

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

CC Docket No. 96-128

To: Chief, Common Carrier Bureau

PETITION FOR WAIVER

Fort Bend Telephone Company ("Fort Bend"), by counsel, hereby requests this waiver, to the extent necessary, of the requirement that, by March 9, 1998, local exchange carriers ("LECs") must provide payphone-specific coding digits ("Payphone Coding") in order to facilitate per-call compensation required to be paid by interexchange carriers ("IXCs") to payphone service providers ("PSPs").¹ In the event that the Commission concludes that LECs must provide the Payphone Coding service only through Flex Automatic Number Identification ("Flex ANI"), Fort Bend, pursuant to Section 1.3 of the Commission's Rules,² requests a temporary waiver of the Payphone Coding requirement, until 90 days following the release of an Order mandating the use of Flex ANI. As demonstrated herein, Fort Bend submits that, to

¹See Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Report and Order, 11 FCC Rcd 20541 (1996)("Payphone Order"); Order on Reconsideration, 11 FCC Rcd 21233 (1996)("Payphone Reconsideration Order"); Order, CC Docket No. 96-128, DA 97-2162 (rel. October 7, 1997); Second Report and Order, CC Docket No. 96-128, FCC 97-371 (rel. October 9, 1997).

²/ 47 C.F.R. § 1.3 (1996).

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the extent that this waiver is necessary, good cause exists³ for the relief requested herein. In support thereof, the following is shown:

Fort Bend is a rural LEC headquartered in Rosenberg, Texas, serving approximately 31,726 access lines. Fort Bend planned to use a Line Information Data Base ("LIDB") service to comply with the Payphone Coding requirement,⁴ and anticipated that this service would provide Payphone Coding in a manner consistent with that required by the Commission.⁵ Fort Bend evaluated its options in providing Payphone Coding and determined that a LIDB solution would be most suitable for its network. Fort Bend did not believe that the purchase of the Flex ANI software was justified since it anticipates that Flex-ANI would only be used to meet its obligations to provide Payphone Coding.⁶

Due to the uncertainty associated with whether the Commission will permit small LECs

^{3/} "The Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest." WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969). Waiver of a Commission rule is appropriate where (1) the underlying purpose of the rule will not be served, or would be frustrated, by its application in a particular case, and grant of the waiver is otherwise in the public interest, or (2) unique facts or circumstances render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest, and there is no reasonable alternative. Northeast Cellular Telephone Co., L.P. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

^{4/} See Declaration of Frank Anderson, Controller of Fort Bend. The declaration bears a facsimile signature. The original declaration will be filed with the Commission upon receipt by counsel.

^{5/} See Payphone Order, 11 FCC Rcd at 20591 (¶ 98); Payphone Reconsideration Order, 11 FCC Rcd at 21265-266 (¶ 64).

^{6/} Fort Bend estimates that it would cost approximately \$23,000 to install Flex ANI software in its existing switch facilities. Fort Bend currently provides service to 290 payphones.

technical options⁷ with respect to Payphone Coding, *i.e.*, either through LIDB-based services or Flex ANI,⁸ it is unclear whether Fort Bend's planned use of LIDB will comply with Commission directives. Accordingly, out of an abundance of caution, and in light of the impending March 9, 1998, deadline, Fort Bend files this request for waiver.

In the event that the provision of Payphone Coding via Flex ANI is mandated, Fort Bend seeks a temporary waiver of the March 9, 1998, Payphone Coding requirements. Based on discussions with its switch manufacture, Fort Bend anticipates that its requested ninety (90) day extension following the release of an Order mandating the use of Flex ANI will permit it to purchase, test, and deploy Flex ANI software in its switch facilities. In the absence of this extension, Fort Bend will be technically incapable of providing Payphone Coding, assuming Flex ANI is mandated. Fort Bend submits that this brief delay in the provision of Payphone Coding is outweighed in light of its overall desire to make only what it believes to be justified network investments.

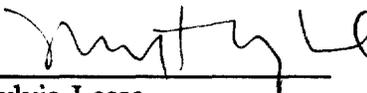
⁷/ The Commission previously has recognized the need to provide to smaller LECs technical options for the provision of new services. See, e.g., In the Matter of Policies and Rule Concerning Operator Service Access and Pay Telephone Compensation, CC Docket No. 91-35, Third Report and Order, 11 FCC Rcd 17021 (1996), Memorandum Opinion and Order, CC Docket No. 91-35, DA No. 96-2169 (rel. December 20, 1996); see also Payphone Order, 11 FCC Rcd at 20590-591 (¶ 97), Payphone Reconsideration Order, 11 FCC Rcd at 21278 (¶ 93); In the Matter of Provision of Access for 800 Service, Memorandum Opinion and Order on Reconsideration and Second Supplemental Notice of Proposed Rulemaking, CC Docket No. 86-10, 6 FCC Rcd 5421 at 5426 (1991) citing Report and Order, 4 FCC Rcd at 2829, n.90.

⁸/ See Public Notice, CC Docket No. 96-128, DA 97-2214, released October 20, 1997; see also The United States Telephone Association Petition for Waiver, filed September 30, 1997; the LEC ANI Coalition Petition for Waiver, filed September 30, 1997; and TDS Communications Corporation Petition for Waiver, filed October 1, 1997.

In light of these specific facts and circumstances, Fort Bend submits that, if Flex ANI- is mandated for the provision of Payphone Coding, a ninety (90) day extension following the release of an Order mandating the use of Flex ANI to provide Payphone Coding is warranted and in the public interest. Good cause being shown, Fort Bend requests this waiver to the extent deemed necessary.

Respectfully submitted,

FORT BEND TELEPHONE COMPANY

By 
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Its Attorneys

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March 6, 1998

DECLARATION OF FRANK ANDERSON

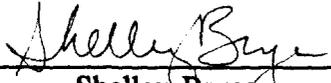
I, Frank Anderson, Controller of Fort Bend Telephone Company, do hereby declare under penalties of perjury that I have read the foregoing "Petition for Waiver" and the information contained therein is true and accurate to the best of my knowledge, information, and belief.


Frank Anderson
Controller

Date: March 6, 1998

Certificate of Service

I, Shelley Bryce, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC, 20037, hereby certify that a copy of the foregoing "Petition for Waiver" was hand-delivered this 6th day of March, 1998, to the following parties:



Shelley Bryce

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