

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

In the Matter of)

Petition of Locus Telecommunications, Inc.) RM-11354
for a Declaratory Ruling or)
Rulemaking Regarding Customer)
Service Calls from Payphones, and)
Motion to Dismiss filed by APCC)

**REPLY COMMENTS OF THE
AMERICAN PUBLIC COMMUNICATIONS COUNCIL**

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March 20, 2007

**BEFORE THE
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To: Chief, Wireline Competition Bureau

**REPLY COMMENTS OF THE
AMERICAN PUBLIC COMMUNICATIONS COUNCIL**

Pursuant to the Commission's Public Notice, DA 07-513 (rel. Feb. 1, 2007), the American Public Communications Council, Inc., and its affiliated compensation collection clearinghouse, APCC Services, Inc. (collectively "APCC"), hereby reply to the comments filed regarding Locus Telecommunications, Inc.'s ("Locus") petition for a declaratory ruling ("Petition") that toll-free calls placed to its customer service numbers are exempt from dial-around compensation, and regarding APCC's motion to dismiss Locus' Petition.

Only three parties filed comments in this proceeding: Verizon, Locus, and an individual named Gene Retske.¹ The paucity of the comments confirm APCC's position that Locus' petition raises no significant issues warranting the Commission's consideration. As Verizon states, on the issue raised by Locus' petition, the Commission's rules are clear:

¹ Verizon's Comments on the Petition for Declaratory Ruling of Locus Telecommunications, Inc. ("Verizon Comments"), Letter to Marlene Dortch from Jonathan Marashlian, attorney for Locus ("Locus Comments"), and untitled comments filed by Gene Retske (Retske Comments"), all filed March 5, 2007.

a call is completed if the caller succeeds in reaching the called party, whether that party is another end-user, a customer service representative, or an interactive voice-response (“IVR”) system.

Verizon at 1-2.²

Locus’ comments on APCC’s motion raise only procedural objections. Contrary to Locus’ argument, a motion to dismiss is the correct response to an improper pleading, in this context or in any other under the Commission’s rules. Especially in the context of a petition for declaratory ruling, for which there is no rule defining appropriate responsive pleadings, Locus can have no basis for claiming that a motion to dismiss is improper.³

Nor is there any merit to Locus’ suggestion that it was somehow wrong for the Commission to place APCC’s motion on public notice. No procedures are specifically prescribed with respect to petitions for declaratory ruling. 47 CFR § 1.2. In such circumstances, the Commission’s rules provide:

Procedures to be followed by the Commission shall . . . be such as in the opinion of the Commission will best serve the purposes of such proceedings.

47 CFR § 1.1.⁴

² While there may be a controversy brewing as to *which* carrier is liable for the completed calls, that issue is not raised in Locus’ petition. *See* Verizon Comments at 2. Moreover, as Verizon points out, no party has yet filed a complaint and therefore the Commission has no factual record for resolving this issue.

³ The Commission’s rules are generally liberal in permitting parties to request appropriate action without following rigid forms. *See, e.g.*, 47 CFR §1.41 (“Except where formal procedures are required under the provisions of this chapter, requests for action may be submitted informally”).

⁴ APCC believes the most appropriate course would have been for the Commission to summarily dismiss Locus’ petition, since it presents no issue on which comment is warranted and is a transparent abuse of the Commission’s processes. Contrary to Locus’ argument that dismissal would benefit only APCC, summary dismissal would have served the public interest by avoiding the waste of administrative resources and the risk that inviting comment would give unwarranted credence to what are obviously meritless claims. Nonetheless, given that the Commission chose to invite public comment on the petition rather than summarily dismissing it,

Gene Retske's comments are irrelevant to the issue raised by the petition, as well as being inaccurate in several respects.⁵ In any event, there is no basis whatever for his claim that, by seeking to collect compensation at the FCC-prescribed rate, the payphone industry is "trying to exact a penalty on whoever they can." The idea that prepaid card providers who ignore the Commission's rules should be entitled to negotiate a discount on the prescribed rate is simply perverse.

(Footnote continued)

it was clearly proper for the Commission to place APCC's motion to dismiss on public notice as well.

⁵ Mr. Retske's description of the rate commonly charged to use a payphone is some ten years out of date. In addition, the \$.49 dial-around compensation rate applies uniformly to customer services calls whether they are placed to companies like Hertz and Mastercard or to prepaid card providers.

CONCLUSION

For the foregoing reasons, Locus' petition should be dismissed.

Dated: March 20, 2007

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert F. Aldrich", is written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that on March 20, 2007, a copy of the foregoing Reply Comments of the American Public Communications Council was delivered via e-mail, to the following:

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