

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

CC Docket No. 98-701
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**REPLY OF MCI TELECOMMUNICATIONS CORPORATION
IN SUPPORT OF ITS PETITION FOR RECONSIDERATION**

MCI Telecommunications Corporation (MCI) hereby replies to the Comments of the American Public Communications Council on MCI's Petition for Reconsideration of the compensation allocation modification for non-equal access payphones in the Common Carrier Bureau's April 10, 1998 Order (April 10 Order)¹ in the above-captioned proceeding (APCC Comments). Since APCC, the only party to file comments on MCI's Petition, does not oppose it, the Petition should be granted.

In the April 10 Order, the Bureau, inter alia, modified the compensation requirements set forth in the Bureau's prior Per-phone Compensation Waiver Order.² That previous order had granted interexchange carriers (IXCs) a limited waiver of the payphone compensation requirements to enable IXCs to pay to payphone service providers (PSPs) per-phone instead of per-call compensation for subscriber 800 and access code calls originated

¹ Order, DA 98-701 (released April 10, 1998).
² Memorandum Opinion and Order, DA 98-642 (released April 3, 1998).

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from payphones when payphone-specific coding digits are not available from those payphones. The April 10 Order modified that obligation by allocating such per-phone compensation for payphones served by non-equal access switches only to the top ten carriers receiving the highest amount of subscriber 800 and access code calls.

MCI sought reconsideration of that modification on the grounds that such a limitation on IXC compensation obligations was foreclosed by the Court's previous reversal, in Illinois Public Telecommunications Ass'n. v. FCC (Illinois),³ of the Commission's similar limitation of interim compensation obligations to IXCs with annual toll revenues over \$100 million. MCI pointed out that the Bureau's administrative convenience rationale for the "top ten" limitation in the April 10 Order is essentially the same as the rationale for the \$100 million cut-off rejected in Illinois, and the Court's response -- that the administrative burden of writing a small check is insignificant - - is equally applicable.

Implicitly acknowledging the validity of MCI's argument, APCC merely states in its Comments that it "does not support MCI's petition for reconsideration."⁴ APCC points out that since

³ 117 F.3d 555 (D.C. Cir. 1997).

⁴ APCC presumes to advise MCI on the appropriate scope of its Petition for Reconsideration, asserting that "any reconsideration of the allocation logically should apply to both classes of payphones" -- i.e., non-equal access payphones and "smart" payphones served by LECs that have not implemented "Flex ANI." The April 10 Order, however, only modified the compensation allocation for non-equal access payphones and said

only a small percentage of the total number of payphones is involved, the overpayment by the top ten carriers will have only a de minimis impact on their overall payphone compensation obligations, which, of course, is no justification at all for the "top ten" approach in the April 10 Order. It also states that unlike the small PSPs that provide the payphones in question and which are severely impacted by the supposedly low level of compensation set for those payphones affected by the per-phone waiver, the top ten carriers are large corporations that will not be affected by the minor discrepancies between what they would pay in a perfect per-call system and what they have to pay under the April 10 Order. The relevance of the latter point is not explained, since the PSPs, and the impact of the compensation formula on the PSPs, would not be affected by MCI's request to change the allocation of the compensation obligation among the IXCs. APCC never challenges MCI's argument based on the Court's reasoning in Illinois.

Having provided no rationale to support the compensation allocation established in the April 10 Order, APCC then falls back to a suggested modification of the relief requested by MCI. APCC proposes that the compensation allocation requested by MCI

nothing about the other category mentioned by APCC. MCI's Petition, therefore, only addresses the compensation allocation for non-equal access payphones. APCC should not be permitted to piggyback, through its comments on MCI's Petition for Reconsideration of the April 10 Order, its own untimely petition for reconsideration of the compensation methodology established in the Per-phone Compensation Waiver Order for payphones served by LECs that have not implemented Flex ANI.

be implemented only during the "waiver period" (i.e., payments for periods prior to the full implementation of Flex ANI for all payphone lines that were not subject to a permanent waiver of payphone-specific ANI obligation), but that following the end of that period, each IXC's compensation payment to each PSP for that PSP's permanently-waived payphones would be based on the average volume of calls received by that IXC from that PSP's other payphones, so that each IXC's payment for a PSP's permanent-waiver payphones would be exactly the same as the IXC's average payment for the PSP's other payphones. APCC also suggests a true-up for the waiver period based on its post-waiver formula.

MCI objects to APCC's proposal for the "post-waiver period." MCI's Petition only addresses the compensation allocation for non-equal access payphones. As the Bureau found in the Per-phone Compensation Order, the call volume for non-equal access payphones is much less than for equal access payphones, averaging only about 16 calls per month.⁵ APCC has sought reconsideration of that finding, but MCI has opposed APCC's petition. As MCI pointed out in its comments on that petition, there is no evidence in the record that call volumes in equal access areas are the same as those in non-equal access areas.

Accordingly, unless and until APCC's petition is granted -- which seems extremely unlikely, given the lack of support provided by APCC for its position -- there is no basis for APCC's proposal to base compensation for a PSP's non-equal access

⁵ Per-phone Compensation Order at ¶ 30.

payphones on the average call volume for its equal access payphones. Those averages are so disparate that APCC's proposal would result in a significant unjustifiable bonus for non-equal access payphones. Similarly, its proposal certainly should not be the basis for any "true-up" for the waiver period, since it would actually result in a falsification of the appropriate compensation for that period.

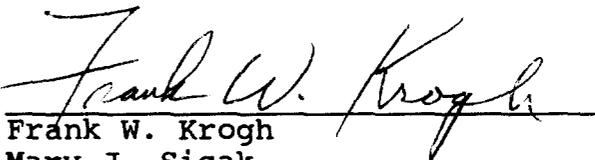
Finally, there is no justification for the additional administrative burden that would result from APCC's proposal. It would be time-consuming and inefficient to have to calculate individual payphone call volumes for each PSP with non-equal access payphones in order to determine each such PSP's average equal access payphone call volume.⁶ APCC's proposal is thus the worst of all worlds -- inefficient as well as unfair.

⁶ APCC's proposal also makes no accommodation for a PSP that has only non-equal access payphones.

Accordingly, MCI's Petition for Reconsideration of the April 10 Order should be granted, and APCC's suggested modification of the relief sought by MCI should be rejected.

Respectfully submitted,

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Dated: June 5, 1998

CERTIFICATE OF SERVICE

I, Sylvia Chukwuocha, do hereby certify that copies of the foregoing Reply Comments in Support of MCI's Petition for Reconsideration were sent, on this 5th day of June, 1998, via first-class mail, postage pre-paid, to the following:

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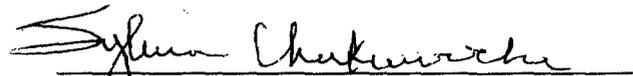
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