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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

March 26, 2001

NOTICE OF ORAL EX PARTE
COMMUNICATION

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

Re: Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128; Colorado Payphone Association's Petition for Reconsideration of the Third Report and Order

Dear Ms. Salas:

On March 26, 2001, Albert H. Kramer and Robert F. Aldrich, on behalf of the American Public Communications Council ("APCC"), had a meeting with Dorothy Attwood, Chief of the Common Carrier Bureau, Jared Carlson, Assistant to the Bureau Chief, Jane Jackson, Chief of the Competitive Pricing Division, and Lenworth Smith, Chief of the Legal Branch, Competitive Pricing Division. They discussed APCC's views on the matters pending in the above-referenced dockets, and the information contained in the attached documents which were handed out at the meeting.

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

Sincerely,



Robert F. Aldrich

RFA/nw

cc: Dorothy Attwood
Jared Carlson
Jane Jackson
Lenworth Smith

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RETROACTIVE COMPENSATION ADJUSTMENTS

Ex Parte Presentation CC Docket No. 96-128 American Public Communications Council

I. THE AMOUNT OF ANY INTERIM PERIOD COMPENSATION ADJUSTMENTS CANNOT BE DECIDED IN ISOLATION.

- ◆ The Commission has linked retroactive compensation adjustments for the Interim Period (November 1996 – October 1997) and the Second Report and Order Period (October 1997 – April 1999).
- ◆ Retroactive compensation adjustments are not automatic: they are to be ordered only if the equities so require. *Towns of Concord v. FERC*, 955 F.2d 67, 75-76 (D.C. Cir. 1991).
- ◆ The Commission has made no final ruling to date on retroactive adjustments for the Interim Period, and did not evaluate the equities prior to ruling on retroactive adjustments for the Second Report and Order Period.
- ◆ Still pending is the Colorado Payphone Association's Petition for Partial Reconsideration of the *Third Report and Order*, filed April 21, 1999, which requests the Commission to reconsider its decision to require retroactive adjustments for independent PSPs for the Second Report and Order Period. The Association argued:
 - Independent PSPs were grossly *undercompensated* for years prior to November 1996, due to the FCC's erroneous failure to consider compensation for subscriber 800 calls. No retroactive adjustment was awarded for those years.
 - IXC's paid \$.284 per call but recovered *more* than that from their end user customers during the Second Report and Order Period. Retroactive adjustments based on the \$.24 rate would provide a huge windfall to IXC's.

II. THE RBOCS' INTERIM PERIOD COMPENSATION PROPOSAL IS UNWORKABLE AND UNFAIR TO INDEPENDENT PSPS.

- ◆ The RBOCs recommend using actual 1998 per-call compensation payments (recalculated at the \$.24 – actually \$.238 for retroactivity purposes -- rate) as the basis for adjusting PSPs' Interim Period compensation
- ◆ Most IXCs *as well as* independent PSPs oppose the RBOC proposal.
- ◆ 1998 compensation payments are wholly unreliable as indicators of independents' dial-around call volumes, due to the massive problems with FLEX ANI compensation and resellers.
- ◆ Translating payments from one period to another would generate huge administrative problems.

III. THE RBOC PROPOSAL WOULD RESULT IN GROSS UNDERCOMPENSATION OF INDEPENDENT PSPS.

- ◆ The current compensation rate (\$.238 per call), which would be retroactively applied, is based on the Commission's finding that a *marginal* payphone has 439 calls per month, of which 142 are compensable dial-around calls. The \$.238 rate was set to recover relevant portions of the fixed cost of a marginal payphone.
- ◆ The Commission found that call volume is higher at *average* payphones than at *marginal* payphones. APCC's survey of actual 1997 (Interim Period) call volumes showed that the *average* independent payphone had 159 compensable dial-around calls per month.
- ◆ Actual compensation payments to independent PSPs in 1998 were made on an *average* of about 109 calls per payphone per month. 68.6% of the compensable calls at an average independent payphone.
- ◆ Reasonably applying the paid-call percentage for *average* independent payphones (68.6%) to *marginal* payphones' call volume of 142 calls per month yields a 1998 paid call volume for marginal payphones of about 97 calls per payphone per month, 45 calls below the level necessary to fully recover marginal payphone costs.

IV. ANY RETROACTIVE COMPENSATION ADJUSTMENTS MUST ENSURE COST RECOVERY FOR MARGINAL PAYPHONES

- ◆ The *Third Report and Order* intended that marginal payphones would recover \$33.80/phone/month dial-around compensation ($$.238/\text{call} \times 142 \text{ calls} = .\33.80).
- ◆ As shown above, marginal payphones were actually compensated for only 97 calls per month in 1998, for total compensation of \$27.55 per payphone per month (at the 1998 rate of \$.284) -- \$6.25 short of the \$33.80 contemplated by the *Third Report and Order*.
- ◆ If the Commission applies the current \$.238 rate retroactively to 1998 call counts, as proposed, marginal payphones' compensation would be reduced to \$23.09 per payphone per month -- \$10.71 short of the \$33.80 contemplated by the *Third Report and Order*.
- ◆ To ensure the amount of cost recovery intended by the *Third Report and Order*, adjusted compensation for the Interim Period and Second Report and Order Period, if based on actual 1998 paid call volumes, would have to be set at \$.348 per call ($\$33.80/97 = \$.348$).

V. RETROACTIVE COMPENSATION ADJUSTMENTS ARE NOT WARRANTED, WITH RESPECT TO INDEPENDENT PAYPHONES, FOR THE INTERIM PERIOD OR THE SECOND REPORT AND ORDER PERIOD.

- ◆ The Commission could reasonably reach a different result with respect to ILEC payphones, which appear to be differently situated.

APCCS 1998 Dial Around Compensation Breakdown

Year	Qtr	Unique	Collections	Compen-
		Submitted	Per ANI Per	sated Calls
		ANIs	Month	Per ANI Per
				Month
1998	1	369,854	29	101
1998	2	389,149	33	115
1998	3	394,571	33	115
1998	4	373,135	30	104
1998	All	1,526,709	31	109