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FEDERAL COMMUNICATIONS COMMISSION
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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

COMMENTS OF WORLDCOM, INC. ON REMAND ISSUES

WorldCom, Inc. ("WorldCom"), by its undersigned counsel, hereby responds to the Commission's June 19 Public Notice ("Notice"), DA 98-1198, seeking comments in the above-referenced proceeding.

I. INTRODUCTION

The Notice seeks comments on issues remanded to the Commission on May 15 by the U.S. Court of Appeals for the D.C. Circuit in MCI Telecommunications Corporation v. FCC.[1] This is the second time in less than one year that the D.C. Circuit has rejected major components of the Commission's "carrier pays" compensation scheme. Indeed, there is unlikely to be a successful resolution to the problem of how to compensate payphone service providers ("PSPs") for the use of their equipment unless and until the Commission confronts and acknowledges a fundamental economic truth. Namely, the economic beneficiary of a payphone call -- and the "causer" of the minimal costs involved in using a payphone -- is the person who chooses to place a call from a payphone, instead of using an alternative type of telephone equipment. The

[1] 1998 WL 242245 (D.C. Cir.) ("D.C. Circuit Opinion").

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Commission has previously discounted the importance of this relationship out of a desire to preserve "coinfree" payphone access. Nonetheless, alleged caller expectations of a perpetual entitlement to "coinless" access to carrier networks must change as this marketplace changes. Until the FCC accepts this reality, it will remain mired in a regulatory and appellate morass of its own making, caught between overburdened "facility-based" carrier payors, blissfully unaware and sometimes evasive resellers, unappeasable PSPs, non-compliant and intransigent incumbent local exchange carriers ("ILECs"), bewildered and enraged customers, and a Court of Appeals which has clearly grown impatient at both the Commission's "subtracting apples from oranges" and its other "epitome[s] of arbitrary and capricious decisionmaking."[2]

Unfortunately for the Commission, the Common Carrier Bureau's shredding (through misapplication of the waiver procedure) of the ANI-based signaling requirements eviscerated the very heart of the "carrier tracking" requirements which the Court reviewed and accepted in Payphone I.[3] The Bureau's action makes it highly likely that the carrier tracking scheme itself will be vacated upon further judicial review.

The one way to escape from this quagmire is simple and

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[2] Illinois Public Telecom. Ass'n v. FCC, 117 F.3d 555, 564 (D.C. Cir. 1997) ("Payphone I").

[3] Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket 96-128, Order, DA 97-2162 (Com. Car. Bur., Oct. 7, 1997).

elegant, statutorily permissible, properly noticed, deregulatory, and marketplace-driven. First, the Commission must loosen its regulatory grip on the payphone business, and let the PSPs set market prices for the use of their equipment. Second, the Commission must require the PSPs to either collect these prices from their actual, breathing, in-person payphone callers, or negotiate with carriers, who are only secondarily interested in whether a call is made from a payphone, to preserve "coinless" access where the market requires it. By adopting such a plan, the Commission will surely promote the widespread deployment of payphone services to the benefit of the general public, as Congress directed over twenty-nine months ago. Alternatively, the Commission (once again) can set yet another rate -- which will undoubtedly fail to satisfy either the PSPs (if too low) or carrier payors (if too high) -- and then make a third attempt to satisfy the Court of Appeals that the Commission's reasoning is economically sound, fully supported, and adequately explained.

II. ATTEMPTS TO DEFINE SEPARATELY THEN COMPARE THE "MARKETS" FOR LOCAL COIN CALLS AND SO CALLED "COINLESS" TOLL CALLS FAIL TO RECOGNIZE THAT ONLY THE PAYPHONE CALLER CAN INFLUENCE THE MARKET RATE FOR USE OF A PAYPHONE TO MAKE EITHER CALL

It is axiomatic that telephone network usage can occur only in the presence of telephones. WorldCom benefits every time its customers use a telephone to access its long distance telephone network and pay for its services. WorldCom is disinterested,

however, in whether a particular customer makes its call(s) from a payphone, *unless the only alternative is that a given call not be made at all*. Accordingly, WorldCom has an interest in the fact that payphone equipment is available for use by its transient customers. However, this interest in payphones is no more ardent than WorldCom's interest in whether its business customers access its network from hotel rooms or wireless phones, or whether its residential subscribers have a telephone in every bedroom. WorldCom's interest is straightforward -- more calling is generally a good thing. However, as end users, carriers, prepaid service providers, and paging and dispatch companies repeatedly have emphasized throughout this proceeding, the transport carrier of a call is not the true beneficiary of payphone usage.[4] No economic advantage is conferred by the fact that the call originated from a payphone. Nor is the recipient of an "800" call dialed from a payphone a beneficiary. Such a subscriber clearly is indifferent to where a call originated, and may or may not have an interest in receiving a particular call at all. Accordingly, WorldCom fails to understand the Commission's insistence (as once again detailed in the Notice) on defining separate markets for so called "coin" and "coinless" calling, then trying to link the markets using convolutions which only provoke the ire of an already suspicious Court of Appeals.

WorldCom supports the principle of permitting a market-

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[4] See, e.g., AirTouch Reply Comments at 3 (Sept. 9, 1997).

based rate for the use of payphone equipment. But the only market-based rate is the one a caller is willing to pay directly to use a given phone. The use of the phone and the call itself are independent goods, and callers can discover and accept this far more quickly than the Commission may believe. There are comparable marketplace truisms in place in other deregulated or partially regulated markets. For example, any customer will accept the proposition that a soft drink vending machine actually sells two things -- sodas and refrigeration. A customer who wants to avoid the additional cost of the refrigeration can purchase the soft drink for less at a store.

The payphone marketplace is capable of the same type of demand-driven activity. Only after payphone callers (the real economic beneficiaries) stop perceiving payphone usage as "free" will they have the means and incentives to evaluate their potential usage of a payphone against alternatives like wireless calling and calling from other publicly available telephones. Attempting to hide this reality from callers distorts the market the Commission claims to be nurturing, burdens parties who cannot control from where a call is made (as is most evident in the case of calls to "subscriber 800" numbers), and even creates incentives for fraud.

III. ADOPTION OF A "CALLER PAYS" ALTERNATIVE WILL PERMIT A MARKET-BASED RATE AND MITIGATE THE PROBLEMS CAUSED BY THE UNAVAILABILITY OF REQUIRED PAYPHONE SIGNALLING

As WorldCom explained at length in two sets of comments related to the anomalous "Coding Digit Waiver Order" of October

1997, no carrier-pays plan can work absent the ubiquitous availability of accurate, real-time signaling to permit the complete ability to block calls from specific payphones at the request of specific customers. Even if the signaling were available, implementation of such a plan by tracking carriers appears to be far beyond current abilities, and probably transcends any definition of economic or technical feasibility.

In any event, the willingness of the Common Carrier Bureau to undermine the Commission's call tracking scheme via a wholesale and shocking capitulation to last-minute ILEC waiver requests has meant that the required signaling is not fully available anyway. WorldCom is convinced that we have not seen the last feeble ILEC waiver request, given the unprecedented ease with which the current waivers were obtained. Curiously, despite claims by the ILECs that Flex ANI is being rapidly deployed, WorldCom's network statistics suggest that far fewer phones are "coding digit capable" than the ILECs have led the Bureau to believe. Indeed, deployment is far from complete, even in regions served by some of the largest ILECs in the country. Perhaps the larger ILECs have discovered that the only disadvantages to slow rolling the deployment of Flex ANI are the detrimental effects on independent payphone owners and the carriers who compete with the larger ILECs for toll and local customers. If there is a better explanation WorldCom is at a loss to know what it is. Problems also persist with many smaller independents which apparently have failed to even grasp the fact that they are under federal orders to implement this

tariffed service.

The problems noted above are simply fatal to the carrier-tracking scheme. The solution is to proceed with further deregulation of the payphone business itself, rather than continuing to tinker with a discredited plan which is beyond repair.

The Notice asks for "comment on other market-based methodologies that could be used to establish a per-call compensation rate for *coinless* calls."[5] WorldCom respectfully suggests that the Commission has begged the question. The best market-based methodology is one that is economically honest, and it may indeed require the use of coins.

IV. CALLER PAYS AS A DEFAULT WOULD NOT PRECLUDE NEGOTIATED RATES FOR "COIN FREE" PAYPHONE USAGE

To suggest that it is asking too much for Americans to carry currency for use in meeting everyday expenses, like using a payphone, is pure paternalism. However, WorldCom emphasizes that adoption of a deregulated, caller-pays plan as the default would not preclude the use of negotiated arrangements between carriers and PSPs to provide for coinless access at certain locations. In particular, there may be strong incentives for carriers to secure the ability of their customers to have unfettered network access at certain captive locations (e.g., airports, remote highways) where there is *no technically or economically feasible alternative* to the

[5] Notice at 2 (emphasis supplied).

use of a payphone to make a call. For example, a passenger in transit at a "hub" airport who does not have change may decide to defer a call altogether if there is no alternative, or if roaming charges make a wireless call infeasible. If these situations are shown to reduce traffic volumes, WorldCom, other carriers, and PSPs will have every reason to negotiate to make available coinless access from such locations.

In fact, depending upon the variables, it is not hard to imagine that the negotiated rate for certain captive locations might substantially exceed the current compensation rate of $.284/call. For example, carriers may have incentives to negotiate a per-minute compensation rate for such calls, if such a rate will allow a more equitable pass through of payphone expenses to the primary beneficiary of the call, *the caller*. The only way to determine the efficacy of such marketplace solutions is to allow the market to work. The Commission's current plan simply fails in this respect, and no amount of tinkering with alleged cost data or artificial market "proxies" will mitigate that failure.

V. CONCLUSION

For the foregoing reasons, WorldCom recommends that the Commission (1) deregulate the use of payphone equipment and allow PSPs to set a fair compensation rate based upon the willingness of callers to pay for the use of the equipment; and (2) eliminate the per-call tracking requirements and "carrier pays" scheme.

Respectfully submitted,

Douglas F. Brent /RSW

Douglas F. Brent
WorldCom, Inc.
101 Bullitt Lane
Suite 101
Louisville, Kentucky 40222

Richard S. Whitt
WorldCom, Inc.
1120 Connecticut Avenue, NW
Suite 400
Washington, D.C. 20036

July 13, 1998

CERTIFICATE OF SERVICE

I, Cecelia Y. Johnson, hereby certify that I have this 13th day of July, 1998, sent a copy of the foregoing "Comments of WorldCom, Inc." by first-class U.S. mail, postage prepaid, or hand delivery, to the following:

Magalie Roman Salas (original and 4 copies)*
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Kathryn C. Brown*
Chief, Common Carrier Bureau
Federal Communications Commission
Room 500
1919 M Street, N.W.
Washington, D.C. 20554

Lawrence E. Strickling*
Deputy Chief, Common Carrier Bureau
Federal Communications Commission
Room 500
1919 M Street, N.W.
Washington, D.C. 20554

Dorothy T. Attwood*
Chief, Enforcement Division (2 copies)
Common Carrier Bureau
Federal Communications Commission
Room 6008
2025 M Street, N.W.
Washington, D.C. 20554

Robert W. Spangler*
Deputy Chief (Policy), Enforcement Division
Common Carrier Bureau
Federal Communications Commission
Room 6008
2025 M Street, N.W.
Washington, D.C. 20554

Rose Crellin*
Enforcement Division
Common Carrier Bureau
Federal Communications Commission
Room 6008
2025 M Street, N.W.
Washington, D.C. 20554

Greg Lipscomb*
Enforcement Division
Common Carrier Bureau
Federal Communications Commission
Room 6008
2025 M Street, N.W.
Washington, D.C. 20554

International Transcription Service, Inc.
1231 20th Street, N.W.
Washington, D.C. 20037

Cecelia Y. Johnson

Cecelia Y. Johnson

* by hand delivery