

ORIGINAL

EX PARTE OR LATE FILED

ORIGINAL

DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP

2101 L Street NW • Washington, DC 20037-1526
Tel (202) 785-9700 • Fax (202) 887-0689
Writer's Direct Dial: (202) 828-2226
A5691.0570

RECEIVED

JAN - 9 2001

January 9, 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

HAND DELIVERY

Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals
445 12th Street, SW
Washington, DC 20554

**NOTICE OF WRITTEN
EX PARTE**

Re: Public Payphone Matters: CC Docket No. 96-128

Dear Ms. Salas:

This letter reports a written ex parte contact by the undersigned with Dorothy Attwood clarifying the American Public Communications Council's position in the above-referenced docket. Enclosed are two copies of the letter sent to Dorothy Attwood.

If you have any questions, please do not hesitate to give me a call.

Sincerely,



Albert H. Kramer

AHK/rw
cc: Ms. Dorothy Attwood

Number of Copies rec'd 0+2
ABODE

DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP

2101 L Street NW • Washington, DC 20037-1526
Tel (202) 785-9700 • Fax (202) 887-0689
Writer's Direct Dial: (202) 828-2226
A5691.0570

January 9, 2001

RECEIVED

JAN - 9 2001

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

HAND DELIVERY

Ms. Dorothy Attwood
Chief - Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW
Room 5-C450
Washington, DC 20554

Re: Payphone Compensation Rules

Dear Ms. Attwood:

I am writing to clarify the position of the American Public Communications Council, Inc. ("APCC") regarding the requirements of the existing payphone compensation regulations. In addition, we will discuss a portion of the rules that may be addressed by the Commission in a rulemaking, although, if there is an appropriate, ongoing proceeding (such as a petition for reconsideration of prior orders), it may be possible for the Commission to deal with this portion of the rules without initiating a new rulemaking proceeding.

I.

The Commission's Current Payphone Rules

The Commission's rules on payphone compensation require that "every carrier to whom a completed call from a payphone is routed shall compensate the payphone service provider for the call . . ." 47 C.F.R. § 64.1300(a). Consistent with this provision, section 64.1310(a) of the rules provides, "It is the responsibility of each carrier to whom a compensable call from a payphone is routed to track, or arrange for the tracking of, each such call so that it may accurately compute the compensation required by Section 64.1300(a)."

In the Memorandum Opinion and Order issued on April 3, 1998, the Commission further explained and gave examples of some of the obligations of facilities-based carriers and switch-based resellers to payphone service providers ("PSPs"):

The Commission also stated that facilities-based carriers may recover the expense of payphone per-call compensation from their reseller customers. As clarified in the *Order on Reconsideration*, switched-

based resellers are responsible for paying per-call compensation. When facilities-based IXCs providing 800 service have determined that they are not required to pay compensation on particular 800 number calls because their switch-based resale customers have identified themselves as responsible for paying the compensation, the facilities-based carriers must cooperate with PSPs seeking to bill for resold services. Thus, a facilities-based carrier must indicate, on request by the billing PSP, whether it is paying per-call compensation for a particular 800 number. If it is not, then it must identify the switch-based reseller responsible for paying payphone compensation for that particular 800 number. Facilities-based IXCs and switched-based resellers may not avoid compensating PSPs by withholding the name of the carrier responsible for paying per-call compensation, thereby avoiding the requirements of the *Payphone Orders* and Section 276.

Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, 13 FCC Rcd 10893 ¶ 38 (April 3, 1998).

This statement of the Commission provided examples of the types of obligations imposed on facilities-based carriers and switch-based resellers. The statement did *not* purport to encompass the full range of such obligations necessary to ensure that all PSPs are fully compensated for completed calls from their payphones.

II.

The Requirements of the Current Rules

APCC previously has articulated to the Commission its views on the requirements of the current payphone rules, as set forth in the *Order on Reconsideration of the First Report and Order*. See APCC's Comments and Reply Comments in *Flying J Petition for Declaratory Ruling*, CCB/CPD No. 00-04, filed May 1, 2000 and May 22, 2000, respectively. See also APCC Comments and Reply Comments on RBOC/GTE/SNET Payphone Coalition Petition for Clarification, in CC Docket No. 96-128, NSD File No. L 99-34, filed May 15, 1999 and June 1, 1999, respectively, in response to a Commission Public Notice.¹ APCC hereby repeats those views and renews its request that the Commission issue a clarification that the *current rules* require the following:

(1) each facilities-based carrier must provide to PSPs, at the time dial around compensation is due to be paid, a computer-readable list of the access code and toll-free numbers which traversed the carrier's network upon which the carrier paid per-call dial around compensation, and the volume of calls for each access code and toll-free number;

¹ *Common Carrier Bureau Seeks Comment on the RBOC/GTE/SNET Payphone Coalition Petition for Clarification Regarding Carrier Responsibility for Payphone Compensation Payment*, CC Dkt. No. 96-128, NSD File No. L-99-34, DA 99-730 (1999).

(2) each facilities-based carrier must also provide to PSPs, at the time dial around compensation is due to be paid, a separate, computer-readable list of the access code and toll-free numbers which traversed the carrier's network upon which the carrier did *not* pay per-call dial around compensation, and the volume of calls for each access code and toll-free number. Also, for each of the access code and toll-free numbers upon which the carrier did *not* pay per-call dial around compensation, the facilities-based carrier must provide to PSPs the name, address, contact person and phone number of the carrier or reseller to which all traffic for that access code or toll-free number was routed;

(3) each facilities-based carrier is not relieved of its payphone compensation obligation to PSPs if the facilities-based carrier, on a current basis, has not identified to the PSPs the switch-based reseller ("SBR") customer that is responsible for making payment and the number of dial-around calls routed to the SBR;

(4) each facilities-based carrier is relieved of its obligation to pay per-call dial around compensation to PSPs only when the facilities-based carrier has notified its SBR customers of their responsibility to pay payphone compensation, and the SBR has acknowledged that obligation, has agreed to make its payments directly to the PSPs, and has in fact made those payments to the PSP;

(5) if a facilities-based carrier is collecting payphone surcharges from its reseller customers for all or a certain portion of the reseller customer's calls, whether the customer is an SBR or a non-SBR, the facilities-based carrier is obligated to pass on the payphone compensation to the PSPs from whose phones those calls were made; and

(6) a facilities-based carrier cannot disclaim payphone payment responsibility in favor of its SBR customer when the service provided to the SBR customer does not pass through Flex ANI to the SBR, and any additional or other information necessary to identify payphone calls is not provided to the SBR. Since it is only the facilities-based carrier that can order Flex ANI and can ensure the appropriate digits are passed on to the SBR, the facilities-based carrier must remain responsible to the PSP if it is the facilities-based carrier's fault that the SBR does not receive the Flex ANI digits it needs to recognize a payphone-originated call.

III.

Need for Further Strengthening the Current Rule

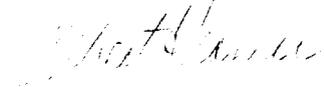
In addition to clarifying that the existing payphone rules impose the foregoing disclosure and payment requirements, we ask the Commission to utilize a pending proceeding (such as a petition for reconsideration of previous orders) or, if necessary, to initiate a new, prospective rulemaking proceeding, to make clear that the per-call dial around compensation obligation is imposed either on (a) the CIC code carrier for each completed call originating from a payphone, or (b) the facilities-based carrier that operates the facilities to which the call is routed after it leaves the central office of and is handed off by the local exchange carrier ("LEC"). At a minimum, we ask the Commission to commit to further strengthen the dial-around compensation rule as soon as it is practicable to do

Ms. Dorothy Attwood
January 9, 2001
Page 4

so. The record developed in the two proceedings mentioned above and related materials submitted in CC Dkt. No. 96-128 amply justify these changes.

Please do not hesitate to call me if you wish to discuss these matters further or have any questions about the position of APCC. Thank you in advance for your cooperation and assistance.

Sincerely yours,



Albert H. Kramer

AHK/rw

cc: Mr. Yog Varma
Ms. Staci Pies
Mr. Martin Schwimmer