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

In the Matter of)	
)	
RBOC Payphone Coalition Petition for)	RM No. 10568
Rulemaking to Establish Revised Per-Call)	
Payphone Compensation Rate)	
)	
American Public Communications Council)	
Request to Update Default Compensation Rate)	
For Dial-Around Calls from Payphones)	
)	
)	

REPLY COMMENTS OF
THE NATIONAL NETWORK TO END DOMESTIC VIOLENCE

Sara F. Leibman
Fernando R. Laguarda
Susan S. Ferrel
MINTZ LEVIN COHN FERRIS
GLOVSKY & POPEO, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004
Telephone: (202) 434-7401
Facsimile: (202) 434-7400

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**REPLY COMMENTS OF
THE NATIONAL NETWORK TO END DOMESTIC VIOLENCE**

The National Network to End Domestic Violence (“NNEDV”),^{1/} by its attorneys and pursuant to the Federal Communications Commission’s (“Commission”) September 30, 2002 Public Notice in the above-referenced proceeding, hereby submits its reply comments to the Petitions for Rulemaking Regarding the Payphone Dial-Around Compensation Rate.”

^{1/} NNEDV is the leading domestic violence public policy organization in the nation, providing analysis, advocacy and education to end domestic violence. A nonprofit public interest organization, NNEDV serves 53 state and local domestic violence coalitions that collectively represent nearly 2,500 member programs. NNEDV was instrumental in the enactment of the Violence Against Women Act, Pub. L. No. 103-322, 108 Stat. 1796(1994), and participates in the development and implementation of law and public policy affecting battered women.

^{2/} The American Public Communications Council (“APCC”) and the RBOC Payphone Coalition (“RBOC Coalition”) (collectively the “Petitioners”) request that the Commission increase the “dial-around” payphone compensation rate from \$0.24 per call to \$0.49 per call. *See RBOC Payphone Coalition’s Petition for Rulemaking to Establish Revised Per-Call Payphone Compensation Rate*, Petition for Rulemaking (filed Sept. 4, 2002) (“*RBOC Petition*”); *American Public Communications Council’s Request to Update Default Compensation Rate for Dial-Around Calls from Payphone*, Request that the Commission Issue a Notice of Proposed Rulemaking (or in the Alternative, Petition for Rulemaking) to Update Dial-Around Compensation Rate (original filed Aug. 29, 2002; corrected copy filed Aug. 30, 2002) (“*APCC Petition*”). NNEDV opposes this request for the reasons set forth herein.

INTRODUCTION AND SUMMARY

NNEDV writes to emphasize that an increase in the per-call payphone compensation rate would impose significant hardships on public service organizations such as domestic violence hotlines and shelters. Domestic violence hotlines are struggling to provide counseling, placement, and emergency services to victims using scarce funding today; doubling the payphone rate would require the hotlines to divert limited resources to telecommunications expenses instead of fulfilling their intended role in the community.

The comments filed in this proceeding demonstrate that there is no basis for granting the Petitioners' request. The reasons offered by the Petitioners for doubling the dial-around rate are unsupported and their cost studies are unreliable. In addition, in calculating the joint and common payphone costs, the Petitioners include costs that either are already accounted for in the Commission's existing cost methodology or are costs that should not be passed on to consumers (including victims of domestic violence).

If, despite these deficiencies, the Commission decides to grant the payphone providers' request, it should exempt public service organizations from funding the increase. By the very nature of the services they provide, domestic violence hotlines cannot refuse to accept calls placed from any source – *especially* payphones. Nor can they pass the costs on to the victims that make the calls. Public service organizations should not be forced to sacrifice important public services in order to subsidize the payphone industry.

I. INCREASING THE PER-CALL PAYPHONE RATE WOULD IMPOSE SERIOUS HARDSHIPS ON PUBLIC SERVICE ORGANIZATIONS THAT OPERATE HOTLINES AND PROVIDE COMMUNITY SERVICES AND PUBLIC SAFETY SUPPORT FOR THE MOST NEEDY PEOPLE IN THE COUNTRY

As the APCC points out in its initial comments, the need for payphone services is particularly important, if not critical, for the victims of domestic violence.^{3/} In most cases, a battered woman uses a payphone when her situation has become desperate and she needs immediate access to shelter, aid, and counseling. Typically, she has fled her home, with little money and often with dependent children. At that moment, the payphone at the corner store may help lead the victim to life-saving shelter and services.

Most victims place their calls to domestic violence hotlines that they have heard about from friends, posters, billboards, or from advertisements placed in the phone book. These hotlines are often run by autonomous organizations and are funded pursuant to the Violence Against Women Act (“VAWA”) or through private funding or charitable contributions.^{4/} One such program established under VAWA is the National Domestic Violence Hotline (“National Hotline”). In 1996, the National Hotline (1-800-799-SAFE) took its first call, providing life-saving assistance to those experiencing domestic violence. Since its creation, over 800,000

^{3/} See APCC Petition at 5. Payphones also play an important role for those who wish to contact other crisis hotlines including drug crisis, suicide hotlines, child abuse crisis centers, poison centers, and rape crisis centers.

^{4/} For example, the National Hotline receives \$2 million per year in government funding. The State of Nebraska allocates \$400,000 to fund its domestic violence program.

calls^{5/}, have been handled by the National Hotline. Of these calls, approximately 64,000 (or 8.3 percent) originated from payphones.^{6/}

When a victim phones the National Hotline, she receives crisis intervention, referral information, and support from a trained professional with access to a national database that contains information on emergency shelters, legal advocacy, social services, and other programs in the caller's community. In addition to the National Hotline, several state, local, and charitable organizations also sponsor hotlines to provide assistance to victims of domestic violence.” These organizations serve as a resource for the victims of domestic violence and other professionals seeking legal information, legislative updates and general information about domestic violence on behalf of abused women. Given the creation of additional domestic violence hotlines coupled with the benefits and resources provided to battered women, the number of calls to such hotlines continues to increase.”

^{5/} See National Hotline, *Fact Sheet, available at* <http://www.ndvh.org>.

^{6/} In preparing these comments, NNEDV conducted a survey of organizations providing hotlines for victims of domestic violence. Responses were received from Georgia Coalition Against Domestic Violence; SafeLink Hotline; Child, Inc.; Alabama Coalition Against Domestic Violence; Nebraska Coalition Against Domestic Violence; Connecticut Coalition Against Domestic Violence; CHOICES Domestic Violence Program in Galena, Illinois (“CHOICES”); Arizona Coalition Against Domestic Violence; Vermont Network Against Domestic Violence and Sexual Assault; the Project Against Violent Encounters (“P.A.V.E.”); Nevada Network Against Domestic Violence; Rhode Island Coalition Against Domestic Violence; Women’s Center of Rhode Island; New York State Coalition Against Domestic Violence; and, the National Domestic Violence Hotline. The statistics provided come directly from the responses to the survey and will be used accordingly throughout this reply comment.

^{7/} See, e.g., “Los Angeles County District Attorney’s Office Bureau of Crime Prevention, Domestic Violence Hotline,” *available at* <http://da.co.la.us/text/crimeprv/domv.htm> (“In November 1994, the District Attorney established the Los Angeles County Domestic Violence Hotline to help victims find a safe way out of their abusive environments.”); P.A.V.E., *available at* <http://www.unitedwayofienningtoncounty.com/PAVE.htm> (sponsoring a 24 hour hotline providing case management legal services, access to shelters, safe homes, and emergency funds).

^{8/} According to the service providers we surveyed, calls to local hotlines continue to increase. For example, CHOICES reports that as a result of increased calling, it recently added an additional toll-free number for call reception in its satellite office. The Arizona Coalition Against Domestic Violence and

Equally important to the success of hotlines is their ability to provide victims in need with access to immediate crisis intervention.” To facilitate these calls, the majority of hotlines pay a long distance carrier for a toll-free number, which allows victims to make long distance calls to the hotline without incurring any expenses themselves.”” Access to a toll-free number, particularly from a payphone, ensures that victims who do not have telephones or do not want their abuser to find out that they are calling have timely access to services, particularly when they are fleeing their homes with their children.”” In one recent call to the National Hotline, for example, a victim was in such danger that she fled her home to use a hotel payphone to discuss life saving information with an advocate. Placing a call at a payphone also reduces the risk that batterers can trace or listen to calls made by victims on their mobile or home phones. Many batterers, for example, monitor the victim’s telephone usage to keep victims isolated and to avoid criminal consequences. In rural communities, particularly, abusers are known to use scanners to monitor cell phone calls. If the batterer discovers that the victim placed a call to someone without his permission, it may have life-threatening consequences. Finally, calling a toll-free

P.A.V.E. also report that their calls are becoming more frequent and the calls received by the National Domestic Violence Hotline have increased 30 percent per year and, because of television publicity, increased by 900 percent on one day alone. *See* The National Domestic Hotline, “Donate,” *available at* <http://www.ndvh.org/>. It is not surprising that call volumes will increase as efforts to publicize resources available to battered women and their children continue.

^{9/} For example, the Georgia Coalition Against Domestic Violence is accessible from anywhere in Georgia and operates 24 hours per day.

^{10/} The majority of hotlines pay for telecommunications services themselves. CHOICES reports that toll-free services **are** particularly important in rural areas where a single hotline can accommodate several states.

^{11/} For example, the New York State Coalition Against Domestic Violence provides information and referrals for over 20,000 victims of domestic violence each year. It serves as a resource for domestic violence service providers and other professionals seeking legal information, legislative updates and general information about domestic violence on behalf of abused women and other technical assistance needs.

number reduces the number of calls that the battered woman would otherwise need to make to receive assistance, counseling, and shelter. Indeed, the payphone is an invaluable resource for the victims of domestic violence and the hotlines receiving the calls.

In light of the important services provided by public service organizations, it would be especially inappropriate to pass on the costs proposed by the Petitioners, including litigation fees, bad debt and bankruptcy expenses, to the organizations.^{12/} Hotlines already devote a considerable amount of their scarce resources in compensating payphone owners for the dial-around calls placed by victims, which is on top of the significant costs they incur for toll-free services. Increasing the per-call rate would require public service organizations to allocate more of their already small annual budgets to telecommunications services. The National Hotline, for example, estimates that the proposed increase in the per-call rate would require them to pay \$7,200 more per year for payphone surcharges. State, local, and private organizations, like SafeLink and the New York State Coalition Against Domestic Violence, would face telecommunications cost increases between \$1,000 and \$1,200 per year. Although these figures may seem small in comparison to the telecommunications budgets of many commercial entities, these are expenses that the hotlines can ill afford.

In adopting its initial payphone charge, the Commission noted that parties who were dissatisfied with the per-call rate could block all incoming calls from payphones.’’ The Commission reasoned that targeted call blocking would provide payphone owners and carriers

^{12/} The National Domestic Violence Hotline reports that operating expenses are climbing as call volume increases. As the demand for hotline services steadily increases so does the need to ensure that the Hotline is fully staffed and advocates are able to answer every call. Adequately staffing the Hotline can be difficult because of tight budget restrictions. Increasing the dial-around compensation rate would only further strain its budget.

^{13/} *Third Report and Order ¶¶ 64-68*

with an incentive to develop an acceptable compensation rate.''' While such a technique might be feasible for long-distance carriers and certain toll-free subscribers, public service organizations such as domestic violence hotlines and shelters cannot, and should not, block toll-free calls from any source. Public service organizations generally establish toll-free numbers for the express purpose of permitting callers to reach them easily – and free of charge – from any location. Indeed, blocking calls from payphones would endanger the very people that domestic violence hotlines exist to help.

Calling-party pays also would be an inappropriate mechanism for compensating payphone providers because it would prevent end-users from placing toll-free calls without charge. As discussed above, domestic violence hotlines specifically establish toll-free numbers to enable the public to place calls free of charge. This purpose would be undermined if battered women fleeing an abusive situation were unable to obtain help unless, in the middle of the crisis, they remember to bring change with them. In addition, victims of domestic violence often contact several different toll-free numbers to implement a safety plan.^{15/} If the victim had to pay a surcharge for each call, they would not be able to obtain the life-preserving assistance they need.

Undoubtedly, public service organizations will continue to provide hotline services despite any increase in payphone costs, but the new costs have the potential to affect the quality of existing services. The additional funding that would be required for telecommunications costs could be used to help actual victims in need; for example, to feed the children of domestic

^{14/} *Id.* ¶ 68

^{15/} Victims may have to call the welfare office, the support office, the food bank and the unemployment office to obtain all the resources needed to create a stable, nurturing home, free of the abuser.

violence victims and to purchase diapers and clothing. These funds also could be devoted to paying the salaries of relief hotline associates who are trained to help battered women escape from their abusers. Or the money that would go to payphone owners could be used to sponsor programs designed to raise the public's awareness of the Nation's domestic violence problem and of the resources available to help battered women. In light of the dearth of support provided by the payphone industry for increasing the per-call rate, the Commission should not make a choice that could require the hotlines to deny victims important resources, including food, clothing, and shelter.

II. THE PAYPHONE OWNERS HAVE NOT JUSTIFIED THEIR REQUESTS TO INCREASE THE PER-CALL PAYPHONE COMPENSATION RATE

Imposing additional costs on domestic violence hotlines and shelters would be particularly unfair and contrary to the public interest given that the majority of commenters have shown that the payphone owners' cost assertions are unsupported and unsubstantiated.^{16/} As AT&T explains, the cost studies fail to include essential data inputs of the methodology used to determine the per-call rate.^{17/} Under the current call methodology, the per-call compensation rate is reached by dividing the sum of the joint and common costs incurred by payphone owners by the marginal call rate.^{18/} In developing their cost studies, however, the Petitioners do not

^{16/} See Response of the Office of the Attorney General of the State of Texas at 1 ("State of Texas"); Opposition of Sprint Corporation to Petitions for Rulemaking at 1 ("Sprint"); Opposition of IDT Corporation at 3-4 ("IDT"); Comments of AT&T Corporation at 2 ("AT&T"); Comments of Worldcom, Inc. at 2 ("Worldcom"); Comments of Global Crossing North America, Inc. at 1 ("Global Crossing"); Opposition of ATX Communications, Inc. at 2 ("ATX").

^{17/} AT&T at 13-16.

^{18/} See *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Third Report and Order, and Order on Reconsideration of the Second Report and Order, 14 FCC Rcd 2545 ¶¶ 69-71 (1999) ("*Third Report and Order*").

accurately reflect the call volumes associated with marginal payphones. Specifically, APCC fails to exclude unprofitable low-volume phones and does not include all the completed calls at a marginal payphone when calculating its call volume.^{19/} The RBOC Coalition's estimates of its call volumes are similarly flawed. For example, although the Commission specifically ruled that the volume of calls at marginal locations should exclude call volumes for locations where the premises owner pays or receives rents, the RBOC Coalition includes these call volumes in its cost study.^{20/} As a result, the Petitioners' call volumes are extraordinarily low, which incorrectly suggests a need to increase the per-call compensation rate.

In addition, the proposed 100 percent increase in per-call compensation is grossly disproportionate to the percentage decline in call volumes.” Based on the Petitioners' own figures, the total call volume has only decreased by 10 percent.^{22/} The Petitioners have offered no rationale for why this small decline warrants doubling the per-call rate. Nor is there any basis for the Petitioners' assertions that the per-call rate increase is necessary to sustain the number of payphones already deployed.^{23/} While the Commission is required to establish a “per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed call,”^{24/} it is not required to set the per-call rate at such a level as to

^{19/} AT&T at 13-15. APCC only includes the amount of calls actually paid for in determining the call volume at marginal payphones. See APCC Petition at 13. As AT&T explains, the Commission calculates the marginal payphone call volumes by examining the total number of calls at a marginal payphone and does not reduce this volume based on the payphone owners' contentions that they have not been paid. AT&T at 15; see also *Third Report and Order* ¶ 146.

^{20/} AT&T at 16; RBOC Petition at 5; see also *Third Report and Order* ¶ 139.

^{21/} See State of Texas at 3.

^{22/} See APCC Petition at 8; RBOC Petition at 40.

^{23/} See, e.g., Sprint at 3; IDT at 7-8; Worldcom at 11.

^{24/} 47 U.S.C. § 276(b).

allow payphone operators to recover the costs for all of their existing assets and their exclusive location costs. Rather, as Sprint makes clear, payphone operators must adapt to the competitive marketplace by eliminating expensive exclusive payphone deals where the demand for service no longer exists.^{25/} It is not the Commission's job to ensure that payphone operators are compensated for every asset on their books.

Similarly, the Petitioners' contention that the deployment of wireless phones has reduced the demand for payphone services, even if correct, is not relevant to whether the Commission should grant their Petitions. The Commission should not be in the position of protecting its regulatees from competition and from their own poor business judgment. Indeed, the record reflects that payphone operators themselves created many of the payphone industry's problems.^{26/} For example, "[s]ince payphone services were deregulated, payphones have acquired an often-justified reputation for poor service, poor maintenance, and inflated rates."^{27/} In addition, rising payphone rates (ranging from \$0.35 to \$0.50) may also be responsible for the lower volumes of calls placed at payphones. If granted, the requested increase in payphone rates, combined with the already poor quality of service, would only further reduce the number of calls placed at payphones and, in turn, the number of payphones deployed.

In any event, consumers (including victims of domestic violence) should not be required to pay twice for costs already recovered under the Commission's existing per-call compensation mechanism. Despite the Petitioners' assertions, the Commission includes collection costs in its

^{25/} Sprint at 4.

^{26/} Sprint at 5; JDT at 11.

^{27/} Sprint at 4.

calculation of the joint and common costs.^{28/} Likewise, there is no reason to include litigation and bankruptcy-related costs in the cost-recovery methodology, especially when, as IDT Corporation states, these costs will likely be recovered through judicial proceedings.^{29/} In short, the payphone owners have not justified their proposed increase and their Petition should be rejected.

III. IF THE COMMISSION ADOPTS A PER-CALL PAYPHONE COMPENSATION RATE INCREASE, IT SHOULD EXEMPT PUBLIC SERVICE ORGANIZATIONS

As discussed above, many public service organizations rely on toll-free numbers to deliver services and conduct operations. For many of these entities, especially those that provide hotline services, being able to receive toll-free calls from payphones is crucial. The recipients of these services need free and unfettered access to toll-free services wherever they might be. If the Commission raises the dial-around per-call compensation rate, public service providers may be forced to reduce services.

Accordingly, if the Commission determines that an increase in the per-call compensation rate is warranted, it should “grandfather” public service organizations so that they would only be required to pay the current per-call rate (**\$0.24** per call). This exemption could be implemented through a certification process, under which an applying entity would be required to demonstrate that it is either a government entity or that it satisfies the criteria set forth in section 501(c)(3) of

^{28/} See *Third Report and Order* ¶ 164, ATX at 14.

^{29/} IDT at 14.

the Internal Revenue Code.^{30/} After its application is granted, the certified public service organization would have to notify its toll-free service provider of the exemption and the carrier would then subtract the per-call increase from the certified public service company's bill (or reduce the surcharge by half). The payphone providers would take the reduction as an offset to their bills to long-distance carriers.

Exempting certified public service organizations from increases in payphone compensation would further the important goal of ensuring that those in need can obtain the services – sometimes life-saving – they need. Some telecommunications carriers have voluntarily decided to provide free payphone services to public service organizations. For example, Cellular One sponsors the Vermont Network Against Domestic Violence and Sexual Assault hotline by providing toll free statewide hotline numbers. In addition, Cellular One pays all of the per-call payphone costs associated with the hotline. While payphone owners have not chosen to take such voluntary steps, the Commission should ensure that organizations like the hotlines are not required to reduce or eliminate important services in order to subsidize the payphone industry's inefficiencies.

^{30/} See I.R.C. § 501(c)(3). Section 501(c)(3) generally provides that certain organizations are exempt from tax pursuant to § 501(a). Those organizations include:

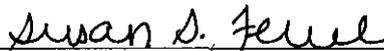
Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, . . . no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

CONCLUSION

For the foregoing reasons, the Commission should reject the Petitioners' requests to initiate a rulemaking proceeding to examine whether to increase the per-call payphone compensation rate.

Respectfully submitted,

THE NATIONAL NETWORK TO
END DOMESTIC VIOLENCE



Sara F. Leibman
Fernando R. Laguarda
Susan S. Ferrel
MINTZ LEVIN COHN FERRIS
GLOVSKY & POPEO, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004
Telephone: (202) 434-7401
Facsimile: (202) 434-7400

Its Attorneys

November 14, 2002

CERTIFICATE OF SERVICE

I, Susan S. Ferrel, hereby certify that on this 14th day of November 2002, the foregoing Reply Comments of the National Network to End Domestic Violence were served on the following:

Qualex International
Portals II
445 12th Street, S.W. Room CY-B402
Washington, D.C. 20554
qualexint@aol.com

Aaron M. Panner
Kellogg, Huber, Hansen,
Todd & Evans, P.L.L.C.
1615 M Street, NW
Suite 400
Washington, DC 20036

Michael J. Shortley, III
Attorney for Global Crossing
North America, Inc.
1080 Pittsford-Victor Road
Pittsford, New York 14534

John E. Benedict
401 Ninth Street, N.W.
Suite 400
Washington, DC 20004

Hope Halpern
Director of Regulatory Affairs
Telstar International, Inc.
1 North Broadway
White Plains, NY 10601

Mark C. Rosenblum
AT&T Corp.
Room A229
900 Route 202/206 North
Bedminster, New Jersey 07921

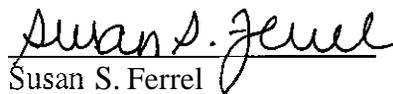
Carl Wolf Billek
IDT Corporation
520 Broad Street
Newark, New Jersey 07102-3111

Albert H. Kramer
Dickstein Shapiro Morin & Oshinsky LLP
2101 L Street, N.W.
Washington, D.C. 20037

Roger B. Borgelt
Assistant Attorney General of Texas
Consumer Protection Division
Public Agency Representation Section
P.O. Box 12548
Austin, Texas 78711

Larry Fenster
1133 19th Street, NW
Washington, DC 20015

Richard M. Rindler
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W. Suite 300
Washington, DC 20007


Susan S. Ferrel