

**CERTIFICATE OF SERVICE**

I hereby certify that on July. 2, 2001, a copy of the foregoing Complainant's Responses and Objections to Defendant's First Set of Interrogatories was served by first-class mail, postage prepaid, on the following parties:

The Honorable Arthur I. Steinberg  
Administrative Law Judge  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room 1-C861  
Washington, DC 20554

Magalie Roman Salas, Secretary  
Office of the Commission Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room TW-B204  
Washington, D.C. 20554  
(Original and Three Copies)

Tejal Mehta, Esquire  
Federal Communications Commission  
Market Disputes Resolution Division  
Enforcement Bureau  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

David H. Solomon, Chief  
Enforcement Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

Michael Thompson, Esquire  
Wright & Talisman, P.C.  
1200 G Street, N.W.  
Washington, D.C. 20005

John M. Goodman  
Verizon  
1300 I Street, NW 400W  
Washington, DC 20005  
(Facsimile and First-Class Mail)

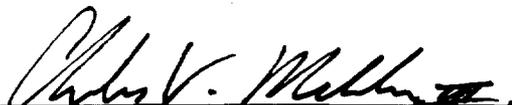
Sherry A. Ingram  
Verizon  
1320 North Court House Road  
Arlington, VA 22201  
(Facsimile and First-Class Mail)

Rikke Davis, Esquire  
Sprint Corporation  
401 9<sup>th</sup> Street, N.W., Suite 400  
Washington, D.C. 20004

Mary Sisak, Esquire  
Robert Jackson, Esquire  
Blooston, Mordkowsky, Dickens, Duffy & Prendergast  
2120 L Street, N.W., Suite 300  
Washington, D.C. 20037

William A. Brown, Esquire  
Davida M. Grant, Esquire  
Southwestern Bell Telephone Company  
1401 I Street, N.W., Suite 1100  
Washington, D.C. 20005

Angela M. Brown, Esquire  
Theodore Kingsley, Esquire  
Bell South Telecommunications, Inc.  
675 West Peachtree Street, Suite 4300  
Atlanta, Georgia 30375

  
\_\_\_\_\_  
Charles V. Mehler III

Tab

B

# KECK, MAHIN & CATE

FILE NUMBER 45685-026

DIRECT DIAL (202) 789-3400

RECEIVED

FEB 1 1993

ENFORCEMENT DIVISION

January 26, 1993

**DUPLICATE**  
1201 NEW YORK AVENUE, N.W.  
WASHINGTON, DC 20005-3919  
(202) 789-3400  
FAX (202) 789-1158

RECEIVED

JAN 28 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Ms. Donna Searcy  
Secretary  
Federal Communications Commission  
Room 2025  
1919 M Street, N.W.  
Washington, D.C. 20554

RE: Formal Complaint, Millicom Services  
Company v. Southwestern Bell Telephone Company  
(E-93-49)

To whom it may concern:

The above-referenced formal complaint was filed on January 11, 1993. The undersigned hereby enter an appearance as counsel of record for the complainant.

Due to administrative error, two omissions were made in the original filing. First, on page 5, the word "not" was omitted from the fourth line of text following the quote from 47 C.F.R. § 69.2(m). Reference to the APCC Petition for Declaratory Ruling (page 8), which was incorporated by reference with the complaint, makes it clear that the intent of the argument is that complainant cannot be categorized as an entity offering services exclusively as a reseller. Second, on page 4, reference to the Enforcement Division's November 12, 1992 letter to complainant regarding the informal complaint was omitted. The letter notes that the Bureau declined to recommend action on the informal complaint, and directs complainant that a formal complaint should be filed within sixty days of the date of the letter.

Finally, based on additional conversations with complainant, footnote 1 should be clarified to state that Millicom Services Company is the successor in interest to Millicom Telecommunications Services, Inc. All changes have been marked for ease of reference.

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

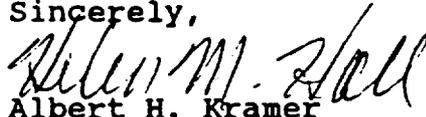
CHICAGO, ILLINOIS    HOUSTON, TEXAS    LOS ANGELES, CALIFORNIA    SAN FRANCISCO, CALIFORNIA  
PEORIA, ILLINOIS    OAKBROOK TERRACE, ILLINOIS    SCHAUMBURG, ILLINOIS  
KECK, MAHIN, CATE & KOETHE, P.C.    NEW YORK, NEW YORK    EAP HILLS, NEW JERSEY

**KECK, MAHIN & CATE**

Federal Communications Commission  
January 26, 1993  
Page 2

The original and five copies of the corrected Complaint are enclosed. Please date stamp the additional copy of the corrected Complaint. Thank you for your attention to this matter.

Sincerely,

  
Albert H. Kramer  
Helen M. Hall\*

cc: Carolyn Roddy, Enforcement Division  
enclosures

\*Admitted to practice in Illinois only.



INTRODUCTION

① The complainant, Millicom Services Company, is a provider of IPP service. This complaint asks the Commission to rule that the Commission's rules and regulations do not authorize the defendant to impose end user common line ("EUCL") access charges upon the IPPs provided by the complainant.

② An IPP provider is not included in the definition of end-user in 47 C.F.R. § 69.2(m), and is therefore not subject to the EUCL access charge imposed under Part 69 of the Commission's rules. The Commission's access orders make it clear that the non-traffic sensitive costs attributable to public pay phone service are assignable to the carrier common line charge and that the rationale that resulted in that assignment applies as persuasively to an IPP as to a local exchange carrier public payphone ("LECPP").

③ The complainant also seeks to recover as damages the EUCL charges it has paid in the past, and charges which continue to accrue.

④ Complainant notes that a petition for declaratory ruling was filed with the Commission by the American Public Communications Council ("APCC") on April 21, 1989 (DA 89-517), and that petition remains pending before the Commission. A copy of the APCC petition is attached as Exhibit 1, and is incorporated herein by reference. In addition, complainant understands that other formal complaints raising the same issue as that discussed herein

are also pending before the Commission. See C.F. Communications Corp. v. Century Telephone of Wisconsin et al., File Nos. E-89-170 through E-89-182.

#### THE LAW

1) The defendant is required by 47 U.S.C. § 201 to furnish communications service upon reasonable request and subject to the orders, rules, and regulations of the Commission. Under 47 U.S.C. § 201(b), "[a]ll charges, practices, classifications, and regulations for and in connection with such communications service, shall be just and reasonable, and any such charge, practice, classification or regulation that is unjust or unreasonable is hereby declared to be unlawful."

2) Under 47 U.S.C. § 202, it is unlawful for the defendant "to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage."

#### THE CONTROVERSY

9) The complainant provides (or has provided) IPP service to its customers at approximately 200 IPP stations in the State of Texas, each of which is connected to a telephone line provided by

the defendant. For each such line, the defendant furnishes to the complainant, and the complainant pays, a monthly bill submitted by the defendant.

(10) Since complainant has been using telephone lines furnished by the defendant, the defendant has been charging the complainant a monthly EUCL access charge for each such line. That EUCL charge is imposed in a flat dollar amount normally described as a "subscriber line charge" on the telephone bills submitted by defendant to the complainant.

(11) In November, 1990, complainant filed an informal complaint against defendant with the Commission. In the informal complaint, complainant protested the assessment of EUCL charges on IPP lines, requested a determination that the defendant's practice is unlawful, and requested a refund of past EUCL charges improperly assessed. Defendant responded in July, 1991.

(Complainant does not have a copy of the attachment referenced in the response, but will attempt to locate it and forward it to the Commission.) On November 12, 1992, the Common Carrier Bureau Enforcement Division issued a letter to complainant, noting that it declined to take action on the informal complaint, and directing complainant that a formal complaint should be filed within sixty days of the date of the letter. A copy of the defendant's response, and the Common Carrier Bureau's letter is attached as Exhibit 2.

COMPLAINANT IS NOT AN END USER UNDER THE REGULATIONS

② The purported regulatory basis for the EUCL charge is 47 § C.F.R. 69.1(b), which provides that "[c]harges for . . . access services shall be computed, assessed and collected . . . as provided in this part," and 47 C.F.R. § 69.5(a), which provides that "[e]nd user charges shall be computed and assessed upon end users as defined in this subpart . . ." The imposition of the EUCL charge upon the complainant by the defendant is in violation of those sections because the complainant is not an end user as that term is defined in 47 C.F.R. § 69.2(m):

(m) "End User" means any customer of an interstate or foreign telecommunications service that is not a carrier except that a carrier other than a telephone company shall be deemed to be an "end user" when such carrier uses a telecommunications service for administrative purposes and a person or entity that offers telecommunications services exclusively as a reseller shall be deemed to be an "end user" if all resale transmissions offered by such reseller originate on the premises of such reseller;

Complainant is expressly excluded from this definition because complainant is a carrier that does not use the telecommunications service for administrative purposes and because the complainant is not an entity which offers telecommunications services exclusively as a reseller and none of the resale transmissions offered by the complainant originates on the complainant's premises. The defendant's EUCL charges are therefore contrary to the rules and regulations of the Commission and are therefore a violation of 47 § U.S.C. 201. See Exhibit 1.

COMPLAINANT IS EXEMPT FROM EUCL UNDER  
THE COMMISSION'S ACCESS ORDERS

② The Commission, by formal order, has specifically exempted pay telephones from the EUCL charge, with certain exceptions not applicable to the complainant's telephones. MTS and WATS Market Structure, 93 F.C.C. 2d 241 (1983), recon. 97 F.C.C. 2d 682, 703-705 (1983) ("First Reconsideration Order"), further recon. 97 F.C.C. 2d 834 (1984), aff'd in principal part and remanded in part, NARUC v. FCC, 737 F.2d 1095 (D.C. Cir. 1984), cert. denied, 105 S. Ct. 1224 (1985). For the reasons explained in APCC's petition for a declaratory ruling (see Exhibit 1, pages 6-12), the defendant's EUCL charges are in direct violation of an order of the Commission and are, therefore, a violation of 47 U.S.C. § 201.

THE DEFENDANT'S COLLECTION OF EUCL IS DISCRIMINATORY

③ Defendant is a direct competitor of the complainant in the furnishing of payphone service. No EUCL charge or equivalent charge for recovery of non-traffic sensitive ("NTS") costs is attributed to any end user for the defendant's pay telephones (LECPPs). Instead, defendant recovers the cost of the LECPP line through the carrier common line charge ("CCLC"), imposed on interexchange carriers. For the reasons in APCC's petition for a declaratory ruling (see Exhibit 1 at pages 9-12), IPPs and LECPPs should be treated equally for purposes of recovery of NTS costs, and the NTS loop costs associated with IPPs should be recovered through the CCLC rather than from complainant. The imposition of

an EUCL charge by defendant upon the complainant's IPPs is an act of unjust and unreasonable discrimination against the complainant to its prejudice and disadvantage and an undue and unreasonable preference and advantage in favor of the defendant in violation of 47 U.S.C. § 202.

DAMAGES

15 The complainant has been and will be damaged by the defendant in the amounts of the unlawfully imposed EUCL charges. The complainant has been wrongfully assessed EUCL charges of approximately \$49,440 by the defendant, and these charges continue to be assessed every month.<sup>2</sup> Complainant ceased paying EUCL charges billed to its IPPs in November, 1990.

COMPLAINANT'S STANDING

10 The complainant is bringing this complaint against the defendant under 47 U.S.C. §§ 206 - 208 for its violations of 47 U.S.C. §§ 201 and 202, and its violations of the regulations and orders of the Commission.

WHEREFORE, the complainant asks the Commission for the following relief:

1. Declaration. A declaration that the imposition by the defendant of a subscriber line charge or EUCL access charge upon the complainant's IPPs violates 47 U.S.C. §§ 201 and 202, and 47 C.F.R. §§ 69.1(b) and 69.5(a), and the orders of the Commission;

---

<sup>2</sup> The final amount of EUCL charges unlawfully billed to complainant will have to be determined in a final accounting following resolution of this complaint.

2. Damages. An award of the damages incurred by the complainant, including the EUCL charges wrongfully collected by the defendant, in an amount to be determined in a final accounting;

3. Costs and fees. An award of the complainant's costs and fees;

4. Other relief. Such other relief as the Commission may deem appropriate.

Respectfully submitted,

Millicom Services Company *[Signature]*

Millicom Services Company  
555 63rd Street  
Brooklyn, New York 11220

Dated: January 11, 1993

**FILE COPY**

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

_____	
In the Matter of	)
	)
THE AMERICAN PUBLIC COMMUNICATIONS COUNCIL	)
	)
Petition for Declaratory Ruling	)
That End User Common Line Access Charges	)
May Not Be Assessed on Competitive Public	)
Pay Telephones	)
	)
_____	)

RECEIVED  
APR 21 1989  
Federal Communications Commission  
Office of the Secretary

PETITION FOR DECLARATORY RULING  
OF THE AMERICAN PUBLIC COMMUNICATIONS COUNCIL

Of Counsel

Bruce W. Renard  
Barry E. Selvidge

Albert H. Kramer  
Robert F. Aldrich

MESSER, VICKERS, CAPARELLO  
FRENCH & MADSEN  
Suite 701  
First Florida Bank Building  
215 South Monroe Street  
Tallahassee, FL 32302-1876

WOOD, LUCKSINGER & EPSTEIN  
2000 M Street, N.W.  
Suite 500  
Washington, D.C. 20036  
(202)223-6611

April 21, 1989

Attorneys for the American  
Public Communications  
Council

### SUMMARY

APCC requests the Commission to rule that end user common line ("EUCL") access charges may not be assessed on competitively provided public payphones under the Commission's current access charge rules. These charges are not assessed by local exchange carriers ("LECs") on LEC-provided public pay telephones. In essence, the Commission should rule that all public payphones are created equal for purposes of end user charges.

Competitively provided public coin telephones did not exist when the Commission's access charge rules were originally adopted. Since then, however, competitive payphone providers ("CPPs") have been authorized to enter the market and are making payphones available to the general public. Disputes over EUCL charges have arisen because local exchange carriers ("LECs") are billing CPPs' public payphones for the charges.

The access charge rules do not authorize the assessment of EUCL charges on competitively provided public payphones. CPPs are not "end users" but "carriers" under the access charge and do not fit the criteria for carriers "deemed to be" end users. For these reasons, CPPs' public payphones cannot lawfully be assessed the end user charge.

It is no accident that the Commission's rules do not authorize assessment of EUCL charges on competitively provided public payphones. Although such payphones did not

exist when the rules were adopted, the policy considerations that led the Commission to exclude public payphones from EUCL charges apply as strongly to competitive public payphones as to traditional public payphones. In both cases, the payphone line is not dedicated to any particular end user, but to the public at large. In both cases, there is the same inequity in assessing charges that realistically can be recovered from only a fraction of the end users. Accordingly, the Commission's underlying policy rationale, as well as the access charge rules themselves, dictates that the costs of competitive public payphone lines cannot be recovered by means of EUCL charges.

Issuing the ruling that APCC requests will not prevent exchange carriers from recovering the non-traffic sensitive costs which are currently recovered improperly from CPPs by means of EUCL charges. Those costs are assignable to the carrier common line charge, the same charge which is currently used to recover the costs of LEC-provided public payphone lines.

For the foregoing reasons, the Commission should grant this petition and rule that EUCL charges cannot be assessed on competitively provided public payphones.

RFA:mg:/wb/rfa/pet3.txt

TABLE OF CONTENTS

	PAGE
STATEMENT OF INTEREST . . . . .	1
INTRODUCTION AND BACKGROUND . . . . .	2
DISCUSSION . . . . .	6
I.    THE COMMISSION'S ACCESS CHARGE RULES DO NOT AUTHORIZE ASSESSMENT OF EUCL CHARGES ON COMPETITIVE PAYPHONE LINES . . . .	6
II.   THE COMMISSION'S RATIONALE FOR EXEMP- TING PUBLIC PAYPHONE LINES FROM EUCL CHARGES APPLIES TO COMPETITIVELY PROVIDED PAYPHONES . . . . .	9
III.  THE REQUESTED RULING WILL NOT PREVENT EXCHANGE CARRIERS FROM RECOVERING THE INTERSTATE COSTS OF PAYPHONE LINES . . . .	12
CONCLUSION . . . . .	13

RFA:mg:wb/rfa/pet2.txt

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

\_\_\_\_\_  
In the Matter of )  
 )  
THE AMERICAN PUBLIC COMMUNICATIONS COUNCIL )  
 )  
Petition for Declaratory Ruling )  
That End User Common Line Access Charges )  
May Not Be Assessed on Competitive Public )  
Pay Telephones )  
\_\_\_\_\_)

To: The Commission

PETITION FOR DECLARATORY RULING

The American Public Communications Council ("APCC"), a council of the North American Telecommunications Association ("NATA"), pursuant to Section 1.2 of the Commission's Rules, hereby requests, on behalf of itself and its members, a declaratory ruling that interstate end user common line ("EUCL") access charges may not be assessed on any public pay telephone provided by a competitive provider.

STATEMENT OF INTEREST

The American Public Communications Council ("APCC"), a council of the North American Telecommunications Association, is composed of some 60 operators and distributors of pay telephone equipment, which do business in all parts of the United States. APCC's purpose is to represent the interests of its members and of the public in having the

most widely available, lowest cost, highest quality public communications services. In furthering those interests, APCC's primary objective is to promote full and fair competition in the market for public telephone equipment and services. Members of APCC, as well as other competitive payphone providers, have been billed for the EUCL charges which APCC contends herein are not lawfully assessed on competitive public payphones. See Attachment A. APCC and its members thus have a direct and substantial interest in the subject of this petition.

#### INTRODUCTION AND BACKGROUND

When the Commission's access charge rules were first devised,<sup>1/</sup> the Commission decided that local loops connected to public coin telephone equipment should not be subject to the end user common line ("EUCL") charge. First Reconsideration Order at 703-05. At that time, coin telephone service for a given community was provided exclusively by the local exchange carrier ("LEC") with a monopoly franchise for local telephone service to that community. Since then, however,

---

<sup>1/</sup> MTS and WATS Market Structure, Third Report and Order, 93 FCC 2d 241 (1983) ("Access Charge Order"), recon., 97 FCC 2d 682 (1983) ("First Reconsideration Order"), further recon., 97 FCC 2d 834 (1984), aff'd in principal part and remanded in part, NARUC v. FCC, 737 F. 2d 1095 (D.C. Cir. 1984), cert denied, 105 S. Ct. 1224 (1985).

the Commission has authorized the interconnection of public coin telephone equipment provided by other entities,<sup>2/</sup> and numerous companies have entered the market to provide public coin telephone equipment and service. These new entrants, referred to herein as "competitive payphone providers" ("CPPs"), make their equipment available for the same purposes as the public coin telephones traditionally provided by the franchised exchange carrier -- namely, for access to the telecommunications network by transient members of the public.

Entry, rates and other conditions of competitive payphone providers' service are subject to regulation in virtually all states. In many states, CPPs must obtain a certificate of public convenience and necessity and operate as an authorized "telephone company" under state law. See, e.g., Fla. Stat. § 364.002(4). In short, CPPs act as public utilities or common carriers in holding themselves out to serve the communication needs of the general public, and they are regulated as such.

Like traditional public payphones, CPPs' public payphones are placed in a wide variety of locations, including sidewalks and government buildings, busy commercial

---

<sup>2/</sup> Registration of Coin Operated Telephones, 49 Fed. Reg. 27763 (July 6, 1984).

locations such as airports, hotels, and shopping malls, and less busy locations such as remote gasoline stations and rural "mom-and-pop" stores. The general practice is for a competitive payphone provider to retain ownership and control of the public payphone and to place the phone at a location under an agreement to remit to the premises owner some portion of the revenues earned.<sup>3/</sup> In this respect, too, competitive payphone providers operate in a similar fashion to LECs, which also own and operate public payphones pursuant to commission agreements with premises owners. In both cases, the public payphone is provided for the use of the public, not the premises owner.<sup>4/</sup>

EUCL charges are not assessed on lines connected to LEC provided public payphones. However, despite the similarities between the two classes of public payphones, numerous LECs are billing CPPs for EUCL charges. See Attachment A.<sup>5/</sup> As a result, there have been disputes

---

<sup>3/</sup> A few premises owners do own and operate the payphones on their premises.

<sup>4/</sup> This petition addresses public payphones, not "semi-public" stations, which are provided for the combined use of the premises owner and the public.

<sup>5/</sup> As shown in the examples of such bills provided in the Attachment, LECs customarily issue an individual bill for each competitively provided payphone and its associated line. Nonetheless, EUCL charges are assessed at the multiline business rate rather than the single-line rate.

between CPPs and local exchange carriers ("LECs") over whether competitively provided public payphones are legally subject to the EUCL charge even though the same charge is not assessed on the LECs' own public payphones. Some CPPs have refused to pay EUCL charges, and at least two informal complaints have been filed at the FCC. See Attachment B.<sup>6/</sup> In addition, there is at least one case pending in federal court regarding the legality of applying such charges to competitively provided payphones. C.F. Communications Corp. v. Century Telephone of Wisconsin, Inc., filed February 16, 1989 (W.D. Wis.) (No. 89C-0168C).

In summary, the issue of the legality of applying EUCL charges to competitively provided public payphones is ripe for resolution under the Commission's declaratory ruling procedures. There is a clear need to terminate controversies and remove uncertainty as to whether or not EUCL charges apply. 47 CFR § 1.2. Moreover, the issue presented is industry-wide in scope and the essential facts underlying the issue are not in dispute. Rather, the question posed is a legal one: Is the EUCL charge, which is not assessed on LEC-provided public payphones, inapplicable

---

<sup>6/</sup> In addition, a carrier has written to the Commission regarding this matter, and the Commission staff has informally responded. However, there has been no official adjudication of the issues raised in the carrier inquiry and informal complaints.

to competitively provided public payphones? In these circumstances, a declaratory ruling clearly is warranted. AT&T Co., Petition to Rectify Terms and Conditions of 1985 Annual Access Tariffs, Declaratory Ruling, 3 FCC Rcd 5071 (Common Carrier Bureau, 1988), clarified in Order, DA No. 88-1406, released September 15, 1988 (a declaratory ruling is warranted to resolve the lawfulness of actual or proposed carrier actions where the facts are undisputed).

#### DISCUSSION

I. THE COMMISSION'S ACCESS CHARGE RULES DO NOT AUTHORIZE ASSESSMENT OF EUCL CHARGES ON COMPETITIVE PAYPHONE LINES

Competitively provided public payphones do not fit the criteria stated in the Commission's rules for the imposition of EUCL charges. Under the Commission's Access Charge Rules:

A charge that is expressed in dollars and cents per line per month shall be assessed upon end users that subscribe to local exchange telephone service, Centrex or semi-public coin telephone service to the extent they do not pay carrier common line charges.

47 CFR § 69.104(a). This rule does not authorize assessment of the EUCL charge on any public payphone, including a public payphone offered by a competitive provider.

The rule by its terms applies EUCL charges only to those payphone lines subscribed to "semi-public coin

telephone service." Id. Thus, payphones which are not subscribed to "semi-public" service are not subject to EUCL charges. The competitively provided payphones at issue here are dedicated to public use only. They do not utilize "semi-public" service, and for that reason alone, EUCL charges should not apply.

Further, the rule provides for assessment of EUCL charges only on "end users," as defined in the rules. Under Part 69, an "end user" is defined as:

any customer of an interstate or foreign telecommunications service that is not a carrier, except that a carrier other than a telephone company shall be deemed to be an "end user" when such carrier uses a telecommunications service for administrative purposes and a person or entity that offers telecommunications services exclusively as a reseller shall be deemed to be an "end user" if all resale transmissions offered by such reseller originate on the premises of such reseller;

47 CFR § 69.2(m). Accordingly, a "carrier" cannot be an "end user" except in certain special circumstances.

Competitive payphone providers are not "end users" as so defined. Rather, a CPP is a "carrier." The Commission and the Courts have held that one becomes a carrier by "holding oneself out to serve the public indiscriminately. . . ." NARUC v. FCC, 525 F.2d 630, 642 (D.C. Cir. 1976). CPPs unquestionably hold themselves out to the public and thus qualify as carriers for access charge purposes. Their public payphones are provided under state public utility regulation and are accessible to the public

in the same way as telephone company provided public payphones. There can be little doubt that CPPs are "carriers" under the access charge rules.

As a carrier, a CPP could be an "end user" subject to EUCL charges only if it satisfied one of the two conditions in the definition set out above, whereby "a carrier other than the telephone company shall be deemed to be an 'end user' . . . ." The first condition, where telecommunications service is used for "administrative purposes," does not apply, because the service provided at CPPs' public payphones is for public use, not administrative use. The second condition, for carriers that offer telecommunications services only from their own premises and exclusively as a reseller, also does not apply to CPPs. Although some interstate calls from competitively provided public payphones -- namely "sent-paid" calls -- are resold by CPPs, most interstate payphone calls are "0+" calls, which are not typically resold by CPPs. Rather, charges for "0+" calls are assessed by the interexchange carrier or operator service provider that handles the call. Thus, a CPP is not "exclusively a reseller" and the second condition under which a carrier may be "deemed an end user" also does not apply.

Furthermore, even if a CPP were "exclusively a reseller," the CPP's "resale transmissions" do not originate on the CPP's premises. A CPP contracts to locate its