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June 7, 2001

BY COURIERFEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

Re: CC Docket No. 96-128, File No. NSD-L-99-34

Dear Ms. Salas:

The American Public Communications Council ("APCC") hereby submits material mistakenly omitted from its Opposition of the American Public Communications Council to Sprint Corporations Request for Stay, filed June 4, 2001.

Footnote 6 of APCC's Opposition references two petitions for further reconsideration, filed January 13, 1997, of the Commission's first *Order on Reconsideration* in this proceeding, 11 FCC Rcd 21233 (1996). Although the footnote states that copies of these petitions are attached, counsel inadvertently failed to attach such copies. Copies are hereby submitted as Attachments 2 and 3 to the Opposition.

In addition, Attachment 1 of the Opposition attached two letters, one from Richard Juhnke to Edward Modell, and the other from Edward Modell to Helene Miller. Page 1 of the letter from Edward Modell to Helene Miller was mistakenly omitted. A copy of the complete attachment, including the missing page, is attached.

We regret any inconvenience to the Commission or the parties resulting from these omissions.

Sincerely,



Robert F. Aldrich

REFA:nw
Enclosures
cc: Parties on attached Certificate of Service

No. of Copies rec'd 04
List A B C D E

ATTACHMENT I



Richard Juhnke
General Attorney

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December 8, 2000

VIA FACSIMILE AND FIRST CLASS MAIL

Edward G. Modell
Dickstein Shapiro Morin & Oshinsky LLP
2101 L Street, NW
Washington, DC 20037-1526

Re: Demand for Information Related to Dial Around Compensation Collections

Dear Mr. Modell:

This is in response to your November 20, 2000 letter to Sprint Communications Company L.P., on behalf of APCC Services, Inc.; Data Net Systems, LLC; Jaroth, Inc.; Intera Communications Corporation; and Davel Communications, Inc., demanding that Sprint provide certain data to them purportedly required by FCC rules and regulations.

The first set of data you request is a list of toll-free numbers on which Sprint paid per-call dial-around compensation and the volume of calls for each toll-free number. Nothing in the Commission's payphone compensation rules (47 C.F.R., Part 64, Subpart M) imposes any requirements on IXCs regarding the information they must provide to PSPs. Paragraph 110 of the FCC's first Report and Order in CC Docket No. 96-128 (11 FCC Rcd 20541 (1996) (subsequent history omitted)) does require IXCs to provide, along with their per-call compensation, a statement indicating the number of calls that the carrier has received from each of the PSP's payphones, and I am informed that Sprint is fully complying with that requirement. The *Global Crossing* Consent Decree, cited in your letter, arose from complaint and enforcement proceedings against Global Crossing for its failure to pay any compensation to LEC PSPs and by its terms applies only to Global Crossing. If the provisions of Paragraph 17 of that Consent Decree (to which your letter invites our attention) were requirements of general applicability, there would have been no need to include them in the Consent Decree, since every carrier is already obligated to adhere to valid FCC rules and orders of general applicability.

The second element of your request is for a list of toll-free numbers on which Sprint did not pay per-call compensation, the volume of calls for each toll-free number, and the name, address and point of contact of the carrier to which traffic for that toll-free number was routed by Sprint. Again, nothing in the Commission's Rules imposes any such requirement, and the only FCC order that relates to such information is the Common Carrier Bureau's Memorandum Opinion and Order released in CC Docket No. 96-128 on April 3, 1998 (13 FCC Rcd 10893).

Edward G. Modell
December 8, 2000
Page 2

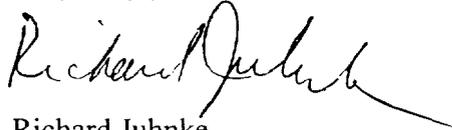
Paragraph 38 of that order provides, in relevant part:

When facilities-based IXCs providing 800 service have determined that they are not required to pay compensation on particular 800 number calls ... [they] 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 compensation for that particular 800 number.

As can be seen, nothing in that order requires Sprint to provide the comprehensive data you request; instead, Sprint is merely obligated to provide the identity of the switch-based carrier responsible for a particular 800 number that is brought to Sprint's attention by the PSP. Again, for the same reasons as discussed above, Paragraph 17 of the *Global Crossing* Consent Decree is inapposite.

Notwithstanding the limited scope of the Bureau's April 3, 1998 order, Sprint has been voluntarily providing, on request, a listing of all toll-free numbers assigned to each switch-based reseller traversing Sprint's network, and the name, address and contact information for each such reseller, beginning with data for the fourth quarter of 1999. If any of your clients have not requested or received such data, I suggest that they contact Ms. Vicky Crone at 816-854-7064. Although Sprint is under no legal obligation to provide such data for periods prior to that date, we are investigating whether we have access to such information, and the processes that would be necessary to compile such information. If it turns out that it is possible to provide such information, Sprint would be willing to do so as long as your clients are willing to compensate Sprint for its costs. Sprint should have an answer to the availability of the information, along with an estimate of the costs involved (assuming the information can be compiled), within the next several days. I suggest that your clients stay in contact with Ms. Crone on that issue as well.

Very truly yours,



Richard Juhnke

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November 20, 2000

VIA FACSIMILE AND CERTIFIED MAIL

Helene Miller
Spring Communications
903 E. 104th St.
Kansas City, MO 64131

Re: Demand for Information Related to Dial Around Compensation Collections

Dear Ms. Miller:

On behalf of our client dial-around compensation billing and collection agents, APCC Services, Inc. ("APCCS"); Data Net Systems, LLC; Jaroth, Inc., d/b/a Pacific Telemanagement Services; Intera Communications Corporation; and Davel Communications, Inc., and the payphone service providers (PSPs) they represent, we are writing to demand certain information which is required by our clients in order to determine whether they have been paid all per-call dial around compensation which the PSPs are entitled to receive. Pursuant to rules and regulations promulgated by the Federal Communications Commission ("FCC") implementing Section 276 of the Telecommunications Act of 1996, we hereby demand that your company provide the following:

(i) a computer-readable list of the toll-free (e.g., 800) numbers which traversed your company's network upon which you paid per-call dial around compensation, and the volume of calls for each toll-free number, and

(ii) a separate, computer-readable list of the toll-free (e.g., 800) numbers which traversed your company's network upon which your company did not pay per-call dial around compensation, and the volume of calls for each toll-free number. Also, for each of these toll-free numbers upon which your company did not pay per-call dial around compensation, we further demand that your company provide the name, address, contact person and phone number of the carrier to which all traffic for that toll-free number was routed by your company.

We demand that this information, as described in (i) and (ii) above, be provided by your company on a quarter-by-quarter basis for each quarter beginning with the third quarter of 1998 (i.e., 3Q98) and continuing through the second quarter of 2000 (i.e., 2Q00), and for each quarter hereafter beginning with the third quarter of 2000 (i.e., 3Q00). We further demand that this information be provided to us as quickly as possible but no later than December 10, 2000.

598 Madison Avenue • New York, New York 10022-1614

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<http://www.dsmo.com>

November 20, 2000

Page 2

With regard to the information hereby demanded, we call your attention to §276 of the Communications Act of 1934, as amended, 47 U.S.C. §276, the related FCC rules, and the Order and Consent Decree released by the FCC on November 2, 2000 In the Matter of Global Crossing Telecommunications, Inc., File No. ENF-00-0003. For your information, we are enclosing a copy of the Order and Consent Decree. We particularly direct your attention to Paragraph 17 of the Consent Decree.

If you have any questions about the information demanded or otherwise wish to discuss this matter, please contact us or have your attorney contact us immediately. If you fail to provide the information demanded, we have been authorized by our clients to seek that information by whatever legal means are available. Thank you for your cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Edward G. Modell". The signature is fluid and cursive, with the first name "Edward" being the most prominent.

Edward G. Modell

Enclosures

ATTACHMENT 2

TABLE OF CONTENTS

	<u>Page</u>
SUMMARY	ii
BACKGROUND	2
DISCUSSION	4
I. The Commission Must Not Allow LECs to Define Their ICS As Part of Regulated Network Services	4
II. The Commission Should Enumerate the Fraud Protection Functions that Must Be Available to ICS Providers on a Nondiscriminatory Basis	8
III. The Commission Should Clarify that LECs Must Provide Validation on a Nondiscriminatory Basis	10
IV. The Commission Must Require Nondiscriminatory Treatment of Bad Debt	13
V. Any Network ICS Functions Must Be Provided on a Tariffed Basis	14
CONCLUSION	15

SUMMARY

Invision Telecom, Inc. requests further reconsideration of several issues relating to inmate calling services ("ICS") that may not have been resolved in the Commissions prior orders in this proceeding. The ICS environment is quite different from the regular public payphone environment. Collect calling is fundamental to ICS just as coin calling is fundamental to public payphones. ICS requires sophisticated call control functions, which are provided by discrete equipment that is usually dedicated to a particular facility. Whether located on the confinement facility premises or in the central office, the call control components must be defined as part of nonregulated ICS. Processing of collect calls is typically integrated with, and in any event closely coordinated with call control. Finally, bad debt represents a far higher proportion of ICS calls than of other calls. Bad debt is a significant risk associated with the ICS business and must be defined as a responsibility of LECs' ICS operations.

Regardless of where the ICS call control/call processing system is physically located, it must be defined as part of deregulated ICS. Section 276 requires deregulation of "payphone service," defined to include, "the provision of inmate telephone service in correctional institutions, and any ancillary services." 47 U.S.C. § 276(d) (emphasis added). If the FCC allowed LECs to continue defining their ICS as a regulated service, for which the nonregulated LEC payphone entity merely collected a presubscription commission, the high level of bad debt incurred by ICS would continue to be subject to subsidy by the LEC's regulated services, independent ICS providers would continue to suffer

discrimination, and the provisions of Section 276 would be meaningless with respect to inmate calling services ("ICS").

The Commission must rule that LECs' facilities dedicated to ICS must be removed from regulated accounts, and that ICS must be provided by LECs as part of their deregulated "payphone service."

The Commission must also clarify that (1) LECs must make available to independent ICS providers, on a nondiscriminatory basis, the specific fraud protection information that LECs provide for the benefit of their own ICS, (2) validation must be available on the same nondiscriminatory basis to independent ICS providers and to the LEC ICS, (3) reciprocal billing arrangements must be available without discrimination, and (4) bad debt must be treated in the same nondiscriminatory manner for independent ICS and for the LEC ICS. Finally, any network ICS functions that support LEC ICS, and that are not required to be removed from regulated accounts must be available on a tariffed basis to independent providers.

reconsideration in order to ensure, in the event that these issues should have been addressed in the Orders rather than in rulings on the CEI Plans, that the issues are, in fact, addressed.²

BACKGROUND

The ICS environment is quite different from the regular public payphone environment. A discussion of the special characteristics of ICS was included in ICSPC's comments in CC Docket No. 96-128, and is attached to this Petition. See Attachment 1.

Some of the distinctive characteristics of the ICS environment, and their legal and public policy consequences, can be summarized as follows. First, coin payphones are generally not provided for inmate use. The predominant method of calling is collect calling, which is generally the only calling method allowed.³ Thus, collect calling is clearly integral to -- and in any event, at least "incidental" to -- the "payphone service" business in the ICS environment. See 47 U.S.C. § 276(d).

Second, because confinement facilities have special needs to control inmate calling and because the incidence of fraudulent and uncollectible calls from confinement facilities is especially high, ICS requires sophisticated call control functions which are

² Section 276 of the Communications Act required the Commission to take all actions necessary to prescribe regulations under Section 276(b) (including "any reconsideration") by November 8, 1996. 47 U.S.C. § 276(b)(1). In the event that the Commission determines that it is not authorized to address any further "petition for reconsideration" at this time, Invision requests that this filing be treated as, alternatively, a petition for clarification or a petition to reopen the proceedings.

³ In jails, which generally are located relatively close to the inmates' homes, the calls are predominantly local and intraLATA.

customized to the facilities' particular needs. These call control functions are usually carried out in equipment located on the premises of the confinement facility, and in any event, even if physically located in a central office or comparable facility, are either dedicated to or specially programmed for the particular confinement institution. Therefore, the call control system must be defined as part of a LEC's nonregulated ICS facility.⁴

Third, there is necessarily an integral relationship between the call control functions and the processing, billing and collection of ICS calls. Without effective call control safeguards, which effectively minimize calling to numbers known to be involved in fraudulent and uncollectible calls, the incidence of bad debt is likely to reach unacceptable levels that preclude the ICS business from being profitable. Therefore, call control and call processing are typically integrated in a single system under the ICS provider's control. Even if call processing is provided separately -- e.g., through network-based collect calling features -- it must be subject to special restrictions and must be coordinated with the call control functions.⁵

Fourth, even with an effective call control and call processing system, bad debt is substantially higher for ICS than for ordinary collect calling. Therefore, if subsidies and discrimination in favor of LECs' ICS are to be eliminated, as Section 276 requires, the

⁴ Some functions that would ordinarily be part of call processing in the public payphone environment -- e.g., identification of unbillable numbers -- are likely to be treated as part of call control in the ICS environment. The fact that, in the ICS environment, some functions can move between control processing and call control shows the integral relationship between control and processing. See text following this note.

⁵ See previous footnote.

LEC's ICS must be defined in such a way that the nonregulated entity has responsibility for uncollectible calls. Otherwise, the LEC's costs associated with bad debt from ICS will continue to be subsidized by regulated services.

DISCUSSION

I. THE COMMISSION MUST NOT ALLOW LECS TO DEFINE THEIR ICS AS PART OF REGULATED NETWORK SERVICES

As discussed above, the central components of an inmate calling service are (1) the call control functions, which implement restrictions on the timing and permissible destinations of inmate calls, and contains mechanisms to monitor and detect fraudulent or prohibited calls, and (2) the call processing functions, which validate, complete, and capture billing information for inmate calls. Independent ICS providers typically provide both components on-premises as part of a single, integrated system. Even if the two components are not integrated, they must be closely interrelated. For example, the call processing component must be configured so that calls never default to a live operator unless the operator is specially trained and dedicated to handling inmate calls. Further, the call processing component should be capable of transmitting information received in the course of billing and collecting inmate calls so that the call control component can use such information as appropriate to implement additional restrictions on inmate calling.

The Orders did not determine specifically whether the call control and call processing functions that are central to the provision of ICS are part of the nonregulated

ICS or part of regulated network offerings. Since the call processing and call control system is the essential component of an inmate calling service, it is subject to deregulation on the same basis as the terminal equipment, regardless of whether the call processing and call control system is located on-premises or attached to the LEC's network in the central office.⁶

In resolving this issue, the Commission is not bound by pre-Telecommunications Act precedent that demarcated the distinction between regulated "basic" service and nonregulated "CPE" and "enhanced service." Section 276 does not prohibit Bell companies and other LECs only from subsidizing or discriminating in favor of enhanced services or CPE. It prohibits them from subsidizing or discriminating in favor of its "payphone service," defined as, among other things, "the provision of inmate telephone service in correctional institutions, and any ancillary services." 47 U.S.C. § 276(a)(1)(d). LECs may not subsidize or discriminate in favor of their inmate calling services any more than their inmate calling equipment. If the FCC allowed a LEC to continue defining its

⁶ As discussed in earlier filings (see ICSPC's Docket 96-128 Comments at 18), before the emergence of competition, LEC ICSPs provided inmate calling services through the same network systems used to provide regular collect calling services. Increasingly, however, in order to compete with the sophisticated call control systems furnished by independent providers, LECs have migrated to providing the call control and call processing functions through discrete equipment similar to the inmate calling systems employed by independent ICSPs. Petition for Declaratory Ruling by the Inmate Calling Services Providers Task Force, Declaratory Ruling, 11 FCC 7362, ¶ 7 (1996). Some LECs, like the independent ICSPs, currently locate that equipment on the confinement facility's premise. Others locate the equipment in their central offices, or may locate the call control system on the premises and the call processing system in the central office.

Since the same functions are provided and are located in discrete pieces of equipment regardless of the equipment's location, it is impermissible to classify the service differently based on the equipment location.

inmate calling service as a "regulated" service, rather than as part of the deregulated "payphone service" offering as Congress mandated, the rules would fail to prevent the LEC from continuing to subsidize and discriminate in favor of its inmate calling service, and the provisions of Section 276 would be meaningless with respect to inmate calling services. Such an approach would make a mockery of Section 276 and the Congressional policy to end subsidies and discrimination.

For example, as discussed above, one of the critical differences between ICS and ordinary operator services is the high proportion of "bad debt" associated with ICS due to fraudulent or otherwise uncollectible calls. Monitoring to prevent fraudulent or uncollectible calls is a central function of an ICS call control and call processing system. However, even with sophisticated controls, bad debt from ICS far exceeds bad debt from other operator services as a percentage of billed revenue. In earlier filings in Docket No. 96-128, ICSPC demonstrated that LECs currently do not segregate bad debt associated with ICS from bad debt associated with ordinary operator services. Thus, the LECs effectively use revenues from other services to subsidize the costs associated with their bad debt from ICS. If LECs are able to continue to define ICS as part of regulated service, they will be able to continue subsidizing this bad debt, contrary to the letter and intent of Section 276.

Further, independent ICS providers are competing by using their own call processing and call control systems, and should not be forced to route their ICS traffic to the LEC in order to obtain the support services they require. A misinterpretation of

Section 276 that required only that a LEC's competitive ICS be made formally available, through commission arrangements,⁷ to other ICS providers, would enable a LEC to avoid any meaningful unbundling of its competitive ICS from the regulated services that are truly needed by independent ICS providers.

Congress clearly intended that LECs' ICS be removed from all subsidies from regulated revenues, so that the LECs' ICS would no longer be insulated from market forces. By allowing a LEC to continue providing the critical ICS functions (i.e., the transmission validation, billing and collection of ICS calls) as part of a regulated service, exempt from Section 276's ban on subsidies and discrimination, the Commission would violate both the language and the intent of Section 276.

In summary, the reclassification of LECs' ICS, including call processing and control functions, as nonregulated is essential to prevent the subsidies and discrimination prohibited by Section 276, and cannot be dependent on whether the LEC chooses to physically locate the call processing and/or call control system on its own premises or on the premises of its prison facility customer. Each LEC must remove its ICS business from regulation as Congress intended.

⁷ As discussed in ICSPC's comments on the BellSouth CEI plan, BellSouth has offered a 45% commission plan to some ICS providers as well as, presumably its own payphone affiliate, if they will use its ICS. See Comments of the Inmate Calling Service Providers Coalition on BellSouth's CEI plan, filed December 30, 1996.

II. THE COMMISSION SHOULD ENUMERATE THE FRAUD PROTECTION FUNCTIONS THAT MUST BE AVAILABLE TO ICS PROVIDERS ON A NONDISCRIMINATORY BASIS

The Commission's Orders specify generally that fraud protection functions must be provided on a nondiscriminatory basis. Invision requests further clarification of this requirement in light of omissions from various LECs' CEI Plans.

Independent ICSPs have historically been handicapped in their ability to compete with LECs' inmate calling services operations because LECs have refused to provide critical account and fraud control information on an unbundled basis and on reasonable terms.

This information includes, among other things:

Billing name and address information (on-line);

Called party account information, including social security number and customer code;

Service establishment date;

Disconnect date and reason for disconnect;

Information on nonlisted or nonpublished numbers;

Additional lines;

Previous telephone numbers, if any;

Service restrictions;

Class of service;

Payment history;

Calling patterns/returns;

Credit history; and

Features (e.g. call forwarding or three-way calling).

This type of information is especially critical in the ICS environment because of the high incidence of fraud and bad debt incurred by ICS providers. To implement the basic requirements of Section 276 and the Payphone Order that LECs not discriminate in favor of their own ICS operations and that all subsidies for LEC ICS be terminated, it is essential that the account and fraud control information listed above be made available to independent ICSPs on the same basis if it is provided to or for the benefit of a LEC's ICS.

Ameritech's and BellSouth's CEI plans are silent on whether any of this information is provided to, or for the benefit of, their ICS operations or other ICS providers. It is Invision's understanding that this information is available from Bell companies, if at all, only if the ICS provider enters a billing and collection agreement directly with the Bell company. However, the cost of entering into such a billing arrangement is high.⁸ As a result, the vast majority of independent ICSPs use third-party billing clearinghouses. The billing agreements between the Bell companies and such third-party clearinghouses typically prohibit the use of information supplied to the clearinghouse by any other party. Clearly, it is not permissible for a LEC to condition the availability of a critical CEI function on the purchase of a nonregulated service (billing and

⁸ Billing and collection agreements can require up front payments by independent ICSPs of \$75,000 or more.

collection) from the LEC. The Commission should clarify that this information must be made available on the same basis to independent ICS providers as to the LEC's ICS.⁹

**III. THE COMMISSION SHOULD CLARIFY THAT LECS
MUST PROVIDE VALIDATION ON A NONDIS-
CRIMINATORY BASIS**

Section 276 requires that information related to validation of called numbers must be available on the identical nondiscriminatory basis to independent ICS providers as to a Bell company's own ICS.¹⁰ Yet, Ameritech's and BellSouth's CEI plans, the only plans on which the public comment date has thus far been reached, say nothing about validation. For example, their CEI plans do not state whether they will rely on LIDB validation of their ICS calls. The cost to ICSPs for each LIDB check, using currently available services, from designated LIDB providers, is \$.06 or more. Since it has been asserted that every

⁹ For example, if this information is available on a real-time basis to validate a LEC's ICS calls, then the LEC should make available on-line access to this information to independent ICS providers as an option so that they can check any relevant item before completing an inmate call. Such on-line access would enable an ICS provider to identify potential problems and minimize the bad debt that is incurred.

¹⁰ The nondiscrimination requirements of Section 276 in this area are comprehensive, and are not limited by the contours of the Commission's rules in Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, 7 FCC Rcd 3528 (1992). The Commission's validation rulings in that proceeding, which focused primarily on validation of calling cards, concerned validation of interstate calls, which are primarily carried by IXCs rather than LECs. Further, the orders in that proceeding involved the nondiscrimination provision of Section 202, which is more qualified and limited in scope than the nondiscrimination provision of Section 276. Cf. Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, FCC 96-325, released August 8, 1996, ¶¶ 218-19 (Nondiscrimination standard in Section 251 of the Act is not qualified and therefore more stringent than "unjust and unreasonable discrimination" standard of Section 202).

attempted call must be validated, including repeat calls, and since many call attempts are made to busy numbers, unanswered calls, and refused calls, ICSPs can spend 20 cents or more on validation for every revenue-generating call.

The Commission should clarify that, to the extent that a LEC is providing validation to its own ICS for calls terminating in its territory, either indirectly through a LIDB service provider, or directly, in some manner that allows better service and/or reduced charges, the LEC ICS must pay charges for such validation and make the same rates and service available to ICSPs.

In addition, the Ameritech and BellSouth CEI plans fail to address the problem of competitive local exchange carrier ("CLEC") number validation. LIDB at this time provides no indication that a called party has changed telephone companies from an incumbent LEC to a CLEC.¹¹ If the called number validated properly before the change of LEC, it continues to do so. As a result, based on LIDB alone, an ICSP has no way of knowing that it should not continue to send its billing data to the LEC. Two to six weeks later, the LEC reports the number as unbillable and the independent ICSP currently is not informed why the call was unbillable. And, even if it could determine that the call was to a CLEC, the independent ICSP does not know which CLEC. Meanwhile, the ICSP has paid the LEC or intermediaries a validation fee and a billing and collection fee for every call to the CLEC, and in some cases must pay additional fees to receive back-up information.

¹¹ While CLECs' market shares of the overall residential market are currently very low, ICSPC's experience is that inmates are aware of this area of vulnerability and place a greatly disproportionate share of ICS calls to CLEC numbers.

If a LEC makes available for the benefit of its own ICS calls information about the fact that a called party has changed carriers, and the identity of the CLEC, the LEC's ICS will receive a tremendous preference, contrary to Section 276(a). This advantage will only grow as competition develops and more customers elect to switch to CLECs. ICSPC understands that, at some point, information about CLEC changes will become available in a future software release for LIDB. Pending availability of adequate information, this information must be made available in a timely and nondiscriminatory manner. To the extent that it is furnished to or for the benefit of the LEC's ICS, the LEC's ICS must pay a charge and the same rates and service must be available to independent ICSPs.

Accordingly, the Commission must rule that LECs are required to make call validation information, including information about CLEC changes, available to independent ICS providers and their own ICS on a nondiscriminatory basis.

To the extent that LEC ICS benefit from reciprocal billing and collection services with other LECs, the benefit of those arrangements must be made available to independent ICS providers. This is especially important because some independent LECs refuse to provide billing and collection service for independent ICS providers. To the extent that a LEC is using its mutual billing arrangements with other LECs as a way to obtain billing of its ICS calls placed to customers in such LECs' service territories, the LEC must make the same arrangements available to other ICS providers.

IV. THE COMMISSION MUST REQUIRE NONDIS-CRIMINATORY TREATMENT OF BAD DEBT

As a result of their current practices, LECs' ICS operations do not have to account for their bad debt.¹² The LECs do not retain information regarding the calling number when they bill a call on behalf of their ICS operations. As a result, they are unable to charge back against their ICS operations the costs of those ICS calls for which they are unable to collect. Instead those uncollectibles apparently go into a common pool with regulated residential and business bad debt, and regulated ratepayers bear the costs of the LECs' ICS's bad debt. Furthermore, to the extent that the LEC attempts to charge back bad debt to its ICS operations based on some average bad debt, there is still a subsidy of the LEC's ICS. As explained above, ICS bad debt is much higher than bad debt for other services. Averaging in ICS bad debt with other bad debt dilutes the level of chargeback to ICS, with ratepayers picking up the shortfall.

By contrast, because independent ICSPs bill for their calls using a different record format, the LEC has a record of who the billing party is.¹³ Thus, when the LEC

¹² LEC ICS operations send their call records to the LEC's billing and collection departments in the standard format generated by the Automatic Message Accounting ("AMA") system. The calls therefore appear on the customer's regular billing pages. Presumably, the LEC can disconnect a subscriber's line for nonpayment - a step it may not take on behalf of independent ICS providers if the subscriber denies all knowledge or otherwise disputes the call.

¹³ In order to bill a call, independent ICSPs send a call record to a third party service bureau (or where there is a direct billing and collection agreement with the Bell company, to the Bell company's billing and collection department). The independent ICSP sends the call record in the standard format used for third party billing, Exchange Message Interface ("EMI"). Calls billed in the EMI format appear on a separate page in the called party's bill. This makes it possible for the billed party to easily identify, and not pay for, those calls.

cannot collect for a call, that bad debt is charged back to the independent ICSP, which then must account for its entire cost. In addition, the independent ICSP is liable for the costs of the call, even though it is unable to collect from the called party.

The Commission must clarify that a LEC must handle bad debt on the same nondiscriminatory basis for its own ICS and independent ICS.

V. **ANY NETWORK ICS FUNCTIONS MUST BE PROVIDED ON A TARIFFED BASIS**

If a LEC is permitted to provide its inmate call processing and/or call control functions in the network, those functions must be provided on a resale basis (as, for example, the coin control functions are provided). Otherwise, the real provider of ICS would be the LEC's regulated service operations, not the LEC's ICS. Thus, in the event that LEC ICS are allowed to provide inmate call processing and/or call control functions as part of a regulated service, the Commission must make clear that those functions must be offered to its own ICS entity on a tariffed basis and must be equally available to other competing ICS providers. It would be utterly inconsistent with Section 276 for a LEC to simply hand off ICS calls to its regulated service side in return for a commission.

Further, if the Commission rules that a LEC ICS entity can take a package of ICS functions from its regulated side under tariff, the Commission must rule that any services that can be unbundled from the package used by the LEC's own ICS must be unbundled and made available to independent ICS providers. Thus, even if a LEC could define its entire ICS as part of regulated "CEI," it must make the components of that CEI package individually available, to the extent feasible, to ICS providers.

CONCLUSION

For the foregoing reasons, the Commission's Payphone Order should be further reconsidered or clarified as stated above.

Dated: January 13, 1997

Respectfully submitted,

A handwritten signature in cursive script that reads "Robert F. Aldrich". The signature is written in dark ink and is positioned above a horizontal line.

Albert H. Kramer
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