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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY



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February 5, 2001

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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

Dear Ms. Salas:

Transmitted herewith, on behalf of AT&T Corp., are an original and fourteen copies of AT&T's petition to implement Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996.

In the event that there are questions concerning this matter, please communicate with this office.

Very truly yours,

Charles E. Griffin

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

AT&T Petition for Declaratory Ruling

Pursuant to Section 276(c) of the Telecommunications Act of 1996 and Section 1.2 of the Commission's Rules (47 C.F.R. § 1.2), AT&T Corp. ("AT&T") hereby petitions the Commission for a declaratory ruling that States may not foreclose carriers from establishing cost-recovery mechanisms to recoup from payphone users the costs of operating payphones subsequent to the Commission's implementation of Section 276 of the Telecommunications Act.

Section 276(a) and (b) of the Act introduced a new payphone regime, pursuant to which the Commission is required to "prescribe regulations that establish a per call compensation plan to ensure that all payphone service providers ["PSPs"] are fairly compensated for each and every completed intrastate and interstate call using their payphone."¹ The express terms of this federal statute thus vested plenary authority in the Commission to establish payphone compensation rules for *all* payphone calls, including intrastate calls. Moreover, Section 271(c) requires the Commission to preempt "any State requirements [that] are inconsistent with the Commission's regulations. . . on such

¹ Section 271(b)(1)(A) exempts from compensation emergency services and calls for hearing disabled individuals. Such calls are not pertinent in this context.

matters.” Indeed, the Commission’s authority under the Act has been firmly established by the D. C. Court of Appeals, which upheld -- against direct challenge by nine state regulatory commissions -- the Commission’s “unambiguous” authority to regulate rates for local (*i.e.*, intrastate) coin calls.²

From the earliest Commission order on payphone compensation, the Commission rejected proposed payment mechanisms that would require PSPs to collect payphone compensation from payphone users, electing instead to require carriers to pay compensation directly to PSPs.³ Critically, however, the Commission held that carriers “have the option” of recovering such payments from their customers.⁴ As a result, AT&T and many other carriers have adopted surcharges in both their interstate and intrastate tariffs to recover the significant costs necessary to comply with the Commission’s payphone compensation rules.⁵ AT&T’s surcharge is applied, *inter alia*, to all non-coin calls made from payphones.

A number of states have adopted “rate caps” for certain types of calls from payphones. Moreover, regulators in at least one State have threatened to find that the application of AT&T’s payphone surcharge will result in unlawful rates. In that particular circumstance, the State has adopted “rate caps” for intrastate 0+/0- payphone calls. AT&T’s current rates for such calls are set at the lawful cap. However, when such calls are made from payphones AT&T, consistent with its national process in

² *Ill. Pub. Telecomms. Ass’n v. FCC*, 117 F.3d 555 at 562-63 (1997).

³ Report and Order, FCC 96-388, released September 20, 1996, ¶ 83.

⁴ *Id.*

⁵ Such costs include both the costs of payments made to payphone service providers and the costs associated with calculating and paying payphone compensation.

implementing the payphone compensation regime, also separately assesses a payphone surcharge. The State commission has informed AT&T that it believes that AT&T's application of this surcharge to 0+/0- payphone calls violates its rate cap, and it has threatened action to require AT&T to reduce its rates and establish a refund mechanism relating to its prior collection of the payphone surcharge on intrastate 0+/0- calls made from payphones.⁶

AT&T requests that the Commission promptly exercise its authority under Section 276(c) and declare that any such action would violate section 276 and the Commission's regulations thereunder, because it would prevent AT&T and similarly situated carriers from implementing a payphone regime that is consistent with the rules and practices established by this Commission. As noted above, pursuant to the Commission's requirements, AT&T has established the mechanisms necessary to track payphone calls and to compensate payphone owners under the Commission's rules. As part of its overall implementation of the Commission's payphone compensation requirements, AT&T has also established a payphone surcharge to enable it to recoup the significant financial burdens imposed by the Commission's payphone rules. State commissions should not be permitted to adopt mechanisms that would limit, prohibit, or otherwise penalize AT&T or similarly situated carriers for doing so; otherwise, carriers could be left without adequate means to recover their payphone-related costs.

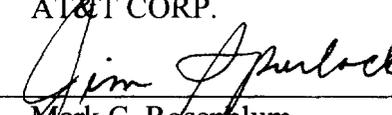
⁶ See Attachment 1.

ACCORDINGLY AT&T respectfully asks the Commission to issue promptly a declaratory ruling forbidding State commissions from limiting or otherwise regulating AT&T's right to establish a payphone surcharge for any category of calls placed from payphones.

Respectfully submitted,

AT&T CORP.

By


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February 5, 2001

STATE OF FLORIDA

Commissioners:
 E. LEON JACOBS, JR., CHAIRMAN
 J. TERRY DEASON
 LILA A. JABER
 BRAULIO L. BAEZ
 MICHAEL A. PALECKI

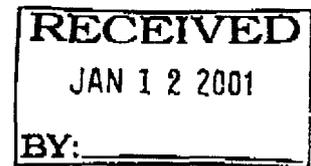


DIVISION OF COMPETITIVE SERVICES
 WALTER D'HAESELEER
 DIRECTOR
 (850) 413-6600

Public Service Commission

January 5, 2001

Rhonda P. Merritt
 Asst. VP, Law & Government Affairs
 AT&T Communications of the Southern States, Inc.
 101 North Monroe Street, Suite 700
 Tallahassee, FL 32301-1546



Dear Ms. Merritt:

Pursuant to the ongoing investigation (Docket No. 992037-TI) into AT&T's tariffed rates for operator service providers, staff has concluded that AT&T appears to be applying a payphone surcharge for intrastate 0+ and 0- calls made from a pay telephone or in a call aggregator context that exceeds the rate cap established by Rule 25-24.630, Rate and Billing Requirements, Florida Administrative Code. In your letter dated May 30, 2000, you stated that under AT&T's Custom Network Service tariff, a payphone surcharge of \$0.28 from February 1, to July 31, 1999, and \$0.26 from August 1, 1999, to present is applicable. In addition, you stated that a \$0.30 public payphone surcharge is applicable under AT&T's General Services Tariff. Staff believes these surcharges are not authorized under the rate cap.

Based on this information, staff believes that AT&T appears to be in violation of Rule 25-24.630, Florida Administrative Code and should proffer to: (1) determine the number of calls effected by the excessive surcharge, (2) quantify the amount to be refunded to customers, and (3) refund the amount overcharged to the consumers in accordance with Rule 25-4.114, Refunds, Florida Administrative Code. Please provide me with a written response by January 22, 2001.

Sincerely,

Dale R. Buys
 Regulatory Analyst
 Bureau of Service Quality

CC: Diana Caldwell

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