APCC

American Public Communications Council, Inc.

Willard R. Nichols
President

November 12, 2009

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

Re: ***Federal-State Joint Board on Universal Service,*** **CC Dkt.. No. 96-45, WC Dkt. No. 05-337, WC Dkt. No. 06-122 and CC Dkt. No. 96-128**

Dear Ms.Dortch:

On November 6, 2009, James Kelly, Chairman of the American Public Communications Council, Bert Carp of Williams and Jensen, and I met with Chairman Genachowski, Priya Aiyar, Legal Advisor to the Chairman and Sharon Gillett, Chief of the Wireline Competition Bureau. The enclosed handout was used as the basis of the discussion.

On November 10, 2009, I sent the enclosed follow up letter to Ms. Gillett.

Please contact the undersigned if you have any questions.

Sincerely,

Willard R. Nichols

Enclosure
cc: Chairman Genachowski
Ms. Sharon Gillett
Ms. Priya Aiyar

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CRITICAL PAYPHONE ISSUES

• THE PAYPHONE INDUSTRY IS IN DIRE STRAITS AND NEEDS RELIEF NOW. IT IS MUCH EASIER TO KEEP A PAYPHONE IN SERVICE THAN TO REINSTALL ONE THAT HAS BEEN REMOVED. AND DESPITE THE ADVENT AND WIDESPREAD DISSEMINATION OF CELL PHONES, PAYPHONES CONTINUE TO PROVIDE AN IMPORTANT, EVEN CRITICAL, LIFELINE SERVICE FOR THE AMERICAN PUBLIC.

In 1996 when Congress passed the most recent amendments to the Communications Act, there were over 2,000,000 payphones in the United States. Contrary to the Act's ongoing policy mandate to "promote the widespread deployment of payphone services to the benefit of the general public", today less than 650,000 remain in service.

In spite of the growth of cell phones, nearly 5% of American households (over 5.6 million households) have no personal or residential phone service at all (in many states, for minority households, the percentage with no phone service is close to twice as large). These are the people most dependent on payphone service. But many of us occasionally find ourselves without a working cell phone. And we have seen that in times of national emergencies and disasters, like Hurricane Katrina and the 2003 blackouts, and even in the case of the 9/11 terrorist attacks, payphones continue to provide an essential service as the wireless infrastructure becomes inoperable or cell phones cannot be recharged. Moreover, payphones today provide 24/7 free access to Emergency 911 services for all citizens with an in-place, accurate location designation capability enabling prompt E-911 response. Well over a billion calls are continuing to be made every year on payphones in this country and payphones remain an important part of our nation's communications infrastructure.

Prompt action is required to save what is left of the payphone base in this country. Payphones are a low-margin business. Yet it costs more than $300 to reinstall a payphone once it is removed from service, and even more to install a new one. If it takes several years to get federal policy right, we will unnecessarily lose many phones that could be kept in service.

The future of payphones in this country rests with the 800+ independent payphone operators represented by the American Public Communications Council, Inc. (APCC). These are small businesses which cannot afford to match the legal resources marshaled against them by local and long distance telephone companies in drawn-out FCC proceedings and court cases.

• THERE ARE ESSENTIALLY THREE CAUSES FOR THE PRECIPITOUS DECLINE IN PAYPHONES.

> **(i) GROWTH IN CELL PHONE USE.** Today there are about 255 million cell phones in service. There is no doubt that growth in cell phone penetration has been a major cause in the decline in payphone deployment. But it is far from the only cause. It is common today for phones even making over 100 calls per month to be removed from service as unprofitable, and this is neither necessary nor in the public interest.

(ii) FAILURE OF THE FEDERAL "DIAL-AROUND" PROCESS TO MEET THE STATUTORY OBLIGATION TO REIMBURSE PSPS FOR "EACH AND EVERY" COMPLETED CALL. APCC estimates that as much as 15% or more of federally mandated "dial-around payments are never remitted to payphone providers, and there is a major problem with late payments as well. APCC has identified to the FCC dozens and dozens of carriers that have not complied with the agency's rules. Yet, not a single carrier or prepaid card provider responsible for these payments has been disciplined with an FCC sanction. APCC has been forced to file over 40 informal and formal complaints at the FCC over the past 4 years for failures to pay dial-around compensation and comply with the FCC's regulations. These private enforcement efforts by APCC for its small-business members have cost them literally millions of dollars; but even with these efforts, PSPs are not receiving full and timely dial-around payments, which should constitute as much as 30% to even 50% of their total revenues. The current FCC payment system is not only flawed in its conception, it is broken. Without serious and immediate attention from the FCC, the Congressional mandate to support the continued widespread deployment of payphones will not and cannot be met.

(iii) THE EXIT OF LOCAL TELEPHONE COMPANIES FROM THE PAYPHONE BUSINESS HAS GREATLY CONTRIBUTED TO THE DECLINE IN PAYPHONE, AND ALSO REDUCED THE LECS' COMMITMENT TO PROVIDING SERVICES ESSENTIAL TO THE REMAINING BASE OF INDEPENDENTLY OWNED PAYPHONES. Today, very few payphones are being provided by local telephone companies, and even this number continues to drop. Companies such as AT&T, Bell South and Qwest have exited the payphone business already, and the remaining few are not long for the payphone world. If payphones are to remain in service in the future, they will be provided solely by the approximately 800+ small-business men and women that comprise today's independent payphone industry.

When the dial-around compensation process was designed pursuant to the 1996 Act, local telephone companies had strong economic incentives to achieve dial-around payments for their own phones. What needed to be done at that time was to assure independent payphone operators of fair and comparable treatment. As LEC-owned payphones have become less and less important as a local telephone company revenue source, attention to the support services necessary to dial around collections, now largely to benefit independent providers, has predictably waned. It is no longer sufficient to ensure LEC nondiscrimination against independent providers, since the system as a whole is failing.

- **WHILE INDEPENDENT PAYPHONE OPERATORS HAVE BEEN ABLE TO MAINTAIN SOME DEPLOYMENTS, EVEN INCLUDING SOME OF THE PHONES ABANDONED BY LOCAL TELEPHONE COMPANIES, THESE OPERATORS ARE OVERWHELMINGLY SMALL BUSINESSES. THEY SIMPLY CAN NO LONGER AFFORD THE LEGAL COSTS OF LONG, ARTIFICIALLY DRAWN-OUT FCC PROCEEDINGS AND COURT FIGHTS TO ACHIEVE FAIR COMPENSATION FOR THE USE OF THEIR PAY PHONES. THE ACTIVE INVOLVEMENT BY THE FCC TO ENSURE EXPEDITIOUS ACTION ON PAYPHONE ISSUES IS ESSENTIAL.**

ACTION PLAN

IN ORDER TO ENSURE THE ONGOING VIABILITY OF THE PAYPHONE INDUSTRY, THE FCC NEEDS TO TAKE THE FOLLOWING ACTIONS QUICKLY:

1. APPOINTMENT OF A TASK FORCE WITH REPRESENTATIVES OF THE PAYPHONE INDUSTRY, THE TELEPHONE INDUSTRY, FCC STAFF, AND PUBLIC INTEREST GROUPS TO RECOMMEND CHANGES IN FEDERAL POLICY TOWARD PAYPHONES IN LIGHT OF MAJOR CHANGES IN PAYPHONE DEPLOYMENTS OVER THE LAST TWELVE YEARS. The principal focus of the Task Force should be on improving the crucial "dial-around" process, which works less and less well as telephone companies exit the payphone business. Unless the dial-around process is substantially and immediately improved, substantial additional shrinkage in the nation's payphone base is inevitable. Modification of the treatment of payphones under the Universal Service program also should be considered in light of changed circumstances. Given the urgency of the situation, the Task Force should be required to report after a defined period – perhaps sixty days.

Dial-Around

Payphone operators are supposed to be compensated by an FCC-established fee for completed "dial-around" calls. These are non-coin calls to 1-800 numbers, credit and pre paid calling-card calls, and the like. The statutory mandate is fair compensation for "each and every" completed call. The local and long-distance carriers involved in completing these calls are required to track the calls, charge the end-user should they wish to, and pay the PSP the FCC-established "dial-around" fee. The carriers charge unregulated fees for their services to each other and to the end-user. At best, the payphone provider is not paid unless and until collections take place. Unlike payphone providers, the carriers are in a position through contractual relationships and network information to determine whether calls are in fact completed and to collect from the end-user. Yet they currently do a poor job of this, at least in part because they can recover costs and profit even if their monitoring of completed calls and their collection efforts are less than rigorous.

The proposal the payphone industry will bring to the Task Force table will be for the LECs to reimburse the payphone operators for all dial around calls flowing through their switch. The payphone operator would receive a discounted payment, on a prorated basis, utilizing a formula to determine what percentage of calls made are ultimately completed. Carriers would then, on the present unregulated basis, bill each other and the end-user for the applicable charges. The carriers would retain their present ability to run a profitable business, but payphone operators would receive a reliable income stream, on the basis of an easily audited criterion.

Of course, other participants in the Task Force could bring their own proposals for a more administrable system to the table for consideration.

Universal Service

In 1997 the FCC made a discretionary decision to require payphones to pay into the USF. The Commission also has found payphones ineligible to participate in USF funding. These policies should be reviewed in light of the dramatically changed circumstances – not least, the plain facts that there are far fewer payphones today and telephone companies are not likely to be the payphone service providers in the future. We note that in addition to its mandate to support "widespread deployment of payphones," the 1996 Act contains specific reference to establishment of programs to support "public interest payphones". Although such programs have not proven particularly successful as constituted in the past, it is clear that Congressional intent is not opposed to providing appropriate support for payphones.

2. ENFORCEMENT OF EXISTING DIAL-AROUND RULES. While the Task Force is meeting, the FCC should take immediate steps to enforce pending cases of willful noncompliance with the existing rules, and make it clear that these rules will be enforced vigorously in the future if a new approach cannot be developed. Two immediate actions are necessary. These are prompt initiation and timely completion of (i) actions to sanction completing carriers for noncompliance with their payment obligations under existing dial-around compensation regulations; and (ii) actions against major carriers for failures to properly and comprehensively track completed calls and pass along payphone identifying coding digits.

3. RESOLUTION OF PENDING DISCRIMINATORY OVERCHARGING CASES. Now, over twelve years after the implementation of the 1996 Communication Act, which restructured the competitive telecommunications landscape, one last implementation issue still remains and needs to be resolved: cases still pending at the FCC for refunds for violations of the Commission's orders prohibiting discriminatory overcharging of independent payphone operators for their basic line connections -- overcharging that continued for years after Congress and the FCC ordered it to stop. Petitions have been pending at the FCC since 2004 asking for final resolution of these issues; they need to be decided now.

APCC

American Public Communications Council, Inc.

Willard R. Nichols
President

November 10, 2009

Ms. Sharon Gillett
Chief, Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Ms. Gillett:

I am writing to follow up on a question raised when we met with Chairman Genachowski, Ms. Aiyar, and you on November 6, 2009. You inquired as to the impact on the Universal Service Fund (USF) if payphone service providers (PSPs) were exempted from and not required to pay into the USF.

As we discussed, our subsidiary, APCC Services, processes dial around compensation (DAC) collection and payment for the majority of independent PSPs and otherwise collects data on the payphone industry. Based on the information available to APCC Services,[1] we estimate that the total contribution to the USF of all PSPs, including all independent operators and those LECs that continue to operate payphones, is $2,921,730 per year.[2]

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[1] APCC Services processes DAC for approximately 62% of the independently owned payphones. It is assumed that the profiles for the amount of USF paid per payphone owned by APCC Services customers is typical for the industry, including for those payphones that remain for those LECs who continue to operate payphones.

[2] This estimate is based on (1) allocating to larger PSPs, including both larger independent PSPs and LECs, who are direct payers into USF roughly 78% of the approximately 609,000 payphones that remain in service and the remaining payphones to smaller PSPs who, under the rules enforced by USAC, are not allowed to pay directly into USF because of their *de minimis* status but must instead absorb the pass through USF charges imposed by LECs and interexchange carriers, and (2) taking due account of the fact that the direct payers pay on average at a per payphone rate that is roughly one third or less than the per payphone rate paid by those *de minimis* PSPs who must absorb pass through charges.

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I would appreciate the opportunity to provide any additional information that might be helpful to you.

Sincerely,