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March 23, 2000

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

RECEIVED

MAY 23 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Pay Telephone Reclassification and Compensation Provisions of the
Telecommunications Act of 1996, CC Docket No. 96-128/File No. NSD-L-99-34;
Flying J Files Petition for Declaratory Ruling, CCB/CPD Docket No. 00-04; Wisconsin
Public Service Commission Order Directing Filings, CCB/CPD No. 00-01

Dear Ms. Salas:

On Monday, March 22, Paul Francischetti of Bell Atlantic, Rodger McDowall of SBC Communications, Michael Kellogg, and I met on behalf of the RBOC/GTE Payphone Coalition with Yog R. Varma, Deputy Chief of the Common Carrier Bureau, and Lynne Milne, Tamara Preiss, Lenworth Smith, and Jon Stover of the FCC. The attached document reflects the substance of our presentation, which concerned matters in the above-referenced dockets.

One 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 of this proceeding. If you have any questions concerning this matter, please contact me at (202) 326-7921.

Sincerely,



Aaron M. Panner

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Enclosure

**RBOC/GTE Payphone Coalition:
The Commission's Unfinished Business**

May 2000

Unfinished Business

- Three Issues Urgently Require Commission Attention
 - Reseller Problem: The Commission should clarify carriers' responsibility for paying per-call compensation when a call is billed by a reseller, and it should adopt a new rule to reduce administrative problems
 - Interim Compensation: The Commission should immediately adopt an interim compensation plan — Coalition PSPs are still waiting for over \$200 million in compensation
 - Regulation of Payphone Line Rates: The Commission should withdraw the Bureau's "New Services Test" Order
- Once These Issues (and Any D.C. Circuit Remand Issues) Are Resolved, Payphones Can Go on the Back Burner

Per-Call Compensation — Background

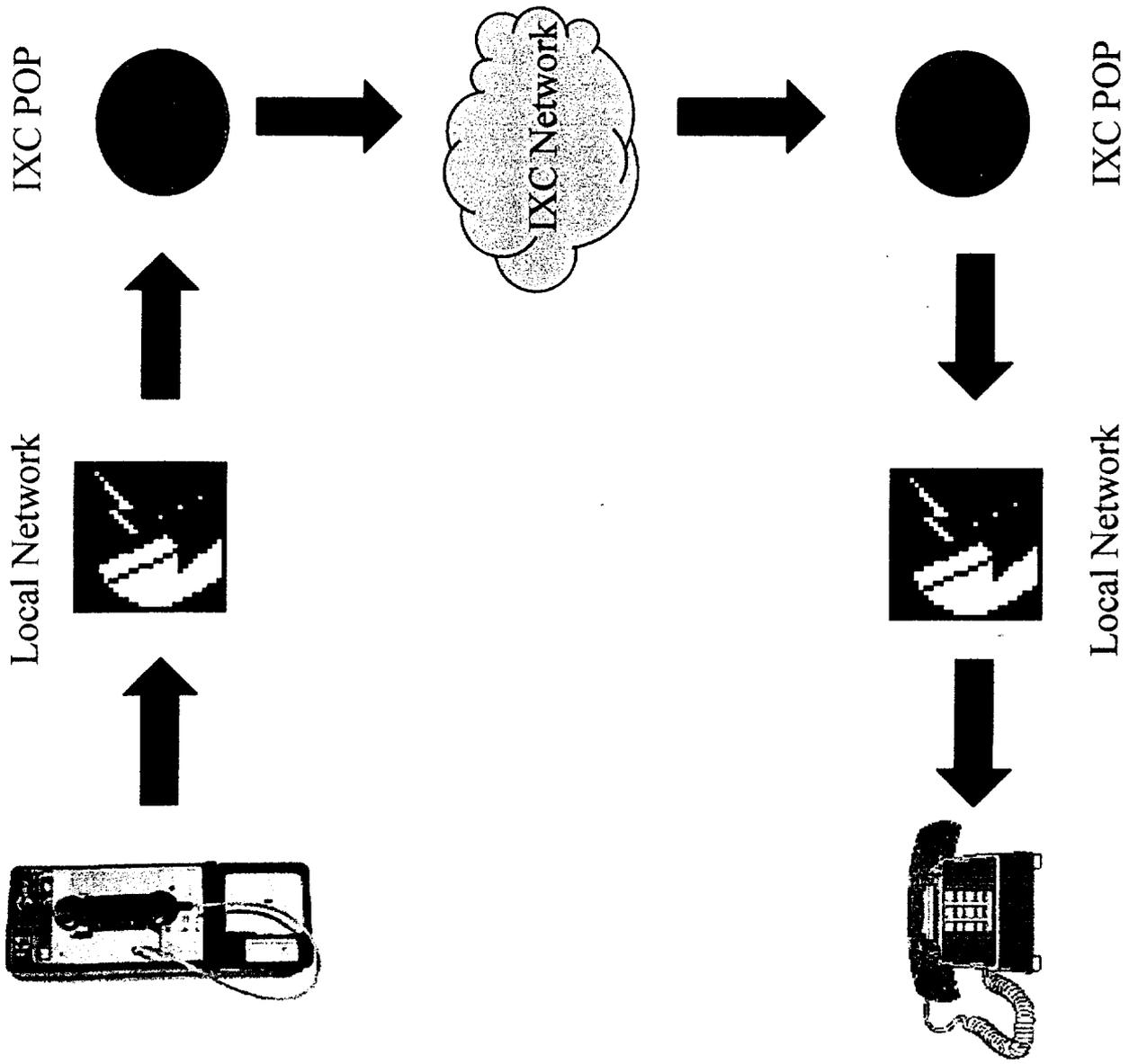
- Per-Call Compensation Is the Sole Source of Compensation for PSPs on Many Calls from Payphones
 - 800 subscriber calls (e.g., 1-800-FLOWERS)
 - 800 access code calls (e.g., 1-800-COLLECT)
 - 101XXXX access code calls
 - Some 0+ and 1+ calls, if not otherwise compensated
- PSPs Are Prohibited From Blocking Access Code Calls by Law. 47 U.S.C. § 222 (“TOCSIA”)
- IXC’s Are Free to Block Calls from Payphones, and Some Do So
- Bargaining Power Is on the IXC’s Side
- As Call Volumes Fall, and IXC’s Shift Traffic to Dial-Around, Per-Call Compensation Increasingly Essential to PSPs’ Survival

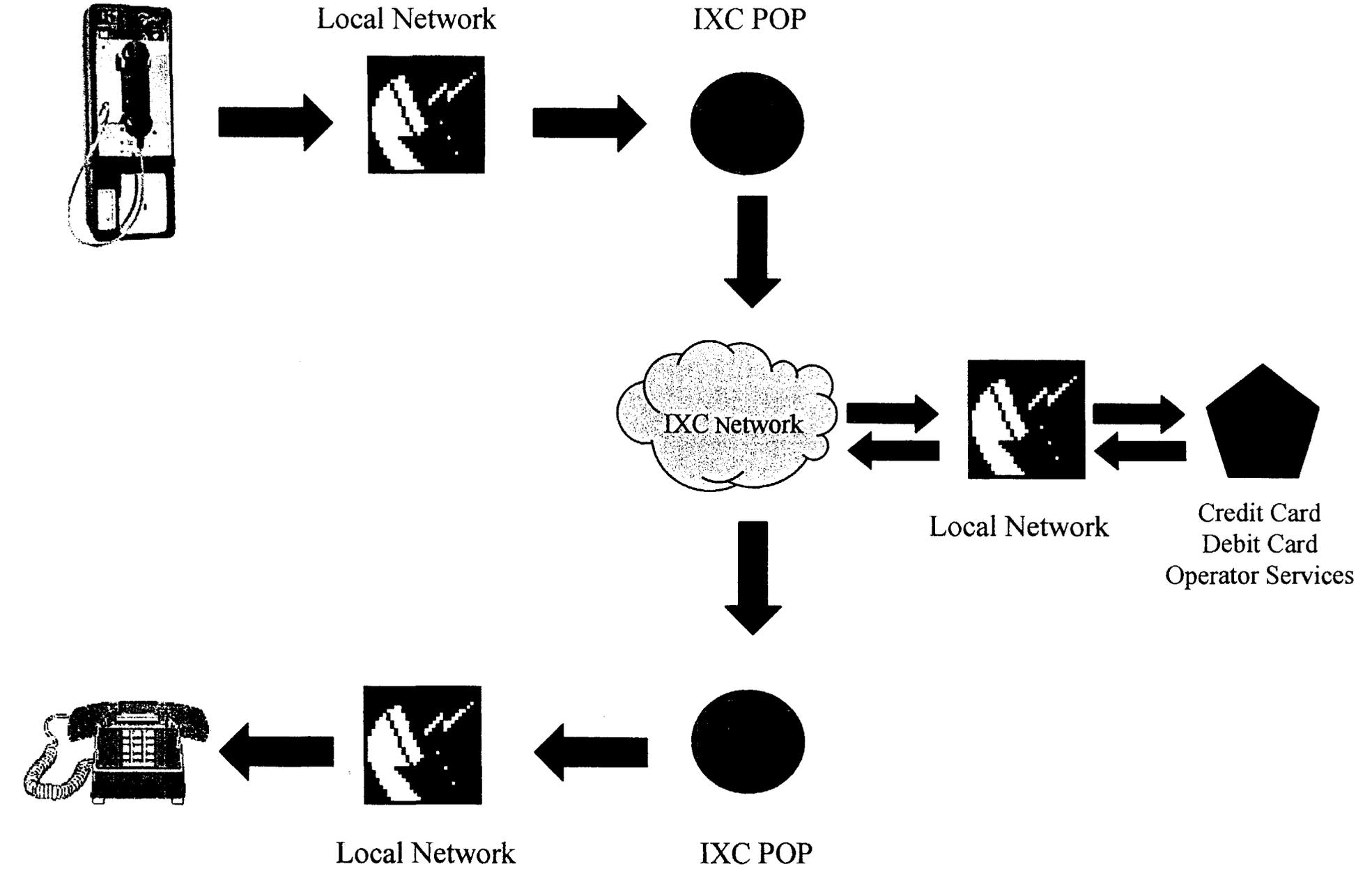
Compensation Shortfall and the Reseller Problem

- **Per-Call Compensation Shortfall for Coalition Members Stands at Tens of Millions of Dollars Annually: Many Major Carriers Underpay; Many Small Carriers Pay Nothing**
- **Reseller Issue Is Most Important Remaining Enforcement Problem**
 - **Many major carriers insist that underpayments are the responsibility of facilities based resellers**
 - **Efforts to identify resellers face major obstacles**
 - **PSP has no way to tell whether a given call is carried by a reseller**
 - **IXCs have not identified the calls they pay for**
 - **IXCs do not identify the resellers responsible**
- **PSPs Are Left at the Mercy of IXCs and Resellers**

Root of the Problem: “Switch-Based Reseller” Loophole

- The Basic Rule: Facilities-Based Carriers Pay
 - “[E]very carrier to whom a completed call from a payphone is routed shall compensate the payphone service provider.” 47 C.F.R. § 64.1300(a)
 - “In the interests of administrative efficiency and lower costs, facilities-based carriers should pay the per-call compensation for the calls received by their reseller customers.” First Report and Order, 11 FCC Rcd at 20586, ¶ 86
- In Limited Circumstances, A Reseller May Take Over Per-Call Payments for the Facilities-Based Carrier
 - Facilities-based carriers are not required to pay compensation when “switch-based resale customers have identified themselves as responsible for paying compensation.” Memorandum Opinion and Order, 13 FCC Rcd at 10915-16, ¶ 38
 - “If a carrier does not maintain its own switching capability, then . . . the underlying carrier remains obligated.” Order on Recon., 11 FCC Rcd at 21277, ¶ 92
- Facilities-Based Carriers Have Taken This Narrow Exception And Run With It





The Commission Should Immediately Clarify the Rule

- Primary Jurisdiction Referral From Flying J Proceeding Provides Another Opportunity — Coalition Petition Is Also Pending
- Clarification Must Be Consistent With Letter and Spirit of Prior Rulings
 - The basic rule: the owner of the first switch is required to pay compensation
 - For obligation to shift to reseller, three conditions must be satisfied
 - Reseller must affirmatively undertake obligation to pay compensation. Memorandum Opinion and Order, 13 FCC Rcd at 10916, ¶ 38
 - IXC must identify the reseller responsible for the particular call. Memorandum Opinion and Order, 13 FCC Rcd at 10916, ¶ 38
 - Reseller must have a switch within the network capable of tracking calls
 - Platform providers — like debit card resellers — do not qualify because they do not use switches in the network. Order on Recon., 11 FCC Rcd at 21277, ¶ 92

The Commission Should Adopt CIC Solution

- On a Going-Forward Basis, Commission Should Provide that CIC Assignee for Particular Call Must Pay Compensation
- The CIC Solution Has Several Advantages Over Current Rules:
 - No more definitional disputes
 - Distinctions among facilities-based carriers, switch-based resellers, and non-switch-based resellers do not correspond to routing and tracking of calls in the network.
 - No dispute over CIC assignee — for each call, there is a unique CIC.
 - CIC associated with each call is available to PSP for verification purposes
 - CIC solution will reduce disputes and improve collection efficiency
 - Top ten CIC assignees account for over 96 percent of calls; top twenty CIC assignees account for over 98 percent of calls.

IXCs' Objections to CIC Solution Are Baseless

- Main Objection Is CIC Assignee May Not Be Able To Identify Completed Calls
 - For 101XXXX access code calls and non-resold subscriber 800 calls, CIC assignee can always identify completed calls
 - For switch-based resellers, CIC assignee has contractual relationship with reseller who can identify completed calls
- The CIC Solution Is Already Working
 - AT&T already uses CICs to track per-call compensation
 - Reconciliation disputes with AT&T are relatively minimal

Interim Compensation: Paying PSPs Their Due

- As of April 15, 1997, LEC PSPs Eliminated Hundreds of Millions in Access Charges Supporting Their Payphones to Qualify For Per-Call Compensation
- Commission Established Per-Phone “Interim Compensation” Regime to Cover April to October 1997 — When Per-Call Compensation Began
- Plan Was Vacated By D.C. Circuit
- Commission Has Not Addressed the Issue After Remand
- Coalition Members Have Been Deprived of Over \$200 Million in Compensation at Current Rates — For Three Years
- Immediate Commission Action Is Essential

D.C. Circuit Vacated Original Interim Compensation Plan

- The Court Vacated the Original Plan for Three Reasons
 - The plan excluded IXC's with revenues under \$100 million from payment obligations
 - The plan divided payment obligations according to IXC's' total toll revenues
 - Commission had no evidence that total toll revenues provided a good proxy for payphone-originated calls
 - The plan excluded certain 0+ and inmate calls from RBOC phones from the interim plan, even though RBOCs received no other compensation for these calls
- The Coalition Would Support Two Possible Approaches to Address the Court's Concerns

Option 1: Use Later Payments As a Proxy

- Require All IXC's to Pay Compensation for the Interim Period Equal to the Corresponding Payments for the 1998 Period — With Appropriate Adjustments
 - Commission should determine that payphone call volumes were roughly the same in 1997 and 1998
 - For each payphone in service during both periods, set interim obligation equal to compensation obligation incurred during corresponding period one year later
 - For payphones in service during 1997, but not in 1998, set compensation equal to IXC's per-payphone average
- Eliminates Need to Divide Per-Phone Obligation Among Carriers
- IXC's May Seek Waivers to Reflect Changed Circumstances

Option 2: 131 Calls Plus 0+ and Inmate

- Commission Could Retain 131 Compensable Calls Per Payphone Figure
 - Has not been challenged and provides a reasonable approximation
- Commission Must Make Adjustment for 0+ and Inmate Calls
 - IXCs should be required to identify payphone for which 0+ or inmate compensation is due for interim period
 - IXCs should pay on actual 0+ and inmate volumes for those payphones
 - If IXCs lack records for specific payphones, should be required to document, in a Commission filing, average number of 0+ or inmate calls for all payphones for the relevant period and pay at that rate
- Divide Obligation by 800 Revenues
 - Two-thirds of compensable calls are 800 calls
 - Distribution of 800 calls generally should provide a good proxy for 800 calls from payphones

Option 2 in Operation

- For April 15-July 1, 1997:

2.5 months x 131 calls/month x \$.238 x share of 800 revenues

Plus 0+ calls

Plus 11.25% interest from October 1, 1997 (Blended Debt/Equity Rate from Prior Commission Orders — Not a Penalty Rate)

- For July 1 - October 6, 1997:

3.2 months x 131 calls/month x \$.238 x share of 800 revenues

Plus 0+

Plus 11.25% interest from January 1, 1998

A Radical Departure: The Common Carrier Bureau's "New Services Test" Order

- Order Concerns Regulation of Intrastate Portion of Payphone Access Lines
 - Payphone Access Lines are functionally equivalent to business lines
 - Usually priced in the same way
 - Have been widely available under state tariffs since mid-1980s
- Payphone Access Lines are Subscriber Lines, Available for Resale, and Subject to EUCL
- CLECs Have Made Significant Inroads into Payphone Access Line Market, Using Both Resale and UNEs

The Bureau Order Requires Provision of Retail Lines at UNE-Like Rates

- New Services Test Is Flexible — An Appropriate Measure of Costs (Determined by the LEC in the First Instance) Plus Overhead
- Bureau Order Ignores Prior Precedent and Requires Payphone Access Lines To Be Priced At TELRIC
 - “[C]osts must be determined by the use of an appropriate forward-looking economic cost methodology that is consistent with the principles the Commission set forth in the Local Competition First Report and Order.” Bureau Order ¶ 9
 - “[F]or purposes of justifying overhead allocations, UNEs appear to be ‘comparable services’ to payphone line services.” Bureau Order ¶ 11
 - UNEs not comparable — comparable services are business lines
- This Requirement Flatly Contradicts the Act and Prior Commission Orders
 - Section 251(c)(3) limits the obligation to provide UNEs to telecommunications carriers: “Section 276 does not refer to or require the application of Sections 251 and 252 to LEC payphone services.” First Report and Order, 11 FCC Rcd at 20615, ¶ 147

The Order Oversteps Commission Jurisdiction

- The Bureau Order Claims Authority to Dictate the Content of State Tariffs
 - Bureau stated that it would “review the incumbent LECs’ [State] rates, terms and conditions” and that it could prescribe a rate “even though [it] may be filed in a state tariff.” Bureau Order ¶ 6 & n.14
 - That claim finds no support in prior Commission orders, violates the Act, and is unconstitutional
- Section 276 Does Not Grant the Commission Authority Over Rates Charged for Payphone Lines, As Opposed to Payphone Compensation
- If the Bureau Were Correct, Commission Would Be Forced to Review Payphone Line Rates in All 50 States

The Commission Should Withdraw the Order

- The Rule Would Virtually Foreclose Facilities-Based Competition in the Market for Payphone Access Lines, a Result Antithetical to the Act
- The Order Was Procedurally Improper
 - The Bureau may not make new law pursuant to delegated authority
 - Parties did not have notice and an opportunity to comment
 - The Order threatens serious disruption at state level
- The Order Is Substantively Wrong
- Commission Should Issue Notice of Inquiry or Proposed Rulemaking to Clarify the Appropriate Commission Role in Overseeing State Payphone Line Rates