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JUN 24 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

June 24, 2002

By Hand

Marlene H. Dortch, Secretary
Federal Communications Commission
236 Massachusetts Avenue, N.E.
Suite 110
Washington, D.C. 20002

Re: *In the Matter of Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket 96-128*

Dear Ms. Dortch:

Please find enclosed for filing the original and four copies of the RBOC Payphone Coalition's Reply Comments on the Notice of Proposed Rulemaking Regarding Inmate Calling Services. Also enclosed is one extra copy of the motion. Please date-stamp and return the extra copy.

Thank you for your assistance. If you have any questions, please call me at 202-326-7921.

Sincerely,



Aaron M. Panner

Enclosures

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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JUN 24 2002

In the Matter of)
)
Implementation of the Pay Telephone)
Reclassification and Compensation Provisions)
of the Telecommunications Act of 1996)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CC Docket No. 96-128

**RBOC PAYPHONE COALITION'S REPLY COMMENTS ON THE NOTICE OF
PROPOSED RULEMAKING REGARDING INMATE CALLING SERVICES**

INTRODUCTION AND SUMMARY

The RBOC Payphone Coalition¹ ("the Coalition") files this reply on the Commission's Notice of Proposed Rulemaking concerning inmate calling services.² None of the comments provides a justification for imposing further regulations on inmate calling services; for its part, WorldCom, Inc. largely agrees with the Coalition's de-regulatory approach. In response to the other comments, the Coalition wishes to make five brief points.

First, the Commission should reject any suggestion that the Commission prohibit the payment of commissions to corrections institutions by inmate calling service providers. As a legal matter, such a regulation would be beyond the Commission's authority, as the Act does not permit it to regulate what a payphone provider pays a premises owner to locate a payphone on the premises; as a policy matter, it would be inappropriate for the Commission to intervene in the way state and local governments

¹ The RBOC Payphone Coalition comprises BellSouth Public Communications, Inc., SBC Communications Inc., and the Verizon telephone companies.

² See Order on Remand and Notice of Proposed Rulemaking, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 17 FCC Rcd 3248 (2002) ("NPRM").

operate their correctional facilities. The Coalition does not endorse (or condemn) the commissions charged by any particular corrections institution, but it does believe that such matters should be left to responsible state and local authorities.

Second, the Commission should not adopt a nationwide minimum rate for local calls from inmate institutions. To the extent that any particular state rate cap can be shown to deny inmate calling service providers fair compensation, the Commission can entertain a situation-specific petition for preemption.

Third, the Inmate Calling Service Providers Coalition's ("ICSPC") concerns about the billing of collect calls delivered to CLECs' customers are generally justified. The responsibility for this problem lies squarely with CLECs who fail to include appropriate information in the applicable line information databases ("LIDB") for the lines they serve. So long as the appropriate information is made available to them, ILECs have every interest in keeping their LIDBs current with both toll restriction information and account ownership information.

Fourth, the Commission should neither require nor prohibit any particular payment method – such as debit card calling – but leave these matters to corrections officials and the marketplace.

Fifth, the record provides no support for Commission regulation of service quality – even on interstate calls.

DISCUSSION

I. THE COMMISSION SHOULD NOT PROHIBIT COMMISSION PAYMENTS TO INMATE INSTITUTIONS

Two parties urge the Commission to prohibit corrections institutions from negotiating commission payments with inmate calling service providers, contending that

a federal prohibition on site commissions is necessary to combat upward pressure on rates. *See T-NETIX Comments* at 6-7; *Citizens For Rehabilitation of Errants ("CURE") Comments* at 4. But, as explained in our opening comments, nothing in section 276 gives the commission authority to regulate commission payments to correctional institutions or any other location provider. *See RBOC Coalition Comments* at 6-7. Section 276 directs the Commission to establish "a per call compensation plan to ensure that all payphone service providers are fairly compensated." 47 U.S.C. § 276(b)(1)(A). Payment of commissions to location providers – which is a general practice throughout the pay telephone industry – does not prevent inmate calling service providers from being fairly compensated. Inmate calling service providers are free, in the competitive bidding process, to ensure by their bid that they receive fair compensation. They are not forced to offer commissions that make their contracts unprofitable. If a corrections institution demands commissions that eliminate any prospect of profit, inmate calling service providers can simply refuse to bid. That refusal should cause corrections institutions to reduce their demands. Also, corrections institutions are principally public institutions controlled by state and other governments that have the authority to curtail or eliminate commissions by law if they deem it to be in the interest of the public that they serve, just as they have the authority to decide whether and what calling privileges will be extended to inmates. Accordingly, section 276 does not provide authority to the Commission to bar commissions.

Sections 201 and 226 do give the Commission authority to ensure that interstate rates are just and reasonable. But there has been no showing that any interstate rate is unreasonable – let alone that the rates for interstate calls from corrections institutions

generally are unreasonable – or that commissions are the cause of such unreasonable rates. Moreover, as the Coalition has pointed out (Comments at 7-8), the overwhelming majority of inmate calls are intrastate, and Sections 201 and 226 do not give the Commission jurisdiction over the rates for such calls.

Nothing in the Act gives the Commission authority to intervene in state corrections policy. The prohibition on site commissions illustrates the point that regulating commissions would embroil the Commission in the operations of inmate facilities. T-NETIX proposes that the prohibition on commissions apply to those contributions that amount to location rents but not to in-kind contributions dedicated to legitimate security interests. *See T-NETIX Comments* at 7. But determining whether an in-kind contribution is related to security requires an assessment of security decisions. The Commission cannot and should not involve itself in these types of determinations.

To be clear, the Coalition takes no position on whether commissions in general or any specific level of commissions in particular are a good idea as a matter of policy. The Coalition simply submits that these issues are properly resolved by corrections officials with due regard to local conditions and needs, subject to oversight by the governmental bodies that establish, fund, and regulate those corrections facilities.

II. THE COMMISSION SHOULD NOT SET A MINIMUM PER-CALL COMPENSATION RATE FOR LOCAL CALLS

The ICSPC has submitted cost data on local calls, and contends that the data demonstrate that the Commission should impose a minimum compensation rate for local inmate calls. *See ICSPC Comments* at 3-5. The ICSPC argues that some inmate calling service providers are not being fairly compensated because state telecommunications regulators have established maximum rates for local calls from inmate locations.

The Coalition believes that the Commission should not set a national per-call compensation rate for local calls placed by inmates. If some state-imposed local rate cap (or any other state regulatory practice) prevents a payphone provider from receiving fair compensation for some calls made from inmate payphones, then that provider can petition the Commission to preempt the rate in that state. As the Commission explained in the *Order on Reconsideration*, “[I]f an inmate provider believes, after making its arguments to a particular state . . . that it is not receiving fair compensation for intrastate toll calls originated by its inmate payphones, it may petition the Commission to review the specific state regulation of which it complains.”³ The Commission should re-affirm that it has authority to preempt local rate ceilings that deny an inmate calling service provider fair compensation, but it should not take any further action in this proceeding.

III. THE COMMISSION SHOULD DECLINE TO REGULATE BILLING AGREEMENTS

The ICPSC argues that the Commission should issue a series of rulings concerning providers’ obligations to enter into billing and collections arrangements with inmate calling service providers and, in particular, the operation of LIDB. *See ICPSC Comments* at 8-9. While some of the ICPSC’s proposals may go too far, they point in the right direction.

The industry has recognized for several years that IXCs are frequently unable to collect charges due for collect calls placed to end users served by CLECs – not just in the inmate context, but for all collect calls. As a general matter, the Coalition agrees that

³ *Order on Reconsideration, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 21233, 21269, ¶ 72 (1996).

reliable information should be made available that permits carriers generally and inmate calling service providers to identify the local exchange carrier serving the called party; if the carrier serving the called party can be accurately identified, the inmate calling service provider can make a determination about whether to connect the calling party with the called party.

The Coalition thus agrees that all LECs should be required to populate the appropriate LIDB with toll or billing restriction information, and all Coalition members do so (as the ICSPC appears to acknowledge). As long as CLECs provide accurate information, the ILECs will keep their LIDBs current with line number account toll and billing restriction information provided by the CLECs. But no ILEC has control over whether a CLEC places appropriate information into any particular LIDB. Thus, when it comes to CLEC lines, the LIDB is only as good as the information the CLECs provide. Accordingly, to the extent the ICSPC proposes that CLECs be required to keep the applicable LIDB (and the LNP database that enables the carrier to identify the LIDB that should be queried) up-to-date, the Coalition supports that proposal.

IV. CORRECTIONS OFFICIALS SHOULD REMAIN FREE TO ADOPT DIFFERENT BILLING PRACTICES

Commenters raise arguments both for and against debit calling and other inmate calling service options. Comments in favor of debit calling claim that, in general, debit calling is cheaper and therefore more desirable. *See CURE Comments* at 6-8. Comments opposing debit-card calling claim it presents additional security issues and may not, in the end, significantly reduce costs. *See T-NETIX Comments* at 8-10.

The Coalition believes that the Commission should not require, but also should not prohibit, debit-card calling. Corrections officials should remain free to implement

debit-card calling or other calling options as appropriate to their institutions, because different calling systems have different advantages. For example, although the Commission has pointed to some potential benefits of debit-card calling, some inmate family members in a Verizon focus group on debit-card calling disfavored that option because they were concerned that corrections officials would mismanage inmate accounts.

Inmate institutions and inmate calling service providers are sophisticated actors involved in a complicated industry. They should be free to negotiate and adopt the technological calling arrangements that are suited to the particular circumstances at a facility. The Commission therefore should not mandate any particular compensation arrangement, but leave these matters to responsible officials at the state and local level.

V. THE RECORD PROVIDES NO BASIS FOR THE COMMISSION TO REGULATE SERVICE QUALITY

CURE contends that the Commission should set service quality standards for inmate calling services. *See CURE Comments* at 8. The Commission should refuse this suggestion. Even if the Commission had such authority – and, at least with respect to intrastate calls, it does not – there is no evidence in the record of service quality problems justifying regulatory intervention.

CURE asserts the existence of service quality problem, but offers no evidence that service quality is a significant problem. *See id.* CURE also fails to recognize that corrections officials, who are in daily contact with inmates and their families, have an incentive (and the economic power) to ensure that the inmate calling service providers in their facilities provide adequate quality. In short, there is no reason to believe that the Commission's intervention is called for here.

CONCLUSION

The Commission should refrain from further regulation of inmate calling services.

Respectfully submitted,



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June 24, 2002

CERTIFICATE OF SERVICE

I hereby certify that, on this 24th day of June 2002, I caused copies of the RBOC Payphone Coalition's Reply Comments on the Notice of Proposed Rulemaking Regarding Inmate Calling Services to be served by first-class mail, postage prepaid, on the following parties:

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