should be compensated during the interim period for 0+ calls for which they do not receive compensation by contract. The Commission asks whether it would be appropriate to have the presubscribed carrier pay the default per-call compensation amount to the PSP for 0+ calls in light of the fact that the presubscribed carrier often pays a commission for 0+ calls to the location provider. The Commission also seeks comment on whether the presubscribed carrier could simply pay the PSP for the number of 0+ calls it has received from the payphone multiplied by the default rate.

As an initial matter, no party other than the BOCs appealed the Commission's Order with

respect to 0+ compensation. Accordingly, the Court's decision must be limited to the BOCs. In addition, the Commission was not required to prescribe compensation for 0+ calls, and it did not do so for non-BOC PSPs in its Payphone Order, because PSPs other than the BOCs had the ability to enter into contracts with the presubscribed operator service provider (OSP) -- or other party such as the premises owner -- to receive whatever compensation they felt was "fair." To the extent any non-BOC PSP did not enter into a contract directly with the presubscribed OSP, it was by their own choice. Therefore, it must be assumed that whatever "deal" to which they agreed-- regardless of whether the agreement is with the presubscribed OSP-- provides "fair" compensation. Otherwise the PSP would not have agreed to place a payphone at the location. Importantly, the Act does not require that compensation be paid by the presubscribed OSP. It only requires that the Commission prescribe regulations that "establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone."<sup>5</sup> For 0+ calls, the Commission has fulfilled its requirement by finding that PSPs can ensure fair compensation for 0+ calls through the contract process.

Moreover, the Commission does not need to prescribe 0+ interim compensation for the BOCs. As an initial matter, the BOCs in most states are not yet eligible for any compensation because they have not complied with all of the Commission's eligibility requirements. Even in those few cases where a BOC is eligible or becomes eligible in a state for compensation, the Commission does not need to prescribe compensation because the BOC is able to ensure fair

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<sup>5</sup> Section 276(b)(1)

compensation through its ability to work with the location provider to select the presubscribed OSP. For example, BellSouth is imposing a charge of \$15 per month on location providers that do not select the OSP selected by BellSouth. Clearly, this charge represents BellSouth's mechanism for ensuring that it is "fairly" compensated for 0+ calls. The Commission does not need to do anything more.

If, however, the Commission prescribes compensation for 0+ calls from BOC payphones during the interim period, compensation should be equal to the cost-based per-call rate as calculated above times an estimated number of 0+ calls from payphones. MCI does not have information on the actual number of 0+ calls received from payphones. Therefore, MCI would not be able to pay compensation based on the actual number of 0+ calls from BOC payphones during the interim period.

#### IV. COMPENSATION FOR INMATE CALLS DURING THE INTERIM PERIOD

The Commission seeks comment on its interpretation that the Court is only concerned about a lack of compensation for inmate calls in the interim period where such compensation is not paid pursuant to a contract. The Commission asks how the BOCs, and any similarly situated PSP, should be compensated for inmate payphone calls during the interim period. The Commission also asks whether it would be appropriate to have the presubscribed carrier pay the default per-call compensation rate to the PSP for each inmate payphone call for which compensation is not provided pursuant to a contract with the PSP.

The Commission should not prescribe any compensation for the inmate phones of any PSP, including the BOCs, during the interim period or otherwise, under the same theory as the

Commission found it was unnecessary to prescribe compensation for 0+ calls for non-BOC payphones-- namely, all parties involved in providing inmate services have the ability to contract with the location provider (oftentimes the Department of Corrections) for “fair” compensation for the services provided. Thus, all PSPs, including the BOCs, enter into contracts to place payphones at prisons through the location provider’s RFP process and any PSP that does not believe it is being fairly compensated for the placement of payphones at the prison can choose to not provide payphones. For example, in the typical BOC-- or PSP-- inmate payphone agreement, the location provider gives the BOC the right to carry, bill and collect the revenue for all local and intraLATA calls in exchange for the BOC’s agreement to provide the payphones. PSPs-- including BOC PSPs-- also usually pay a commission to the location provider for this right. Through the contract process, the LEC also agrees to provide access to the IXC for interLATA calls. Thus, it is clear that the PSP is being “fairly” compensated for the use of its phones through the exclusive right to collect local and intraLATA call and interexchange access revenues. In any event, through the contract process PSPs-- including BOC PSPs-- clearly have the opportunity to be fairly compensated for all calls from their payphones. Accordingly, there is no need for the Commission to prescribe additional compensation for inmate payphones.

## V. RETROACTIVE ADJUSTMENTS TO INTERIM COMPENSATION

The Commission asks whether, how, and under what authority, it should impose retroactive adjustments to the payment obligations and compensation levels that are incurred under the existing rules before the Commission completes action on remand. The Commission asks the parties to specify whether such potential adjustments should be made for the entire first

year of interim compensation or whether any adjustments should be limited to the period after the date of the Court's remand.

Once a new interim compensation amount is established, either before or after the remand proceeding is completed, carriers are entitled to a refund of all overpayments made since the effective date of the Commission's interim compensation rules. Where feasible, overpayments could be offset against future compensation payments for PSPs. Where offsets against future compensation are not feasible, PSPs should be required to refund overpayment amounts.

## VI. CONCLUSION

Based on the foregoing, MCI requests that the Commission revise its compensation rules and order as discussed herein.

Respectfully submitted,

MCI TELECOMMUNICATIONS CORPORATION

By:



Mary J. Sisak

Mary L. Brown

1801 Pennsylvania Ave., N.W.

Washington, DC 20006

(202) 887-2605

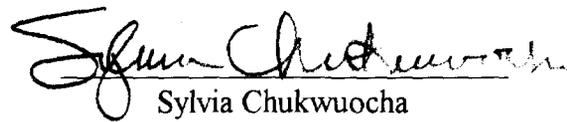
Dated: August 26, 1997

**CERTIFICATE OF SERVICE**

I, Sylvia Chukwuocha, do hereby certify that copies of the foregoing "COMMENTS" were sent via first class mail postage prepaid to the following on this 26th day of August, 1997.

Chief, Enforcement Division  
Common Carrier Bureau  
2025 M Street, N.W.  
Room 6008  
Washington, DC 20554

ITS  
1919 M Street, N.W.  
Room 246  
Washington, DC 20554

  
Sylvia Chukwuocha