PUBLIC NOTICE

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Federal Communications Commission
1919 M Street, N.W.
Washington, D. C. 20554

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DA 97- 2214

Released: October 20, 1997

PLEADING CYCLE ESTABLISHED FOR PETITIONS TO WAIVE PAYPHONE CODING DIGITS REQUIREMENTS

(CC Docket No. 96-128)

Comments Due: **October 30, 1997**
Reply Comments Due: **November 6, 1997**

1. On October 7, 1997, the Common Carrier Bureau granted, on its own motion,[1] a limited waiver[2] of five months, until March 9, 1998, to those local exchange carriers (LECs) and payphone service providers (PSPs) that cannot provide payphone-specific digits as required by the *Payphone Orders*.[3] This limited waiver applied to the requirement that LECs provide payphone-specific coding digits to PSPs, and that PSPs provide coding digits from their payphones before they can receive per-call compensation from interexchange carriers (IXCs) for subscriber 800 and access code calls. The Bureau stated that an immediate waiver was necessary to begin per-call compensation on October 7, 1997, in keeping with the Commission's mandate under Section 276 of the Communications Act.[4] The limited waiver recognized that three parties

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[1] *See* Section 1.3 of the Commission's rules, 47 C.F.R. § 1.3.

[2] *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Order, DA 97-2162 (Com. Car. Bur., Oct. 7, 1997) ("*Waiver Order*").

[3] *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Report and Order, 11 FCC Rcd 20,541, 20,591, paras. 98-99 (1996); Order on Reconsideration, 11 FCC Rcd 21,233, 21265-66, 21,278-80, paras. 64, 93-99 (1996); Second Report and Order, CC Docket No. 96-128, FCC 97-371 (rel. Oct. 9, 1997) (together the "*Payphone Orders*").

[4] *Waiver Order* at 2, 5 (citing 47 U.S.C. § 276); *see Ex Parte* Letter to William F. Caton, Acting Secretary, Federal Communications Commission, from Robert F. Aldrich, Counsel to American Public Communications Council, Aug. 25, 1997, which states that "it is preferable for per-call compensation to begin on schedule." *Id.* at 1.

had filed petitions for waiver of the payphone-specific coding digit requirements. This Public Notice seeks comment on those waiver requests.[5]

2. On September 30, 1997, United States Telephone Association (USTA) petitioned the Commission for a waiver of the requirement that LECs supply the requisite coding digits to PSPs by October 7, 1997.[6] USTA requests that LECs with digital, equal-access switches be given an additional nine months to provide the technology required to supply and accommodate the coding digits; that LECs with non-equal-access switches be exempt from providing payphone identification information until their switches are replaced or upgraded for equal-access; and that LECs be permitted to use whatever technology they select for digital, equal-access switches to provide information that will permit IXCs to track payphone calls in order to compensate PSPs.[7]

3. On September 30, 1997, the LEC ANI Coalition[8] requested that the Commission waive the October 7, 1997 deadline, stating that LECs will be unable to supply forty percent of payphone lines with the requisite coding digits by that date.[9] The Coalition requested that the deadline be extended until the Commission issues an order clarifying the LECs' payphone-specific coding requirements.[10] The Coalition also requested that the Commission grant a waiver pursuant to Section 69.4(g) of our rules so LECs can establish a rate element to recover the costs of providing payphone identification digits.

4. Finally, on October 1, 1997, TDS Communications Corporation (TDS), an owner of local exchange carriers, petitioned the Commission to extend the deadline for payphone coding digits from October 7, 1997, until July 1, 1998.[11] TDS states that it needs additional time to

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[5] The Furst Group, Inc. and GE Capital Communication Services Corporation have requested that they be removed from the list of IXCs responsible for paying flat-rate interim compensation to PSPs, on the grounds that their toll revenues are below the revenue threshold required to obligate an IXC to participate in the program. This Public Notice does not seek comment on these requests.

[6] Petition for Waiver of the United States Telephone Association, CC Docket No. 96-128, Sept. 30, 1997.

[7] *See id.* at 11.

[8] Members of the LEC ANI Coalition include Ameritech, Bell Atlantic, BellSouth, GTE, NYNEX, SBC, SNET and U S West. *See* Letter to John Muleta, Chief, Enforcement Division, Common Carrier Bureau, from Michael K. Kellogg, Counsel for the LEC ANI Coalition, Jul. 28, 1997, at 1.

[9] The Coalition states that forty percent of the payphones in its territories are "smart" payphones that do not transmit unique payphone coding digits. These payphones, largely used by independent PSPs, transmit a "07" coding digit that merely identifies a payphone call as coming from a restricted line. The remaining payphones are "dumb" payphones that rely on LEC switches for functions and features, and, as a result, already transmit unique payphone coding digits. See Letter to John B. Muleta, Deputy Chief, Common Carrier Bureau, Federal Communications Commission, from Michael K. Kellogg, Counsel, LEC ANI Coalition, Sept. 30, 1997, at 2, 4, 5.

[10] *Id.* at 3, 5.

[11] TDS Communications Corporation Petition For Waiver, CC Docket 96-128, Oct. 1, 1997.

arrange agreements with database suppliers, and to complete transmission tests to IXCs selected by its subsidiaries.[12]

5. In response to the *Waiver Order*, AT&T Corporation (AT&T) states that it cannot comply with the waiver as granted and proposes an alternative method to enable AT&T and other similarly situated IXCs to comply with the Commission's payphone compensation requirements and the Bureau's waiver order.[13] AT&T argues that its ability to perform its obligations under the Commission's *Payphone Orders* is "severely prejudiced by the Bureau's waiver order" because AT&T "cannot track payphone calls on a per-call basis for the majority of payphone calls that require compensation during the waiver period."[14] AT&T states that it currently is able to track and pay per-call compensation for dial-around operator service calls because those calls are routed from its 4ESS switches to 5ESS switches within AT&T's network. AT&T's 5ESS switches are able to interconnect with an ancillary Originating Line Number Screening database maintained by the LECs in order to identify whether the dial-around call originated from a payphone.[15] AT&T states that it is not able, however, to track and compensate subscriber 800 calls from payphones that transmit "07" calls because it would be prohibitively expensive for those calls to be rerouted to the 5ESS switches in order to use the LIDB to determine whether they originated from payphones.[16]

6. AT&T restates its position that carriers should not be required to pay compensation unless payphones transmit payphone specific coding digits, because carriers will not be able to block calls from such phones and cannot bill customers on a per-call basis from those phones.[17] AT&T proposes, however, that the Commission permit carriers to use the per-phone compensation method as a means of calculating a carrier's payment obligations during the

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[12] *Id.* at 2-3.

[13] *See* Letter to John B. Muleta, Deputy Chief, Common Carrier Bureau from E.E. Estey, Government Affairs Vice President, AT&T, Oct. 14, 1997 ("AT&T Letter"). On October 7, 1997, AT&T also filed an opposition to the USTA and TDS petitions. We will include AT&T's opposition in the record developed in response to this Public Notice.

[14] *Id.* at 2.

[15] *Id.* at n.1.

[16] *Id.* at 2. We note that the United States Court of Appeals for the District of Columbia Circuit ruled in 1995 that Section 226 of the Act required the Commission to consider compensation for payphone 800 subscriber calls. *Florida Public Telecommunications Ass'n v. FCC*, 54 F.3d 857 (D.C. Cir. 1995). *See also Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, 11 FCC Rcd 6716, 6723-24 (1996).

[17] We note that two IXCs, Telco Communications Group, Inc. and American Network Exchange, Inc., have petitioned or requested that they be exempt from the flat-rate interim compensation program payment on the grounds that they are willing and able to provide per-call tracking and compensation immediately. This Public Notice does not, however, seek comment on those petitions and requests.

waiver period for payphones that do not deliver the necessary identification digits.[18] AT&T also requests that the Commission require each LEC to provide the Commission and carriers with a list of the offices that currently can deliver payphone digits, and a schedule of the dates by which its other equal access end offices will be capable of delivering specific payphone identification digits. AT&T further requests that after March 9, only non-equal access offices should be exempt from the requirements the Commission previously established.[19]

7. *Ex Parte* Presentations This Public Notice is a "permit-but-disclose proceeding" and subject to the "permit-but-disclose" requirements under Section 1.1206(b) of the rules, 47 C.F.R. § 1.1206(b), as revised. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. See 47 C.F.R. §1.1206 (b)(2), as revised. Other rules pertaining to oral and written presentations are set forth in Section 1.1206 (b), as well.

8. Comment Filing Dates Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments with the Office of the Secretary, Federal Communications Commission, Room 222, 1919 M St. N.W., Washington, D.C. 20554 on or before **October 30, 1997**, and reply comments on or before **November 6, 1997**. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. In addition, parties should file two copies of any such pleadings with the Chief, Enforcement Division, Common Carrier Bureau, Stop 1600A, Room 6008, 2025 M Street, N.W., Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, N.W., Washington, D.C. 20036. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, DC.

For further information, contact Rose Crellin or Greg Lipscomb, Enforcement Division, Common Carrier Bureau, 202/418-0960.

Action by the Acting Bureau Chief, Common Carrier Bureau

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[18] AT&T Letter at 1, 3. We note that our rules currently permit per-phone negotiated compensation arrangements, as well as other types of negotiated compensation agreements. *See* 47 C.F.R. § 1300(a).

[19] *Id.* at 3.