DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP
2101 L Street NW • Washington, DC 20037-1526
Tel (202) 785-9700 • Fax (202) 887-0689
Writer's Direct Dial: 202-828-2236
A5691.482

September 16, 1996

BY COURIER

William F. Caton, Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

EX PARTE PRESENTATION

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

Dear Mr. Caton:

On behalf of the American Public Communications Council ("APCC"), this letter is submitted regarding the level of compensation that should be prescribed under Section 276 of the Act. 47 U.S.C. § 276.

Concerns have been expressed that per call compensation for non-coin calls (e.g., subscriber 800 calls and access code calls) should be less than compensation for local coin calls, on the theory that, while coin collection costs are incurred in connection with local coin calls, there is no cost associated with collection of compensation for non-coin calls.[1] This assertion is contrary to the practical experience of IPP providers. In fact, IPP providers incur substantial costs in collecting compensation for non-coin access code calls under the current access code compensation regulations of the FCC.

A description of the access code compensation collection process as it currently functions is enclosed with this letter.

As shown in the enclosure, disputed unpaid amounts currently account for about 10% of billed access code compensation revenues. In addition, even when payment is not disputed, payment is delayed for 3-6 months after placement of the call. This adds an

[1] APCC does not agree that any differential in collection costs should result in lower levels of non-coin compensation. Compensation should be based on market surrogates. However, assuming that such a differential would be relevant to the level of compensation, this letter shows there is no reason to believe that collection costs are lower for non-coin calls.

additional 3% or so in interest compared with the timing of coin collection. Collection fees by clearinghouses are between 4% and 10% of billed revenue. Thus, collection shortfalls and collection costs total at least 17-23% of billed revenue. And this estimate does not even include the internal expenses incurred by individual IPP providers.

In summary, based on experience to date under the access code compensation system, costs of collecting non-coin compensation are very substantial. Assuming that relative collection costs are relevant to the level of Section 276 compensation, the record provides no reason to believe that non-coin compensation collection costs are lower than coin compensation collection costs.

Sincerely,

Albert H. Kramer

AHK/nw
Enclosures

Description of the Current Access Code Compensation Collection Process

Each IPP provider gathers a list of all its payphone line numbers ("ANIs") eligible for compensation that are in service on the last day of a calendar quarter. The IPP provider then submits this list to the interexchange carriers ("IXCs") either directly or through a clearinghouse (clearinghouses handle over 300,000 of the 350,000 ANIs submitted for payment). Simultaneously with the IPP submission to the IXCs, local exchange carriers ("LECs") are required to submit to IXCs a list of IPP ANIs they show as being in service in their region on the last day of the same calendar quarter. IXCs may use this LEC list as a check against the IPP submissions to "verify" eligibility for compensation. IXCs process requests for payment and return a check and payment report to the IPP at the end of the following calendar quarter. The payment report indicates on which ANIs compensation was paid and on which ANIs compensation was not paid. Reasons for non-payment are indicated by assignment of an error code.

The timing is such that even in a best case scenario, compensation for an eligible call placed in January would not be received by the IPP provider until early July. That compensation would be net of fees paid to the clearinghouse for its role in the collection process.

The best case scenario is not the usual case, however. APCC's experience operating the industry's largest clearinghouse (billing approximately 200,000 ANIs per quarter) shows it is quite common for IXCs to dispute the validity of legitimate ANIs submitted for compensation. Such disputes primarily occur because LECs submit either erroneous information (error code 14) or no information (error code 12). IXCs cite the LEC's failure to comply with its obligations as a reason to withhold compensation. IPP providers then must go through a complicated and time consuming dispute resolution process to obtain compensation on the disputed ANIs. Only a minority of disputes have been resolved to date. See attached spreadsheet. Further, several of the IXCs refuse to pay compensation at all, or reject invoices for prior periods for previously unsubmitted ANIs, or pay well beyond the dates due.

APCC's experience with IPP compensation over the last two years is shown on the attached spreadsheet.[1] As the spreadsheet illustrates, the net effect of LEC noncompliance and IXC recalcitrance is that actual compensation received by IPP providers is significantly less than granted the amount prescribed under the FCC orders. Of the $28,811,844 expected, only $25,973,743 was received.[2] This amounts to a shortfall of $2,838,100, or roughly 10%, before clearinghouse fees are deducted. Even when payment is not disputed, payment is delayed for 3-6 months after placement of the call. This adds an additional 3% or so in interest compared with the timing of coin collection. In addition, clearinghouse fees amount to between 4% and 10% of the $6 per month compensation. Thus, total shortfalls and costs incurred in collection of non-coin compensation are in the neighborhood of at least 17-23%. Furthermore, this estimate does not even include the internal expenses incurred by individual IPP providers to prepare and keep track of their invoices.

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1 Note that since the first quarter of 1995, AT&T has paid compensation on a per call basis for approximately 60% of the ANIs submitted for payment, and the balance on flat rate. Sprint began a similar per call system beginning with the third quarter of 1995. Total compensation received by IPP providers per ANI has remained relatively equal under per call compared to the pure flat rate system.

2 The expected amounts are based on billing of $6.00 per payphone per month under the flat-rate system. The disputes reflected in the chart concern only the eligibility of ANIs for compensation. Under a per-call compensation system, there also will be disputes over the volume of calling from eligible ANIs. These disputes are likely to result in additional shortfalls and dispute resolution costs.

APCC Dial Around Compensation Clearinghouse Collection History

Quarter	# of ANIs	Expected $ Amount	Received $ Amount	Shortfall	#Disputed ANIs	#Disputed Cleared	#Disputed Outstanding
1994 Q1	204,482	$ 3,680,676.00	$ 3,567,563.94	$ (113,112.07)	25,616	7,572	(18,044)
1994 Q2	197,277	$ 3,550,986.00	$ 2,777,540.35	$ (773,445.65)	30,174	8,415	(21,759)
1994 Q3	196,303	$ 3,533,454.00	$ 3,415,049.92	$ (118,404.08)	36,654	10,126	(26,528)
1994 Q4	199,045	$ 3,582,810.00	$ 3,425,197.70	$ (157,612.30)	33,025	8,472	(24,553)
* 1995 Q1	196,983	$ 3,545,694.00	$ 2,691,478.22	$ (854,215.78)	32,396	6,809	(25,587)
* 1995 Q2	203,720	$ 3,666,960.00	$ 3,456,433.30	$ (210,526.70)	27,494	3,749	(23,745)
* 1995 Q3	194,239	$ 3,496,302.00	$ 3,227,976.04	$ (268,325.96)	28,607	2,499	(26,108)
* 1995 Q4	208,609	$ 3,754,962.00	$ 3,412,504.39	$ (342,457.61)	27,716	1,508	(26,208)
TOTAL	1,600,658	$ 28,811,844.00	$ 25,973,743.86	$ (2,838,100.14)	241,682	49,150	(192,532)

Explanation of Spreadsheet

of ANIs

- This is the total number of ANIs submitted for compensation, less the ANIs that were duplicates or determined to be ineligible for compensation by virtue of not being IPP lines.

Expected $ Amount

- The number of ANIs times $6 per month ($18 per quarter)

Received Amount

- Total compensation received from IXCs, including any payments for resolution of past disputes and for ANIs covering earlier quarters.

Shortfall

- Difference between expected compensation and actual payments.

Disputed ANIs

- The number of ANIs disputed because of a mismatch in LEC data compared to IPP data for billing name and address (error code 14) and/or no LEC data submitted (error code 12) by either Sprint or the Cincinnati Bell clearinghouse which represents and does processing of compensation requests on behalf of AT&T, MCI and Alascom.

Disputes Cleared

- The number of disputes out of the number identified in the previous column which have been resolved as of 9/11/96. Any compensation for these resolved disputes is included in the Amount Received column for the quarter in which it was received.

Disputes Outstanding

- The number of disputes from the Disputed ANIs column which have not been resolved and upon which no compensation has been paid.

ATTACHMENT 2

Excerpt from APCC's 10/30/97 Comments On
Petitions For Waiver Of The ANI Digit Requirement

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

In the Matter of	)	
	)	
Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-128 DA 97-2214

COMMENTS OF THE AMERICAN PUBLIC COMMUNICATIONS COUNCIL ON REQUESTS FOR WAIVERS OF THE ANI DIGITS REQUIREMENT

Albert H. Kramer
Robert F. Aldrich
DICKSTEIN SHAPIRO MORIN
& OSHINSKY LLP
2101 L Street, N.W.
Washington, D.C. 20037-1526
(202) 828-2226

Attorneys for the American Public Communications Council

October 30, 1997

769008
Client No. A5691.543

demonstrated would be collected from IXCs if the LEC had complied with the Payphone Order. The Commission has ample authority to condition LEC payphone compensation on compliance with fundamental Payphone Order requirements. Reconsideration, ¶ 131. Indeed, the Commission has already conditioned LEC eligibility for compensation on removal of the discrimination prohibited by Section 276. There can be no more blatant example of LEC discrimination than their provision of payphone-specific ANI digits *only* on lines used overwhelmingly by their own payphones.

III. THE COMMISSION SHOULD SPECIFY THE MANNER OF TARIFFING AND COST RECOVERY FOR THE REQUIRED CODING SERVICES

At the same time that it clarifies the type of coding digit service that is required, the Commission should address the manner in which that service should be tariffed.

First, given the importance of this service to the federal compensation scheme, there can be little dispute that the coding digit service must be federally tariffed.[25]

Second, the Commission should make clear that the costs of Flex ANI must not be assessed solely on PSPs. Obviously, any costs attributable to the upgrading of

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[25] In ruling on which payphone-related network services must be federally tariffed, the Bureau has specifically ruled that call screening services are required to be federally tariffed. Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, DA 97-678 (rel. Apr. 4, 1997). Although the Bureau also ruled that only "payphone-specific" services must be federally tariffed, and although some LECs have refused to tariff their screening services on the ground that they are not "payphone-specific," there can be no dispute that a service charged only to payphone providers is "payphone-specific." However, irrespective of the result under prior rulings, the Commission should find that Flex ANI charges must be federally tariffed in view of the importance of the service to the federal compensation scheme.

non-equal-access switches to equal-access may not be assessed on PSPs.[26] Those costs should be borne in the same manner as other equal access costs. Further, Flex ANI will be used for other services apart from payphones, and other purposes apart from payphone compensation. To the extent that IXCs use Flex ANI for other purposes, they must be required to pay for it directly, rather than having charges assessed in the first instance on PSPs.

Third, any charges assessed on PSPs must be applied to both "dumb" and "smart" payphone lines. Although it is the "dumb" payphone lines that currently lack payphone-specific ANI digits, this state of affairs is in no way the fault of the subscribers to "dumb" payphone lines, who are primarily independent PSPs. It is simply an accident of history, or rather, of the LECs historic discrimination practices which are now prohibited by Section 276. If LECs had been motivated to do so, they could have assigned a "payphone-specific" code to "dumb" lines and a "non-payphone-specific" code to "smart" lines, instead of vice versa. Alternatively, if LECs had, from the outset of competition, made "smart" lines available on a nondiscriminatory basis to all providers, all payphone providers could have benefited from the "payphone-specific" code. It is no coincidence that the "payphone-specific" code is for the line used overwhelmingly by LEC payphones.

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[26] As discussed above, note 20, the number of payphone lines served by non-equal access switches is generally acknowledged to be very small in relation to total payphone lines. The Commission should not mandate conversions to equal-access solely in order to have a "perfect" per-call compensation scheme. Rather, the Commission should grant LECs and IXCs a waiver of per-call compensation requirements for lines served by non-equal-access switches. Each such waiver should last until such time as the switch is converted to equal-access under the applicable timetable.

LEC PSPs should not be exempt from charges that are the direct result of LEC bias. In short, the Commission must make clear that any charges assessed on PSPs must be averaged across all lines as though all lines are using it and must be assessed accordingly.

Fourth, any charges assessed on PSPs for the provision of Flex ANI should be added onto the prescribed per-call compensation rate, to the extent that they exceed the one cent per call ANI digit restructuring cost that was used as part of the cost basis of the compensation rate. Second Report and Order, ¶ 57. Since the compensation rate was determined based on the relative differential between the cost of a coin call and the cost of a dial-around call, it is necessary to adjust the Commission's estimate of the coin/dial-around cost differential, and increase the compensation rate, to the extent of any additional charge for Flex ANI above and beyond the Commission's estimate of one cent per call.[27]

Further, in the event that the FCC permits LECs to apply a Flex ANI charge only to "dumb" line subscribers while exempting "smart" line subscribers, then the FCC must adjust its prescribed compensation rate to reflect the differential in dial-around costs borne by each group of subscribers. In other words, if a LEC is allowed to charge "dumb"

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[27] APCC intends separately to challenge the Second Payphone Order's analysis and attribution of ANI digit restructuring costs. In the Second Payphone Order, the FCC spread the cost of ANI digits restructuring across all calls, including coin calls. But contrary to the analysis in the Second Payphone Order, any cost incurred by payphone providers in order to receive Flex ANI is attributable solely to dial-around calling. If the base of calls across which the cost of ANI digits is spread is narrowed to include only dial-around calls, the cost per call will be higher than if the cost is spread across all payphone calls.

line subscribers two cents per call for Flex ANI, while charging "smart" line subscribers nothing, then (assuming other factors stay the same) the compensation rate for "dumb" line subscribers must be increased to 29.4 cents per call, and the compensation rate for "smart" line subscribers must be reduced to 27.4 cents per call.

IV. IF THE IXCS ARE GRANTED A WAIVER, THE FCC MUST ENSURE THAT PSPS ARE COMPENSATED DURING THE WAIVER PERIOD

AT&T has requested that IXCs be granted a waiver of their per-call compensation obligations, allowing them to pay compensation for five months on a flat-rate basis. AT&T alleges that it cannot track payphone calls and pay per-call compensation in the absence of payphone-specific ANI transmitted on every call (Options 1 or 2). AT&T's support for this claim is not convincing. There does not appear to be any compelling reason why AT&T or other carriers could not, if necessary, track and pay per-call compensation by using OLNS (Option 3) or even LEC-ANI-list screening (Option 4). AT&T claims OLNS or variants of OLNS can be used only to track access code calls -- and cannot be used to track subscriber 800 calls -- because only access code calls are routed to a Class 5 switch that can launch a data base query. Yet, during 1996, AT&T, MCI, and Sprint were tracking and paying per-call compensation to payphone providers in Illinois, for intrastate access code *and* subscriber 800 calls, pursuant to an order of the Illinois Commerce Commission, even though Options 1 and 2 were unavailable to them. Furthermore, MCI and Sprint have both indicated that they can track subscriber 800

CERTIFICATE OF SERVICE

I hereby certify that on December 1, 1997, I caused a copy of the foregoing Petition Of The American Public Communications Council For Partial Reconsideration to be sent by first class mail, postage prepaid or by hand delivery (*), to the following:

William E. Kennard*
Chairman
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, DC 20554

Michael Powell*
Commissioner
Federal Communications Commission
1919 M Street, N.W.
Room 844
Washington, DC 20554

Harold Furchgott-Roth*
Commissioner
Federal Communications Commission
1919 M Street, N.W.
Room 802
Washington, DC 20554

Susan P. Ness*
Commissioner
Federal Communications Commission
1919 M Street, N.W.
Room 832
Washington, DC 20554

Gloria Tristani*
Commissioner
Federal Communications Commission
1919 M Street, N.W.
Room 826
Washington, DC 20554

Christopher J. Wright*
General Counsel
Federal Communications Commission
1919 M Street, N.W.
Room 614
Washington, DC 20554

John B. Muleta*
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 500
Washington, DC 20554

Robert Spangler, Acting Chief*
Common Carrier Bureau
Federal Communications Commission
2025 M Street, N.W.
Room 6008
Washington, DC 20554

Greg Lipscomb*
Common Carrier Bureau
Federal Communications Commission
2025 M Street, N.W.
Room 6008
Washington, DC 20554

Glenn B. Manishin
Michael D. Specht
Blumenfeld & Cohen-Technology Law
Attys for International Telecard Assoc.
1615 M Street, N.W., Suite 700
Washington, DC 20036

Teresa Marrero
Teleport Communications Group Inc.
Two Teleport Drive
Staten Island, New York 10311

Theodore C. Rammelkamp, Jr.
Telaleasing Enterprises, Inc.
601 West Morgan
Jacksonville, Illinois 62650

Charles H. Helein
Helein & Associates, P.C.
Atty for America's Carriers
Telecommunications Association
8180 Greensboro Drive
Suite 700
McLean, Virginia 22102

Judith St. Ledger-Roty
Wendy I. Kirchick
Kelley Drye & Warren LLP
Attys for Paging Network, Inc.
1200 19th Street, N.W.
Suite 500
Washington, DC 20036

Leon M. Kestenbaum
Jay C. Keithley
H. Richard Juhnke
Sprint Corporation
1850 M Street, N.W.
11th Floor
Washington, DC 20036

William B. Wilhelm, Jr.
Dana Frix
Pamela S. Arluk
Swidler & Berlin
Counsel for Excel Telecommunications, Inc.
& Telco Communications Group, Inc.
3000 K Street, N.W., Suite 300
Washington, DC 20007

Danny E. Adams
Steven A. Augustino
John J. Heitmann
Attys for LCI International Telecom
Corp. & Telecommunications Assoc.
Kelley Drye & Warren LLP
1200 19th Street, N.W., Suite 500
Washington, DC 20036

Carl W. Northrop
E. Ashton Johnston
Paul, Hastings, Janofsky & Walker LLP
Counsel for AirTouch Paging
1299 Pennsylvania Avenue, N.W.
10th Floor
Washington, DC 20004-2400

Michael J. Shortley, III
Attorney for Frontier Corporation
180 South Clinton Avenue
Rochester, New York 14646

Kathy L. Shobert
General Communications Inc.
901 15th Street, N.W., Suite 900
Washington, DC 20005

Laura H. Phillips
Loretta J. Garcia
Dow, Lohnes & Albertson, PLLC
Attys for MIDCOM Communications
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, DC 20036-6802

Ronald Binz
Debra Berlyn
John Windhausen, Jr.
Competition Policy Institute
1156 15th Street, N.W.
Suite 310
Washington, DC 20005

Charles C. Hunter
Catherine M. Hannan
Hunter Communications Law Group
Attys for Telecommunications
Resellers Association
1620 I Street, N.W., Suite 701
Washington, DC 20006

Richard H. Rubin
Mark C. Rosenblum
Jodie Donovan-May
Attys for AT&T Corporation
295 North Maple Avenue
Room 3252I3
Basking Ridge, New Jerssey 07920

Rachel J. Rothstein
Cable & Wireless, Inc.
8219 Leesburg Pike
Vienna, Virginia 22182

Barry E. Selvidge
Communications Central, Inc.
1150 Northmeadow Parkway, Suite 118
Roswell, Georgia 30076

Richard S. Whitt
for WORLDCOM, Inc.
1120 Connecticut Avenue, N.W.
Suite 400
Washington, DC 20036

Genevieve Morelli
The Competitive Telecommunications
Association
1900 M Street, N.W., Suite 800
Washington, DC 20036

Lisa Mullings
NATSO, Inc.
1199 North Fairfax Street
Suite 801
Alexandria, Virginia 22314-1492

Robert L. Hoggarth
Personal Communications Industry Assoc.
500 Montgomery Street
Suite 700
Alexandria, Virginia 22314

Eric L. Bernthal
Michael S. Wroblewski
Latham & Watkins
Attys for Peoples Telephone Company
1001 Pennsylvania Avenue, N.W.
Suite 1300
Washington, DC 20004

Scott Blake Harris
Kent D. Bressie
Gibson, Dunn & Crutcher, LLP
Attys for Personal Communications Industry Association
1050 Connecticut Avenue, N.W.
Washington, DC 20036

Mark A. Stachiw
AirTouch Paging
12221 Merit Drive, Suite 800
Dallas, Texas 75251

Bruce W. Renard
Peoples Telephone Company, Inc.
2300 N.W. 89th Place
Miami, Florida 33172

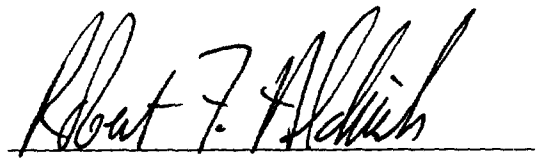
Mary McDermott
Linda Kent
Keith Townsend
Hance Haney
Counsel for United States Telephone Association
1401 H Street, N.W.
Suite 600
Washington, DC 20005

Michael K. Kellogg
Jeffrey A. Lamken
Kevin J. Cameron
Kellogg, Huber, Hansen, Todd & Evans
Counsel for the RBOC/BTE/SNET Payphone Coalition
1301 K Street, N.W.
Suite 1000 West
Washington, DC 20005

Douglas F. Brent
WORLDCOM, Inc.
9300 Shelbyville Road
Suite 700
Louisville, Kentucky 40222

Steven P. Goldman
Bradley D. Toney
Attys for MIDCOM Communications
1111 Third Avenue
Suite 1600
Seattle, Washington 98101

ITS*
1231 20th Street, N.W.
Washington, DC 20036



Robert F. Aldrich