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October 28, 2008

By Electronic Filing **Ex Parte Communication**

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

Re: Federal-State Joint Board on Universal Service, CC Dkt. No. 96-45; Developing a Unified Intercarrier Compensation Regime, CC Dkt. No. 01-92

Dear Ms. Dortch:

On October 28, 2008, Albert H. Kramer and Robert F. Aldrich of Dickstein Shapiro LLP, on behalf of the American Public Communications Council ("APCC"), met with Scott Deutchman, Legal Advisor to Commissioner Michael Copps. We discussed the points covered in the enclosed summaries.

Sincerely,

Robert F. Aldrich

RFA/nw
Enclosures
cc: Scott Deutchman

APCC

UNIVERSAL SERVICE FUND CONTRIBUTION RULES MUST NOT FURTHER ENDANGER PAYPHONE DEPLOYMENT

CC Docket No. 96-45

American Public Communications Council
October 2008

#2510874

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SUMMARY

- Under Section 254(d), the Commission can exact USF contributions from PSPs only if "the public interest so requires."
- It does not serve the public interest to require payphone service providers (PSPs) to pay USF contributions.
  - Payphones provide a unique part of universal service even though they are not eligible for USF support payments.
  - Unlike other industry segments that seek relief from USF contributions, payphones serve a public function.
    - Payphones are a part of providing universal service.
    - In Section 276, Congress mandated the Commission to "promote widespread deployment of payphone service."
  - For other reasons as well, payphones are particularly deserving of an exemption from USF contribution.
    - Payphone service is severely endangered.
    - Payphones are an integral part of the national emergency response infrastructure.
- If the Commission continues to require USF contributions from payphones, the contributions should not exceed current levels.
- Any new contribution scheme cannot require PSPs to subsidize other contributors or competitors.

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PSPs SHOULD NOT BE REQUIRED TO PAY USF CONTRIBUTIONS

The Commission May Exact USF Contributions from PSPs Only "If the Public Interest so Requires"

- The Communications Act states that contribution to USF is mandatory only for "telecommunications carriers." 47 U.S.C. § 254(d).
- "Aggregators" are excluded from the definition of "telecommunications carriers." *Id.* § 153(44).
- PSPs are "aggregators" (*id.* § 226(a)(2)) and thus are not "telecommunications carriers."
- Thus, the Commission can exact USF contributions from PSPs only "if the public interest so requires." *Id.* § 254(d).

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PSPs SHOULD NOT BE REQUIRED TO PAY USF CONTRIBUTIONS (cont'd)

It Does Not Serve the Public Interest to Exact USF Contributions from PSPs

- Payphones provide a unique part of universal service and the national preparedness infrastructure.
    - Payphones offer 24/7/365, on-demand, reliable telephone service with no advance subscription, equipment requirements, up-front fees or monthly charges.
    - Payphones provide critical access to communications in times of disaster.
    - Payphones provide key communications links in emergencies.
    - Payphones provide last-resort network access to travelers and others when wireless alternatives are unavailable or unusable.
    - Payphones provide essential service to callers who cannot afford wireless phones and to the 5%-7% of U.S. households with no home phone.

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PSPs SHOULD NOT BE REQUIRED TO PAY USF CONTRIBUTIONS (cont'd)

It Does Not Serve the Public Interest to Exact USF Contributions from PSPs (cont'd)

- Unlike other industry segments that seek relief from USF contributions, payphones serve a public function.
  - As noted, payphones provide a part of universal service, filling a vacuum otherwise unaddressed.
  - In the Telecommunications Act, Congress mandated the Commission to "promote widespread deployment of payphone service." 47 U.S.C. § 276.
- The total contribution from all PSPs, currently $4-6 million annually, while a major burden to the payphone industry, is extremely small relative to the $7.5 billion annual USF revenue requirement.

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PSPs SHOULD NOT BE REQUIRED TO PAY USF CONTRIBUTIONS (cont'd)

It Does Not Serve the Public Interest to Exact USF Contributions from PSPs (cont'd)

- For other reasons as well, payphones are particularly deserving of an exemption from USF contribution.
  - Payphone service is severely endangered today.
    - Payphone deployment in the United States declined from more than 2,000,000 in 2000 to about 1,000,000 in 2006.
    - By 2008, the number deployed declined more than 20% more, to less than 800,000.
  - Payphones are part of the nation's emergency response infrastructure.
  - Today, most payphones are operated by independent PSPs, who are not eligible to receive USF support.
    - LECs have largely abandoned their commitment to payphones.
    - Direct competitors are eligible for and do receive USF support.

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PSPs SHOULD NOT BE REQUIRED TO PAY USF CONTRIBUTIONS (cont'd)

Implementation of a Payphone Exemption

- Under the current end-user revenues-based plan:
  - Eliminate the direct contribution requirement for PSPs;
  - Exclude payphone line revenues from LEC and IXC end-user contribution base.
- Under a numbers-based or connections-based contribution plan:
  - Exclude payphone numbers/lines from the contribution requirement.

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IF PSPs MUST CONTRIBUTE, PSP CONTRIBUTIONS MUST NOT EXCEED CURRENT AVERAGE LEVELS

- Before the *USF Payphone-Centrex Order* (2/14/08), PSPs' USF costs averaged $.63 per line per month.
  - $.27 for direct payers (39% of ind. payphones)
  - $.86 for *de minimis* payers (61% of ind. payphones)
- Currently, PSPs' USF costs average *at most* $.50 per line per month.
  - $.27 for direct payers
  - $.65 for *de minimis* payers
- Under revised rules, any PSP contribution must not exceed $.50 per line per month.
  - Under revenues-based plan, PSPs' direct and indirect contributions must not increase over average levels above.
  - Under numbers- *or* connections-based plan, monthly contribution for payphone lines/numbers must not exceed $.50 per number/line: create a payphone line category.

ANY NEW CONTRIBUTION SCHEME CANNOT REQUIRE PSPs TO SUBSIDIZE OTHER CONTRIBUTORS OR CUSTOMERS

- The FCC's *USF Payphone-Centrex Order* prohibited LECs from recovering from PSPs any USF costs attributable to Centrex customers.

- A revised contribution scheme, similarly, cannot require PSPs to subsidize costs attributable to other contributors or customers.

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Phantom Traffic Reform and Section 276's Mandate to Ensure Payphone Compensation

CC Docket No. 01-92

American Public Communications Council
October 2008

#2514192

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Phantom Traffic Relief and Section 276

- Phantom traffic relief that includes an ANI II transmission requirement would advance the Commission's mandate under Section 276.
- In Section 276, Congress directed the Commission to ensure the "widespread deployment of payphone services." 47 U.S.C. § 276(b)(1).
- The Commission has recognized that payphones provide access for low-income consumers and play a critical role in the nation's emergency response system (esp. during crises, e.g. 9-11 and Katrina, when wireless networks fail).

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Section 276 and ANI II Digits

- To promote the "widespread deployment" of payphones, Section 276 requires the Commission to ensure that PSPs are compensated for "each and every completed call."
- The Commission's dial-around compensation rules require carriers to pay PSPs \$.494 for each completed call.
- So that carriers can accurately track and compensate payphone calls, the rules require (1) originating LECs to transmit payphone-specific ANI II digits that identify the call as originating from a payphone and (2) all other carriers in the call path to pass those ANI II digits to subsequent carriers.

Phantom Traffic and ANI II Digits

- As the Commission addresses phantom traffic, it can also address an issue vital to the fulfillment of it's mandate under Section 276, by clarifying and reinforcing ANI II transmission requirements.
- The call signaling requirements of the Missoula Plan, which NECA has urged adopting as interim relief, illustrate the ANI II and other requirements that are necessary.

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The Missoula Plan's ANI II Digits Requirements

- Section V.A.2.a. of the Plan requires *all* originating providers to transmit the ANI II digits whether SS7 signaling is used (in which case it is inherent in the protocol) or MF signaling is used (in which case the Plan imposes a specific requirement that originating providers "must also transmit ANI II information").
- Section V.A.2.b. imposes on intermediate providers the obligation to "transmit without alteration" the ANI II digits they receive.

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The Missoula Plan's ANI II Digits Requirements
(cont'd)

- All service providers are bound by the Plan's call-signaling requirements (including ANI II transmission), regardless of whether they are telecommunications carriers or IP-enabled service providers.
  - "Plan's call signaling rules apply to all traffic originating on the PSTN, transiting the PSTN, or destined for the PSTN from other networks." § V.A.1.
  - The "Plan requires *every* communications service provider to transmit accurate telephone number signaling information for use by intermediate and terminating providers." § V.A.2.
- Alternative proposed by USTA addresses only CPN.
  - If USTA model is used, the Commission needs to add requirements for transmitting ANI and ANI ii digits.

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Critical Relief for Payphones

- VoIP is being used in transport or delivery to call platforms in an ever-increasing percentage of payphone-originated calls.
- Not all VoIP providers have recognized their existing obligation to transmit call signaling information that includes the ANI II digits, thus endangering compensation for payphone calls.
- Adoption of ANI II transmission requirements—regardless of what other steps the Commission takes to address phantom traffic—is thus critical to the continued fulfillment of Section 276's mandate that the Commission ensure compensation for payphone calls.
- It will also help address other payphone rules compliance issues.