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

Federal Communications Commission  
Office of Secretary

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

**REPLY TO OPPOSITIONS**

American Alpha Dispatch Services, Inc., Absolute Best Monitoring, Inc., Affordable Message Center, Inc., Procommunications, Inc., National Dispatch Center, Inc., Abacus, Inc., United Cellular Paging, Inc., Alphanet, Inc. and All Office Support, Inc. (hereinafter "The Dispatching Parties"), through counsel and pursuant to Section 1.429(g) of the Commission's Rules, 47 C.F.R. §1.429(g), hereby respectfully submit their Reply to the Oppositions to the Petitions for Reconsideration of the Commission's Second Report and Order in the above-captioned proceeding.

It is abundantly clear from the documents filed in this proceeding that the Commission has done a poor job of informing the public of the impending change in how pay telephone operators are compensated for toll-free calls. Even if the Commission discounts the dozens of letters and electronic mail messages filed in recent weeks by members of the public who have no idea as to how the Commission conducts its proceedings, it is nevertheless evident that the public at large was totally unaware of this change. In the Dispatching Parties' Petition for Reconsideration, it was demonstrated how the Dispatching Parties, who are not Commission licensees, only became aware of the additional charge being levied when informed after the fact by the various IXCs. Other members of the public

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at large voiced similar concerns.<sup>1</sup> This issue is critical, because PSPs are attempting to complain that such Petitioners' complaints are "dead in the water".<sup>2</sup> Other than being highly appreciative of their proposal being called smelly fish,<sup>3</sup> the Dispatching Parties believe that the RBOC Coalition and APCC read the Court of Appeals' Remand too narrowly.<sup>4</sup> Further, the Dispatching Parties believe that the multitude of letters and pleadings filed by the general public make clear that they were not made aware of the proposal and therefore did not have an opportunity to participate in any meaningful way. In any event, for all the time spent arguing small nuances of law and how to excessively line one's pocket, an examination of what is the right thing to do would be more helpful for everyone.

Had the general public been able to participate in the proceeding at an earlier time, the Commission might have been surprised to learn that the general public apparently is not terribly

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<sup>1</sup>See, for example, the January 2, 1998 filing of American Sentry Systems, Inc.; and letters and electronic mail filed by Barbara Perkins, Volker and Sherrie Russ, and Terry Allen-Rouman.

<sup>2</sup>See, Opposition to Petition for Reconsideration filed by the RBOC/GTE/SNET Payphone Coalition on January 7, 1998 at page 8 ("RBOC Coalition"). See also, American Public Communications Council's ("APCC") Opposition to Petitions for Reconsideration, filed January 7, 1998 at 34.

<sup>3</sup>The RBOC Coalition also calls the Dispatching Parties arguments "bedraggled". *Id.* Webster's New Ninth Collegiate Dictionary defines "bedraggled" as "left wet and limp by or as if by rain" or "soiled and stained by or as if by trailing in mud." The Dispatching Parties do not view their concerns over having unlimited charges over which they have no control being forced upon them as "soiled". In the same pleading, the RBOC Coalition accuses the Dispatching Parties (and others) as attempting to get a "free ride", despite the fact that the former access charge means that no number holder ever had a "free ride" and no number holder has argued in this proceeding that PSPs are not entitled to just compensation. *Id.* at 15. In fact, the proceeding has now denigrated to an argument over the definition of the word "bellwether" and a discussion as to whether Peoples Telephone Company, Inc. is a profitable company.

<sup>4</sup>See, Reply to Opposition to Petition for Reconsideration filed by Source One Wireless II, L.L.C. ("Source One") on January 16, 1998 at 2-3, and Sprint Corporation ("Sprint"), filed on January 7, 1998 at 3.

opposed to having the caller pay the PSP compensation. Specifically, numerous individuals filed letters with the Commission stating that the caller should pay the fee.<sup>5</sup> As stated in a letter written to the Commission by Charles Davis, and received by the Commission on December 29, 1997, “[no charge should ever be initiated against a company without its consent. If someone wants to use a phone booth, they should pay the charge at the time of the call.” Against this background, it is clear that the Commission needs to revisit the compensation mechanism, which is part of the Court’s Remand.

APCC and the RBOC Coalition attempt to counter these arguments with their mantra that number holders are not required to pay the PSP charge, it is the IXC’s obligation.<sup>6</sup> However, the fact is that IXCs are passing on the charges, as any reasonable business would. At the same time, the previous access charge has not been eliminated from number holders’ bills, must likely because the Commission did not mandate any reduction. This PSP/IXC debate represents another example of the public being caught between PSPs, IXCs and LECs, each trying to grab the bigger piece of the pie without the least bit of obligation.<sup>7</sup>

The RBOC Coalition’s two page claim that the “paging industry” and others are “special interests” who just want a continued “free ride” on the Coalition’s “investment” rings extremely

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<sup>5</sup>See, for example, the letters from Richard R. Williams, Donna Baughman, William Baughman, Cynthia E. Gomes, James E. Moize, Ramon & Ann Scott, Donald Zandstra, Richard & Dorothy Bender, Rod Falkenstein, Farrell Ostler, and J. Arthur Haddow. While some of these letters were prepared on pre-printed forms, it is nevertheless clear that the actual comments are the filer’s views.

<sup>6</sup>See, APCC’s Opposition to the Petition for Partial Reconsideration of the International Telecard Association, filed January 15, 1998 at p. 2; RBOC Coalition Opposition to Petitions for Reconstitution filed January 7, 1998 at footnote 12.

<sup>7</sup>See, the Comments filed by the Dispatching Parties on January 15, 1998.

hollow.<sup>8</sup> First, the Dispatching Parties aren't sure what makes a "special interest" in this proceeding, but if the 800/888 number holder who winds up paying an additional \$.35 per pay telephone call makes one "special", then certainly the Dispatching Parties are very "special." However, such status does not mean that the Dispatching Parties comments or proposals are any less valuable or meaningful than the "special" PSPs who want more money.

Second, there has never been a "free ride" by 800/888 number holders with regard to pay telephone calls. As the RBOC Coalition well knows, PSPs have collected an access charge for years. These charges have ultimately been reflected in the charges levied on number holders. Thus, to claim that there is a "free ride" is disingenuous.

Third, it is extremely disturbing that the RBOC Coalition would even attempt to claim that the Dispatching Parties (and virtually every other number holder participating in the proceeding) is attempting to "get something for free". Rather, the Dispatching Parties (and every other participant of which the Dispatching Parties are aware) clearly stated that PSPs are entitled to just compensation. The only question is how the compensation is obtained.

The RBOC Coalition refuses to address the core issue: how does an 800/888 number holder prevent itself from being levied with unlimited pay telephone charges? The first answer proffered by APCC is: block pay telephone calls that charge too much after October 1998.<sup>9</sup> However, this is unrealistic. While some number holders at some point in the future might choose this course, the fact is that the charge is being levied now. For example, American Alpha saw a **27.2 % increase in its**

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<sup>8</sup>RBOC Coalition Opposition to Petitions for Reconsideration at 15-16.

<sup>9</sup>APCC Oppositions to Petitions for Reconsideration filed January 7, 1998 at p. 36-37.

**IXC bills for the first month that the charges were assessed!**<sup>10</sup> Other dispatch businesses reported similar increases. This is no small piece of change.

Further, this after-October “solution” is no solution at all. To the Dispatching Parties’ knowledge, no IXC has stated that it intends to offer (or even can offer) 800/888 number holders individualized selection of call blocking from individualized pay telephones. In other words, while an IXC, after October 1998, may be able to block pay telephone “A”, because “A” wants \$.35 per call, but permit pay telephone “B”, because “B” wants \$.10 per call, each 800/888 number holder apparently will not be given the same choice. Rather, as indicated in the attachment to Metrocall’s Reply Comments filed on January 20, 1998, 800/888 number holders will only have an “all or nothing” choice.

It is interesting to note that APCC’s “solution” harms its own industry. Blocked pay telephone calls result in less revenue for the telephone owner, and result in a less competitive marketplace. A reduction by the PSP in its coinless rate will not help, since it is an “all or nothing” blocking choice for the number holder. California Pay Telephones (“CPT”) complained to the Commission on December 30, 1997 about calls from its pay telephones being blocked by MCI. CPT states that over 50% of its calls are for 800/888 traffic. Other than CPT’s understandable outrage over MCI making money even when the call is blocked, CPT provides a sterling example of what will become the universal norm with a change in the rules, that is that pay telephone customers will not have access to 800/888 number regardless of whether they were willing to pay for the call.

In addition, under this “solution”, there is no way for a number holder to prevent paying for endless “hang-up” calls. APCC passes off this problem with the statement that it is an “... unfortunate

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<sup>10</sup>The Dispatching Parties previously reported this increase as 14% in an earlier filing.

reality that the potential for fraud exists with any communications system, not just dial-around calls.”<sup>11</sup> Once again, APCC misses the point. Of course, there will always be criminals. But here, the FCC has encouraged calls made for the sole purpose of collecting access revenue and without the intention of initiating communication. While the police may be aware that houses may be broken into, such realization does not make the police give a criminal the keys to the front doors. And, in this case, it is not fraud, at least not in terms of the law. There is no rule or statute which would prohibit a person from obtaining a pay telephone, and then begin dialing 800/888 numbers, waiting for someone to answer, and then hanging up or apologizing for calling the wrong number. And each of the Dispatching Parties (and many others of which the Dispatching Parties are aware) are now experiencing this phenomenon. It is real, it is here, and it must be dealt with.

APCC believes that the Dispatching Parties should refer fraud to the appropriate authorities for prosecution.<sup>12</sup> However, as pointed out above, there is technically no violation of law. Even more importantly, there is virtually no way to track this type of abuse. The Dispatching Parties receive IXC bills that are so large, they are produced on compact disc. In the case of American Alpha, one month’s bills rise over 6 feet from the floor. National Dispatch Center’s bills are even larger. Any attempt to sort through these bills to determine “fraudulent” calls would take weeks. The Dispatching Parties believe that it would be better to deter these calls than to impose an incredible burden on number holders to spot and attempt to obtain relief from abusers.

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<sup>11</sup>APCC Opposition to Petitions for Reconsideration at 37.

<sup>12</sup>Id.

The Dispatching Parties' "Modified Caller Pays" proposal has industry support and, as shown by the numerous informal letters received by the Commission, would be acceptable to the public.<sup>13</sup> No participant in this proceeding has provided any evidence that the proposal is not feasible, only that it would have been nice to have been offered earlier in the proceeding. The absolute beauty of the proposal is that it eliminates this endless debate before the Commission and in the courts over a surrogate rate and the absence of a true "marketplace", saving countless trees and limiting astronomical legal fees. PSPs will receive whatever compensation they desire, IXCs will pass on their costs, number holders may choose to accept what otherwise may be called a "collect" call, and the caller will have the access necessary to ensure the wide-spread availability of pay telephone calls. It is truly a win situation for everyone, and should be adopted immediately by the Commission.

The Dispatching Parties would be substantially harmed by the implementation of the current compensation plan. However, implementation of the Dispatching Parties' proposal ultimately serves each party in the process, while accomplishing the Commission's goals. The proposal is fully consistent with the Commission's responsibilities under the Telecommunications Act, and should be adopted to increase consumer options and help to limit fraud.

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<sup>13</sup>See, for example, Consolidated Comments of the Ad Hoc Telecommunications Users Committee filed on January 7, 1997.

WHEREFORE, the premises considered, it is respectfully requested that the Commission RECONSIDER its decision in the Second Report and Order in the above-captioned proceeding consistent with the views expressed herein.

Respectfully submitted,

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PROCOMMUNICATIONS, INC.  
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CERTIFICATE OF SERVICE

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