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July 29, 2004

Marlene Dortch
Secretary
Federal Communications Commission
445 12 St., S.W.
Washington, D.C. 20554

Re: Ex Parte, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128.

Dear Ms. Dortch:

In its July 26, 2004 Ex Parte letter, the American Public Communications Council (“APCC”) requests the Commission codify what it purports to be AT&T’s commercial agreement between itself and its switch-based reseller (“SBR”) customers into Commission rules that would dictate the terms of commercial agreements that would apply to all Intermediate Carriers and their SBRs.¹ MCI believes APCC has mischaracterized AT&T’s commercial agreement with its SBR customers, if it understands it to be a “payment obligation on the part of Intermediate Carriers” that is “enforceable” by payphone owners against AT&T. APCC Ex Parte Letter at 1. MCI opposes APCC’s request to modify the rules or even to apply AT&T’s commercial agreement to all Intermediate Carriers.

The Commission should clarify that payphone service providers should not be allowed to unreasonably object to commercial agreements between Intermediate Carriers and their SBR customers who choose to opt-in to compensate payphone service providers (“PSPs”) on the basis of all calls sent to SBR platforms. However, there is no need for the Commission to require Intermediate Carriers to adopt the identical commercial agreement that AT&T has found, at least

¹ Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Ex Parte Letter from Albert Kramer and Robert Aldrich to Marlene Dortch (“APCC Ex Parte Letter”), July 26, 2004.

for now, to be most appropriate for its customer base and business strategy. An examination of MCI's commercial agreement shows it is not identical to that of AT&T.²

Rather, the Commission should retain its clear finding that Completing Carriers are responsible for their own payphone compensation. If a switch-based reseller *qua* Completing Carrier chooses to arrange with an Intermediate Carrier to compensate PSPs on the basis of all calls sent to its platform rather than invest in its own compensation and tracking facilities, and audit those facilities, it remains legally liable for compensation. APCC's Ex Parte seeks to place compensation liability to PSPs directly on Intermediate Carriers and makes it less likely they will be willing to enter into such contractual agreements.

MCI understands the Commission may wish to comment on or characterize certain features that ought to be included in contracts between Intermediate and Completing Carriers when Intermediate Carriers agree to compensate PSPs on behalf of Completing Carriers according to all payphone calls sent to their platforms. For example, the Commission may wish to clarify that PSPs should be notified within a reasonable time after such arrangements begin or end. In doing so, however, the Commission should make clear that the responsibility for notification, payments, and any other actions that are recommended to be undertaken for Completing Carriers to be relieved of the requirement to have their call tracking systems audited are the sole responsibility of the Completing Carrier. Completing Carriers may contractually arrange to have Intermediate Carriers carry out various activities on their behalf, such as notification, but the ultimate responsibility for complying with payphone compensation requirements should remain with the Completing Carrier. Otherwise, Intermediate Carriers will have little incentive to perform this intermediary function for the SBR competitors.

Sincerely,

/s/ Larry Fenster

Larry Fenster

cc: Chris Libertelli
Dan Gonzalez
Scott Bergman
Matt Brill
Jessica Rosenworcel
Jeffrey Carlisle
Denise Coca
Darryl Cooper
William Dever

² Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Declaration of Dianne Moore, May 7, 2004.