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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

March 5, 1998

Ms. Magalie Salas
Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

WRITTEN EX PARTE PRESENTATION

Re: **CC Docket No. 96-128**

Dear Ms. Salas:

On Thursday, March 5, 1998, Albert Kramer, on behalf of American Public Communications Council, submitted the attached Supplemental letter (supplementing our letter of February 27) to Mary Beth Richards, Deputy Managing Director of the FCC.

Please contact the undersigned if you have any questions.

Sincerely,

Robert F. Aldrich

Robert F. Aldrich

RFA/nw
cc: Mary Beth Richards
Glenn Reynolds
Rose Crellin
Greg Lipscomb
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

March 5, 1998

Mary Beth Richards
Deputy Managing Director
Federal Communications Commission
1919 M Street, N.W.
Room 852
Washington, DC 20554

Re: CC Docket No. 96-128

Dear Mary Beth:

This letter supplements our letter of February 27 on behalf of the American Public Communications Council ("APCC"), in which we urged the Commission to address, as soon as possible, the consequences of local exchange carriers ("LECs") continued failure to provide payphone-specific automatic number identification ("ANI") coding digits from "dumb" lines serving "smart" payphones[1] as required by the Payphone Orders.[2] APCC stressed the need for certainty regarding when and how independent payphone service providers ("PSPs") will be compensated for the fourth quarter of 1997 -- for which compensation payments are due in April 1998 -- by carriers that are unable to track calls in the absence of payphone-specific ANI coding digits.

As noted in the February 27 letter, various carriers subject to payphone compensation obligations have asserted that they are unable to pay compensation in the absence of payphone-specific ANI coding digits. In response to the Commission's grant of

[1] Lines serving "smart" payphones do not provide any network intelligence to operate the payphone. Accordingly, such lines are referred to herein as "dumb" payphone lines. Conversely, lines serving "dumb" payphones do provide network intelligence to operate the payphone. Therefore, such lines are referred to herein as "smart" payphone lines.

[2] Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Report and Order, 11 FCC Rcd 20,541 (1996) ("Payphone Order); Order on Reconsideration, 11 FCC Rcd 21,233 (1996) ("Reconsideration Order") (together "Payphone Orders").

waivers to LECs of the requirement to transmit payphone-specific ANI coding digits, some carriers, including AT&T, have requested that the Commission waive the carriers' obligation to pay compensation on a per-call basis for payphones connected to dumb lines (including the vast majority of independent payphones), and to allow them to pay compensation instead on a flat-rate basis to be determined by the Commission. Those waiver requests are pending.

Thus, through no fault of their own, independent PSPs, who have received nothing close to fair compensation for the last eight months, find themselves in a state of uncertainty as to when and on what basis they will receive payphone compensation for the last quarter of 1997. Under the current compensation schedule, compensation payments for the last quarter of 1997 (October 1 through December 31, 1997) are due April 1, 1998. It is essential that the Commission make an immediate ruling to ensure that PSPs will receive fair and timely compensation for the last quarter of 1997.

In our February 27 letter, APCC urged the Commission[3] to require, as a condition for waiving per-call compensation obligations, that carriers (including LECs) seeking a waiver must pay per-phone compensation for the fourth quarter of 1997 at a flat rate based on the average call volume from independent payphones. APCC proposed that this compensation should be *provisionally* allocated among carriers based on their proportionate shares of toll revenues, as in the first Report and Order. The carrier allocations would be subject to a true-up based on carriers' *actual* percentage shares of total compensable calls in the fourth quarter of 1997, determined according to carriers' March 31, 1998 reports pursuant to Section 64.1320 of the Commission's rules.

Upon reflection, APCC wishes to suggest, as an alternative, the following modified version of its February 27 proposal. Under this alternative, there would be a few changes from APCC's February 27 proposal. *Final* compensation payments for the fourth quarter of 1997 would be determined in essentially the same manner as in the February 27 proposal.[4] However, *provisional* compensation would be calculated on a different basis. The Commission would not require provisional compensation to be paid by carriers with more than $100 million of annual revenue based on each carrier's percentage of overall toll revenues. Instead, the Commission would require *every* carrier subject to compensation

[3] On these waiver-related matters, the Common Carrier Bureau may act for the Commission pursuant to delegated authority. Thus, references to the Commission herein can include the Bureau acting for the Commission.

[4] As discussed below, APCC is submitting with this letter new data from a survey of dial-around calling from independent payphones in 1997. The new data indicates that the average monthly volume of dial-around calling has increased from 152 to 159.

obligations to pay provisional compensation based on the average number of compensable calls actually received from Bell Operating Company ("BOC") smart-line payphones during the fourth quarter of 1997. The carrier's average would be multiplied by a factor to reflect record data indicating the difference between average dial-around calling volume from BOC payphones and independent payphones.

Further, the true-up to arrive at final compensation payments would not be conducted by carriers making true-up payments to one another. Instead, the true-up would require each carrier to pay PSPs (or vice versa) the difference between their provisional compensation payment and their final compensation payment.

The details of the modified proposal are as follows. Independent PSPs would be entitled to final compensation for the fourth quarter of 1997 at a flat rate based on the current record as to call volumes from independent payphones. We are submitting new survey data with this letter showing the current average of dial-around calling at independent payphones for 1997. According to APCC's survey, for the twelve-month period of 1997, dial-around calling averaged 159 calls per payphone per month.[5] This new data further confirms that there is a substantial disparity between call volume levels generated at independent payphones and the levels reported from LEC payphones using "smart" lines. At the current level of 159 calls per payphone per month, independent PSPs should receive compensation at an overall rate of $45.16 per payphone per month at the current compensation rate of 28.4 cents per call.

Because the appropriate allocation of this total compensation among carriers cannot be determined before compensation payments are due, each carrier requiring a waiver[6] would pay *provisional* compensation determined in the following manner. The Commission would require the five Regional Bell Operating Companies ("RBOCs") to immediately disclose, and would place on public notice, the total number of smart

[5] APCC's survey of 1996 call volumes, discussed in the February 27 letter, showed an average of 152 dial-around calls per month. That average was developed based on 11 months of call records from more than 4,000 diverse payphones. Comments of APCC, filed August 26, 1997, Attachment 4. APCC's 1996 average has been cited by numerous parties on all sides of this proceeding. See e.g., Comments of Comptel, filed August 26, 1997, at 12; Reply Comments of Sprint, filed September 7, 1997, at 4. The 1997 data was developed using essentially the same data sources and methodology. Therefore, this APCC data is the best available estimate of average call volume from independent payphones.

[6] Carriers requesting a waiver should be required to certify, under penalty of perjury, that they have no way to determine the number of compensable calls received from each dumb line.

payphone lines that were transmitting payphone-specific ANI digits on dial-around calls during the last quarter of 1997. Each carrier would determine its total number of compensable calls received from Regional Bell Operating Companies between October 7, 1997 (the start date for per-call compensation) and December 31, 1997. The carrier would then divide that number of calls by the number of RBOC smart lines specified in the public notice. The result would be each carrier's average number of compensable calls received from smart lines during the last quarter of 1997.

This amount would then be multiplied by a factor to reflect the current record information regarding the difference in average compensable call volume from RBOC payphones and independent payphones. In 1996, the RBOC Coalition estimated that their average compensable call volume from RBOC payphones (which used primarily "smart" lines) was 132 calls per payphone per month.[7] As noted above, APCC's current estimate of average compensable call volume from independent payphones (using almost exclusively dumb lines) is 159 calls per payphone per month. For purposes of determining provisional compensation, the Commission should require each carrier to multiply the average number of calls received from RBOC payphones by a factor of 159/132, or 1.20, to arrive at a provisional estimate of the average call volume from independent payphones. Each carrier would calculate its provisional payment to PSPs as follows: average compensable calls received from RBOC payphones times 1.20 times 28.4 cents. Thus, if a hypothetical carrier received an average of 20 compensable calls per month from each RBOC payphone during the fourth quarter of 1997, its per phone payment to independent PSPs for the fourth quarter of 1997 would be 20 x 1.20 x .284 = \$6.82 per phone per month.

This provisional payment would be subject to true-up based on the relationship between the average compensable call volume from independent payphones and the total volume reported by all carriers from RBOC dumb-line payphones. In order to determine the basis for a true-up, the Commission should remind carriers that they are required to report, by March 31, 1998, the total number of compensable calls they received during 1997. 47 CFR § 64.1320. The Commission should clarify that, in order to provide a uniform set of data for determining a true-up, carriers should report separately the number of compensable calls they received from smart payphone lines -- i.e., the number of dial-around calls with "27" associated -- from October 7 through December 31. After receiving all carriers' reports, it is a relatively simple task for the Commission to add up all the totals and calculate the percentage of the total volume of compensable calls that was received by each carrier. The Commission would then designate that percentage as the carrier's final share of the total call volume of 159 calls per payphone per month from

[7] Ex Parte Letter from Michael Kellogg to William Caton, August 23, 1996, cited in Payphone Order, ¶ 124, n.426.

independent payphones.[8] Thus, if carriers reported a total of 500 million calls from RBOC payphones in the fourth quarter of 1997, and the hypothetical carrier mentioned above reported 100 million calls, then that carrier's share would be 20%. The hypothetical carrier's final compensation obligation would be 20% of .284 times 159, or $9.03 per payphone per month. The carrier would make a supplemental payment of the difference between $9.03 and $6.82, or $2.21 per payphone per month to each independent PSP.

While this approach requires some explanation, it is actually a simple, straight-forward procedure that would involve minimal expenditure of Commission resources and would free the Commission from the need for further oversight of the process. The Commission would simply take the call volume data that is already required to be reported, calculate each carrier's percentage share on a spreadsheet, and publish the results. The payment obligations of each carrier would be objectively and finally determined.[9]

The process of calculating final per-phone compensation payments for each carrier is thus simple and straightforward, and should be completed within three weeks of the March 31 date for submission of carrier reports. The Commission should then issue a public notice specifying each carrier's final per-phone compensation obligation, and directing carriers to make supplemental payments, where necessary to meet their final compensation obligations for the fourth quarter of 1997, within 30 days. Carriers making late payments should be subject to interest charges and penalties.

As noted in APCC's earlier letter, it is essential that the final determination of the overall *level* of compensation for independent payphones connected to dumb lines be based on record data as to the level of traffic generated by *independent payphones using dumb lines* -- and not based on the call volumes reported by carriers as originating from smart lines. Smart payphone lines are overwhelmingly LEC payphone lines, and there is no reason to believe that the overall level of dial-around traffic from LEC lines is even approximately equal to the overall level of traffic from independent PSP lines. LECs claim they have large numbers of payphones that generate very little traffic -- the so-called

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[8] Carriers that *are* able to track calls from dumb lines during the waiver period would be included in the calculation of carrier percentages. However, their per-call payments would not be subject to the true-up.

[9] Further, this simple process, including reliance on data from smart payphones for allocation only, could also be applied to determine carriers' compensation obligations for subsequent waiver periods, and for the "interim" period. For these periods, the provisional payments described above would no longer be necessary. Carriers would make a single, final payment for each subsequent period, and for the interim period.

"semi-public" payphones -- with which independent PSPs do not compete. See e.g., Reply Comments of BellSouth, July 15, 1996, at 4, n.3. LECs also have claimed to be providing numerous "public interest payphones" generating very little traffic. Thus, average levels of dial-around traffic experienced from LEC payphones connected to smart lines are likely to be much lower than the average levels from independent payphones. By contrast, the difference between overall call *volumes* from LEC payphones and independent payphones is unlikely to affect the validity of the *allocation* of call volume *percentages* among carriers.

As noted earlier, APCC's studies provide a reliable estimate of average dial-around traffic from independent payphones. The data has been relied upon by numerous parties on both sides of the compensation proceeding. Because it is based on data from independent payphones, it is the most reliable available basis for estimating the level of dial-around traffic from independent payphones different category of payphones. Independent PSPs should not be forced to accept a compensation level that is based on an entirely different category of payphones maintained almost exclusively by LECs.

Conclusion

The above-described alternative to per-call compensation has become necessary because LECs and IXCs have been dilatory in fulfilling their obligations and as a result have failed to comply with the per-call tracking requirements of the Payphone Orders. The delays in implementing per-call compensation must end. The Commission should not accept any further excuses for non-compliance by LECs or IXCs. LECs should be required to make fully functioning Flex ANI available at all equal access switches by April 30, 1998. IXCs should be required to order Flex ANI no later than 30 days thereafter. Any further non-compliance by LECs or IXCs should incur the strongest available sanctions.

Sincerely,

Albert Kramer by RYA

Albert H. Kramer

AHK/nw
Attachment
cc: Glenn Reynolds
Rose Crellin
Greg Lipscomb
Jennifer Myers
Craig Stroup

ATTACHMENT 1

APCC Survey of Dial-Around Calling
at Independent Payphones in 1997

APCC SMDR Project
Industry Statistics (12-month Average for 1997)

By Greg Haledjian, APCC Government Relations Manager
March 5, 1998

In order to demonstrate call traffic patterns in the independent payphone market, the American Public Communications Council (APCC) asked its members to help APCC collect statistics on call counts and duration (call data) using the station message detail reporting (SMDR) capabilities of their payphones.

Currently, 21 companies operating more than 100,000 payphones have submitted monthly call data for the SMDR Project from January 1997 through December 1997. The samples used total more than 6,000 payphones in 32 states and in 73 different area codes across the United States. The payphones are at a wide variety of locations such as hotels, motels, convenience stores, restaurants, business districts, shopping malls, gas stations, apartment buildings, truck stops and casinos.

APCC members polled their payphones from their computers in order to download the call data into payphone management software. The members exported the call data to monthly files and sent the files to APCC's administrative office for further processing.

As part of this project, APCC compiled a list of "800" numbers that appeared with some frequency on payphones' SMDR records. Calling each number identified the organization subscribing to each collected number. Each number was then placed into one of three categories: (1) carrier access codes; (2) prepaid (or debit) cards; or (3) toll-free subscriber 800 (nonmatched) numbers. Lists of identified carrier access code numbers and prepaid card numbers were provided by APCC to Stefek Enterprises in Killeen, TX. Stefek inserted these lists into a database within its call data analyzer software, Payphone Data Reconfiguration System (PDRS). These lists were then used to determine the frequency of access code and prepaid card calls directed to various carriers from the sample payphones.

APCC used a modified version of PDRS to produce summaries of each company's monthly call data, showing call counts and summary detail for various categories of completed calls. The detail includes call counts for carrier access codes and prepaid card numbers identified with different carriers. The APCC defined a completed call for this project by setting an acceptable duration for each type of call. These reports were exported from PDRS and imported into Excel spreadsheets.

Within Excel, statistics were developed for each company showing month-by-month average call counts per payphone, call percentages and carrier percentages for various categories of calls. Average statistics for all of the companies for each month from January 1997 through December 1997 were developed by aggregating call data from every company submitting call data for each specific month, and averaging each month's total over the number of payphones reporting data for the month.

The 1997 twelve-month average of dial around calls was 159: 33 access code calls, 3 prepaid card calls, and 123 toll-free subscriber calls. The month with the highest number of dial around calls for 1997 was August with 193 calls: 43 access code calls, 4 prepaid card calls, and 146 toll-free subscriber calls. Overall, these numbers are greater than the 1996 eleven-month average of 152 dial around calls: 39 access code calls, 5 prepaid card calls, and 108 toll-free subscriber calls.

APCC is continuing the SMDR Project in order to compile a record of call traffic patterns that is as comprehensive as practicable during this critical period in the development of the payphone compensation rules.

Please let me know if you have any questions or comments.

Industry Statistics													
Average per ANI													
Year/Month	***9701***	***9702***	***9703***	***9704***	***9705***	***9706***	***9707***	***9708***	**9709**	**9710**	**9711**	***9712***	***12-mo Avg***
No. of ANIs	*3,644*	*4,754*	*4,964*	*4,957*	*5,753*	*5,687*	*6,073*	*4,174*	*4,590*	*3,605*	*2,478*	*2,422*	*4,425*
Dial Around Calls													
Access Code	30	28	31	32	37	39	41	43	35	35	26	25	*33*
Prepaid Card	3	3	4	4	4	4	3	4	2	2	2	1	*3*
Toll-free Subscriber	105	95	108	117	127	133	139	146	135	146	108	112	*123*
Total Calls/Month	138	127	143	152	168	176	183	193	172	184	135	139	*159*