

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link Up	)	WC Docket No. 03-109
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
	)	
Numbering Resource Optimization	)	CC Docket No. 99-200
	)	
Implementation of the Local Competition	)	
Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Developing a Unified Intercarrier Compensation	)	
Regime	)	CC Docket No. 01-92
	)	
Intercarrier Compensation for ISP-Bound Traffic	)	CC Docket No. 99-68
	)	
IP-Enabled Services	)	WC Docket No. 04-36

**REPLY COMMENTS OF  
AMERICAN PUBLIC COMMUNICATIONS COUNCIL**

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The American Public Communications Council (“APCC”) hereby submits these reply comments in response to comments on the Order on Remand and Report and Order and Further Notice of Proposed Rulemaking issue on November 5, 2008 in the above-referenced proceedings (the “*Further Notice*”).

**I. INTRODUCTION AND SUMMARY**

APCC’s reply comments are limited to two aspects of the draft proposals on which the Commission has sought comment. First, with respect to universal service contribution methodology, the Commission should exempt payphone service providers (“PSPs”) from a contribution requirement. As discussed below, PSPs are not telecommunications carriers and therefore the Commission can only impose a contribution requirement on PSPs if it finds that the

“public interest so requires.” Imposing a contribution requirement on PSPs, however, is directly contrary to the public interest. Payphones are the only on-demand, pay-per-use communications service giving 24/7/365 access to the public network with no subscription, and no upfront costs, and thus themselves play a critical universal service function. Payphones also play a critical public safety role, providing an emergency communications infrastructure that has proven to be reliable in times when other services, like mobile networks, fail. Imposing a burdensome cost on PSPs that will ultimately contribute to a reduction in the number of payphones runs directly counter to the universal and public safety functions played by payphones. At a bare minimum, if the Commission does decide to impose a contribution requirement on payphones, the Commission must, as it has done for wireless prepaid providers, and for similar reasons, cap the contribution requirement at its current level.

Second, with respect to the measures that the Commission proposes to take to ensure proper billing for traffic, the Commission can also address an issue vital to the fulfillment of its mandate under Section 276 to ensure the “widespread deployment of payphones,” by clarifying and reinforcing ANI II transmission requirements.

## **II. STATEMENT OF INTEREST**

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 all public payphones. To this end, APCC actively participates in Commission proceedings affecting payphones, and has participated in the earlier phases of this proceeding.

## **III. THE COMMISSION SHOULD NOT INCLUDE PAYPHONE LINES IN UNIVERSAL SERVICE SUPPORT ASSESSMENTS**

### **A. The Commission Can Only Impose Universal Service Contributions on PSPs If It Finds that the “Public Interest So Requires”**

As the Commission recognized in each of the draft proposals on which it seeks comment in the *Further Notice*, PSPs are not subject to Section 254’s mandatory universal service contribution requirement. *See, e.g. Further Notice*, Appendix A ¶ 100. Section 254 imposes mandatory universal service contributions only on “telecommunications carriers.” 47 U.S.C. § 254(d). PSPs are not telecommunications carriers. Rather, PSPs fall within the definition of “aggregators” under Section 226 of the Act, i.e. a “person that, in the ordinary course of its operations, makes telephones available to the public or transient users of its premises, for interstate telephone calls using a provider of operator services.” 47 U.S.C. § 226(a)(2); *Federal-State Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, ¶ 797 (1997). Aggregators are specifically excluded from the Act’s definition of “telecommunications carrier.”<sup>1</sup>

PSPs thus fall under the Commission’s permissive authority under Section 254. Pursuant to that authority, the Commission can require “other providers of telecommunications” to contribute to universal service if—and only if—the Commission finds that the “public interest so requires.” 47 U.S.C. § 254(d).

**B. Imposing a Contribution Requirement on PSPs Is Directly Counter to the Public Interest**

The public interest requires that the Commission free PSPs from their current universal service obligation. Given the critical universal service and public safety roles played by payphones, continuing to impose a contribution requirement on PSPs would be directly contrary to the public interest and would conflict with Congress’ mandate that the Commission ensure the “widespread deployment” of payphones.

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<sup>1</sup> Telecommunications carriers are defined to mean “any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in section 226).” 47 U.S.C. § 153(44).

**1. Payphone Service Furthers the Goals of Universal Service and Plays a Critical Public Safety Function**

Payphone service is an “on demand dial-tone/pay-per use” wireline, high-quality service available twenty-four hours a day, seven days a week, 365 days a year. *Unlike every other form of communication available to the public*, users are not required to make an initial investment in equipment, await activation of the service or pay recurring monthly charges. Any member of the public can place a call anywhere at any time. Users have the option of paying for calls with coins or by use of calling cards, prepaid cards or other access code arrangements. Emergency 911 calls are free of charge twenty-four hours a day, seven days a week across the nation’s public payphone base. Users can place calls to 800 subscribers at no charge to the caller.

In 2007, the Commission reported that about 6.5% of American households are without any phone, and for minority Americans, poorer families and those living in rural areas, the numbers are much higher. For those households with no phone line, (or for those who may be afraid to call from home, such as victims of parental or spousal abuse and teenagers seeking help for drug abuse), payphones are the only means by which they can make day-to-day calls and emergency calls. Despite the seeming ubiquity of mobile phones, they are not universally available. Moreover, even those who do have mobile phones rely on payphones when their cell phones fail, when they’re out of their cell phone’s service area, when the cell phone battery fails, etc.

By providing all Americans, no matter what their income level, with ready, affordable and reliable access to the telephone network, payphones play a critical role in furthering the goals of universal service by affording access to the public network. The Commission has recognized that role on several occasions. *See, e.g. Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Report*

and Order, 11 FCC Rcd 20541, ¶ 264 (1996). Indeed, the Commission has actively promoted payphones as a tool for ensuring universal access. In the Commission’s 1999 guidebook for international telecommunications regulation, *Connecting the Globe: A Regulator’s Guide to Building a Global Information Community*, the Commission singled out payphones as a critical tool for “ensur[ing] that even the most remote or sparsely populated area has some access to communications service.” *Id.* at VI-1.

Payphones also play an important role in enhancing public safety and national security. They provide a critical emergency communications infrastructure that has proven to be reliable and more robust in times when other services, like mobile networks, fail or are disabled. For example, during the September 11, 2001 attacks, payphones provided the only reliable means of emergency communications for thousands of New York City residents and emergency services personnel. During and in the aftermath of Hurricane Katrina, when mobile towers were blown over or flooded, payphones were often the only functioning telephones. And when blackouts blanketed the northeast, payphones again were available when other wireless networks failed. The long lines of people waiting their turn at payphones on 9-11, during the Hurricane Katrina crisis and the blackouts attest to the unique importance and reliability of payphones as critical infrastructure for all Americans.

In addition to the role payphones play during times of national crisis, payphones also play a critical day-to-day role in ensuring access to emergency services. By providing free access to 911 service, payphones provide crime victims, stranded motorists, and those in the need of emergency medical care with a readily available link to the help they need.

**2. Continuing to Impose a Contribution Requirement on PSPs Will Contribute to the Continuing Decline in the Number of Payphones, Reducing Their Ability to Contribute to Universal Service and Public Safety**

In recognition of their critical universal service and public safety functions, Congress has directed the Commission to ensure the “widespread deployment of payphone services to the general public.” 47 U.S.C. § 276(b)(1). The ability of payphones to continue to play their critical roles in ensuring universal service and public safety depends on their continued widespread availability. When a member of the public needs access to the public network, he or she needs to be reasonably assured that a payphone is located nearby. And during emergencies or times of national disaster, payphones must be sufficiently widely-deployed so that they are readily available to those in need of emergency services.

However, the payphone industry today is one of the most economically challenged sectors of the telecommunications industry. In 1998, according to Commission data, the number of payphones deployed was about 2.15 million.<sup>2</sup> The Commission found that deployment at that level was consistent with Congress’s goal of widespread deployment of payphones.<sup>3</sup> Today, however, the number of payphones deployed has declined to less than 800,000. Many PSPs have gone out of business. Even incumbent telephone companies are dropping out of the payphone industry. Qwest and BellSouth left the payphone industry years ago and AT&T and Verizon are reducing their payphone operations.

While there are many factors that contribute to the declining number of payphones, including the growth of wireless subscribership, in the end it is the result of PSPs being squeezed between high payphone costs and depressed revenues. PSPs are under intense financial pressure to remove payphones from locations where payphones are still needed by the public but do not generate sufficient revenues to be economically viable.

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<sup>2</sup> *Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Third Report and Order, 14 FCC Rcd 2545, n.390 (1999) (“*Payphone Third Report and Order*”).

<sup>3</sup> *Id.* ¶ 141.

By continuing to impose a contribution obligation on PSPs, the Commission would be directly contributing to that cost squeeze, to the detriment of the public benefits provided by the widespread availability of payphones and in contravention of its mandate under Section 276. While the total current contribution from all PSPs, roughly \$5 million annually, is a miniscule fraction of the \$7.5 billion annual USF revenue requirement, it is a significant cost item for PSPs faced with dramatically declining revenues.

Thus, imposing a contribution requirement on PSPs would not only not serve the public interest—it would run directly counter to it. Simply put, the Commission can do much more to ensure universal service by helping to ensure the continued availability of payphone service to the public than by continuing to collect the relatively trivial current contributions from PSPs. Accordingly, especially given that payphone deployment levels have already fallen so far below the level that the Commission found was consistent with Section 276’s mandate, the Commission must exempt PSPs from a contributing requirement.<sup>4</sup>

**C. The Universal Service and Public Safety Functions Roles Played By Payphones Make PSPs Unique Among the Various Industry Segments Seeking Relief from Universal Service Contributions**

While several other industry segments have argued that they should be exempt from universal service contributions, PSPs are unique in the benefits they provide to the public. The critical universal service and public safety and welfare functions provided by payphones distinguish PSPs from the other industry segments seeking exemptions for universal service contributions. Unlike telematics providers, one-way service providers, and two-way paging services, PSPs offer a communications link available on-demand 24 hours a day, 365 days at

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<sup>4</sup> The Commission has recognized explicitly that Section 276 may require special treatment in the implementation of otherwise generally applicable rules. For example, the Commission has held that PSPs should be exempt from a certain types of access charges imposed on other business telephone lines because assessing the charge on PSPs “may limit the deployment of payphone services.” *Access Charge Reform*, Order on Reconsideration, 18 FCC Rcd 12626, 12629 (2003). The Commission must similarly take cognizance of Section 276’s mandate here.

year, so that all users have access to the public network and emergency services. And, uniquely, payphones provide that communications link at absolutely no upfront cost and without requiring any investment in or installation of CPE.

The one industry segment that is similar in some ways to payphone services is stand-alone voicemail service, which, in draft proposal A, the Commission tentatively concluded should be exempt from universal service contributions. *See Further Notice*, Appendix A ¶ 140. In exempting voicemail services from a contribution requirement, the Commission found that such services are “provided to low-income ‘phoneless’” people, *id.*, “who are most in need of access to such services,” *id.* ¶ 142.

That logic applies with even more force to payphones. Like stand-alone voicemail services, payphones also benefit the “phoneless,” by providing transient and low-income users with available access to the public network. Indeed, many if not most users of standalone voicemail services use payphones to access their voicemails and many PSPs have worked with their local community voicemail providers to make calls to the services free from payphones. Community voicemail providers have recognized the important enabling role payphones play for community voicemail services, and have urged the Commission to reduce economic burdens on payphones to ensure their continued widespread availability.

While payphones and community voicemail services both provide critical access to the public network for users who otherwise might have no such access, payphones offer one important advantage. Unlike voicemail services, which require activation and registration, payphones offer an entirely “on-demand” communications link providing access whenever needed. A user can walk up to any payphone at any time and place a call, ensuring that even the most transient users have access to emergency and social services. Thus, even if the

Commission decides not to exempt voicemail service providers (which is the case in draft proposal C), then the Commission still can and should exempt PSPs.

**D. The Commission’s Stated Basis for Imposing a Contribution Requirement Pursuant to its Permissive Authority Rests on an Erroneous Predicate**

In its 1997 *Universal Service Order*, the Commission found that the public interest requires that PSPs make universal service payments. The Commission did so on a competitive neutrality theory, reasoning that since LECs that owned payphones were required as telecommunications carriers to make payments to support mechanisms, so too should independent providers. As the Commission explained:

If we did not exercise our permissive authority [under section 254(d)], aggregators that provide only payphone service would not be required to contribute, while their telecommunications carrier competitors would. We do not want to create incentives for telecommunications carriers to alter their business structures by divesting their payphone operations in order to reduce their contributions to the support mechanisms.<sup>5</sup>

That conclusion, however, is premised on the Commission’s erroneous belief that telecommunications carrier-affiliated PSPs are subject to mandatory universal service payments from their payphone service revenue under Section 254(d) of the Act. That premise is simply incorrect. There is no requirement that carrier-owned payphone service revenues must be attributed to the carrier’s telecommunications carrier operations.<sup>6</sup> The definition of “telecommunications carrier,” which was incorporated into the Act in 1996, adopts the concept that an entity can be a carrier for some purposes but not others. Section 153(44) of the Act, which defines “telecommunications carrier,” states in relevant part that “[a] telecommunications

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<sup>5</sup> *Universal Service Order* ¶ 797.

<sup>6</sup> See, e.g., *FCC v. Midwest Video*, 440 U.S. 689, n.9 (1979), citing with approval *NARUC v. FCC*, 533 F.2d 601, 608 (D.C. Cir. 1976)(an entity can be a common carrier with regard to some activities but not others); James Lister, *The Rights of Common Carriers and the Decision Whether to Be a Common Carrier or a Non-Regulated Communications Provider*, 53 FED. COMM. L.J. 91, 94 (2000).

carrier shall be treated as a common carrier under this Act only to the extent that it is engaged in providing telecommunications services . . . .”<sup>7</sup> Thus, to the extent that a LEC or other telecommunications carrier operates as a payphone service “aggregator,” the carrier is not operating as a telecommunications carrier and is not subject to the mandatory contribution requirement of Section 254(d) of the Act.

In any case, as discussed above, major LECs have all either exited the payphone business or are reducing their operations. Thus, any continuing concerns the Commission may have about ensuring the proper incentives should be given much less weight than the Commission gave to them in 1997 when the BOCs were the major providers of payphone services. The Commission thus can—and, for all the public interest reasons spelled out above, should—decline to subject PSPs to universal service assessments.

**IV. IF THE COMMISSION CONTINUES TO REQUIRE ASSESSMENTS, PAYPHONE LINES SHOULD BE ASSESSED, UNDER ANY OF THE COMMISSION’S PROPOSALS, AT A RATE THAT IS THE SAME AS OR LOWER THAN THEIR CURRENT LEVEL**

In the various draft proposals on which the *Further Notice* seeks comment, the Commission seeks comment on moving from the current revenue-based assessment system to (1) a numbers based-system and/or (2) a connection-based system. In draft proposals A and C, the Commission contemplates adopting a \$1.00 assessment per residential telephone number, and requests comment on a connections-based approach for business users (which would include PSPs). In draft proposal B, the Commission specifies that business users with a telephone-number based connection would be assessed \$1.00 for every such connection. Thus, under draft proposals A and C the contribution methodology that would apply to payphones is unspecified, and under draft proposal B, PSPs would pay \$1.00 per month per payphone.

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<sup>7</sup> 47 U.S.C. § 153(44).

For the policy and legal reasons discussed above, payphone lines should not be subjected to universal service assessments under any long-term system the Commission adopts. For these same reasons, if the Commission decides to require PSP assessments, APCC urges the Commission to ensure that under whatever system it adopts, payphone lines are not assessed at rates higher than the current level of approximately \$.50 per line per month.

Such an approach would be consistent with the Commission's proposed reduced assessment for wireless prepaid service providers. *See Further Notice*, Appendix A ¶ 135.<sup>8</sup> In the case of wireless prepaid providers, the Commission has tentatively found that "it is considerably more difficult [for wireless providers] to pass-through their contribution assessments in light of their 'pay-as-you-go' service offerings," and "many prepaid wireless end users are low income consumers." *Id.* ¶ 136. The Commission further found that imposing a \$1.00 per month assessment on wireless prepaid numbers would likely result in an increase over the current per-line assessment.

All of those factors apply with equal or greater force to PSPs. Payphone service is also pay-as-you-go, but PSPs face the added challenge of having no ongoing relationship with their customers, making passing through universal service fees even more difficult. Moreover, payphone users are, if anything, even lower income consumers than are subscribers to wireless prepaid plans. Finally, since PSPs currently pay approximately \$.50 per payphone per month, adopting a \$1.00 per-line contribution requirement would roughly *double* the contribution burden borne by PSPs.

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<sup>8</sup> While the specific citations in these reply comments are to draft proposal A, all three draft proposals contain the reduced assessment for wireless prepaid providers.

**V. THE COMMISSION SHOULD REQUIRE THE TRANSMISSION OF ANI II DIGITS IN ADDITION TO CALLING PARTY NUMBER (CPN)**

In order to combat phantom traffic and ensure proper billing for calls, the Commission tentatively proposes to “facilitate the transfer of necessary information to terminating service providers, particularly in cases where traffic is delivered through indirect interconnection arrangements.” *Further Notice*, Appendix A ¶ 329. Specifically, the Commission proposes to amend its rules to require all providers to populate the calling party number (“CPN”) field in the SS7 call signaling stream and to pass that information, unaltered, down the callpath. *Id.* ¶ 331.

As the Commission addresses phantom traffic, it can also address an issue vital to the fulfillment of its mandate under Section 276, by similarly clarifying and reinforcing ANI II transmission requirements. To promote the “widespread deployment” of payphones, Section 276 requires the Commission to ensure that PSPs are compensated for “each and every completed call.” 47 U.S.C. § 276(b)(1)(A). In order to meet that mandate, the Commission has adopted rules requiring carriers to pay PSPs \$.494 for each completed call toll-free or access code call made from a payphone. *See* 47 C.F.R. § 64.1300-1320.

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. The difficulty is that an ever-increasing percentage of payphone-originated calls are being transported at least in part over a VoIP architecture and not all VoIP providers have recognized their existing obligation to transmit call signaling information that includes the ANI II digits.

The Commission should thus build on its proposed CPN requirements and adopt similar requirements relating to the passing of “ANI II” digits.<sup>9</sup> The Commission should reinforce its existing requirements by making explicit that all originating providers must transmit the ANI II digits regardless of whether SS7 signaling is used (in which case it is inherent in the protocol) or MF signaling is used (in which case the Commission should impose a specific requirement that originating providers must do so). The Commission should also reinforce existing requirements by imposing a specific requirement that intermediate providers transmit the ANI II digits they receive without alteration. By explicitly requiring all providers to populate and/or transmit the ANI II digits, regardless of whether they are telecommunications carriers or IP-enabled service providers, the Commission would make it even clearer that its existing ANI II transmission requirements apply to all providers carrying calls from payphones. The adoption of these 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.

## **VI. CONCLUSION**

For the reasons discussed above, the Commission should acknowledge the importance of payphones as an integral part of universal service and promote ready access to payphones by not subjecting PSPs to universal service assessments. The Commission can much more effectively advance the goals of universal service—and further public safety—by encouraging the widespread deployment of payphones by eliminating the cost burden imposed on PSPs by the existing contribution requirement. If the Commission nevertheless decides that

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<sup>9</sup> The call signaling requirements of Section V.A. of the Missoula Plan illustrate the ANI II requirements that are necessary and indeed provide a detailed road map for these specific regulations.

PSPs should continue to be subject to assessments, the Commission should ensure that it does so at a rate no higher than the current level.

The Commission should also require all providers in the call path to pass ANI II digits to order to meet Section 276's mandate that the Commission ensure compensation for payphone calls.

Respectfully submitted,

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