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

JUN 4 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
Calling Party Pays Service)	WT Docket No. 97-207
Option in the Commercial Mobile)	
Radio Service)	

PETITION FOR PARTIAL RECONSIDERATION

The American Public Communications Council ("APCC") hereby petitions for partial reconsideration of the Commission's *Memorandum Opinion and Order on Reconsideration and Order Terminating Proceeding* ("Termination Order"), WT Docket No. 97-207, FCC 01-125, released April 13, 2001, in the above-captioned docket.¹

STATEMENT OF INTEREST

APCC is a national trade association representing over 1,000 independent (non-local exchange carrier) providers of pay telephone equipment, services, and facilities. APCC seeks to promote competitive markets and high standards of service for pay telephones. To this end, APCC has actively participated in all FCC proceedings affecting payphones.

DISCUSSION

In July 1999, the Commission issued a *Notice of Proposed Rulemaking* ("NPRM") in this proceeding in which it proposed to adopt rules governing Calling Party Pays ("CPP") service offerings by Commercial Mobile Radio Services ("CMRS") providers in order to facilitate the broader implementation of CPP. Recently, however, the

¹ Notice of the *Termination Order* was published in the Federal Register on May 4, 2001 at 66 FR 22445.

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Commission issued the *Termination Order* terminating the proceeding without acting on the issues raised in the *NPRM*, based upon the Commission’s conclusion that “it is not clear that regulatory intervention by this Commission is warranted.” *Termination Order* at ¶ 2. The Commission states that by terminating the proceeding, it has “remove[d] any remaining regulatory uncertainty regarding calling party pays occasioned by the pendency of this proceeding.” *Id.* However, regulatory uncertainty regarding CPP *does* in fact remain, because the Commission has not taken steps to ensure that the cost of a CPP call is not improperly billed to payphone service providers’ (“PSPs”) lines. Absent a requirement by the Commission that CPP providers determine that a CPP call is being made from a payphone line and collect alternative billing information from the calling party for that CPP call, PSPs remain at risk of being improperly billed. The Commission failed to address the payphone line billing issue in its *Termination Order*. The Commission should reconsider and adopt the simple rule proposed by APCC.²

As stated in APCC’s comments in response to the both the *NPRM* and the earlier *Notice of Inquiry*, the Commission must resolve the outstanding issues associated

² In remanding a termination order issued by the Federal Energy Regulatory Commission for failing to provide a satisfactory explanation for its termination of the proceeding, the United States Court of Appeals for the District of Columbia Circuit stated:

We recognize that an agency’s discretion is surely at its height when it chooses *not* to act. We also recognize that notice-and-comment rulemaking procedures contemplate — indeed presume — that the arguments of interested parties may induce an agency to rethink its initial view of a situation. The original [Notice of Proposed Rulemaking] in no way bound the agency to promulgate a final rule if further reflection, or changed circumstances, convinced the Commission that no regulatory change was warranted. Issuance of the [Notice of Proposed Rulemaking] did, however, oblige the agency to consider the comments it received and to articulate a reasoned explanation for its decision.

Williams Natural Gas Company v. Federal Energy Regulatory Commission, 872 F.2d 438, 450 (D.C. Cir. 1989) (“*Williams*”).

with CPP calls made from payphones. Specifically, APCC stressed that PSPs are vulnerable to unauthorized billing of CPP charges and urged the Commission to rule that CPP charges may not be billed to payphone lines. The concerns raised by APCC in this proceeding, however, have not been acknowledged or addressed by the Commission in the *Termination Order* or elsewhere. Even under the lenient standard articulated in *Williams*, the Commission was obliged to show that it had considered *all* of the issues in this proceeding — including and in particular APCC’s — by at a minimum responding to APCC’s issues and articulating a reasoned explanation for its decision.

As APCC has explained, payphones and payphone service differ substantially from other categories of service providers and other classes of local exchange service customers, including private branch exchanges (“PBX”). Billing payphone lines for CPP charges on direct dialed CPP calls is never appropriate because (1) a PSP has no customer relationship with the CPP provider and legitimately expects to be billed only by carriers to whose services it has subscribed, (2) the originating line for a CPP call made from a payphone is not in fact associated with the party to whom the call should actually be billed, (3) a PSP cannot control access to its telephone lines in the same manner as other users of the public network, and (4) PSPs have no satisfactory way of handling CPP calls for which the PSP is billed.³ Unless the CPP call is identified as originating from a payphone and the CPP provider is prompted to collect alternative billing information from the calling party,

³ Currently, all PSPs – including LEC-affiliated PSPs as well as independent PSPs – must take “payphone line” service from a LEC pursuant to “payphone line” tariffs, and generally are charged for any direct-dialed call reaching a local or toll network from the payphone line. *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Report and Order*, 11 FCC Rcd 20541, 20591 (1996) (“*Payphone Order*”); *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Order on Reconsideration*, 11 FCC Rcd 21233, 21265-66 (1996) (“*Order on Reconsideration*”) (collectively “*Payphone Orders*”).

the full charge for the CPP call will be billed to the call's originating line and, thus, the PSP. Therefore, in order to prevent undue burdens on payphone service and PSPs, the Commission must adopt rules requiring that (1) CPP charges may not, under any circumstances, be assessed on PSPs, and (2) the CPP provider is responsible for identifying payphone lines as such.

As APCC stressed in its comments, there is a reliable, universally applicable, and Commission-mandated method for determining whether a CPP call is being placed from a payphone which enables CPP providers to avoid the billing and other problems associated with CPP calls that originate from payphones: flexible automatic number identification ("Flex ANI"). These "payphone-specific" coding digits enable a carrier to track calls originating from payphone lines and, therefore, can be used to determine whether a CPP call is originating at a payphone. Payphone-specific coding digits are required to be universally available, and all carriers receiving compensable "dial-around" calls from payphones are responsible for subscribing to Flex ANI so they can identify calls originating from payphones.⁴ In addition to prohibiting carriers from billing payphone lines for CPP calls, APCC urged the Commission to expressly require that CPP providers screen the coding digits to determine whether the call is from a payphone.

The only even indirect discussion of these concerns in the *Termination Order* is in a footnote. The Commission suggested, in response to concerns raised by the PBX

⁴ In its proceeding implementing the provisions of Section 276 of the Telecommunications Act of 1996, the Commission required, as part of a payphone's ANI, that LECs provide the capability to transmit, with each call made from a payphone, coding digits that identify the call as originating specifically from a payphone. *Order on Reconsideration* at ¶ 64. Although PSPs are currently paying for Flex ANI through federally tariffed charges, it is the responsibility of the carrier receiving the call to subscribe, free of charge, to Flex ANI.

community, that the line identification database (“LIDB”) be used to screen calls in order to protect against unauthorized PBX system calls. *Termination Order* at n. 55. However, the mere availability of LIDB will not prevent improper billing of PSPs for CPP calls unless carriers actually query LIDB prior to completing such calls. Nothing in the *Termination Order* ensures that carriers will do so. As explained by APCC, the most effective solution is for CMRS providers to subscribe to Flex ANI. While the Commission may give CMRS providers discretion to adopt other screening methods so long as they ensure *no billing* to payphone lines, since Flex ANI unequivocally identifies calls from payphones, it would seem to be the logical solution for affirmatively prohibiting billing payphone lines for CPP calls.

To address this billing issue, the Commission need not adopt detailed or broad-sweeping rules governing *all* aspects of CPP service. However, it is clear that a simple rule prohibiting billing of payphone lines is needed and appropriate. Therefore, the Commission should adopt such a rule rather than relying on unnecessary and wasteful enforcement proceedings. Accordingly, APCC asks the Commission to partially reconsider its decision to terminate the instant proceeding without action, and to adopt minimum rules and/or other safeguards with respect to CPP service necessary to prevent CPP service from burdening payphones and payphone service.

CONCLUSION

For the foregoing reasons, APCC requests that the Commission address the concerns raised by APCC in its comments by adopting rules requiring CPP service providers to screen for ANI coding digits in order to identify payphone-originated calls so as to avoid billing PSPs for direct-dialed CPP calls.

Dated: June 4, 2001

Respectfully submitted,



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