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August 6, 2007

VIA ECFS

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

RE: RM# 11354 - Locus Telecommunications, Inc.'s Petition for Declaratory Ruling or,  
in the alternative, Rulemaking

Dear Ms. Dortch:

On August 2, 2007, Nelson J. Gomez, Vice President of Locus Telecommunications, Inc. ("Locus") and Locus' undersigned counsel met with John Hunter, Legal Advisor to Commissioner McDowell. Mr. Gomez and I discussed Locus' Petition, referring to the attached handout to outline the legal and equitable arguments in favor of granting the relief sought therein.

Pursuant to Section 1.1206(b)(2) of the Commission's Rules, this letter is being filed electronically in the record of above-referenced proceeding. Please do not hesitate to contact me with any questions.

Respectfully submitted,

Jonathan S. Marashlian  
Counsel for Locus Telecommunications, Inc.

Attachment

## BACKGROUND FACTS

- Locus compensates APCC and other Payphone Service Providers (“PSPs”) for all calls completed through its Switch Platform (audited in compliance with Tollgate Rules).
- Toll-free calls to dedicated Customer Service numbers are not routed through Locus’ Switch Platform and are instead routed directly from the T-1 board to an IVR system.
- Locus does not route Customer Service calls through its audited Switch Platform because doing so produces false positives:
  - 100% of calls reaching IVR system would be identified as “completed” calls, including hang-ups and abandoned calls
  - For example:
    1. Customer accidentally selects English instead of Spanish, then hangs up – this would be recorded as a “completed call” if the IVR system was integrated with Switch Platform;
    2. Customer dialed Toll-Free Customer Service number accidentally instead of dialing Toll-Free Access number, upon realizing mistake, call is abandoned – this, too, would be recorded as a “completed call” if the IVR system was integrated with Switch Platform
- Bottom line: Not all calls to an IVR system are “completed” calls under statutory definition and voluminous FCC precedent.
- APCC demanded compensation at \$0.494 rate for payphone-originated calls to Locus Toll-Free Customer Service numbers based on data contained in MCI’s Intermediate Carrier (“IC”) Reports.

## FAILED ACA NEGOTIATIONS

- In the spirit of Tollgate Rules, which encourage private contractual arrangements for payphone compensation, Locus engaged APCC in negotiations for an Alternative Compensation Arrangement (“ACA”), seeking a separate agreement pertaining to compensation for calls destined for Locus Toll-Free Customer Service numbers.
- Locus explained the technical and legal grounds supporting alternative treatment of Customer Service calls and, in view thereof, proposed paying compensation on 100% of Customer Service calls, but at reduced per call compensation rate.
- APCC rejected Locus’ proposals, believing instead it was entitled to recover 100% at the default \$0.494 rate from MCI.
- To avoid dispute with MCI and resolve uncertainty, Locus filed Petition for Declaratory Ruling/Request for Rulemaking

## LOCUS' POSITION

### I. COMPENSATION IS NOT OWED

- In *Tollgate*, the Commission established a two-prong test to identify the entity responsible for paying compensation to PSPs for “completed calls.” The responsible entity is:

the "entity that: (1) is the primary economic beneficiary of PSP services; and (2) has control over the most accurate call completion data to compensate the PSPs."

*See In the Matter of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-12819, FCC Rcd. 21,457 (Rel. Oct. 22, 2004)(emphasis added).

- Application of the test to the facts reveals that neither MCI nor Locus is both the primary economic beneficiary and in control of the most accurate call completion data.
- MCI, and not Locus, is the primary economic beneficiary of the payphone-originated call because:
  - ✓ Locus pays MCI for the inbound 800 service
  - ✓ Locus does not derive the primary economic benefit from calls to its Customer Service numbers because it does not (and cannot) charge its customers for the call
  - ✓ To the extent Locus obtains derivative benefits, such as customer goodwill, such benefits are secondary to the financial remuneration obtained by MCI
- Locus, and not MCI, has control over the most accurate call completion data because:
  - ✓ Locus, and not MCI, has visibility into its IVR System
  - ✓ MCI, as the Intermediate Carrier, cannot determine whether any single call contained in its IC Report to APCC is “completed.”
- Because neither MCI nor Locus satisfies the two-prong test – a test that explicitly stresses the descriptive terms “primary” and “most accurate” and also includes the conjunctive “and” – the Commission must conclude that no entity is responsible for paying Dial-Around Compensation.
- Such a Commission ruling could be narrowly tailored and strictly limited to the factual circumstances presented in Locus’ Petition.

### II. IF COMPENSATION IS OWED, LOCUS AND NOT MCI OWES IT; BUT ONLY FOR “CALLS COMPLETED TO THE CALLED PARTY” -- CALLS TO AN IVR SYSTEM ARE NOT “CALLS COMPLETED TO THE CALLED PARTY”

- Application of the unqualified term “Completing Carrier” in 47 C.F.R. §64.1300 would identify Locus as the “Completing Carrier” of calls routed through its IVR System because Locus’ IVR System “completes” the call to a Customer Service Representative.

For purposes of this subpart, a **Completing Carrier** is a long distance carrier or switch-based long distance reseller that completes a coinless access code or subscriber toll-free payphone call ... 47 C.F.R. §64.1300.

- MCI is not the “Completing Carrier” because calls handed off to Locus at its T-1 board which are directed to an IVR System are not, in and of themselves, “completed calls.” In its Comments, MCI denies being the “Completing Carrier” of such calls and instead accurately acknowledges being the “Intermediate Carrier.”
- Only calls actually answered by a live CSR *could* be considered “compensable,” according to the Commission’s well-established definition of a “completed call.”
- To declare otherwise is inconsistent with the great weight of settled Commission precedent, which uniformly proclaims that calls completed to a platform are not “completed calls.”
- Even some calls that are answered by a live CSR may not be compensable because such calls are analogous to 0- operator assistance, which the Commission determined early on to be non compensable:
  - ✓ *See In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, 11 FCC Rcd. 21,233 (Nov. 8, 1996):

“In response to SW Bell's request that the Commission clarify that PSPs may be compensated for 0- general assistance calls where the caller asks for call rates or dialing instructions, we conclude that such a clarification is not appropriate, because such operator inquiries, which are distinct from directory assistance calls, merely seek information on how or whether to complete a future call and, thus, are not “completed” calls that are compensable under Section 276.

- ✓ Indeed, if compensation is not proper in the context of a 0- call seeking “general assistance,” what makes compensation proper just because a consumer dials a toll-free Customer Service number in search of “general assistance”?
- Similar issues have been raised in the context of IDT Telecom’s Petition for Clarification or Reconsideration, pending in WC Docket No. 06-58:

#### **Relationship to IDT Petition in WD Docket No. 06-58**

- IDT seeks clarification or reconsideration of Footnote 101 of the Commission’s Declaratory Ruling and Report and Order in the Matter of Regulation of Prepaid Calling Card Services, WC Docket No. 05-68. In Footnote 101, the Commission agreed with APCC that compensation is owed for calls to a PPC’s platform when the purpose of the call is to obtain an “information service.”
- IDT is concerned that APCC and other PSPs will misconstrue the Commission’s statement and broadly apply it to obtain compensation for all calls that hit a PPC’s platform and any “information” is obtained.
- IDT explains that “information,” such as automatically announced talk time, is different than an “information service,” such as accessing weather, horoscope, or news information, and that merely obtaining information from a platform does not result in a “completed call,” otherwise ALL calls hitting a PPC’s platform will be deemed “completed” and compensable.

- IDT's fears that APCC will misconstrue the Commission's intent and seek broad application of the language in Footnote 101 are played out in the instant context involving Customer Service calls routed through Locus' IVR platform.
- Indeed, in Comments, APCC characterized compensable information service to include "calls to a service provider's data base" to obtain information about minutes remaining on a card. See APCC Comments at n.12. However, as IDT points out, minutes remaining on a card and certain other "account" information is typically provided to the cardholder automatically, as required by a variety of state laws, and is incidental to the processing of a call to a third party; it is not a separate, completed information service call for which compensation is mandated. See *The Time Machine, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 1186, ¶ 40 (1995).
- As applied to calls to Locus' toll-free Customer Service numbers, Locus must make it clear that such calls are for specific, customer service purposes – such as reporting a non-functioning Access Number, non-functioning PIN, for seeking refunds or credits, and other "service" oriented reasons. The primary reason customers call Locus' toll-free Customer Service numbers is *not* to obtain information about minutes remaining on the card; this information is provided automatically, as required by state laws, when customers dial the Access Number.

### **III. COMPENSATION FOR CUSTOMER SERVICE CALLS CONFLICTS WITH STATE LAWS**

- Consumer protection laws require prepaid calling card providers establish and maintain toll-free Customer Service numbers.
- Various state laws prohibit imposing fees on customers making calls to customer service. State laws also prohibit Locus from blocking calls to customer service. Thus, Locus is forced to endure costs it cannot avoid without violating state laws.

### **IV. REQUIRING COMPENSATION FOR CUSTOMER SERVICE CALLS IS NOT IN THE PUBLIC INTEREST**

- Failure to grant this Petition is contrary to the public interest because significant costs will be foisted upon prepaid calling card customers who are merely seeking to access their service provider's customer Service from a payphone.
- Furthermore, failure to address Toll-Free Customer Service issue may lead to rampant fraud: Nothing can prevent a payphone owner from repeatedly dialing a Locus TF Customer Service number simply to trigger a compensation obligation.

### **V. STATUS QUO RESULTS IN UNFAIR AND ANTICOMPETITIVE OUTCOMES**

- If Locus does not relent and pay APCC 100% on all Customer Service calls, APCC will seek payment directly from MCI.
- MCI will invoice Locus at a rate that far exceeds the default rate and then pay APCC a lower, negotiated per call amount and pocket the difference.
- This result directly contravenes both Congress' intent and the Commission's objectives in implementing regulations that are supposed to ensure "fairness" to all parties.