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December 6, 2010

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DEC - 6 2010

Federal Communications Commission
Office of the Secretary

BY HAND DELIVERY

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

Re: American Public Communications Council, CC Docket 96-45, RM No.

Dear Ms. Dortch:

The American Public Communications Council (“APCC”) hereby submits for filing in the above-referenced matter an original and 10 copies of its Petition for Rulemaking to Provide Lifeline Support to Payphone Line Service. An extra copy of the filing is enclosed to be date-stamped and returned for our files.

If you have any questions regarding the enclosed filing, please do not hesitate to contact the undersigned attorney for APCC.

Sincerely,



Albert H. Kramer

AHK/rw

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ORIGINAL

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

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DEC - 6 2010

Federal Communications Commission
Office of the Secretary

In the Matter of)
)
Amendment of the Commission's Rules)
to Provide Universal Service Lifeline)
Support for Payphone Line Service)
_____)

CC Docket 96-45
RM No. _____

**PETITION FOR RULE MAKING TO PROVIDE LIFELINE SUPPORT TO PAYPHONE
LINE SERVICE**

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Dated: December 6, 2010

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FEDERAL COMMUNICATIONS COMMISSION
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**PETITION FOR RULE MAKING TO PROVIDE LIFELINE SUPPORT TO PAYPHONE
LINE SERVICE**

The American Public Communications Council ("APCC") hereby petitions the Federal Communications Commission to initiate a rulemaking to make Eligible Telecommunications Carriers ("ETCs") providing payphone lines eligible for Lifeline support from the Universal Service Fund for those lines at the Combined Tier 1, Tier 2 and Tier 3 Level. Payphones are a critical component of universal service, providing access to critical calling services to millions of Americans and ready, reliable access to the public network in times of crisis and during emergencies. Yet payphones are in a state of crisis, with the deployed base having fallen by more than 75% over the last ten years. The Commission's own recent actions have exacerbated that crisis, and payphones are in danger of disappearing altogether. The Commission can and should prevent that from occurring—and meet its mandate under Section 276 to ensure the "widespread deployment" of payphones—by providing universal service Lifeline support for payphone line service. The mechanism for providing such support already exists. The

Commission can thus act promptly to secure the remaining base of payphones—and the access to the telephone network that they provide for millions of Americans—before it is too late.¹

This is an important time of transition for the universal service program. The Commission is working towards moving the program into the future, by re-focusing it on broadband access.² But as the Joint Board recently emphasized,³ as the Commission looks ahead, it cannot leave behind the many millions of Americans who still lack even basic access to the telephone network. Payphones have historically responded to that need. If they are allowed to disappear, the result will be a crisis in access to communications that flies in the face of the efforts of the Commission to move the concept of universal service into the future.⁴

I. INTRODUCTION AND SUMMARY

Payphones are the epitome of universal service—a public, on-demand, reliable, high quality 24-7-365 service available to a universal class of all users without advance subscription or advance equipment purchase or rental with free 911 and TRS calling. For the many millions of people who do not have either a landline or a mobile phone, payphones are the only way of making calls. For the 18% of American adults who lack a mobile phone—a figure that jumps to

¹ APCC is simultaneously with the filing of the instant petition filing an Emergency Petition for Special and Interim Relief requesting that the Commission make payphone line service eligible for Lifeline support pending resolution of the instant petition.

² See, e.g. *In the Matter of Federal-State Joint Board on Universal Service Lifeline and Link Up*, Recommended Decision, CC Docket No. 96-45 and WC Docket No. 03-109, FCC 10J-3 (Nov. 4, 2010), ¶¶ 73-74 (“*Lifeline and Link Up Recommended Decision*”).

³ *Id.* ¶ 4 (“the Joint Board supports deployment and maintenance of broadband services in areas that are now unserved or underserved, although it remains important to continue support for existing voice networks”).

⁴ Moreover, just as payphones began as an important service, and continue to serve as a critical back-stop, to ensure access to the traditional telephone network to Americans on the go or in transition, they are also positioned to form the infrastructure for a vast public access network in the broadband era. The next generation of payphones that provide broadband access as well as traditional voice communications are being explored. But in the meantime, the business must survive.

29% of adults with a household income of less than \$30,000—payphones represent the only way of making emergency and other calls when away from home or work. And for all Americans, payphones serve as reliable back-up a for those times when making a call with a mobile phone is not possible, whether because of mobile network congestion, lack of coverage, running out of battery power, or simply because many people routinely find themselves without their mobile phones.

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, such as occurred in the aftermath of Hurricane Katrina and the 2003 Northeast blackouts. 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.

In recognition of the critical role that payphones play in providing universal access to essential phone services, Congress enacted Section 276 of the Communications Act, which, among other things, directed the Commission to ensure the “widespread deployment of payphone services to the benefit of the general public.” 47 U.S.C. § 276(b)(1). In 1998, the Commission found that the number of payphones that existed at the time—over two million—“most appropriately” met the Congressional mandate of “widespread deployment.” The number of payphones has fallen by over 75% since then, to less than 475,000. In short, the Commission has not succeeded in fulfilling its mandate, and, as a result, payphones are in state of crisis.

Moreover the Commission, while laudably taking steps recently to subsidize the delivery of free mobile phones through Universal Service Fund subsidies, has inadvertently acted directly

counter to the Section 276 mandate; the Commission's subsidization of mobile services can only result in greatly accelerating the decline in the number of payphones serving the neediest who are and will increasingly be without any service as a result of the Commission's action. Indeed, the decline in payphone deployment has been exaggerated since the inception of universal service support for mobile phones in states in which large numbers of free mobile phones have been given away by mobile carriers receiving USF support. Such substitution of mobile phones for payphones results in a significant net loss in universal access to critical calling services. Only one person can use a mobile phone, but dozens of people can rely on a single payphone for their communications needs.

Absent action by the Commission, as operating payphones ceases to be a viable business,⁵ many if not most of the nation's remaining 475,000 or fewer payphones are in danger of disappearing in the coming period, leaving many of the tens of millions of Americans who depend on payphones with no other access to essential phone services. Mobiles phones cannot fill the hole that would be left if payphones are eliminated—too many Americans, most especially those in the lower-income brackets who depend most heavily on payphones—do not have mobile phones and will not have them in the foreseeable future.

The Commission can address these imbalances by providing Lifeline support for payphone line service. The Lifeline support for payphone line service can be implemented at a relatively modest cost and, as shown below, has very real efficiencies as compared to the cost of

⁵ The major LECs—who historically operated the bulk of the nation's payphones—have already exited the business almost entirely. AT&T and Qwest have both ceased offering payphones altogether. Verizon has dramatically reduced its in-region payphone operations to a small fraction of its historical base. Verizon recently sold-off all of its payphones in New York City. Out-of-region, APCC understands that Verizon is not installing any new payphones and is removing payphones from some existing locations. Nearly all of the remaining payphones in the United States are operated by APCC's members and other small (i.e. non-LEC) independent payphone service providers.

mobile support. Each dollar spent of support of mobile provides only limited calling to a single subscriber; each dollar of support for payphone line service provides service to dozens of users on an unlimited basis. The Commission can readily implement this relief for payphone line service through existing mechanisms.

As shown below, payphone lines clearly satisfy the statutory criteria for designation as a supported service. Payphone lines, as an essential component of payphone services, are clearly essential to the public health and safety. And the services in question are deployed in public telecommunications networks operated by telecommunications carriers.⁶ While the criterion that a majority of residential customers subscribe to the service cannot, by definition, be met by payphones, that condition is not mandatory, and need only be “considered” by the Commission. Where as here, the last criterion of the statute, that the service to be supported is consistent with the public interest, is so strongly met, the Commission can and should find in favor of Lifeline support.

II. STATEMENT OF INTEREST

APCC is the national trade association representing the interests of independent (i.e. non-LEC) payphone providers. APCC’s 759 members operate the majority of existing payphones. APCC’s members are all sole proprietorships or small businesses.

III. BASIS OF PETITION

A. The Critical Role Played By Payphones In Ensuring Access to Essential Phone Services

⁶ 47 USC § 254(c)(1)(C).

Section 276 was added to the Communications Act as part of the Telecommunications Act of 1996. In Section 276, Congress sought to “promote the widespread deployment of payphone services to the benefit of the general public.” 47 U.S.C. § 276(b)(1).

The Commission has recognized that “[p]ayphones unquestionably serve critical public interests in health, safety and welfare” by providing access for all to the telephone network⁷ The Commission has also found that promoting the widespread deployment of payphones furthers the “universal service function that payphones provide to those who cannot otherwise afford telephone service.”⁸ 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.

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. Payphone service is an “on demand dial-tone/pay-per use” reliable 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

⁷ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Report and Order, 11 FCC Rcd 20541, ¶ 7 (1996) (“*First Payphone Order*”).

⁸ *Access Charge Reform*, 18 FCC Rcd 12626, ¶ 8 (2003). There, the Commission found that “it is bad public policy to impose a non-cost-based charge, such as the PICC, on payphone lines because doing so may limit the deployment of payphone services that serve [universal service] functions.” *Id.*

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 also place calls to 800 subscribers at no charge to the caller.

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 and mobile and other communications network had failed, payphones again were available. Indeed, in a 2004 summary presentation to the Commission, the Wireline Competition Bureau highlighted how "payphones at work" came "to the rescue."⁹ 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. As then-Commission Deborah Tate said in a 2006 speech, "payphones are a critical part of homeland security. They are there for those times that we can't anticipate, when our landlines and cell phones aren't available, and so, as we plan for the possibility of another

⁹ Wireline Competition Bureau, 2003 – 2004, Competition, Broadband, and Universal Service in a Dynamic Market, Presentation to Commission, at 9-10.

disaster—whether a terrorist attack, a hurricane, or pandemic flu—we should not forget to consider payphones as part of our response.”¹⁰

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. While mobile phones provide an alternative to many Americans, as discussed below there are many occasions when mobile service is not available either because of a lack of coverage or a battery or other failure. In those instances, payphones are the only means of access to the telephone network for emergency and other calling.

Thus, as the Commission works to move the focus of universal service to broadband access, it must not lose sight of the bedrock objective of the universal service program: to ensure that no American is denied access to communications. While there is no question that there is a growing need for broadband connectivity, the ability to access the public telephone network is an even more basic need. Payphones—themselves a uniquely public resource in that they are available to all as opposed to a single subscriber—play an irreplaceable role in securing that access. For the foreseeable future, there will always be Americans without a phone of their own, and there will always be times when mobile service is not available; for those Americans, and those times, payphones are the only way of ensuring universal access to essential phone services.

B. The Precipitous Decline In Payphone Deployment

¹⁰ Commissioner Deborah Taylor Tate, Remarks to the American Public Communications Council (May 25, 2006).

In enacting Section 276, Congress recognized the importance of payphone services and the necessity of ensuring that a sufficient number of payphones exist to ensure that the general public can benefit from their availability. In 1997, the year after Section 276 was enacted, there were over 2,000,000 payphones serving the country.¹¹ By 1998, that number had climbed to about 2.15 million.¹² The Commission found that deployment at that level “most appropriately satisfies Congress's stated goal of promoting widespread deployment of payphones to the benefit of the general public.”¹³ That finding was supported by filings from several state public utility commissions that had studied the payphone markets in their respective jurisdictions and concluded that the then-current deployment of payphones “was adequately meeting the needs of the public.”¹⁴

Since 1998, however, the number of payphones has fallen precipitously. By 2002, when the Joint Board last addressed the issue of universal service support for payphone line service, the number of payphones had fallen to 1,919,640.¹⁵ The Joint Board expressed concern over even that relatively modest decline, and found that the decline “may have had a detrimental

¹¹ According to Commission data, as of the March 31 of 1997, there were 2,086,540 payphones in the country. *Trends in Telephone Service*, Industry Analysis and Technology Division, Wireline Competition Bureau, Table 7.6 — Number of Payphones Over Time (September, 2010) (“*Telephone Trends*”).

¹² *Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Third Report and Order, 14 FCC Rcd 2545, ¶ 184 n.390 (1999) (“*Payphone Third Report and Order*”).

¹³ *Id.* ¶ 143.

¹⁴ *Id.*

¹⁵ *Federal-State Board on Universal Service*, Recommended Decision, 18 FCC Rcd 2943, ¶ 49 (2002) (“*Joint Board*”). The 1,919,640 figure cited by the Joint Board was based on 2001 data. According to data subsequently made available by the FCC, there were actually only 1,711,061 payphones deployed as of March 31, 2002. *Id.*; see *Telephone Trends*, Table 7.6..

impact on access to essential phone services.”¹⁶ The Joint Board went on to explain that “this decline in the availability of payphones might reduce access to emergency services, especially in remote areas, and might adversely impact the ability of low-income citizens to have continued access to phone service.”¹⁷

Since the 2002 *Joint Board* decision, the decline in the number of deployed payphones has accelerated dramatically. By 2006, there were only a little over 1,000,000 payphones left in the country,¹⁸ and in the next three years that number fell by nearly half—as of March 31, 2009, there were only 555,128 payphones left.¹⁹ APCC believes there are 475,000 payphones left across the entire country.²⁰ In other words, in the little over a decade since the FCC found that a deployed base of well over 2,000,000 payphones was consistent with the “widespread deployment” of payphones envisioned by Congress, that deployed base has fallen to well under a quarter of the amount the Commission found was adequate.

Notably, this substantial loss in public payphone availability has occurred during the very same time period in which the number of Americans falling below the poverty line—the group most in need of payphone service—has dramatically increased. In 2000, there were 6.4 million

¹⁶ *Joint Board* ¶ 49.

¹⁷ As discussed below, despite its concerns about the decline in payphones threatening access to essential phone services, the Joint Board decided that the record before it did not support including payphone line service in the definition of supported services “at this time,” and instead recommended further study. *Joint Board* ¶ 47. As discussed in the text immediately following this note, and in Section III.C below, today the situation is very different, and universal service support for payphone lines is not only warranted but necessary in order to preserve payphones as a critical means of providing access to essential phone services.

¹⁸ *Telephone Trends*, Table 7.6.

¹⁹ *Id.*

²⁰ This estimate comes from figures provided for the third quarter of 2010 by industry clearinghouses that process dial-around compensation for carrier-payors, which ranged from 468,000 to 475,000.

American families living below the poverty line. By 2008, that number had risen to 8.147 million.²¹

C. The Continuing Critical Role of Payphones

There is no question that some significant measure of the decline in the number of payphones over the last twelve years is due in large part to the increase in mobile subscribership over that same period. In 1998, relatively few Americans had a mobile phone, and most people relied on payphones for their communications needs away from home and work. Today, by contrast 82% of the adult population has a mobile phone,²² and for most of those mobile users payphones are now a secondary method for obtaining access to the phone network when away from home or work.

However, despite increased mobile subscribership, payphones still have a unique and critical role to play in ensuring access to essential phone services. While 82% of adults now have a mobile phone, 18%--or nearly a fifth of the adult population still do not. And among people with a household income of less than \$30,000, mobile ownership is only 71%.²³ For those people, payphones remain the only way of making phone calls when they are away from their home or work, and for the many of them who do not have any phone, payphones are their only way of making calls.

²¹ U.S. Census Bureau Table 13, Number of Families Below the Poverty Level and Poverty Rate 1959-2008. In 2008 there were 39.8 million Americans living in poverty, the highest number in 11 years. U.S. Census Bureau, Report: Income, Poverty and Health Insurance Coverage in the U.S. (2008); Issued September 2009; P60-236(RV).

²² Pew Research Center's Internet & American Life Project, April 29-May 30, 2010 Tracking Survey.

²³ *Id.*

Despite the dramatic increase in mobile subscribership, according to the Commission's most recent report on telephone penetration, 4.4% of American households still lack a phone of any kind—landline or mobile.²⁴ While that figure represents some decrease from 1997, in absolute terms, increases in mobile subscribership have scarcely improved access to essential phone services. In 1997, just over 6,000,000 households lacked a phone; in 2009 some 5,170,000 households still lacked a phone. For those 5,170,000 households, representing 4.4% of American families, payphones remain the only real means of obtaining access to the public telephone network.

For Americans in the lowest income brackets—i.e. those for whom ensuring access to payphones has always been especially critical—increases in mobile subscribership have made even less of a difference. According to Commission data, as of 2009, nearly 10% of all households making \$20,732 or less had no landline or mobile phone.²⁵ For that group of payphone users, the more than 75% decline in the number of payphones since 1996 has resulted in a significant net decrease in access to the public telephone network. In 1997, there were roughly .68 payphones for every household in the lowest income group (households with annual income of less than \$10,000); as of 2009, that number has fallen to .25, a decrease of nearly two-thirds.²⁶ Thus, for those Americans without a phone of their own and who must therefore rely on

²⁴ *Telephone Penetration By Income By State*, Industry Analysis and Technology Division, Wireline Competition Bureau, Table 4 (May, 2010) (“*Penetration By Income*”).

²⁵ *Penetration By Income*, Table 4. The \$20,732 in annual income corresponds to \$10,000 in 1984 dollars, which is the baseline year for the Commission's analysis. According to the Department of Health and Human Services poverty guidelines for 2010, the poverty line in the continental 48 states and the District of Columbia for a family of four is \$22,050. See <http://aspe.hhs.gov/poverty/10poverty.shtml> (accessed Nov. 11, 2010).

²⁶ See *Penetration By Income*, Table 4; *Telephone Trends*, Table 7.6. In 1997, there were 3,049,204 households with income of less than \$10,000, and 2,086,540 payphones. In 2009, while fewer households with income of less than \$10,000 did not have a phone (2,253,415), the number of payphones (555,128) had fallen by roughly three-quarters to 555,128.

payphones, the ability to access essential phone services has significantly diminished as mobile penetration has increased.

It is also worth noting that the telephone penetration statistics maintained by the Commission reflect household ownership of a phone; not individual phone ownership. According to cellular industry data, 24.5% of American households are mobile-only. In many of those homes, there are fewer phones than there are adults, meaning that the percentage of adults without functional access to a phone is greater than the percentage of households that lack a phone. When a mobile subscriber is away from the rest of the household, the phone is simply not available for use by those household members that may remain behind in the residence. In this circumstance, mobile phone service does not provide the means for other household members to place calls. By contrast, payphones can and do provide multiple fixed communication outlets for not only every member of one household but for a large number of households.

Moreover, there will always be segments of the population such as the homeless for whom mobile subscribership is unlikely to be a viable option. While mobile carriers have sought universal service support for their services as a way of providing service to lower income Americans, the viability of mobile subscribership does not turn on just the ability of the user to pay for the service. For example, is it realistic to think that a homeless person will be able to maintain a handset, battery and charger—and be able to keep the phone charged and in working condition on an extended basis? The point is that while the rise in mobile subscribership is unquestionably laudable from the perspective of ensuring access to the public telephone network, there are real-world limitations on the ability of mobile providers to reach all Americans.

And even for people who can afford a mobile phone and are capable of managing their service, payphones still can and do play an important role in ensuring access to the public network. There are many instances where owning a mobile phone does not equate to having it available.

First, many people do not carry their mobile phones with them at all times and thus must still rely on payphones for emergency and other communication away from their homes and places of work. Indeed, New York City has recently acknowledged the important role that payphones continue to play in providing emergency communications services even in this era of high mobile penetration. New York City has recently decided to eliminate 15,000 emergency-help boxes from New York streets. As reported in the New York Times, in response to concerns that doing so would decrease access to emergency communications services, particularly for the deaf and handicapped, Mayor Bloomberg's office pointed out that the city's public payphones remain available to provide exactly that function.²⁷

Second, as many mobile users know all too well, battery life continues to be a significant issue. By contrast, since payphones are powered by the network, they are always available as a dependable means of accessing the network.

Third, the mobile carrier networks are still far from ubiquitous and there are large areas of the country where one mobile provider or another lacks coverage. In those areas, the need for payphones is no less than it was in 1996 when the Commission recognized that for many users "payphones are the only readily available means of accessing . . . critical communications

²⁷ New York Times, *City Renews Effort to End Use of Street Alarm Boxes*, June 25, 2010 ("NYT Alarm Box Article").

services.”²⁸ If anything, given the dramatic reduction in the number of payphones, the need for the remaining payphones is even greater.

Fourth, as the Commission has itself found, during emergencies and natural disasters, mobile networks often fail or are overwhelmed.²⁹ Payphones tend to be far more robust, both because LEC central offices typically are in more secure locations than cell towers and have better power backup facilities than do mobile cell sites and because the landline network is less subject to call overloading than are mobile networks.³⁰

Fifth, even in areas where there is mobile coverage generally, there are many locations where it is not possible to make calls. Subways are an obvious example—and also exactly the kind of venue where people need to be able to place calls. Commuters in subways frequently need to contact a friend or family member to coordinate plans with them or to let them know that plans have changed. With isolated exceptions where a carrier has constructed antennas in the subway system, mobile phones are completely unusable in subways, leaving payphones as the only viable options for calls. Data from payphones located in Chicago Transportation Authority

²⁸ *First Payphone Order* ¶ 277.

²⁹ See, e.g. *Report to Congress on the Study to Assess Short-term and Long-term Needs for Allocations of Additional Portions of the Electromagnetic Spectrum for Federal, State and Local Emergency Response Providers*, 2005 LEXIS 6907 (Dec. 19, 2005), ¶ 7 (hurricanes Katrina and Rita caused extraordinary destruction to mobile and other communications facilities, leading to, among other things, the impairment of emergency response efforts).

³⁰ Indeed, even during emergencies where mobile service is available, payphones have the advantage of providing precise location information to emergency responders. If a caller makes an emergency call from a mobile phone, the E911 information provided to the E911 operator is approximate. By contrast, when the same call is made from a payphone, the E911 operator receives the exact address of the payphone as maintained in the serving LEC’s database. This precise location information is especially critical where the caller is unable to supplement the location information automatically transmitted by the phone, which can happen for a variety of reasons including the caller being deaf, language barriers, and the caller not knowing his or exact location. See, e.g. NYT Alarm Box Article (citing New York City officials as pointing out that payphones can “pinpoint the location of callers even if they do not speak”).

(CTA) facilities strikingly underscores this point. In 2009—when more than 8 out of every 10 Americans had a mobile phone—over one million payphone calls were still made from payphones at CTA facilities.³¹

Sixth, by their public nature, payphones play one role that personal phones cannot. There are many times when a caller may need anonymity—such as for calls to a rape crisis center, a drug addiction help line, or to report a crime—and would be deterred from making those calls if they were forced to use their own phone. So long as payphones are available, however, people will be able to make calls to get the help they need without needing to be concerned about being able to be identified by the phone they are calling from.

Finally, for many lower-income Americans, payphones are a far more affordable means of making calls than are mobile phones. The prepaid plans utilized by many of those users have relatively high per-minute charges, typically about \$.10.³² By contrast, payphones typically offer unlimited local calling for 50 cents or less per call. Thus, for all but the shortest local calls, payphones are far more cost effective than the prepaid mobile plans typically used by lower-income subscribers. Long Distance calling from payphones is similarly cost effective for low income subscribers as compared to typical prepaid mobile rates.³³ This is particularly true for the millions of Americans who regularly call friends and families abroad, for whom international prepaid calling cards offer a dramatically less expensive alternative than placing international calls from their prepaid mobile phones. Perhaps most importantly, with respect to vital 8YY toll

³¹ See The Depaulia, *CTA to Hang Up Pay Phones*, Oct. 4, 2010.

³² While, as discussed in Section III.E below, some wireless providers have obtained ETC status and use Lifeline support to provide their eligible subscribers a certain number of free minutes each month, the number of free minutes is limited—often only in the 100-200 per month range, and in some cases as little as 68—and the price for each additional minute beyond the free minutes—\$.20 or more—is much higher than the typical cost of mobile minutes.

³³ Many public payphones offer call-anywhere in the U.S. price plans for 10 cents/minute or less.

free calling to government agencies and non-profit community service organizations by low income consumers, this access is provided free of charge to callers from payphones. Mobile providers, by contrast, charge their regular per-minute rates for 8YY calls. Given the often substantial hold times associated with these numbers, calling them from a mobile phone can become prohibitively expensive. Payphones thus have a vital role to play in ensuring access to critical governmental and social service agencies for the most economically challenged citizens.

One more statistic serves to sum up why payphones still matter. Last year, APCC estimates that well over 500,000,000—and perhaps as much as one billion—calls were made from payphones. That means that, on average, every American adult used a payphone several times over the course of the year. Of course, payphone usage isn't evenly distributed across the population. The large majority of those one billion calls were likely made by the neediest Americans who, absent the availability of the payphone they used, would have had no other means of placing their call.

D. Existing Efforts to Support Payphone Service Are Inadequate

Recognizing the important role of payphones in ensuring access to the public telephone network, in Section 276 Congress directed the Commission to consider whether to require “public interest payphones, which are provided in the interest of public health safety, and welfare, in locations where there otherwise would not be a payphone” 47 U.S.C. § 276(b)(2). The Commission addressed the matter in its *First Payphone Order* and concluded that public interest payphones, as envisioned by Congress, were necessary to “ensure the maintenance of payphones that serve the public policy interests of health, safety, and welfare in

locations where there would not otherwise be payphones as a result of the operation of the market.”³⁴ In so holding, the Commission found that

As demonstrated by the comments, all payphones serve the public interest by providing access to basic communications services. We are particularly concerned about the role served by payphones in providing access to emergency services, especially in isolated locations and areas with low levels of residential phone penetration. Indeed, in some such areas, payphones are the only readily available means of accessing these critical communications services.

First Payphone Order ¶ 277 (internal citations omitted). Despite finding that the establishment of public interest payphones was in the public interest, the Commission did not establish a federal program. Instead, the Commission left the matter to the states, and permitted—but did not require—the states to establish and fund their own individual public interest payphone programs.

Unfortunately, as reflected in *Joint Board*, very few states have adopted a public interest payphone program, and in those few states that have, the programs have been very limited in scope.³⁵ As a result, as the Joint Board found, “there are relatively few ‘public interest payphones’ in the United States.”³⁶ That was true in 2002, and is truer today when the number of public interest payphones has dwindled to a handful. It is not now realistic to look to future improvements to state public interest payphone programs to help stem the tide of payphone removal. Far fewer states today have a meaningful public interest payphone program than was the case in 2002, and, in this era of squeezed state budgets it is highly unlikely that any state is going to allocate new funding to payphone programs. Thus, whatever promise the public interest payphone mechanism may have had in 1996, it is clear in 2010 that the program cannot meet the

³⁴ *First Payphone Order* ¶ 277.

³⁵ *Joint Board* ¶ 50.

³⁶ *Id.*

Congressional goal of ensuring a sufficient number of payphones to serve the public health, safety and welfare.³⁷

Nor has the commission succeeded in implementing the other measures mandated by Congress in a manner that ensures an adequate base of deployed payphones. The Commission has, in accordance with Section 276, adopted regulations to provide dial around compensation for PSPs.³⁸ The Commission has also promulgated non-discrimination guidelines for the LECs, including the requirement that the former RBOCs adhere to the new services test (“NST”) requirement for payphone line rates.³⁹ Yet, as discussed above, over the last ten years, payphones have been removed at a very accelerating rate and many payphones are being removed even though they continue to provide vital service. Moreover, apart from the impact of mobile communications generally, Commission policy to promote mobile use for consumers qualifying for Lifeline is having the unintended consequence of causing the removal of many of these phones.

E. Existing Lifeline Support for Mobile Phones Has the Perverse and Unintended Effect of Causing the Removal of Payphones

³⁷ Even if the Commission and particular states were to decide that public interest payphone programs are an effective way of halting the decline in the number of payphones, it would likely take years for those programs to be designed, funded, and implemented, by which time it would be too late.

³⁸ See *First Payphone Order* ¶ 48; 47 C.F.R. §§ 64.1300-64.1320.

³⁹ See *Wisconsin Public Service Commission*, 17 FCC Rcd 2051 (2002) (“*NST Order*”) (subsequent history omitted). Although the existence of rates approximating NST compliance is now fairly widespread, at least in Bell Company territories, the prevalence of these rates has not stemmed the tide of payphone removals, as discussed in the text. Many PSPs only belatedly received the relief of NST compliant rates because of Bell Companies’ foot dragging and misguided state decisions. The injustice and unfairness caused by these delays, is the subject of several pending proceedings before the Commission. See, e.g., *Petition of the Illinois Public Telecommunications Association for Declaratory Ruling*, CC Docket No. 96-128 (filed July 30, 2004).

Not only are the programs designed to support payphones inadequate to ensure their continued “widespread deployment,” existing Lifeline support for mobile prepaid providers is having the unintended—and perverse—effect of leading to the removal of payphones. In a series of recent orders, the Commission has granted two mobile resellers ETC status in order for them to obtain Lifeline support for their services, and has paved the way for others to obtain similar relief.⁴⁰

As mentioned above, in the two year period since the FCC decided to allow pure reseller mobile carriers to provide USF eligible recipients with free mobile phones, payphones have declined from over 700,000 phones to less than 475,000 nationwide. The decline has been exaggerated in those states in which larger numbers of free mobile phones have been provided through USF support of mobile service. For example, in Florida, where the number of free mobile phones has increased to 400,000 (at a cost of over \$4 million per month to the USF program) in just two years, the number of payphones has dropped precipitously from over 34,000 in 2008 to about 16,000 today – a decline of over 50 percent. It is clear that the loss of these payphones affects access to critical social services. According to studies done in 2008 and 2010 of calling traffic from Florida payphones, 20 percent or more of the calls from the payphones in the study were to social services and similar government agencies.

As more mobile providers obtain waivers and more states adopt this program, the trend of payphone loss will continue throughout the country. Over half the states including

⁴⁰ The Commission has granted ETC status to TracFone Wireless and Virgin Mobile. See *Virgin Mobile USA, L.P.*, 24 FCC Rcd 3381 (2009), *TraceFone Wireless, Inc.*, 23 FCC Rcd 6206 (2008). The Commission has also granted petitions filed by other wireless resellers seeking forbearance from the requirement that they provide facilities-based service, paving the way for the consideration and (presumably) grant of their ETC petitions. See *Conexions Petition for Forbearance*, WC Docket No. 09-197, FCC 10-178 (Oct. 1, 2010); *Telecommunications Carriers Eligible for Universal Service Support*, 25 FCC Rcd 10510 (2010); *i-wireless, LLC Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A)*, 25 FCC Rcd 8784 (2010).

Massachusetts, New Jersey, West Virginia, Virginia, Michigan and Georgia have programs in place, to provide free mobile phone service through the USF program and more and more states are implementing the program.

While the provision of Lifeline support to mobile resellers may increase telecommunications access by the individual to whom it was provided, it also this laudable result inevitably also leads to diminished use of payphones in the low-income and other neighborhoods where they are most needed.⁴¹ Payphones operate on very thin margins so the decreased use by a former payphone user who now has a free cell phone provided through Lifeline may result in the payphone being taken out of service. Take for example a payphone that requires 100 calls per month to survive. If the payphone serves 40 repeat customers who each make two calls a month, and 20 one-time customers, when even one or two of those customers is, as a result of Lifeline support, newly able to afford a prepaid phone and stops using the payphone, the payphone can no longer cover its costs, the largest of which are line costs, and must therefore be removed. While the user(s) who gets a mobile phone may be better off from a universal service perspective, the net effect is unquestionably negative. While one or two users gain that service, the other 58 or 59 people who relied on the payphone for their calling needs no longer have it available and have thus lost ready access to the telephone network—a result that flies in the face of the goal of universal service.

⁴¹ APCC emphasizes that PSPs are not opposed to Lifeline support for mobile providers. Indeed, APCC has in the past lauded such support mechanisms. *See, e.g.* Comments of the American Public Communications Council on Virgin Mobile USA, L.P.’s Petition to Modify Lifeline Certification Methods in Its Limited ETC Designation Compliance Plan, WC Docket No. 09-197 (filed April 14,2010); Comments of the American Public Communications Council on TracFone Request For Clarification of Universal Service Lifeline Program “One-Per-Household” Rule As Applied To Group Living Facilities, WC Docket No. 03-109 (filed November 20, 2009). At the same time, as discussed in the text, payphones may be a much more cost effective way, and indeed the only way for consumers who can’t afford mobile service even with Lifeline support, of providing service to many consumers.

Indeed, as discussed above, even other members of the new mobile subscriber's household may functionally have less access to essential phone services. Where the addition of a new mobile subscriber results in the removal of the payphone that the household previously relied upon, when the mobile subscriber is away from home, the other members of the household no longer have any way of making calls. This same phenomenon is also relevant to group homes and similar residences for the most disadvantaged Americans.⁴² If one or two residents of a group home receive a subsidized mobile phone, and as a result the payphone previously relied upon by all the residents is removed, then the net result is a dramatic decrease in the availability of phone service to the house's residents.

Moreover, these examples illustrate why Lifeline support for payphone service can be far more efficient than support for mobile phones. Lifeline support for a single or a few payphone lines would allow the deployment of payphones for the 58 or 59 payphone users or the other household members who are left without service as a result of the subsidy to the mobile provider.

Apart from these issues, the provision of Lifeline support to mobile service providers in the absence of similar support for payphone line services is inconsistent with the requirement that universal service support be administered in a "competitively neutral manner." 47 C.F.R. § 54.701. By leading to the removal of payphones that otherwise would have continued to remain at least marginally profitable, Lifeline support for wireless providers causes competitive harm on two levels. First, it causes direct harm to the PSP who was forced to remove the payphone and thus lose the revenue the payphone generated and is as a result one step closer to no longer

⁴² In its recent *Lifeline and Link Up Recommended Decision*, the Joint Board noted that residents of group homes and similar facilities often lack access to critical calling services. *Lifeline and Link Up Recommended Decision* ¶ 13. The Joint Board suggested that the lack of access could be addressed by extending low-income support to group living facilities. *Id.* Payphones could serve that function, and indeed are an efficient way of doing so.