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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ex Parte Filing

Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

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

Dear Ms. Salas:

On behalf of the Consumer-Business Coalition for Fair Payphone 800 Fees, Robert Digges, Jr., Vice President and Deputy Chief Counsel of the American Trucking Associations, Peter A. Gray, Director of Domestic Government Relations at Citicorp, Robert A. Voltmann, Executive Director and Chief Executive Officer of the Transport Intermediaries Association, Ed Mortimer, Government Affairs Manager of the Transport Intermediaries Association, and Sara F. Seidman and I, both of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., met today with Larry Strickling, Deputy Chief of the Common Carrier Bureau, Bob Spangler and Rose Crellin, both of the Common Carrier Bureau, to discuss matters pertaining to the above-referenced docket. Specifically, we discussed the procedural status of the payphone compensation proceeding, the impact the FCC's per-call compensation scheme has on 800 service subscribers, and the limitations of call blocking as an alternative to paying per-call compensation. A copy of the attached document was circulated at the meeting.

An original and one copy of this letter are being submitted to you in compliance with 47 C.F.R. § 1.1206(a)(2) to be included in the record in this proceeding.

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Any questions concerning this submission should be addressed to the undersigned.

Respectfully submitted,

Yaron Dori

Attachment

cc: Larry Strickling
Bob Spangler
Rose Crellin
Sara F. Seidman

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The Consumer-Business Coalition
For Fair Payphone 800 Fees

The FCC's Per-Call Compensation Rate For Payphones Should Be Reduced

- **Background.** In 1997, the FCC determined that 800-number users must pay owners of payphones 28.4¢ for each call made to their 800 numbers from payphones.

- **The D.C. Circuit recently remanded the 28.4¢ rate on the ground that the FCC failed to adequately explain how it derived the rate for coinless calls.** Specifically, the court held that the FCC's subtraction of coin-specific costs from the local coin rate to arrive at the 28.4¢ rate was akin to "subtracting apples from oranges." The court required the Commission to correct this deficiency before November 15, 1998.

- **In response to the D.C. Circuit's remand, the Commission should rethink entirely its approach to payphone compensation.** A cost-based approach is appropriate in light of the court's extreme skepticism that the FCC's market surrogate analysis could be justified under any circumstances.

- **The law only requires that payphone providers receive "fair compensation" for 800-number calls.** There is nothing in the Telecommunications Act of 1996, the Communications Act of 1934, or their respective legislative histories that suggests that payphone providers require compensation at such a high rate.

- **"Fair compensation" suggests that the per-call compensation rate should be set at cost.** An incremental cost-based mechanism – the same mechanism used by the FCC to determine the pricing structure in the local exchange market – should be implemented in the payphone market, resulting in a per-call compensation rate of approximately 6¢ per call.

- **The 28.4¢ rate amounts to a windfall for payphone providers.** The cost of connecting an 800-number call is far below the 28.4¢ rate. The windfall received by payphone providers will enable them to protect their market share and prevent competitors from entering the marketplace.

- **The 28.4¢ compensation rate for 800-number payphone calls is onerously high.** The impact of the new surcharge will be tremendous on the many businesses that currently receive thousands of 800-number calls per day from payphones.

- **Small businesses and public interest organizations are especially hard hit by the 28.4¢ rate.** These businesses and organizations have very little leverage in reducing the rates they must pay long distance providers for 800-number service.

- **Payphone users have no real alternative to paying the high 28.4¢ rate.** Because there is virtually no payphone competition at any particular location (e.g., truckstops, airports, hotels), users have no real choice of which payphone provider to use.

- **Even if real payphone competition existed, 800-number users would still be harmed by the FCC's ruling.** Because the party dialing the 800 number is not directly paying for the call, that party has little incentive to search out the least expensive payphone alternative. This saddles the 800-number subscriber with whatever charges the call may incur.

- **The Commission should act expeditiously on the D.C. Circuit's remand.** 800-number subscribers are being harmed each day that they are required to pay exorbitant rates. The longer the FCC waits to act, the more complicated refund issues will become.

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