ORIGINAL

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
AT&T Request for Limited Waiver Of the Per-Call Compensation Obligation	

To: Chief, Common Carrier Bureau

REPLY OF THE AMERICAN PUBLIC COMMUNICATIONS COUNCIL TO OPPOSITIONS TO PETITION FOR RECONSIDERATION

Albert H. Kramer
Robert F. Aldrich
DICKSTEIN SHAPIRO MORIN
& OSHINSKY LLP
2101 L Street, N.W.
Washington, D.C. 20037-1526
(202) 828-2226

Attorneys for the American Public
Communications Council

June 1, 1998

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
AT&T Request for Limited Waiver Of the Per-Call Compensation Obligation	)	

To: Chief, Common Carrier Bureau

REPLY OF THE AMERICAN PUBLIC COMMUNICATIONS COUNCIL TO OPPOSITIONS TO PETITION FOR RECONSIDERATION

The American Public Communications Council ("APCC") hereby replies to the oppositions of MCI and Sprint to APCC's May 4, 1998, petition for reconsideration of the Common Carrier Bureau's Memorandum Opinion and Order, DA 98-642, released April 3, 1998 ("Order"). In its petition, APCC requested that the Bureau reconsider its determinations as to the assumed average volume of dial-around calling for purposes of its prescription of flat-rate compensation, in lieu of per-call compensation, for certain payphones.

The payphones for which the FCC prescribed flat-rate compensation are in two groups: (1) smart payphones for which payphone-specific coding digits are temporarily unavailable during the "waiver period," due to local exchange carriers' ("LECs") failure to

timely implement Flex ANI; and (2) payphones for which payphone-specific coding digits are permanently unavailable because the payphones are served by non-equal-access switches or because the payphones are served by small- or medium-sized LECs who determine that Flex ANI conversion costs cannot be recovered.

I. NO PARTY OPPOSES APCC'S REQUEST FOR A TRUE-UP OF FLAT-RATE COMPENSATION FOR PAYPHONES SUBJECT TO A TEMPORARY WAIVER

Regarding payphones in the first group, APCC urged the Bureau to reconsider its prescription of final compensation, without any true-up, based on the average call volumes that interexchange carriers ("IXCs") receive from dumb RBOC payphones. APCC urged the Bureau to require IXCs to true-up final payments of flat-rate compensation for each payphone based on the actual call volumes each IXC receives from each payphone after payphone-specific coding digits are available for that payphone.

No party objects to this portion of APCC's petition. Although Sprint "categorically objects to differentiation as between LEC payphones and non-LEC payphones for the purposes of setting any form of per-phone compensation" (Sprint Opp. at 2), this abstract objection does not apply to APCC's reconsideration request for the waiver period. The same true-up proposed with respect to independent payphones could equally well be applied to all smart payphones operated by LECs during the waiver period.

II. APCC'S DATA PROVIDES A REASONABLE MEASURE OF FLAT-RATE COMPENSATION FOR INDEPENDENT PAYPHONES SUBJECT TO A PERMANENT WAIVER

Regarding payphones in the second group, APCC urged the Bureau to reconsider its prescription of compensation, based on data from only 300 payphones of only two LECs, showing dial-around call volume of only 16 calls per payphone per month – about one-tenth of the estimated call volume for payphones generally. Submitting dial-around calling data from roughly a thousand independent payphones located in small and medium-sized LECs' service areas, APCC showed that the average call volume at these payphones is about 170 calls per payphone per month. APCC Petition, Att. 1. Because this data on independent payphones shows dramatically different call volumes for independent payphones than the call volumes for LEC payphones on which the Commission relied in determining the assumed level in small- to medium-sized LEC service areas, APCC urged the Commission to redetermine compensation for independent payphones based on the more comprehensive independent payphone data showing average call volumes of 170 calls per payphone per month.

Sprint opposes this aspect of APCC's petition. Sprint does not attempt to defend the Commission's existing order – indeed, Sprint specifically agrees with APCC that the data set used by the Bureau to determine flat-rate compensation was deficient.[1] However, Sprint objects to APCC's request for reconsideration because APCC's data does not meet Sprint's exacting scientific standards.

A. APCC's Sample Is Reliable

First, Sprint claims that APCC's call data is invalid because it is not "based on a statistically valid random sample." Sprint Opp. at 3. APCC's data may not be perfect, but as Sprint acknowledges, neither is the data on which the Bureau relied in the Order. While Sprint claims that neither data set is reliable, it offers no better data. Moreover, APCC's data is more comprehensive. It covers about 1,000 payphones owned by 15 companies, while the data used in the Order covered only 300 payphones of two companies. In addition, for purposes of prescribing flat-rate compensation for independent payphones, APCC's data improves dramatically on the data used in the Order in a critical respect: it is derived from actual independent payphones rather than LEC payphones. As demonstrated by the data itself and by the unrebutted affidavit of Mike Miller, an independent payphone operator doing business in rural areas, there are very substantial differences between the performance of independent and small-LEC-owned payphones in rural areas. Petition, Att. 2. Therefore, the APCC data is far more deserving of reliance for purposes of prescribing independent payphone provider compensation.

Further, there is no basis for disregarding APCC's data as "self-serving." As explained in Attachment 1 to APCC's Petition, APCC submitted data from two sources. The first source was a payphone call-volume survey that APCC has been continuously running for the last two years. The methodology used in this survey has been previously

---

[1] Sprint Opp. at 2 (asserting that the Bureau's order "fell short of meeting [Sprint's] criteria" because, among other things, "there is no showing that the LEC data on which the Bureau relied constitute a random sample of payphones").

explained to the Commission. Further, the results of this survey have been relied upon for various purposes by numerous parties on all sides of this proceeding. Moreover, the dial-around call-volume estimates derived from this survey have not been dramatically different from the data submitted by other parties, including data on which the Commission has relied in this proceeding. The data on small- and medium-sized payphones was derived from that study by requesting participants to identify all their payphones located in small- and medium-sized LEC areas. Thus, there was no opportunity for study participants to select a group of higher-volume payphones from the base of payphones used in the original study. The results showed that average call volumes from the subgroup of payphones that were served by small- to medium-sized LECs (274 calls per payphone per month) were substantially higher than the average call volumes measured in the same period in the study as a whole (about 153 calls per payphone per month). Compare APCC Petition, Att. 1, with Letter to Mary Beth Richards from Albert H. Kramer, March 5, 1998, Att. 1.

The second source used to develop data on payphone call volumes in small- to medium-sized LEC service areas is derived from data submitted by APCC members in response to APCC's request for additional data from payphones served by small- to medium-sized LECs, following the release of the Order. While selective reporting of payphones is theoretically possible, APCC has no reason to believe that it occurred. Further, the call volume averages derived from the second source, where selective reporting was theoretically possible, were significantly lower than the call volume averages derived from the first source, where selective reporting was not possible. Therefore, the use of data from the second source does not detract from the reliability of the study as a whole.

Indeed, if the Bureau were to exclude data from the second source, the result would be a higher level of flat-rate compensation for independent payphones.

B. APCC's Data Includes Call Volumes for Payphones in Equal Access Areas Because Those Payphones Are Subject to Permanent Waiver

Second, Sprint and MCI object that APCC's data includes call volumes for payphones in equal access areas. They claim that such data is not a reliable indicator of call volumes in non-equal access areas. Sprint and MCI do not identify any characteristic of independent payphones in non-equal access areas that would justify the conclusion that call volumes from those payphones are lower than those from other independent payphones in rural areas. In fact, as a result of further analysis of the data submitted with the petition, APCC has been able to identify 12 payphones in the study that are served by non-equal access switches.[2] Data from these 12 payphones indicate average dial-around call volumes of 282 calls per payphone per month – dramatically higher than the average call volumes for the small LEC Service Area Study as a whole. See Attachment 1.

Moreover, the permanent waiver allowed by the Bureau is not limited to payphones in non-equal access areas. It also applies to payphones in equal access areas where a small- to medium-sized LEC determines that the cost of Flex ANI implementation may not be recovered. Because comprehensive information as to the actual scope of this waiver is not yet available, APCC reasonably collected data on all payphones served by

---

[2] APCC was only able to identify those payphones served by LECs that, according to FCC data, have not converted any of their switches to equal access. It is likely that many other payphones in the study are served by non-equal access switches of LECs that have converted some of their switches to equal access.

small- to medium-sized LECs, all of which are potentially subject to a permanent waiver. Unless more accurate information limiting the scope of the waiver is submitted, the FCC should assume that any of the payphones in APCC's study could be subject to a permanent waiver.

C. APCC's Data Includes Reasonable Surrogates for Completed Calls

Third, Sprint objects to the use of surrogates to estimate the number of completed calls. Again, while Sprint objects to APCC's surrogates, Sprint does not suggest or justify a different surrogate, nor does it offer any data of its own that avoids the objected-to surrogates.[3] Further, Sprint provides no reason to believe that the surrogates employed significantly distort the result. In fact, the 45- and 60-second time limits are very conservative. Although it is true that the surrogates employed by APCC may treat some uncompleted calls as completed (i.e., operator-assisted calls that are never answered, and for which set-up and ringing time exceeds the 45- or 60-second criteria), it is equally true that the surrogates treat some completed calls as uncompleted (i.e., calls that are completed and terminated before the 45- or 60-second criteria expires).

---

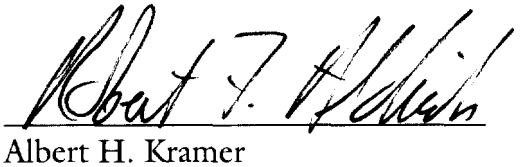
[3] The data relied upon by the Bureau does not include any indicator of how completed vs. uncompleted calls were measured.

CONCLUSION

For the foregoing reasons, the Bureau should reconsider and (1) require a true-up of compensation payments for smart payphones subject to a temporary waiver, based on actual call volumes subsequently recorded at those payphones, and (2) prescribe flat-rate compensation for independent payphones subject to a permanent waiver, based on the average call volume of 171 calls per payphone per month reported for independent payphones served by small- and medium-sized LECs.

Dated: June 1, 1998

Respectfully submitted,



Albert H. Kramer
Robert F. Aldrich
DICKSTEIN SHAPIRO MORIN
& OSHINSKY LLP
2101 L Street, N.W.
Washington, D.C. 20037-1526
(202) 828-2226

Attorneys for the American Public
Communications Council

ATTACHMENT 1

APCC Industry Statistics
Non-Equal Access Service Area Study
June 1, 1998

In order to demonstrate call traffic patterns for payphones located in local exchange carriers (LECs) serving non-equal access areas, the American Public Communications Council (APCC) conducted a more refined analysis of the call data collected in APCC's Small LEC Service Area Study dated May 4, 1998. As discussed in the report of the Small LEC study, the data used in that study was derived from two groups of members--participants in the previously established SMDR Project and from the newly established General Data Project.

APCC was able to isolate specific payphones located in non-equal access service areas from the payphones that contributed call data to APCC's Small LEC Service Area Study. APCC identified LECs which have only non-equal access switches by using the Federal Communications Commission (FCC) Common Carrier Bureau Industry Analysis Division's November 1997 report, "Distribution of Equal Access Lines and Presubscribed Lines."

SMDR Project

The SMDR Project is the data collection project described in the March 26, 1998 letter from APCC Counsel Robert Aldrich of Dickstein, Shapiro, Morin & Oshinsky to Magalie Salas, Secretary of the Federal Communications Commission (FCC). Calling data from payphones served by one non-equal access LEC in South Dakota was submitted by one SMDR Project participant operating three payphones. APCC defined a completed call for this project by setting an acceptable duration for each type of call: greater than 60 seconds for calls to numbers known to be access codes (including prepaid card numbers), and greater than one second for calls to subscriber 800 numbers.

APCC identified the three payphones located in non-equal access LEC areas. The exact call records for these specific payphones were isolated from the Small LEC Service Area Study submission for this company for each month of the fourth quarter of 1997. Each month of call data for the call records from non-equal access LECs was processed with PDRS software in order to determine the number of completed coin calls and dial around calls per month per company for this company. Within Excel, statistics were developed for the company showing month-by-month average call counts per payphone. Average monthly calling statistics for the company for the fourth quarter of 1997 were developed by aggregating call data from the company and averaging the call count totals for the quarter over the total of the number of payphones reporting data for each month of the quarter.

General Data Project

The General Data Project is comprised of call data from other APCC members serving a substantial number of rural areas who agreed to submit call data specifically available from small and medium-sized LECs. Of these project participants, APCC identified four companies which had eleven payphones located in non-equal access LECs in 5 states.

The APCC defined a completed call for this project by adopting the same definition as used by the RBOC Payphone Coalition for its dial around results for the fourth quarter of 1997--a call lasting greater than 45 seconds. General Data Project participants were asked to identify their payphones located in small and medium-sized LEC areas. A list of the following information was provided by each participant to APCC's administrative offices: the small or medium-sized LECs, specific payphones located in these LEC service areas, the types of calls included within the results, number of attempts to dial around numbers, and the number of calls to dial around numbers.

APCC was able to isolate specific payphones and the number of calls per payphone for non-equal access LECs in the General Project. Within Excel, statistics were developed for each company showing month-by-month average of dial around attempts and dial around calls per payphone. Average statistics for all four of the companies for each month in the fourth quarter of 1997 were developed by aggregating call data from project participants and averaging the total for the quarter over the total number of payphones reporting data for the quarter.

APCC Industry Statistics
Combined Project Results
Non-Equal Access Service Area Study

Industry Statistics		**4Q97 Results**	
	ANIs	Dial Around Calls	*Avg. Dial Around Calls per Month*
1997			
October	*10*	3,114	***311***
November	8	2,569	***321***
December	12	2,773	***231***
Totals	***30***	***8,456***	***282***
Note:	**Dial Around Call Types include 800, 888, 10XXX, 101XXXX, and 950**		
Payphones in LEC Areas:			
Georgia			
Citizens Tel.			
North Dakota			
Midstate Tel.			
South Dakota			
Golden West			
Kadoka Tel.			
Union Telephone Co.			
Vermont			
Shoreham Tel.			
Wyoming			
TCT West, Inc.			

6/1/98

CERTIFICATE OF SERVICE

I hereby certify that on June 1, 1998, a copy of the foregoing Reply of the American Public Communications Council to Oppositions to Petition for Reconsideration was delivered by first class, U.S. mail to the following:

Chief, Enforcement Division
Common Carrier Bureau
Stop 1600A, Room 6008
Federal Communications Commission
2025 M Street, NW
Washington, DC 20554

Richard Metzger, Chief
Larry Strickling, Deputy Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW
Room 500
Washington, DC 20554

ITS
1231 20th Street, NW
Washington, DC 20036

Michael Kellogg
Kellogg Huber Hansen Todd & Evans, P.L.L.C.
1301 K Street, NW
Suite 1000 West
Washington, DC 20005

Phillip L. Spector
Patrick S. Campbell
Paul, Weiss, Rifkind, Wharton & Garrison
1615 L Street, NW
Washington, DC 20036

Thomas J. Gutierrez
J. Justin McClure
Lukas, McGowan, Nace & Gutierrez
1111 19th Street, NW, Suite 1200
Washington, DC 20036

James S. Blaszak
Janine F. Goodman
Levine, Blaszak, Block & Boothby, LLP
2001 L Street, NW, Suite 900
Washington, DC 20036

Mark A. Stachiw
AirTouch Paging
12221 Merit Drive
Suite 800
Dallas, Texas 75251

Carl W. Northrop
E. Ashton Johnston
Paul, Hastings, Janofsky & Walker
1299 Pennsylvania Avenue, NW
10th Floor
Washington, DC 20004-2400

Leon M. Kestenbaum
Jay C. Keithley
H. Richard Juhnke
Sprint Corporation
1850 M Street, NW, 11th Floor
Washington, DC 20036

Bruce W. Renard, General Counsel
Peoples Telephone Company, Inc.
2300 N.W. 89th Place
Miami, FL 33172

Mark C. Rosenblum
Richard H. Rubin
AT&T Corp.
295 North Maple Avenue
Room 3252I3
Basking Ridge, New Jersey 07920

Ian D. Volner
Heather L. McDowell
Venable, Baetjer, Howard & Civiletti, LLP
1201 New York Avenue, NW
Suite 1000
Washington, DC 20005

Frederick M. Joyce
Joyce & Jacobs
1019 19th Street, NW
14th Floor, PH-2
Washington, DC 20036

Eric L. Bernthal
Michael S. Wroblewski
Latham & Watkins
1001 Pennsylvania Avenue, NW
Suite 1300
Washington, DC 20004

David L. Hill
Audrey Rasmussen
O'Connor & Hannan, LLP
1919 Pennsylvania Avenue, NW
Suite 800
Washington, Dc 20006

Barry E. Selvidge
Vice President & General Counsel
Regulatory Affairs
Communications Central, Inc.
1150 Northmeadow Parkway, Suite 118
Roswell, Georgia 30076

Alan S. Tilles
Meyer, Faller, Weisman & Rosenberg, P.C.
4400 Jenifer Street, NW
Suite 380
Washington, DC 20015

Judith St. Ledger-Roty
Steven A. Augustino
Kelley, Drye & Warren, LLP
1200 19th Street, NW
Suite 500
Washington, DC 20036

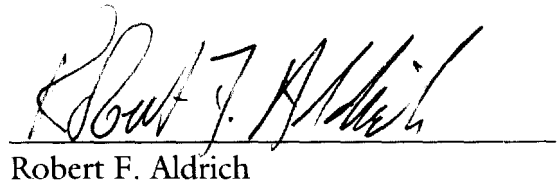
Charles C. Hunter
Catherine M. Hannan
Hunter Communications Law Group
1620 I Street, NW
Suite 701
Washington, DC 20006

Howard J. Symons
Sara F. Seidman
Yaron Dori
Mintz, Levin, Cohn, Ferris, Glovsky
and Popeo, PC
701 Pennsylvania Avenue, NW
Washington, DC 20004-2608

Daniel R. Barney
Robert Digges, Jr.
ATA Litigation Center
2200 Mill Road
Alexandria, VA 22314

Mary J. Sisak
Mary L. Brown
MCI Telecommunications Corporation
1801 Pennsylvania Avenue, NW
Washington, DC 20006

Michael J. Shortley, III
Frontier Corporation
180 South Clinton Avenue
Rochester, NY 14646



Robert F. Aldrich