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November 26, 2002

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Marlene H. Dortch, Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W., TW-A325
Washington, DC 20554

Ex Parte Presentation

Re: Federal-State Joint Board on Universal Service, CC Docket No. 96-45

Dear Ms. Dortch:

On November 26, 2002, Bruce Renard, President of the American Public Communications Council ("APCC") and Albert H. Kramer, Allan C. Hubbard, and Jeffrey H. Tignor of Dickstein Shapiro Morin & Oshinsky, counsel for APCC, met with Christopher Libertelli, Legal Advisor to Chairman Michael K. Powell. The matters discussed are detailed in the enclosed documents, copies of which were handed out at the meeting (along with copies of previously filed materials).

Sincerely,

Jeffrey H. Tignor

Enclosure
cc: Christopher Libertelli (by e-mail)

American Public Communications Council
Ex Parte Presentation on
Payphone Service "Contributions" to Universal Service

November 26, 2002

Who is APCC?

- APCC is a national trade association representing over 1,000 independent (non-LEC) providers of pay telephone equipment, services, and facilities.

- APCC seeks to promote competitive markets and high standards of service for payphones.

- APCC is an active participant in Commission proceedings affecting payphones.

Payphones "Contribute" to Universal Service By Providing a Unique and Vital Form of Universal Service

- Payphones provide the public with affordable, high quality per use "on demand dial-tone" service available 24 x 7 x 365 using a variety of payment media.
- Payphones are used by Americans in all walks of life. Payphones are used not only by people without home phones or wireless phones but by Americans with wireless phones (when those phones cannot function) and by those who need privacy (*e.g.*, for call to domestic abuse shelters).*
- Payphone users can place calls, at no charge to the caller, to 800 numbers that provide access to a range of commercial services and to social services agencies. Payphones are free for emergency and TRS calls.

*See letters from community groups emphasizing the importance of ready access to payphones (Tab 3, Appendices B-J). In addition, a large number of newspaper articles have discussed the continuing need for payphones in communities throughout the U.S. (Tabs 5-17).

Congressionally Mandated Widespread Deployment of Payphones is Threatened

- In 1996, Congress enacted Section 276 of the Communications Act "to promote the widespread deployment of payphone service."

- Payphones in growing numbers are being removed from locations where they are still needed but no longer attract sufficient calls to remain economically viable.*

- Any increase in the amount that payphone service providers must pay in universal service assessments will accelerate the rate of payphone removal.

*Since 1998, almost 500,000 out of a total of 2.2 million payphones have been removed from locations throughout the U.S. Available limited data indicates that the rate of decrease continues at an annual rate of about 7 percent.

Payphone Service Providers' Current Payments to the Universal Service Fund

- Because of the minimal use of payphones for direct-dial long distance calling, payphone service providers ("PSPs") today pay on average only about $.10 per line per month based on end user interstate revenue between $2 and $2.5 million annually for all (including LEC) payphones.*

- On dial-around calls, the IXC whose customer places the call pays the universal service assessment. These assessments amount to approximately $300 million per year.

*In addition, based on the CALLS order, LECs currently assess PSPs a federal universal service fund charge that averages approximately $0.55 per month.

Major Proposals Would Result In Rate Shock

- In its initial Comments, the Coalition for Sustainable Universal Service (CoSUS) stated (footnote 30) that assessments for payphone lines would be imposed upon the LEC provider of the line to the PSP, rather than upon the PSP. The LEC would pass-through the charge ($3.50 - 4.00) to the PSP.*

- According to SBC's August 30, 2002 *ex parte*, PSPs would be assessed for two qualifying connections and would pay $1.10 per line per month in universal service assessments.* In its November 5, 2002 *ex parte*, SBC modified its connections-based proposal, but has not yet provided enough details to make clear the exact economic impact of the proposal on PSPs.

* We recognize that the figures in this slide are under continuing reassessment.

Exponential Increase in Payments

- Assessing payphone connections as tier-1 multi-line business connections at the illustrative connection charge of $4.00 per line would result in a six- or seven-fold increase in PSPs' universal service payments.

- Such an exponential increase in PSPs' monthly universal service payments would significantly accelerate the removal of payphones from locations where they are still needed.
  - Because PSPs cannot pass on universal service charges to end users, any increase in the charge goes straight to the PSPs' bottom line and directly affects decisions as to whether individual payphones will be removed.

Unlike Other Service Providers, PSPs Have No Rational Means Available to Recover their Universal Service Contributions from End Users

- Requiring PSPs to contribute to the USF is inequitable because PSPs, unlike other service providers, have no rational means to recover contributions from end users.
  - Recovery from the few cost causing end users who make interstate coin calls would greatly suppress demand and would actually reduce or eliminate the net contribution to the USF from such calls.
  - On the other hand, recovery from end users who make local coin calls would burden those who are not the cost causers. It would be inconsistent with Section 152(b) of the Act and the Fifth Circuit's decision in *Texas Office of Public Utility Counsel v. FCC* for the Commission to place PSPs in the position of having to recover federal universal service payments through increased rates for intrastate coin calls.

Unlike Other Service Providers, PSPs Have No Rational Means Available to Recover their Universal Service Contributions from End Users (cont.)

- CoSUS has emphasized that the FCC should not be concerned by varying impacts across telecom sectors because telecom providers paying USF fees will pass on their costs to end users as line item charges. CoSUS overlooks the fact that PSPs do not invoice their end users and have no rational way to pass on costs to end users.

- The inability of PSPs to pass through universal service charges to end users is a problem with every universal service fund proposal before the Commission.

If Required to Pay, Payphone Service Providers Should Be Assessed at a Reasonable Rate

- Payphones have characteristics more like pagers than any other service category the Commission is considering in the NPRM.

- PSPs should be assessed at a level not higher than that applicable to paging service.

- As with pagers, any payment required for payphone lines should reflect the following characteristics:
  - comparatively small interstate revenues
  - outbound only calling
  - shared use of facilities
- PSPs should be assessed at a level not higher than that applicable to paging service.

If Required to Pay, Payphone Service Providers Should Be Assessed at a Reasonable Rate (cont.)

- Payphone lines have none of the characteristics of multiline service. Payphone lines are not provisioned in the same manner as multiline business lines. For example, a PSP deploying 500 phones needs to provision 500 separate lines. Under the proposal outlined in the Commission's NPRM, a PSP would pay $2,000 in universal service assessments for those 500 lines. In contrast, a multiline business user using a PBX could deploy one DS-3 to serve its 500 lines. Under the proposal outlined in the Commission's NPRM, that multiline business user would only pay $160 in universal service assessments.

- Under no circumstances, should the proposed tier 1 multiline business connection assessment be applied to payphone service.

PSPs Should Not Be Required to Pay Into the Universal Service Fund

- In order to preserve ready access to the telephone network through payphones, the FCC should altogether exempt PSPs from contributing to the Universal Service Fund.

- PSPs are "aggregators" under Section 226 of the Act and therefore are not "telecommunications carriers" subject to mandatory universal service assessments.*

- Although CoSUS proposes exempting "public interest payphone" lines, this gesture is meaningless since there are only a few hundred public interest payphones throughout the entire country.

*The Commission previously assumed that the LECs' payphone services were part of the LECs' carrier activities and thus were subject to mandatory USF assessments. For reasons of competitive parity, the Commission also required independent PSPs to contribute to universal service. In fact, the LECs' payphone services had been separated from the LEC's carrier services and the Commission was (and is) free to exempt LEC, as well as independent, payphone services from universal service assessments.

APCC

Payphone Service "Contributions" to Universal Service: A Summary

- **Payphones: a unique and vital form of universal service.** Payphone service "contributes" to universal service by providing the public with high quality "on-demand dial-tone" service which is available 24 x 7 x 365 to all members of the public, for one call or many, and is priced affordably on a per-use basis using a variety of payment media (and free for emergency calls). Users can also place calls, at no charge to the caller, to 800 numbers that provide the full panoply of commercial services and access to public service.

  - Even users of wireless service need ready access to payphones when their wireless phones are out of a service area (such as in many rural areas), lose battery power or otherwise are not available for use. Victims of domestic violence and child abuse (and other callers who do not want a record of the call available to family members) must rely on payphones. Payphones are used by many Americans for local or 800 calls to social service agencies (employment, homeless shelters, social security, etc.).

  - These users of payphone service are found in every strata of society in all neighborhoods and regions of the country. Ready access to payphones is especially critical for the 5.6 million American households without phone service and is vitally important for Americans who do not have wireless service. These Americans rely on ready access to payphones for emergency and important business and personal calls not just where they reside, but also where they shop, visit and work.

  - Numerous community associations and social services organizations such as Community Voice Mail, Rural Housing Inc., The Eastern Band of Cherokee Indians, and The North Carolina Sheriffs' Association have expressed their support for ready access to payphones. *See Comments of APCC*, Appendices A-J.

- **Widespread deployment of payphones is mandated by Congress.** In 1996, Congress, recognizing the importance of ready access to payphones, enacted Section 276 of the Communications Act "to promote the widespread deployment of payphone service."

- **Widespread deployment is threatened.** For a variety of reasons, including the expansion of wireless, payphones in growing numbers are being removed from locations where they are needed but no longer attract sufficient calls to remain economically viable. Between 1998 and 2002, the number of payphones has decreased by about 500,000 phones, from about 2.2 million to about 1.7 million. *See Comments of APCC*, pp. 11-13. Based on available data, payphone deployment continues to decrease at an annual rate of approximately 7 percent.

- **Payments are unduly burdensome.** Unlike other providers of telecommunications, payphone service providers have no rational method available for equitably recovering their universal service payments from end users. If payphone service providers are required to make payments to the Fund, payphone service providers may have to recover such payments through price increases for local coin calls. It would be inequitable and of questionable legality to force those end users who make local calls to bear the burden of payphone service provider payments to federal universal service mechanisms. *See Comments of APCC*, pp. 13-16.

- **Proposed Tier 1 multi-line business connection assessment should not be applied to payphone service.** Payphone connections do not fit neatly within any of the Commission's proposed categories for connection-based assessments. Payphones are unique among telecommunications services in the manner in which they are used by consumers and how lines are provisioned. Payphones are not provisioned like multi-line business lines and there is no logical reason to assess payphone connections as tier-1 connections. Assessing payphone connections as tier-1 multi-line business connections would result in a several-fold increase in payphone service providers' universal service payments and thereby significantly accelerate the pace of payphone removal.

- **If required to pay, payphone service providers should be assessed at a reasonable rate.** Payphone service providers should be assessed at a level not higher than that applicable to paging service. Like pagers, payphones are generally used for a more limited connection to the public network than residential or business connections, since the vast majority of payphone calls are outgoing. Also, just as one paging frequency can serve numerous subscribers receiving messages, one payphone can serve many different people making outgoing calls. As with pagers, any payment required for payphone lines should reflect payphone service providers' comparatively small interstate revenues.

- **Retain *de minimis* exception.** If payphone service providers are required to make universal service payments, a *de minimis* exception should be retained in order to reduce tracking and reporting burdens on small payphone service providers.

- **Payphone service providers should not be payors.** To help preserve ready access to the telephone network through payphones, the Commission should relieve payphone service providers of the requirement to pay into the Universal Service Fund. Payphone service providers are not "telecommunications carriers" and thus are not mandatory payors under the Act. The Commission relied on a faulty legal analysis when it found that the public interest required that payphone service providers pay into the Fund. *See Comments of APCC*, pp. 16-18. It is unsound public policy to require payphone service providers who already are a part of universal service to make payments into the Fund.