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February 12, 1999

Ex Parte Filing

Ms. Magalie Salas, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
12th Street Lobby, Room TW-A325
Washington, D.C. 20554

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

Dear Ms. Salas:

On February 11, 1999, Dan Lanksbury and BB Nugent of U S WEST, Aaron Panner, and I met with Glenn Reynolds, Mark Seifert, and Craig Stroup of the FCC on behalf of the RBOC/GTE Payphone Coalition to discuss issues in the above-captioned proceeding. The focus of the discussion was on items in the Commission's recent Third Report and Order that appear to be erroneous or in need of clarification. Among these issues are the transition to market compensation after January 31, 2002, the need to clarify the party responsible for payment of per-call compensation, and the possibility of altering the per-call rate in the future to take account of bad debt. In addition, the Coalition addressed inaccuracies concerning the definition of "compensable call." The attached letter to Mr. Reynolds reflects the substance of the issues discussed in this regard.

One original and one copy of this letter (along with the attachment) are being submitted to you in compliance with 47 C.F.R. § 1.1206(a)(2) to be included in the record of this proceeding. If you have any questions concerning this matter, please contact me at (202) 326-7902.

Sincerely,

Michael K. Kellogg
Michael K. Kellogg

Enclosure

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February 12, 1998

Mr. Glenn Reynolds
Federal Communications Commission
2033 M Street, N.W., Suite 500
Washington, D.C. 20554

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

Dear Mr. Reynolds:

Thank you for meeting with me and other representatives of the RBOC/GTE/SNET Payphone Coalition yesterday. As we discussed during that meeting, the Coalition is concerned that some language in the FCC's recently released Third Report and Order ("Order") might lead to some confusion concerning the definition of "compensable call" for purposes of the per-call compensation obligation.

The Coalition notes that the definition of compensable call was not an issue that was on remand from the D.C. Circuit, was not an issue upon which the Commission sought comment, and was not an issue raised in any Petition for Reconsideration. The Commission's previously established regulations on this issue are straightforward and require little elaboration. Those regulations provide that, with enumerated exceptions not at issue here, "every carrier to whom a completed call from a payphone is routed shall compensate the payphone service provider for the call at a rate agreed upon by the parties by contract." 47 C.F.R. § 64.1300(a). "In the absence of an agreement . . . the carrier is obligated to compensate the payphone service provider at" the per-call rate. Id. § 64.1300(c) (as amended). In other words, any completed call for which the PSP is otherwise uncompensated is eligible for per-call compensation under the Commission's rules. Indeed, the D.C. Circuit has strongly suggested that any other result is inconsistent with the Act.

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See Illinois Pub. Telecomm. Ass'n v. FCC, 117 F.3d 555, 565-66 (D.C. Cir. 1997).

The Coalition does not understand anything in the Order to call these basic principles into question. The Coalition is concerned, however, that some of the facts and terminology used by the Commission are inaccurate, and these inaccuracies might provoke disputes in the future if not clarified. These inaccuracies relate to three classes of calls: 0+, inmate, and 1+ calls.

0+ calls: In paragraph 53 of the Order, the Commission states that "0+ calls made from a payphone where the PSP serve[s] as an aggregator" are compensable, while "presubscribed 0+ calls" are not compensable. These terms are incorrect: all payphone providers are aggregators (see 47 U.S.C. § 226(a)(2)), and all 0+ calls are sent to the payphone's presubscribed carrier. Thus the distinction the Commission was attempting to draw is not clear from the language of the Order. In addition, note 90 of the Order contains confusing language concerning the type of 0+ calls for which compensation must be paid.

The Commission has already made clear that, in the absence of a contract for compensation between the PSP and 0+ carrier, the carrier must pay per-call compensation. This issue was addressed specifically with regard to BOC PSPs, who are denied compensation on many 0+ calls made from their payphones because, before 1996, many premises owners negotiated long-term commission contracts directly with IXCs. The Commission has therefore held that "once the BOCs reclassify their payphones and terminate all subsidies, . . . they may receive per-call compensation established by the [First Report and Order], so long as they do not otherwise receive compensation for use of their payphones in originating 0+ calls." First Report and Order, 11 FCC Rcd 20541, 20569, ¶ 53 (1996); see Order on Recon., 11 FCC Rcd 21233, 21259, ¶ 51 (1996).

Inmate calls: In paragraph 53 of the Order, the Commission states that "certain inmate calls (to be specifically addressed in a separate proceeding)" are compensable.

The Commission has already explained that, as with 0+ calls, in the absence of a contract for compensation, the carrier must pay per-call compensation to the PSP for inmate calls. Again, many BOC PSPs are denied such compensation now because of long-term commission arrangements that antedated the 1996 Act. The Commission has thus held that "BOCs are able to collect per-call compensation for 0+ calls originated from BOC inmate phones

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. . . when BOCs do not otherwise receive compensation pursuant to contract." Order on Recon., 11 FCC Rcd at 21260, ¶ 52.

As the Coalition understands it, nothing in the remand of Inmate Calling Services Providers Coalition v. FCC, No. 97-1046 (D.C. Cir.) called for reconsideration of the eligibility of inmate calls for per-call compensation. That appeal raised two issues — fair compensation for local and intraLATA toll collect calls from inmate payphones and implementation of non-structural safeguards with respect to telephone service provided to independent inmate payphone services providers. Neither issue implicates the question of which inmate calls are eligible for per-call compensation.

1+ calls. In note 7 of the Order, the Commission states that 1+ calls are a "subset" of 0+ calls, carried by the PSP's presubscribed carrier. In the case of many BOC PSPs, this is factually incorrect. Because few IXCs have the technical capability to carry 1+ calls (which require coin control to be performed by the IXC's switch), such calls are usually routed to AT&T as the default carrier.

The arrangements for compensation between BOC PSPs and AT&T (in most cases) antedate the 1996 Act and do not provide BOC PSPs with any compensation for the use of their payphones. Under the Commission's regulations, because AT&T is the "carrier to whom a completed call from a payphone is routed" and because the parties have not agreed upon a rate for compensation, such calls are compensable at the default rate.

The Coalition believes that these inaccuracies could be resolved through the issuance of errata or a clarification.

1. First, the Commission should delete the second and third sentences of note 7 of the Order, beginning at "A related subset . . ." and ending at "through the deposit of coins." Those sentences, as described above, are inaccurate in the case of many dumb payphones. If it were considered essential to describe the nature of 1+ calls, we would suggest substituting the following language for the second and third sentences:

Another category of long distance calls made from payphones are so-called "1+" calls where the caller makes a long distance call from the payphone by dialing "1" plus the long distance number. In the case of "smart" phones, including some BOC "smart" payphones, the payphone's presubscribed carrier carries the call and the payphone owner may retain part of the payment

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received from the caller, typically through the deposit of coins, as a commission. In the case of many dumb phones, however, 1+ calls are sent to AT&T as a default carrier, and the payphone provider may not receive any compensation from the caller; all coin deposits, sometimes with an adjustment for administrative charges or a fraud allowance, are paid over to AT&T.

Alternatively, the latter two sentences (which raise complexities that appear to be unnecessary for the purposes of the Order) could be omitted.

2. Paragraph 53 and note 90 should also be corrected. In the Coalition's view, the cleanest solution would be to substitute the following language for paragraph 53, deleting all accompanying footnotes:

As our rules provide, except in the case of calls for which section 276 specifically provides that PSPs are not entitled to compensation, the term "compensable call" includes all completed calls that a PSP routes to a carrier for which the PSP is not otherwise compensated. [fn. See 47 C.F.R. § 64.1300(a)-(c).] We reiterate that, for purposes of this Order, calls for which PSPs receive compensation from some other source, e.g., as part of an individual contract between a PSP and an IXC, are not entitled to per-call compensation under this Order.

Alternatively, if the Commission feels that it is desirable to list example of compensable calls, the paragraph could read as follows (modifications in bold type):

Specifically, we establish for purposes of this Order that the term "compensable call" includes:

- (1) access-code calls; [fn. 88 as is]
- (2) toll-free calls; [fn. 89 as is]
- (3) certain 0+ and 1+ calls (e.g., 0+ calls for which a BOC PSP is not otherwise compensated because of a contract between the location provider and the presubscribed IXC); [fn. 90: See First Report and Order, 11 FCC Rcd 20541, 20569, ¶ 53 (1996); Order on Recon., 11 FCC Rcd 21233, 21259, ¶ 51 (1996). A 0+ call occurs when the caller dials "0" and then the

desired telephone number. 0+ calls include credit card, collect, and third-number-billing calls. OSP Second Report and Order, 7 FCC Rcd at 3251 n.4.¹]

(4) certain 0- calls (e.g., 0- calls in states that, with FCC permission, prohibit blocking of such calls); [fn. 91 as is]

(5) certain inmate calls [**remainder deleted**]; [fn. See, e.g., Order on Recon., 11 FCC Rcd at 21260, ¶ 52. "Inmate calls" are calls made by inmates using payphones located in the prison or penitentiary.]

(6) certain toll-free Government Emergency Telecommunications System (GETS) 710 calls. [fn. 93 as is]

"Compensable calls," in the context of this Order, do not include

(1) **local** coin calls or other calls, such as **local** directory assistance calls, for which the payphone provider can otherwise charge;

(2) 0+ **and** 1+ calls for which the PSP receives compensation under contract with the presubscribed carrier;

¹The remainder of footnote 90 should be deleted because it is confusing and legally incorrect. The Commission appears to be suggesting that if a PSP has the opportunity to enter into a contract with a presubscribed carrier but chooses not to do so, the PSP has thereby waived any claim to compensation for such a call. This suggestion runs contrary to the language of the Commission's rules and the statute. Section 64.1300(c) provides the "[i]n the absence of an agreement . . . the carrier is obligated to compensate the payphone service provider at a per-call rate of \$.24." Section 276(b)(1)(A) likewise provides that payphone providers should be fairly compensated for "each and every" completed call made from their payphones.

Moreover, the language should be deleted because it invites disputes over the meaning of the word "chosen" and because it provides IXCs with an incentive to avoid entering into negotiated agreements with PSPs.

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(3) 0- calls in states that do not prohibit blocking of 0- calls.

We reiterate for the purposes of this Order, calls that receive compensation from some other source, e.g., as part of an individual contract between a PSP and an IXC, are not entitled to per-call compensation under this Order.

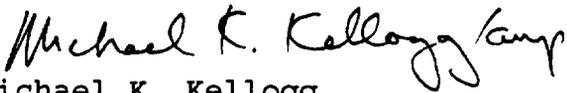
3. It may also be quite helpful to add a footnote at the beginning of the paragraph containing the following language:

. . . the term "compensable call" includes: [fn. **Nothing in this list is intended to alter carriers' per-call compensation obligations as previously set out in the Payphone Orders.**]

* * * * *

We hope that the foregoing suggested clarifications are helpful. If I can provide any further information, please call me at (202) 326-7902.

Yours sincerely,


Michael K. Kellogg

cc: Lawrence Strickling
Mark Seifert
Craig Stroup