

Before the
Federal Communications Commission
Washington, D.C. 20554

RECEIVED
JUL 12 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of the)
Pay Telephone Reclassification)
and Compensation Provisions of the)
Telecommunications Act of 1996)

CC Docket 96-128

**REPLY TO OPPOSITIONS TO
PETITION FOR RECONSIDERATION**

PocketScience, through its counsel, hereby replies to the Oppositions to its Petition for Reconsideration filed by MCI-Worldcom, Sprint, AT&T, the RBOC/GTE Coalition, Cable and Wireless, and the APCC. For the reasons stated herein, PocketScience respectfully requests that the Commission (1) as a function of durational billing, set the rate for data only calls lasting less than one minute at 25% or less of the standard rate; and (2) adopt a rate less than 24 cents for all dial around payphone calls based on an efficient payphone provider model.

I. Durational Billing Can And Should Be Implemented To Encourage Technological Innovation And Economic Growth.

PocketScience customers typically use the payphone for less than one minute to download their Internet e-mail. This is a data-only service. The PocketScience 800 number does not connect any voice calls. One solution to the alleged complexity of implementing durational billing is for the Commission to carve out a lower dial around rate for data only calls which last less than one minute. An 800 number designated as a data only number would receive a lower dial around rate for calls less than one minute. This would encourage efficient use of payphones for Internet e-mail downloads.

No. of Copies rec'd 014
List ABCDE

Since the typical PocketScience customer uses a payphone for less than one minute, and the typical voice call lasts close to four minutes, PocketScience suggests that the rate for data calls less than one minute be set at 25% or less of the normal dial around rate. There is nothing unfair or inequitable in the suggestion that the PocketScience customer should pay 25% or less of the standard dial around rate if they use the payphone for 25% or less time than the typical voice customer.

We note that none of the Oppositions disputes that durational billing can be implemented. None disputes that the IXCs already use durational billing for almost all other calls. The Opponents simply argue that it will cost them money to upgrade their software to implement a durational billing system for dial around payphone compensation. However, the absence of this software and the imposition of a flat rate costs PocketScience and its customers money and on a continuing basis will aggregate far more money than the cost of a one time software upgrade.

The public interest will be served by adopting a dial around rate for short Internet data downloads. The RBOC/GTE Coalition calls PocketScience's Petition "special-interest pleading at its most unadorned." RBOC/GTE Opp. at 3. However, currently one hundred million Americans use Internet e-mail now and another one hundred million will be using it soon. This is a overwhelming majority of all potential payphone customers. Being able to access Internet e-mail from a payphone is a significant issue that affects the public interest. It cannot be labeled a special interest issue when most Americans can benefit from such an aid to Internet access.

Also incorrect is the contention that the Commission cannot implement durational billing because the statute refers to a "per call compensation plan." RBOC/GTE Opp. at 2. The statute

does not say that the Commission must establish a single rate for all calls. Rather, it states that the Commission must adopt regulations that cover "each and every completed intrastate and interstate call." 47 U.S.C. §276(b)(1)(a). If the RBOC/GTE Coalition's reading of the statute was correct, then the Commission would have to adopt one rate for every payphone call, including local coin calls. Since the RBOC/GTE Coalition concedes that the Commission can deregulate local coin rates and set a special rate for dial around calls, it also must concede that the Commission can adopt a durational based rate, so long as every call is covered. *Illinois Public Telecommunications Ass'n v. FCC*, 117 F.3d 555, 562 (D.C. Cir. 1997)(Section 276 gives the FCC the authority to set the local intrastate payphone rate as well as the dial around rate, and the FCC could preempt local authorities and deregulate the local payphone coin rate.)

Several of the Opponents contend that the Commission considered and rejected the durational billing proposal "because there are no significant opportunity costs associated with longer calls." RBOC/GTE Opp. at 3. They contend that PocketScience's proposal "is supported only by arguments, not facts." AT&T Opp. at 2. The Opponents all are large companies that can afford to hire economists to file studies with the Commission that they can then refer to as "facts." PocketScience, a startup company, may not be equipped to win a battle of the experts. However, PocketScience offers more than mere "arguments." It offers common sense. Any Commissioner who has stood in line waiting to use a payphone (whether at a crowded airport or a local theater trying to call the babysitter) knows that longer calls involve opportunity costs. Durational billing encourages efficient use of communications resources, flat rates encourage

inefficiency. Furthermore, any American that gets a telephone bill knows that inter-exchange carriers can and do bill on a durational basis.¹

Setting a lower rate for data-only calls of less than one minute serves the public interest as it encourages the use of payphones in an efficient manner. The greater number of calls that can be accommodated within the time frame of a typical voice call means that payphone providers will still be fairly compensated for each and every call.

II. PocketScience Believes The 24 Cent Rate Is Too High And A Lower Rate Should Have Been Set Based Upon An Efficient Cost Model.

PocketScience believes that the 24 cent dial around rate adopted by the Commission is too high and should be lowered on reconsideration. PocketScience agrees with Sprint that the Commission should have used an efficient payphone cost model, rather than a "marginal payphone" cost model to calculate the dial around rate. Sprint Opp. at 2-3. Use of an efficient payphone cost model would encourage efficient payphone operations that would benefit all consumers.² Basing costs on marginal, inefficient operations unnecessarily raises costs for all consumers. Higher costs inhibit Internet access and discourage the development and deployment

¹APCC statement on page 3 of its Opposition that PocketScience built its business on the use of pay phones without payment is without foundation. PocketScience based its business on the clear concept that durational billing for such toll-free 800 calls and all long distance calls was the FCC policy and should be used in this instance.

²It is surprising that the Commission chose to use a "marginal," i.e., inefficient, rate setting model in this proceeding when the Commission used the TELRIC, i.e. efficient, rate setting model in its UNE proceedings. The Commission waxed eloquent as to why UNE rates based on an efficient cost model encourage innovation and spur economic growth, but appears to have forgotten its prior reasoning when considering payphone compensation. The Commission's disparate treatment of the two cases may be reversible error, unless the Commission can explain why an efficient cost based model is inapplicable here.

of innovative products and services such as the mobile Internet e-mail offered by PocketScience. Discouraging the use of the Internet and Internet access services has a rippling effect in holding back economic development and technological innovation throughout the economy.

PocketScience's focus upon the detrimental effects of imposing the 24 cent rate on busy payphones, such as those in airports where PocketScience customers are most likely to encounter the detrimental effects of the 24 cent rate and payphone operators are most likely to be overcompensated by the 24 cent rate - is misinterpreted by MCI-Worldcom who states that "PocketScience does not dispute the cost of payphones the Commission uses to calculate average per call payphone compensation charges." MCI-Worldcom Opp. at 2. PocketScience does dispute the 24 cent rate. However, MCI-Worldcom's suggestion that the Commission should use "average payphone costs and average call volumes" does not go far enough and PocketScience prefers Sprint's suggestion that the rate should be based upon "the costs of an efficient payphone service provider."

The Commission originally proposed to use 35 cents for the dial around rate, since 35 cents was the typical rate for local coin calls and the Commission viewed it as "the market rate." However, in *Illinois Public Telecommunications Ass'n v. FCC*, the Court rejected that approach, finding that the Opponents herein had shown that the cost to payphone operators of a local coin call is higher than the costs of a dial around call because of the mechanical and collection costs associated with coins and because of the costs associated with origination and completion of the call. 117 F.3d at 563. On remand, the Commission set the rate at 28.4 cents by taking the local coin call market rate of 35 cents and subtracting 6.6 cents, which the Commission found to be the cost differential between local coin calls and coinless dial around calls. In *MCI*

Telecommunications Corp. v. FCC, the Court rejected this approach finding that subtracting a cost (6.6 cents) from a market based price (35 cents) was mixing apples with oranges. 143 F.3d 606, 608 (D.C. Cir. 1998).

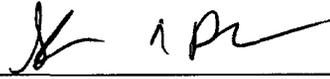
In this second remand, the Commission attempts to remedy the latter error by constructing an entirely cost based rate, without reference to the 35 cent market price. After analyzing payphone costs, the Commission now concludes that the 28.4 cent rate was too high and lowers the rate to 24 cents. While the attempt to construct a cost based rate appears to satisfy the Court's concern, the method used to calculate the cost based model obviously will have a tremendous impact upon the vast number of payphone customers. If the Commission allows payphone operators to recover the full cost of inefficient payphone operations, they will have no incentive to operate more efficiently. For this reason, PocketScience agrees with Sprint and others who contend that the cost based model requires further refinement. Unlike the Opponents, however, PocketScience believes those refinements can be handled on reconsideration and that further Court appeals are unwarranted.

The Commission has settled on a cost based approach. At this point the Commission simply needs to refine its model to encourage more efficient payphone operations, and to recognize that short, data only calls do involve lower opportunity costs and should be given a lower rate. PocketScience asks the Commission to fulfill its mission of furthering the development and deployment of innovative Internet telecommunications services through approval of durational billing for short data-only pay phone calls.

CONCLUSION

For the foregoing reasons, the Commission should reconsider its previous decision and should (1) set the rate for data only calls lasting less than one minute at 25% or less of the standard rate; and (2) adopt a rate less than 24 cents for all dial around payphone calls based on an efficient cost model.

Respectfully submitted,
ROSS & HARDIES



Stephen R. Ross
James A. Stenger
888 16th Street, N.W.
Suite 400
Washington, D.C. 20006
(202) 296-8600

Dated: July 12, 1999

Attorneys for PocketScience

CERTIFICATE OF SERVICE

I, Magdalene Copp, a secretary of the law office of Ross & Hardies, do hereby certify that I have this 12th day of July 1999, served by first class mail a copy of the foregoing

"Reply to Oppositions to Petition for Reconsideration" to:

The Honorable William E. Kennard *
Chairman
Federal Communications Commission
445 12th Street, S.W., Room 8-B201
Washington, D.C. 20554

The Honorable Susan Ness *
Commissioner
Federal Communications Commission
445 12th Street, S.W., Room 8-B115
Washington, D.C. 20554

The Honorable Gloria Tristani *
Commissioner
Federal Communications Commission
445 12th Street, S.W., Room 8-C302
Washington, D.C. 20554

The Honorable Harold Furchtgott-Roth *
Commissioner
Federal Communications Commission
445 12th Street, S.W., Room 8-A302
Washington, D.C. 20554

The Honorable Michael K. Powell *
Commissioner
Federal Communications Commission
445 12th Street, S.W., Room 8-A204
Washington, D.C. 20554

Lynne J. Milne*
CCB, Competitive Pricing Division
Federal Communications Commission
445 12th Street, S.W., 5th Floor
Washington, D.C. 20554

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

Richard S. Whitt, Esq.
WorldCom, Inc.
1120 Connecticut Ave., N.W., Suite 400
Washington, D.C. 20036-3902

Michael K. Kellogg, Esq.
Aaron M. Panner
Kellogg, Huber, Hansen, Todd & Evans,
1301 K Street, N.W., Suite 1000 West
Washington, D.C. 20005
(Counsel for the **RBOC/GTE Payphone Coalition**)

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

Albert H. Kramer, Esq.
Robert P. Aldrich, Esq.
2101 L Street, N.W.
Washington, D.C. 20037-1526
(Counsel for the **American Public Communications Council**)

Rachel J. Rothstein, Esq.
Brent M. Olson, Esq.
Cable & Wireless USA, Inc.
8219 Leesburg Pike
Vienna, Virginia 22182

By: Magdalene Copp
Magdalene Copp

*Hand Delivery