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

To: The Commission

<u>THE CALIFORNIA PAYPHONE ASSOCIATION'S MOTION TO WITHDRAW ITS PETITION FOR RECONSIDERATION</u>

The California Payphone Association ("CPA"), Petitioner in the above-referenced matter, hereby moves to withdraw its Petition for Reconsideration ("Petition") in this matter filed on January 13, 1997. By the Petition, CPA requested further reconsideration or clarification of several issues. Specifically, CPA requested: 1) that the Commission clarify that an exogenous cost adjustment is required for the transfer of deregulated payphone assets to an affiliate at fair market value; 2) that the Commission require LECs to allow PSPs to choose the end user rates used in the network to rate sent-paid calls; 3) that the Commission rule that IPP providers must be provided with unique payphone screening codes on COCOT lines; and 4) that the Commission clarify that LECs may not discriminate in the provision of operator service commissions to their own payphones.

Some of the issues CPA was seeking to have reconsidered have been resolved, while others are now pending before the Commission in other proceedings. Accordingly, CPA hereby moves to withdraw the Petition.

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Respectfully submitted,

Albert Kramer

Albert H. Kramer
Robert F. Aldrich
DICKSTEIN SHAPIRO MORIN & OSHINSKY, LLP
2101 L Street, N.W.
Washington, DC 20037-1526
(202) 785-9700

Special Attorneys for California Payphone Association

Martin A. Mattes

NOSSAMAN, GUTHNER, KNOX & ELLIOT
50 California Street
San Francisco, CA 94111-4799
(415) 398-3600

Attorney for California Payphone Association

April 14, 1998

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PETITION FOR RECONSIDERATION OF
THE CALIFORNIA PAYPHONE ASSOCIATION

Martin A. Mattes
GRAHAM & JAMES
One Maritime Plaza
Suite 300
San Francisco, CA 94111
(415) 954-0200

Attorney for the California Payphone Association

Albert H. Kramer
Robert F. Aldrich
DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP
2101 L Street, N.W.
Washington, D.C. 20037-1526
(202) 785-9700

Special Attorneys for the California Payphone Association

January 13, 1997

632647

SUMMARY

The California Payphone Association ("CPA") requests further reconsideration or clarification of several issues that may not have been resolved in the previous orders in this proceeding. First, CPA requests clarification that an exogenous cost adjustment is required for transfer of deregulated payphone assets to an affiliate at fair market value. Second, the Commission should rule that, to comply with nondiscrimination requirements, LECs' coin line offerings must allow the PSP to select the end user rates used in the network to rate sent-paid calls. Third, the Commission must rule that a unique payphone screening code must be provided for the "COCOT" lines used predominantly by IPP providers as well as for the coin lines used predominantly by LEC payphones. Fourth, the Commission should clarify that LECs may not discriminate in the provision of operator service commissions to their own payphone operations.

TABLE OF CONTENTS

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

PETITION FOR RECONSIDERATION OF
THE CALIFORNIA PAYPHONE ASSOCIATION

The California Payphone Association ("CPA") hereby petitions for further reconsideration of the Commission's Order on Reconsideration, FCC 96-439, released November 8, 1996, 61 Fed. Reg. 65341 (December 12, 1996).

CPA is pursuing further reconsideration because CPA is uncertain whether the issues discussed below have been resolved by the Commission's prior orders in this proceeding.[1] A number of these issues have been raised in the comments filed by the American Public Communications Council on the comparably efficient interconnection ("CEI") plans of BellSouth and Ameritech. However, CPA is taking the step of requesting further reconsideration in order to ensure, in the event that these issues should have been

[1] 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 (Sept. 20, 1996) ("Payphone Order"), and Order on Reconsideration, FCC 96-439 (Nov. 8, 1996) ("Reconsideration Order") (collectively, "the Orders").

addressed in the Orders rather than in rulings on the CEI Plans, that the issues are, in fact, addressed.[2]

STATEMENT OF INTEREST

CPA is a nonprofit mutual benefit corporation representing over 200 providers of independent public payphones ("IPPs") operating in the State of California. CPA is the principal representative of such IPP providers in regulatory proccedings before the California Public Utilities Commission and also participates on their behalf in major FCC proceedings affecting payphone services.

DISCUSSION

I. AN EXOGENOUS COST ADJUSTMENT IS REQUIRED FOR TRANSFER OF PAYPHONE ASSETS AT FAIR MARKET VALUE TO AN AFFILIATE

In the Payphone Order, the Commission decided that if a local exchange carrier ("LEC") places its nonregulated payphone operations in an affiliate or an operating division that has no joint and common use of assets or resources with regulated operations, the LEC must transfer the assets to the nonregulated affiliate or operating division at the higher of fair market value or net book cost. Payphone Order, ¶ 164. On the other hand, if a LEC leaves its nonregulated payphone operations in an operating division that has

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[2] Section 276 of the Communications Act required the Commission to take all actions necessary to prescribe regulations under Section 276(b) (including "any reconsideration") by November 8, 1996. 47 U.S.C. § 276(b)(1). In the event that the Commission determines that it is not authorized to address any further "petition for reconsideration" at this time, CPA requests that this filing be treated as, alternatively, a petition for clarification or a petition to reopen the proceedings.

assets or resources in common with regulated operations, the payphone assets are reassigned to nonregulated status at net book cost. Id., ¶ 163.

In the Reconsideration Order, the Commission ruled that the removal of payphone operations from regulated accounts requires an exogenous cost adjustment pursuant to Section 61.45(d)(1)(v) of the Commission's rules, which governs exogenous cost changes resulting from "the reallocation of investment from regulated to nonregulated activities pursuant to sec. 64.901." Reconsideration Order, paras. 198-199, quoting 47 CFR § 61.45(d)(1)(v). This ruling may have left some ambiguity as to whether the exogenous cost change applies both to the reassignment of payphone assets within the LEC at net book cost and to the transfer of payphone assets to a nonregulated affiliate or operating division at the higher of fair market value or net book cost.

CPA requests clarification that an exogenous cost adjustment is required for carriers that transfer payphone assets to a nonregulated affiliate, reflecting the applicable transfer price, regardless of whether a transfer occurs at net book cost or fair market value. Recently, BellSouth filed tariff revisions purporting to make an exogenous cost adjustment to reflect the removal of payphone operations from regulated accounts pursuant to the Payphone Order. See BellSouth Telecommunications, Inc., Transmittal No. 385, filed December 11, 1996. BellSouth is complying with the Commission's Payphone Order by transferring its payphone operations to a nonregulated subsidiary, BellSouth Public Communications, Inc. ("BSPC"). Thus, under the Payphone Order, the transfer must be recorded at the higher of fair market value or net book cost. Payphone Order, ¶ 164.

However, BellSouth did not include a calculation of market valuation in its justification for the exogenous adjustment of its price cap indices.

The Commission should clarify that the fair market value of transferred payphone assets must be reflected in the exogenous cost adjustment by a carrier in BellSouth's position. The transfer at market value is clearly occasioned by a "regulatory change" and is "caused by [t]he reallocation of investment from regulated to nonregulated activities pursuant to § 64.901." 47 CFR § 61.45(c)(4).[3] Further, the change is also an "extraordinary cost change[]" within the meaning of Section 61.45(c)(5). The reclassification of payphone operations as nonregulated overturns decades of prior regulatory practice.

Further, it would be inconsistent for the Commission to require an exogenous cost adjustment only for carriers that reassign payphone assets within an operating division, or to require carriers that operate through an affiliate to take the adjustment only for the portion of the transfer price that does not exceed net book cost. As APCC and other parties demonstrated in their filings in CC Docket No. 96-128, a transfer at fair market value is likely to make a great difference in the costs saved by regulated service ratepayers as a result of the removal of payphone operations from regulated accounts. In the payphone industry, when assets of one company are sold to another, the market value of the assets is

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[3] The payphone assets in question were treated as regulated assets and are required to be treated as nonregulated under the Payphone Order. Nonregulated assets, of course, are identified pursuant to Section 64.901 of the rules. As a result of the requirement to reclassify payphone assets as nonregulated, BellSouth has decided to transfer those assets to an affiliate. Thus, the transfer is caused by a regulatory change under Section 64.901 of the rules.

typically well in excess of the book cost of the payphone equipment, because of the additional value that accrues when a payphone "route" is transferred as a "going concern". See Payphone Order, ¶ 154 and filings cited therein. Failure to require LECs to reflect such market value in their exogenous price cap adjustments deprives ratepayers of the full benefit that should result from crediting regulated accounts with the market value (above net book cost) of a LEC's transferred payphone assets.

Having stated in its Payphone Order, that the operation of the affiliate transaction rule "protect[s] ratepayers" by "effectively captur[ing] on the carrier's books any appreciation in value of those assets, thus ensuring that any eventual gains would accrue to the benefit of the ratepayers and shareholders" (Payphone Order, ¶ 166), the Commission must require LECs that place deregulated payphone operations in an affiliate to make the necessary exogenous cost adjustment to reflect such gains in the value of their payphone assets. Otherwise, given the operation of the price cap rules, there is no guarantee that the gains ever would accrue "to the benefit of the ratepayers."

II. SPECIFIC CALL RATING

Bell companies' CEI plans indicate that subscriber-selected call rating is not available with coin lines. See e.g., Michigan Bell, Tariff M.P.S.C. No. 20R, at 16 (filed as an Appendix to Ameritech's CEI Plan). IntraLATA long distance, as well as directory assistance, calls are rated only at the LEC rate -- i.e., the LEC payphone operations' rate.[4]

[4] Further, sent-paid local calls originating on coin lines are to be rated "by the customer's pay telephone set." According to Southwestern Bell's CEI Plan, the payphone must send a signal to the central office indicating that sufficient coins have been deposited (Footnote continued)

As APCC, New Jersey Payphone Association ("NJPA"), and Georgia Public Communications Association ("GPCA") have previously argued, providing a coin line that rates calls only at the end user rates used by the LEC's own payphone division is patently discriminatory and spoils any utility the coin line service might otherwise have for IPP providers. See, e.g., Petition of NJPA for Partial Reconsideration and Classification, filed October 21, 1996, at 3-7. IPP providers subscribing to coin lines are effectively forced to adhere to the same rates charged by the Ameritech-affiliated payphone competitor. They are precluded from developing innovative rate structures such as "call anywhere in the United States for 25 cents per minute" -- an increasingly popular approach that has been shown to increase coin traffic at many payphones.

The fact that the rate used in rating intraLATA sent-paid calls may be specified in an LEC tariff does not make the rate selection feature nondiscriminatory. The purpose of the rate is to apply to sent-paid payphone calls. To say that the rate is "selected" by the LEC's regulated side rather than the LEC payphone operation is simply an artifice to avoid CEI compliance. Indeed, the tariffs provide that the revenues from these calls, beyond a basic long distance transmission charge, are kept by the PSP. See e.g., M.P.S.C. No. 20R,

(Footnote continued)
to satisfy the local rate. Southwestern Bell CEI Plan, filed December 30, 1996, Proposed Tariff P.S.C. Mo. - No. 35, Section 34.1.6.A. The central office then presumably establishes the call connection and signals the payphone to retain the coins in escrow. This is a different method of operation from the method previously used on coin lines terminating in LEC payphones. Previously, sent-paid local as well as intraLATA calls were rated by network facilities. To the extent that LECs continue to provide rating for local calls for any or all of their existing base of payphones (and/or newly installed payphones), there is further discrimination between LEC payphones, which receive network rating for local calls, and IPPs, which are required to provide local call rating in the set.

Part 13, Section 2, at 17 ("[c]oin sent paid revenues collected at the customer's payphone are the property of the customer."). Since the LEC payphone operation collects and keeps the charges, it would be transparently false to claim that the LEC payphone operation is not responsible for deciding what the charges will be.

The Commission should rule that LECs must make their coin line service effectively available to other IPP providers, as well as the LEC's own payphone operation, by providing that the PSP subscriber can select the rate for network rating of sent-paid local, intraLATA, and directory assistance calls.

LECs cannot reasonably claim that it is infeasible to allow coin line subscribers to select the rate for sent-paid intraLATA calls. As discussed in the filings of NJPA and GPCA, Ameritech currently provides these capabilities through its ProfitMaster service in Illinois. Thus, Ameritech tariffs three IPP services in Illinois: COCOT service, coin line service, and ProfitMaster service. Although ProfitMaster is not currently defined as a "coin line" service, it provides the coin rating and coin control functions that characterize coin line service, and is thus the functional equivalent of coin line service. However, ProfitMaster is currently not made available throughout the Ameritech region, and it is higher-priced than Ameritech's coin line service.

Under the <u>Computer III</u> decision, CEI must be made available in the geographic areas where the carrier is offering enhanced service. <u>Amendment of Section 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry)</u>, ("Computer III"), Memorandum Opinion and Order on Reconsideration, 2 FCC Rcd. 3035, 3046-47 (1987) (subsequent history omitted). Further, Computer III requires that:

> all enhanced service providers, including the carrier, should pay an equal charge covering the costs of operating the interconnection facilities and providing the unbundled basic services utilized by all enhanced service providers. Depending on the exact implementation of the interconnection facilities, this equal charge may represent an averaged payment for interconnection.

Computer II, Report and Order, 104 FCC 2d 958, 1047 (1986) (subsequent history omitted).

Applying these principles to payphone services, the Commission must require a LEC to provide, throughout its territory and at nondiscriminatory (and averaged, to the extent necessary) charges, coin line services that enable PSPs to have calls rated at their own coin rates.

III. SCREENING CODES

Prior to the Payphone Order, the Commission ordered LECs to provide an improved version of originating line screening ("OLS") that would enable IXCs to uniquely identify calls originating from IPPs using "COCOT" lines. Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, Third Report and Order, FCC 96-131, released April 5, 1996.[5] Traditionally, IPPs using COCOT lines have been assigned the "07" code, which merely indicates the presence of billing restrictions and

[5] However, since this proceeding was initiated prior to enactment of Section 276, the Third Report and Order and subsequent orders have not addressed LECs' obligations under Section 276 and the Payphone Order, See Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, Petition Pertaining to Originating Line Screening Services, Memorandum Opinion and Order, CCB/CPD File Nos. 96-18 et al., released December 20, 1996, n. 28.

can be assigned to a variety of non-payphone lines. LEC payphones, by contrast, benefit from a unique "27" code associated with coin lines.

LECs have indicated that they will implement the Commission's requirement either by offering "Flex ANI," a service that permits the transmission of a "70" code that uniquely identifies COCOT lines to those IXCs subscribing to Flex ANI, or by offering "LIDB-based OLS," a service in which the "07" continues to be transmitted to IXCs, but the IXC can obtain a more fine-grained code (e.g., 70) or information by querying LIDB.

Both these alternatives have major limitations. According to Ameritech and BellSouth, IXCs generally have not subscribed to Flex ANI. See Ameritech's Petition for Waiver, filed October 17, 1996. Where IXCs do not subscribe to Flex ANI, a LEC offering Flex ANI continues to provide IPPs using COCOT lines with the "07" code, which does not uniquely identify calls as payphone calls. By contrast, the LEC continues to provide its own payphones, which use primarily "coin lines," with a "27" code that does uniquely identify calls to IXCs as payphone calls.

In the case of LIDB-based OLS, IXCs have stated that it is not feasible for them to query LIDB to obtain a fine-grained code indicating whether the "07" code originally transmitted refers to a payphone line or some other type of telephone line. [cite] Thus, it appears that IXCs will either not obtain the finer-grained identification or will do so by using some process other than LIDB queries, e.g., by checking the verification data that LECs are supposed to provide under the existing payphone compensation scheme.

Meanwhile, LECs will continue to provide the coin lines used by their own payphones with the unique "27" identifier.

The "07" code for COCOT lines is clearly inferior to the unique "27" code provided to LEC payphones using coin lines, and such inferior treatment is inconsistent with the nondiscrimination requirement of Section 276(a). Moreover, the importance of unique screening codes for payphones has been heightened as a result of the Commission's orders in Docket No. 96-128. The Commission's Order on Reconsideration in the payphone docket confirms that PSPs must ensure transmission of codes that enable IXCs to track calls. Accordingly, LECs are required to provide services "that provide a discrete code to identify payphones that are maintained by non-LEC providers." Reconsideration Order, ¶ 94.

Having a unique screening code automatically transmitted to the IXC provides Bell company payphones with a tremendous advantage in the collection of per-call payphone compensation. With a unique screening code, the IXC knows immediately that a call is compensable, and should not have to take any further steps in order to calculate the compensation due for each particular ANI invoiced by an IPP provider. If no unique screening code is transmitted, by contrast, the IXC must check some reliable data base in order to confirm whether the call is from a payphone and therefore, compensable under the Payphone Order. APCC's experience with the data base currently used to administer flat-rate compensation is that the data base information is frequently unreliable and imposes substantial delays and costs in collecting compensation. Frequently, compensation for a given period is never collected on certain payphones because of the difficulties of securing LEC verification. Transmitting a unique screening code for COCOT lines as well as coin lines would make it unnecessary for PSPs to have their collection of compensation continually delayed or denied due to the highly error-prone LEC verification data base currently in use.

Therefore, by transmitting a unique code on all coin lines while transmitting a non-unique code on COCOT lines, a LEC will be discriminating heavily in favor of its own payphone operations, providing them with a great and unwarranted advantage vis-a-vis independent payphone competitors in the collection of per-call compensation from IXCs.

Accordingly, the Commission should clarify that LECs are required to provide PSPs using COCOT lines with a screening code that uniquely identifies their lines as payphone lines. As long as a unique "payphone" code is provided for the coin lines used predominantly by LEC payphones, a "unique" payphone code must also be provided for COCOT lines and predominantly by IPPs. In order to ensure nondiscrimination, unless IXCs are required to subscribe to the Flex ANI code in all areas, LECs must be required to reconfigure the existing codes that are universally available with access services to which IXCs do subscribe, so that a unique code is available for COCOT lines as well as coin lines.

IV. OPERATOR SERVICES

Ameritech's and BellSouth's CEI plans do not address the intraLATA operator services offered with their public payphones. It is not even clear whether Bell companies consider operator services to be part of their deregulated payphone service or whether they consider operator services to be a separable service that is not "ancillary" to their public payphone service.

If operator services are part of LECs' deregulated public payphone service, LECs must provide such services (1) using computer technology in the payphone or (2) by reselling network-based operator functions. Either way, LECs must be required to make the network functions supporting such services available to PSPs on a nondiscriminatory basis.

If operator services are a separable regulated service that is not "ancillary" to LECs' deregulated payphone service, LECs may not use operator commissions to subsidize their payphone service or discriminate between their own payphone operations and other PSPs in the provision of such services. For example, if a LEC is offering a commission to its payphone service for presubscribing its payphones to the LEC's operator service, then at a minimum, such commissions must also be available to independent PSPs on the same terms and conditions.[6]

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[6] In this regard, however, CPA notes that the Commission's accounting rules do not provide a mechanism for the LEC to pay itself a commission for presubscribing its payphones to the LEC's operator services, where a LEC is not using an affiliate for its provision of payphone service. CPA does not question that such a transaction is permissible where an affiliate is involved, pursuant to the Commission's affiliate transactions rules. However, there is no express provision for such treatment under the cost allocation rules governing nonregulated operations that are not provided through a separate affiliate. CPA suggests that this may reflect a conscious Commission intent to exclude direct commission payments to nonregulated accounts in the absence of an affiliate.

CONCLUSION

The Commission's Orders should be further reconsidered or clarified as stated in the foregoing petition.

Dated: January 13, 1997

Respectfully submitted,

Albert H. Kramer
Robert F. Aldrich
DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP
2101 L Street, N.W.
Washington, D.C. 20037-1526
(202) 785-9700

Special Attorneys for the California Payphone Association

Martin A. Mattes
GRAHAM & JAMES
One Maritime Plaza
Suite 300
San Francisco, CA 94111
(415) 954-0200

Attorney for the California Payphone Association