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

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matter of)
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Implementation of the Pay Telephone)
Reclassification and Compensation)
Provisions of the Telecommunications)
Act of 1996)
_____)

CC Docket No. 96-128

**AMERICAN PUBLIC COMMUNICATIONS COUNCIL'S REPLY TO
OPPOSITIONS AND COMMENTS OF IXCS, 800 NUMBER SUBSCRIBERS
AND PAGING SERVICE PROVIDERS**

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SUMMARY

What the Commission achieved in its payphone proceeding was no small thing: it ended long-time payphone subsidies, uncovered hidden costs, and created a system where the caller is in charge and can bear the economic consequences of its choice to use a payphone for a dial-around call. Some petitioners claim, however, that "there may never be effective competition for subscriber 800 calls." APCC has pointed out in detail the use by some petitioners of misleading "no-competition" claims to undermine, first, the local coin rate as a market-based compensation surrogate and, second, the use of any other benchmark to replicate a market result. This line of argument conveniently leads these petitioners to their old standby proposal, as if it were the only alternative remaining: that per-call compensation rates be cost-based. But the Commission has rejected and re-rejected the cost-based approach for good reason -- it does not "fairly" compensate PSPs for originating calls. Use of the incremental cost-based standard would dramatically undercut the widespread deployment of payphones to the benefit of the general public, as envisioned by Congress. Once again, the Commission should jettison the interexchange carriers' we-should-pay-less arguments in favor of incremental cost-based pricing for payphone calls.

The thrust of the petitioners' arguments is premised on their theory of the absence of competition in the payphone marketplace, and that there is "no reason to believe that the marketplace will undergo a complete metamorphosis." With this premise

and the statement that there will never be competition, petitioners significantly overreach. In fact, this claim that there will never be competition has been directly contradicted by activity in the payphone marketplace -- even as the parties to this proceeding are drafting their reply comments. According to news reports datelined January 19, 1998, a number of trucking companies and trucking-related interests that receive "800" calls from payphones are using their "market clout" to "shift[] away from their lobbying efforts and toward a market-based solution to [compensation for dial-around calls]." These reports detail how the truckers are "hoping that their sizable market clout in long-distance charges . . . will buy them deep discounts if they deal directly with long-distance carriers."

In commenting about payphone surcharges passed on by the interchange carriers, one industry leader pointed to the willingness of the interexchange carriers to profit from the Commission's payphone proceeding by "tak[ing] advantage of the situation *to double and even triple dip*" to recoup compensation payments to PSPs." In other words, many interexchange carriers have been happy to pass on payphone surcharges to callers, but the same carriers have not passed on the corresponding savings from the access charge reductions resulting from the Commission's payphone proceeding.

Not content to attack only the Commission's market-based approach, several commenters support the petitions of their allies by questioning various aspects of the Commission's determination of the 28.4 cent market-based per-call compensation rate. The Commission should reject these types of "hit or miss" arguments that attempt to reduce further the market-based per-call compensation amount.

Those parties opposed to APCC's petition fail to show why its proposed adjustments to the default compensation rate should not be made. First, the interexchange carriers fail to undermine APCC's showing that the 3.1 cents attributed to the capital costs associated with the payphone's coin mechanism should have been included in the cost of a dial-around call, rather than considered an avoidable cost by the Commission and therefore deducted from the deregulated local coin rate. The fixed costs of the payphone, including any portion of the fixed costs that is related to the coin calling capability of the payphone, should be attributed to all calls -- not just the coin calls.

Second, the interexchange carriers do not succeed in raising doubts about another adjustment to the default compensation rate proposed by APCC: adding the costs of 4.3 cents per-call associated with the collection of compensation. Under the compensation system that is currently in place, PSPs will continue to incur compensation collection and bad debt costs, which should be reflected in the default compensation amount.

Third, the interexchange carriers and others argue unconvincingly against APCC's contention that the Commission should reconsider the level of its adjustment for ANI digit upgrade costs. The Commission correctly found that such costs were to be included within the default compensation rate; now it should reconsider the class of calls to which those it attributes those costs and conclude that they apply only to the number of dial-around calls originated by a payphone.

As APCC pointed out in its opposition, a number of petitioners, particularly the paging industry, raise a number of issues that are beyond the scope of the Commission's proceeding on remand, most notably variations on the rejected "caller-pays" compensation approach and "per-increment" pricing. Many of these same parties and their allies again attempt to resurrect issues that have either been considered and rejected already, or are not necessary to address at this juncture. These peripheral issues are more appropriately the subject of a separate proceeding in the future, should the Commission elect to address them at all.

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CC Docket No. 96-128

**AMERICAN PUBLIC COMMUNICATIONS COUNCIL'S REPLY TO
OPPOSITIONS AND COMMENTS OF IXCS, 800 NUMBER SUBSCRIBERS
AND PAGING SERVICE PROVIDERS**

The American Public Communications Council ("APCC") hereby replies to the oppositions and comments¹ filed in response to the Commission's October 9, 1997 Second Report and Order in the above-captioned docket.²

A number of the oppositions and comments filed in response to the various petitions for reconsideration use remarkably strident language not only to distort the payphone service providers' ("PSPs") defense of the "fair" compensation that Congress

¹ AT&T Corp. ("AT&T"); MCI Telecommunications Corporation ("MCI"); Sprint Corporation ("Sprint"); Consumer-Business Coalition for Fair Payphone-800 Fees ("CBC"); Airtouch Paging ("Airtouch"); Mobile Telecommunication Technologies Corp. ("Mtel"); Telecommunications Resellers Association ("TRS"); Ad Hoc Telecommunications Users Committee ("Ad Hoc"); Business Link; and Metrocall, Inc. ("Metrocall"). Other oppositions and comments on petitions for reconsideration, which APCC does not specifically address, were filed by Peoples Telephone Company, Inc.; Communications Central, Inc.; the RBOC/GTE/SNET Payphone Coalition; and APCC itself.

² Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Second Report and Order, FCC 97-371 (rel. October 9, 1997) ("Second Report and Order").

mandated they receive for originating dial-around calls, but also to impugn the Commission's creation of a deregulated payphone marketplace to achieve the statutory goal of a "widespread deployment of payphone services to the benefit of the general public." 47 U.S.C. Section 276(b). Instead of praising the Commission for bringing the benefits of the free market to the payphone industry, the commenters instead contend that the Second Report and Order "represents a radical departure from prior approaches to encouraging competition in non-competitive marketplaces." AT&T at 6 (quoting CBC Opposition at 18). This is exactly backwards. What the Commission achieved in its payphone proceeding was no small thing: it ended long-time payphone subsidies, uncovered hidden costs, and created a system where *the caller is in charge and can bear the economic consequences of its choice to use a payphone for a dial-around call.*

Some commenters assert, incorrectly, that there is no competition for coinless calls in the payphone marketplace. AT&T throws down the gauntlet and declares that "there may never be effective competition for subscriber 800 calls." AT&T at 7 (emphasis added). Such a stark, point-of-no-return statement reveals, as demonstrated below, both AT&T's ax-wielding agenda at this point in this proceeding, and the common-sensical shortcomings of its approach.

AT&T contends, in effect, that there is a lack of leverage against the hypothetical "market power" of the PSPs when it comes to setting the local coin rate and the corresponding default compensation rate at each payphone.³ AT&T at 4-7. Nothing

³ AT&T's analysis fails to acknowledge that it is the PSPs who lack leverage in
(Footnote continued)

could be farther from the truth, particularly since the Commission's rules affirmatively put the caller in charge by making it possible for her to bear the economic consequences of using a payphone. As APCC has previously demonstrated, the IXC's can and do pass the payphone compensation charges on to their subscribers. In turn, 800 subscribers can and do pass on the charges to their customers through a direct surcharge for using a payphone.⁴

The payment stream flows ultimately from the PSP -- as payee -- back to the originator of the call -- as payor.⁵ APCC Opposition at 9.

Once the caller is in charge and responsible for paying his/her way, the caller has real, measurable market power that will have an impact on the prices charged at payphones. For example, callers can defer their calls until they return to their homes or workplaces. More importantly, a caller can exert pressure on premises owners to reduce rates charged at payphones. In the increasingly competitive world today -- both in the payphone arena and in the marketplace at large -- a business that has a payphone located on its premises will listen and react to customers who complain about a price that is too high. Once informed that its customers -- i.e., the relevant market -- will not support a particular price, the

(Footnote continued)

setting a rate for dial-around calls, because Section 226 of the Act, which codified the Telephone Operator Consumer Services Improvement Act ("TOCSIA") requires PSPs to unblock access to the IXC's that carry those calls. As a result, PSPs have no choice to originate dial-around calls, regardless of whatever rate they may be paid. 47 U.S.C. Section 226.

⁴ Contrary to the statements by AT&T and CBC, payphone surcharges have quickly provided callers with a compelling incentive to "seek out the least expensive payphone alternative." See AT&T at 4 (citing CBC Opposition).

⁵ If any party along the payment stream choose to absorb the costs of payphone compensation rather than pass it downstream, that party has made a permissible marketing decision that is market-driven.

business would risk driving away valuable customers by not insisting that the PSP lower its price. APCC Opposition at 11. With virtually every type of business, the customer tends to be king -- and this is all the more so when it comes to pricing payphone services.

The entire thrust of AT&T's opposition is premised on its theory of the absence of competition in the payphone marketplace, and that there is "no reason to believe that the marketplace will undergo a complete metamorphosis." AT&T at 3 (citing CBC Opposition). With this premise and the extreme statement that there will never be competition, AT&T significantly overreaches. The AT&T-CBC view that "there is no evidence that payphone competition is widespread. . ." is completely at odds with the pro-competitive, deregulatory environment fostered by the Commission's rules. AT&T at 6 (emphasis added by AT&T to quote from CBC Opposition).

APCC has pointed out in detail the use by AT&T and others of misleading "no-competition" claims to undermine, first, the local coin rate as a market-based compensation surrogate and, second, the use of any other benchmark to replicate a market result. This line of argument conveniently leads AT&T *et al.* to their old standby proposal, as if it were the only alternative remaining: that per-call compensation rates be cost-based. APCC Opposition at 2-4. The Commission has rejected and re-rejected the cost-based approach for good reason -- it does not "fairly" compensate PSPs for originating calls. Use of the incremental cost-based standard would, on the other hand, dramatically reduce the compensation bill for AT&T and others, because cost-based pricing would undercut the widespread deployment of payphones to the benefit of the general public, as envisioned by

Congress. Thus, the reduction of AT&T's compensation bill would be at the expense of end-users, who would have far fewer payphones from which to make their away-from-home calls. In addition, cost-based pricing would threaten the ability of PSPs, many of whom are small businesses, to remain in business at all, because dial-around calls would be compensated at a rate *below their fair market value and below the actual costs of incurred by PSPs.*

AT&T's claim that there will never be competition has been directly contradicted by activity in the payphone marketplace -- even as the parties to this proceeding are drafting their reply comments. According to a story datelined January 19, 1998 from the Knight-Ridder/Tribune Business News, a number of trucking companies and trucking-related interests that receive "800" calls from payphones are using their "market clout" to "shift[] away from their lobbying efforts and toward a market-based solution to [compensation for dial-around calls]." See Schulz, John D. "Truckers Bank on Market Clout to Avoid FCC Surcharge on 800-Number Calls," Traffic World via Knight-Ridder/Trivune Business News (January 20, 1998).⁶ The article details how the truckers are "hoping that their sizable market clout in long-distance charges . . . will buy them deep discounts if they deal directly with long-distance carriers." Id. All of these efforts by truckers are geared toward "getting around the 28.4 cent tab." Id.⁷ In

⁶ This article appears in its entirety as Appendix A.

⁷ The news article does exaggerate, however, the "\$700 million" annual amount that payphone compensation will have on the trucking industry alone. The total amount paid to PSPs probably would not exceed \$1 billion each year (2 million payphones x approximately \$45 per month x 12 months per year).

particular, Daniel E. England, chief executive officer of C.R. England, the nation's third-largest refrigerated hauler perfectly describes the power of 800 subscribers to bring competitive pressure to bear on setting a fair rate for payphone-originated calls:

We command great market strength. We can designate a preferred provider. We hope competitive forces can improve our situation. We think some of the new (telecommunications) players will be aggressive. There's a whole different landscape. People have to know there are alternatives.

Id.

In commenting about payphone surcharges passed on by the IXCs, Lana R. Batts, president of the Truckload Carriers Association, pointed to the willingness of the IXCs to profit from the Commission's payphone proceeding by "tak[ing] advantage of the situation *to double and even triple dip*" *to recoup compensation payments to PSPs.*" Id. (emphasis added). Since the compensation rate was first announced 14 months ago, carriers have repeatedly increased their rates, ostensibly to "recover" the costs of paying payphone compensation. For example, MCI raised rates for general customers in June "as a result of the Payphone Recovery Order of the Federal Communications Commission," and shortly afterward also imposed a 35 cents per call charge (later adjusted to 30 cents per call) specifically on certain calls originating from payphones. These charges were described as necessary to recover the costs of payphone compensation. Subsequently, in October, MCI extended the 30 cents per call surcharge to apply to 800-number "toll-free" calls as well as other calls originating from payphones. The additional charges were added without,

apparently, rescinding MCI's earlier general rate increase that supposedly was necessary to recoup payphone compensation costs.⁸

Contrary to AT&T's "no competition" claims, competition does exist in the payphone marketplace today,⁹ and callers have been empowered to hold premises owners and PSPs accountable for rates in excess of the fair market value. The Commission's challenge at this juncture is to preserve the fruits of increasing competition and to maintain the market-based environment that allows this competition to flourish.¹⁰

⁸ AT&T has taken similar actions. See AT&T press releases entitled "AT&T adjusts business long-distance prices to offset new payphone costs" (April 30, 1997); and "AT&T adjusts consumer prices to offset new payphone costs" (May 30, 1997). Both press releases are included as Appendix B to these reply comments.

In addition to overrecovering compensation payments from their customers, the IXC's have saved enormous sums from the elimination of access charge subsidies for LEC payphones. As a result of the removal of subsidies at the federal and state level, IXC's have reaped savings conservatively estimated at \$350 million annually. They have not shared any of these savings with their own customers. The IXC's also have saved huge amounts on payphone commission payments, as dial-around calls increasingly supplant direct-dialed "0+" operator service calls.

⁹ At the outset of the 1996 Payphone Order, the Commission concluded, with ample record support, that the payphone marketplace will become competitive over time. Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Report and Order, FCC 96-388 (rel. September 20, 1996) ("Payphone Order") at paras. 11-19. Such a conclusion was within the Commission's expertise to make. The actions the Commission took in that order and in subsequent orders have fostered this competitive environment.

In addition, the Commission took steps in its initial orders to remove barriers to entry and exit. APCC Opposition at n. 35. The removal of these barriers directly contradicts the AT&T-CBC claim that "[T]he Commission has effectively enhanced the ability of incumbent payphone providers to use their revenues to protect their market share, as well as discourage potential competitors from entering the marketplace." AT&T at 7 (quoting CBC Opposition). Instead of supporting the various state commissions in removing entry barriers and supporting a pro-competitive process, the ISCs have attached these efforts and sought more regulation.

¹⁰ To the extent that competition needed any help at all in evolving into full
(Footnote continued)

I. **ARGUMENTS IN SUPPORT OF A "BOTTOM UP," INCREMENTAL COST-BASED COMPENSATION RATE FAIL TO UNDERMINE THE COMMISSION'S RATIONALE FOR LETTING THE MARKET SET THE COMPENSATION RATE.**

As expected, the interexchange carriers ("IXCs"), paging service providers, and 800 subscribers all provide support for each other's petitions in their continuing effort to replace "fair" compensation for dial-around compensation with an incremental cost-based standard (i.e., less compensation) that is more to their liking. For example, AT&T supports CBC's statements that the existing market-based compensation approach will be an unwarranted "windfall" for PSPs that will have a "severe impact" on a multitude of businesses and their customers. AT&T at 3-6; see also TRS at 7-8.¹¹ Although AT&T and CBC attempt to paint a bleak picture of the consequences of businesses having to pay their fair share of payphone compensation, they succeed in providing an inventory of the types of

(Footnote continued)

maturity, the Commission has already created a "transition" period by extending the default compensation rate, as opposed to relying on the market-based rate at each payphone, for an additional year until October 7, 1999.

¹¹ AT&T also argues that non-profit 800 subscribers will be "unfairly subject ... to significant costs." AT&T at 6. AT&T quotes the Direct Marketing Association to make its point: "It would serve no one to discontinue (or block) a crisis line offering counseling to victims of abuse, to runaways, to the depressed or suicidal, to the hungry or homeless." *Id.* at n. 10. PSPs share the concerns of AT&T and DMA for society's downtrodden and less fortunate, as well as those who are suffering, but surely *all of these people would be worse off if there were no payphones for them to use*. It is significant that in making its argument, AT&T does not offer to provide free-of-charge long-distance service to these non-profit groups. Nor do any members of the CBC Coalition agree to forsake their revenue for the services they provide to these non-profit groups: e.g., truckers have not offered to transport goods for free for non-profits, the airlines have not given free tickets to the personnel of non-profit organizations. In sum, the IXCs and their subscriber 800 customers have been eager to demonstrate an altruistic concern for non-profit groups as a way of bolstering their arguments before the Commission, but they are unwilling to make the same corresponding financial sacrifice that they expect from PSPs.

business choices that the industry must make when responding to a new deregulatory framework that strips away subsidies and hidden costs. Ultimately, these business choices will be more economically rationale now that all parties concerned are paying the going rate for the exact services they are getting.

These same industry groups -- the IXCs, paging service providers, and 800 subscribers -- continue to fight the Commission's adoption of the deregulated local coin rate as a benchmark of how the marketplace values the ability to originate a dial-around call from a payphone. Indeed, they argue against the very notion of any market-based compensation surrogate. *See, e.g.*, TRS at 2-3; Ad Hoc at 2-3. This line of attack is followed by the resurrection of the frequently-raised, always-rejected remaining alternative: an incremental cost-based standard for determining compensation. As APCC has shown in its opposition, the Commission should not engage in a regulatory shell game with those whose only goal is to reduce their compensation obligations to a *de minimis* level. APCC Opposition at 2-19. Instead, the Commission should again recognize that only a market-based compensation approach is consistent with its obligation to provide "fair" compensation to PSPs, which will, in turn, achieve the "widespread deployment of payphone services to the benefit of the general public." 47 U.S.C. Section 276(b).

More specifically, in attacking the Commission's market-based compensation approach, MCI and Mtel support, with no additional analysis, AT&T's unpersuasive contention that local coin calls and dial-around calls are "independent goods." MCI at 2-3; Mtel at 4. This view is rather strained. As APCC demonstrated in its opposition,

there are obvious and important similarities that amply justify the FCC's decision to use the local coin rate as a benchmark for compensation. APCC Opposition at 8. Both "goods" are sold by a payphone provider; both "goods" in question are the use of a payphone to originate a call; and under the Commission's approach, the cost of both "goods" can be charged to the caller, who makes the economic decision of whether to place the call and then incurs the consequences of this decision. *Id.* This common sense view of the payphone marketplace is in stark contrast to the overly technical, purely theoretical arguments of AT&T and its allies.

In advocating an incremental cost-based standard for determining compensation, CBC supports its own contention, echoed by some other petitioners, that per-call compensation for dial-around calls be based on a "bottom up" cost-based standard, notwithstanding the Commission's reasons for declining to use such a standard. CBC at 2-3. Unlike AT&T, CBC does not avoid labeling such an approach as "incremental cost-based pricing," (*Id.* at 8) which was precisely the type of analysis the Commission has repeatedly rejected because it "would not permit the PSP to recover a reasonable share of joint and common costs" and, therefore, would not be the "fair" compensation mandated by Congress. *See, e.g., Second Report and Order* at para. 92. Because CBC has not provided any convincing support for an incremental cost-based standard instead of the much more practical market-based system, the Commission should, once again, jettison this we-should-pay-less argument. *See generally* APCC Opposition at 17-19, 23-33.

Not content to attack only the Commission's market-based approach, several commenters support the petitions of their allies by questioning various aspects of the Commission's determination of the 28.4 cent market-based per-call compensation rate. For example, MCI and CBC contend that it is not appropriate to base compensation on a "marginal payphone," because the market already supports economically inefficient payphones through "semi-public payphones" and "public interest payphones." MCI at 2; CBC at 3. In making this argument, MCI and CBC seem confused about the significance of "semi-public" and "public interest" payphones. To the extent that either category of payphones currently exists,¹² they operate outside of the competitive marketplace, and therefore have no place in the Commission's analysis.

In addition, the Commission focused on the "marginal payphone" because market prices are based on the marginal cost of the marginal unit of production (in this case, a payphone with revenue-producing traffic that is sufficient to recover the costs of providing the payphone). Second Report and Order at para. 46. This focus on the marginal payphone appears to have benefited the IXCs. Since marginal payphones have lower call volumes and thus higher per-call costs, the differential between local coin costs and dial-around costs is also presumably higher than it would be at an average payphone.

¹² Section 276 eliminated the traditional "semi-public" payphones, which were payphones provided by LECs pursuant to tariff. 47 U.S.C. Section 276. While that same statutory provision directed the Commission to determine whether or not public interest payphones should be supported, the Commission effectively delegated this determination to the states for resolution by late 1998. Payphone Order at paras. 277-86.

Subtraction of these higher per-call costs from the local coin rate thus produces a lower dial-around rate than if average payphones were used.

Two commenters once again suggest that the Commission did not provide an adequate justification for selecting the "highest" market-based compensation rate as the starting point for its analysis. AirTouch at 7-8; Mtel at 4. This argument defies common sense. The Commission found that five of the seven deregulated states had local coin rates of \$0.35, while two had rates of \$0.25. With this evidence, it was entirely reasonable to conclude that the rate in five states was a more reliable indicator of the market rate than the evidence from two other states. This reliance on the majority sample was subsequently further confirmed by the initial post-October 7, 1997 developments in which at least four of the five RBOC payphone divisions raised their rates, mostly to \$0.35 per call. See generally APCC Opposition at 20. The Commission should reject these types of "hit or miss" arguments that attempt to reduce the market-based per-call compensation amount.

II. THOSE PARTIES OPPOSED TO APCC'S PETITION FAIL TO SHOW WHY ITS PROPOSED ADJUSTMENTS TO THE DEFAULT COMPENSATION RATE SHOULD NOT BE MADE

The IXCs fail to undermine APCC's showing that the 3.1 cents attributed to the capital costs associated with the payphone's coin mechanism should have been included in the cost of a dial-around call, rather than considered an avoidable cost by the Commission and therefore deducted from the deregulated local coin rate. The fixed costs of the payphone, including any portion of the fixed costs that is related to the coin calling

capability of the payphone, should be attributed to all calls -- not just the coin calls. APCC Petition at 9-13. The Commission's rationale for treating coin mechanism costs as an avoidable cost incorrectly assumes that a PSP first decides whether to put in a payphone at all, based on expected revenue from coinless calls alone, and only after cost-justifying a coinless payphone based on coinless calls does the PSP consider whether the additional costs of a coin mechanism are justified by the revenue from "additional coin traffic." Reliance on this economic model is plainly illogical as a matter of common sense and incorrect as a matter of basic economics. *Id.*

Sprint, MCI, and AT&T acknowledge that payphones originate both coin and coinless calls, but insist that the costs of the coin mechanism should not be spread over all calls originated by a payphone. Sprint at 5; MCI at 3-4; AT&T at 12-13. Other than citing a PSP anecdote from a telecommunications trade publication, (Sprint at 6) the IXCs offer little analysis to demonstrate how it would be possible for payphones to remain economically viable to originate dial-around calls without the presence of a coin mechanism to facilitate other calls. In simple terms, the coin mechanism is one factor that ensures the existence of the payphone to originate all calls -- including subscriber 800 calls and access code calls. Therefore, coin mechanism costs should not be treated as "avoided" and should, instead, be spread over all calls originated by a payphone.

The IXCs do not succeed in raising doubts about another adjustment to the default compensation rate proposed by APCC: adding the costs of 4.3 cents per-call associated with the collection of compensation. APCC Petition at 14-15. The

Commission declined in the Second Report and Order to adjust the local coin rate by adding two components of dial-around collection costs: (1) bad debt from uncollectible compensation; and (2) compensation clearinghouse fees and other administrative costs of collecting compensation. This was in error.

Notwithstanding partisan assertions to the contrary by the IXC's, APCC's estimates were imminently reliable and based on its lengthy experience in operating a payphone compensation clearinghouse for its members. See, e.g., AT&T at 14-18, Sprint at 10, MCI at 5. The IXC's, who were among the delinquent compensation payors, attempt to shift the blame for their late payments back to the PSPs by citing various disputes over the quarterly lists of payphone automatic number identifications ("ANIs") provided by the local exchange carriers ("LECs"). AT&T at 16. The question of "blame" in this instance is irrelevant, however.¹³ Under this compensation system that is currently in place, PSPs incur compensation collection and bad debt costs, as demonstrated by APCC, that amount to at least 4.3 cents per call, regardless of whom is to blame.¹⁴ The

¹³ The ANI lists are prepared by the LECs and provided exclusively to the IXC-payors. Because they never receive the lists or have an opportunity to see them, the PSPs are at the mercy of the IXC's and the LECs in order to collect the compensation payments that they are legitimately owed. With regard to AT&T's argument that APCC's 8% level of compensation uncollectibles is an amount for which the PSPs were "principally responsible," APCC reached this 8% level of uncollectibles only after it had worked over time with both IXC's and LECs to account for any errors that might have been made by any party. Therefore, it is simply untrue that, as AT&T alleges, independent PSPs "themselves are principally responsible for the problems APCC identifies." AT&T at 15.

¹⁴ Under these circumstances, AT&T's efforts to shift the blame for errors to PSPs are mistaken at best.

Commission should add this 4.3 cents compensation system-imposed amount to the default per-call compensation amount.

The IXCs and others argue unconvincingly against APCC's contention that the Commission should reconsider the level of its adjustment for ANI digit upgrade costs. APCC has pointed out that the Commission should have divided the estimated monthly cost of ANI digit upgrades by 116, the number of dial-around calls at the Commission's "baseline" location. APCC Petition at 16. Instead, the Commission divided the cost by 542, the total call volume estimated at a "baseline" location. The IXCs argue that the ANI digit upgrade costs, which they label as "speculative" and "de minimis," should be borne by the PSPs instead of the IXCs. Sprint at 10-12; MCI at 5. The Commission correctly found that such costs were to be included within the default compensation rate; now it should reconsider the class of calls to which it attributes those costs and conclude that they apply only to the number of dial-around calls originated by a payphone.

III. THOSE PARTIES OPPOSING THE "FAIR" COMPENSATION MANDATED BY THE FCC FAIL TO DERAIL THE COMMISSION'S PROCEEDING BY RAISING PERIPHERAL ISSUES

As APCC pointed out in its opposition, a number of petitioners, particularly the paging industry, raise a number of issues that are beyond the scope of the Commission's proceeding on remand, most notably variations on the rejected "caller-pays" compensation approach and "per-increment" pricing. APCC Opposition at 34-40. Many of these same parties and their allies again attempt to resurrect issues that have either been considered and

rejected already, or are not necessary to address at this juncture. See, e.g., Ad Hoc at 5-9 ("modified" caller pays).

APCC argued earlier that these peripheral issues are more appropriately the subject of a separate proceeding in the future, *should the Commission elect to address them at all*. AirTouch and Sprint both see the wisdom of this approach with regard to some of these issues. Sprint at 14; AirTouch at 2-3. For its part, however, AirTouch contends that the Commission should "immediately" initiate a proceeding to address its proposals on a "caller-pays" compensation arrangement and per-increment compensation rates. AirTouch at 3. APCC does not agree with AirTouch's suggestion that such a proceeding be commenced immediately, if at all, particularly in view of the Commission's primary responsibility to resolve the more pressing compensation issues. Nevertheless, the Commission should recognize that there is support from an IXC and a paging service provider to defer consideration of at least some of these peripheral issues in favor of focusing the FCC's energies on the more significant issues concerning the determination of a "fair" per-call compensation rate.

The paging service providers continue to argue that the Commission has failed to consider the "unique characteristics" of the paging industry. See, e.g., Metrocall at 5. This is simply incorrect. The paging industry has participated extensively in CC Docket No. 96-128 since the proceeding was initiated. Rather than failing to consider the arguments of the paging industry, the Commission has not found the industry's claim of

"unique" status to warrant special treatment.¹⁵ As APCC stated earlier, the paging industry should not be allowed "to undo what has already been decided and upheld by the appellate court." APCC Opposition at 34.

AirTouch and Metrocall both fault the Commission for failing to consider how its rules would affect the interests of small businesses, as required by the Regulatory Flexibility Act.¹⁶ AirTouch at 10-12; Metrocall at 12-14. This argument appears to be yet another "last ditch" attempt to derail the Commission from considering the pressing compensation issues before it. To the extent that the Commission elects to expand its analysis under the Regulatory Flexibility Act, however, it should discuss the impact of its rules on the thousands of small businesses that provide payphone service to the public throughout the nation. Prior to the adoption of the Commission's rules in this

¹⁵ The "special treatment" for a "unique" industry rationale advanced by the paging service providers refuses to acknowledge that paging customers' calls are *just like most other payphone calls* -- quick, short-duration calls by callers on the move. Like many callers today who pay to dial into their voicemail from a payphone, paging customers respond to a page by dialing into a messaging platform. Both paging customers and the other callers receive the same service from a payphone, and they should both pay the same rate.

In addition, the "special treatment" rationale is supported with a good deal of hyperbole, but virtually no data. For example, Metrocall estimates that charges from payphones will "triple" a paging customer's monthly service rate. Metrocall at 6. Under this scenario, each paging customer would have to make "a very low estimate" of five calls per day from a payphone. *Id.* Metrocall does not, however, show any of the data, if any even exists, that led it to its "triple" conclusion. Metrocall's statements do underscore, however, the significant volume of calls originated by payphones that was *previously uncompensated* until the Commission adopted its rules in this proceeding. As APCC has noted, prior to the Commission's payphone rules, 800 subscribers were economic "free riders" in telecommunications marketplace, with the costs of originating 800 calls borne by PSPs *without any compensation whatsoever*. APCC Opposition at 10, n. 13.

¹⁶ 5 U.S.C. Section 601 *et seq.*

proceeding, a large number of these small businesses were in danger of going out of business because they were not compensated at all for an increasing number of subscriber 800 calls. If it weighs any of the hypothetical effects alleged by the paging industry, the Commission must balance it against the adverse impact on the small business PSPs of reducing the per-call compensation rate or applying an incremental cost-based pricing standard (which would be a de facto gross reduction of the per-call rate).

AT&T and CBC again raise the recurring "red herring" of the potential for fraud under the Commission's existing compensation system. AT&T at 6; CBC at 9. It is axiomatic that any compensation system has within it the potential for fraud. For example, the incremental cost-based standard advanced by AT&T and CBC also carries a potential for fraud. APCC has long maintained that the authorities must keep a vigilant eye on those situations where there is a potential for fraud. See APCC Opposition at 37. With assistance from both service providers and their customers, the authorities can detect, and quickly address, actual fraud through suspicious, irregular calling and billing patterns. APCC believes that any such fraudulent conduct must be prosecuted to the fullest extent of the law. In the meantime, however, the specter of potential fraud should not be used to undercut the fair compensation that is necessary to ensure the widespread deployment of payphones for the benefit of all people. Id.

A number of parties support arguments by petitioners that the general unavailability of call blocking capabilities invalidates the Commission's payphone compensation framework. See, e.g., AirTouch at 4-6; Metrocall at 8-9; TRS at 9. These

parties fail to acknowledge that blocking is in place for 60% of payphones. For the remaining payphones, blocking is not in place because of the failure of the IXC's and LEC's to coordinate their efforts in complying with the Commission's ANI coding digit requirements.

More importantly, the commenters' arguments disregard the fact that the Commission prescribed two rates of compensation. For the first two years, beginning October 7, 1997 and ending October 6, 1999, the Commission prescribed a uniform rate of 28.4 cents per call. For the period after October 6, 1999, the Commission prescribed a variable rate that is based on the local coin calling rate charged at the particular payphone in question (minus an adjustment to account for the difference between the costs of a local coin call and a dial-around call). The Commission expressly ruled that the uniform rate was prescribed "because certain call block capabilities are not yet available. . . ." Second Report and Order at para. 122, n. 325. Therefore, there is no immediate need for a blocking capability to be in place.¹⁷

¹⁷ Metrocall argues at length, apparently not in response to any particular petition or opposition, that the Commission's "carrier-pays" rules are "causing unjust and unreasonable billing practices" because the paging industry is unable to bill its customers for payphone charges on a timely basis. Metrocall at 9-11. The short answer to Metrocall's concerns is that if each of its customers makes as many calls from payphones as Metrocall indicates, (Id. at 6) Metrocall will be able to bill the payphone charges on a rolling basis, because each of its customers will expect to receive payphone charges every month. Therefore, Metrocall has no basis to complain about "stale" charges if the type of charge is essentially the same month after month.

In addition, whether or not Metrocall's arguments have any merit -- and they do not -- they have been presented to the Commission in the wrong venue. Billing problems and the other details of doing business, particularly under a new deregulatory framework, are to be expected to some degree and worked out between the parties. Payphone Order
(Footnote continued)