

EXHIBIT 4

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

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|--|---|----------------------|
| In the Matter of |) | |
| |) | |
| Federal-State Joint Board on Universal Service |) | CC Docket No. 96-45 |
| |) | |
| 1998 Biennial Regulatory Review – Streamlined |) | CC Docket No. 98-171 |
| Contributor Reporting Requirements Associated |) | |
| With Administration of Telecommunications |) | |
| Relay Service, North American Numbering |) | |
| Plan, Local Number Portability, and Universal |) | |
| Service Support Mechanisms |) | |
| |) | |
| Telecommunications Services for Individuals |) | CC Docket No. 90-571 |
| With Hearing and Speech Disabilities, and the |) | |
| Americans with Disabilities Act of 1990 |) | |
| |) | |
| Administration of the North American |) | CC Docket No. 92-237 |
| Numbering Plan and North American |) | NSD File No. L-00-72 |
| Numbering Plan Cost Recovery Contribution |) | |
| Factor and Fund Size |) | |
| |) | |
| Number Resource Optimization |) | CC Docket No. 99-200 |
| |) | |
| Telephone Number Portability |) | CC Docket No. 95-116 |
| |) | |
| Truth-in-Billing and Billing Format |) | CC Docket No. 98-170 |

**COMMENTS OF
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Payphone Service Does Not Fit Within The Universal Service Payment Model Because PSPs, Unlike Other Providers Of Telecommunications, Have No Rational Method Available For Recovering Universal Service Payments From End Users

In its *Second Further Notice*, the Commission acknowledges that PSPs, unlike most other providers of telecommunications, are unable to recover universal service assessments from end users through a line item on an invoice.¹ The Commission attempted to address this problem by allowing PSPs and other providers to recover their universal service assessments through their general rates instead of a line item:

Carriers will continue to have flexibility to recover their contribution costs through their rates or through a line item. In this way, we accommodate entities such as payphone and prepaid wireless providers that are unable, for practical or business reasons, to recover universal service contribution costs through a line item.²

But the Commission's solution, though well-intended, does not deal with the problem that PSPs have no legally rational method available for recovering universal service payments from end users. The Commission's flexibility allowing entities to recover assessments through their rates, while perhaps helpful to some entities, is not an accommodation to PSPs.

PSPs have two sources of end user revenue: interstate and intrastate coin calls. Only a small percentage of coin calls are interstate and a major increase in the charges for such calls would yield only minimal revenue to cover PSPs' universal service payments under the proposed connection-based system.³ If these few calls had to bear the cost of the assessments contained in the current proposals, the rates would have to be increased so much that it would suppress the little demand that currently exists; revenue from these calls would actually decrease because of

¹ *Second Further Notice* ¶ 53.

² *Id.* (emphasis added).

³ Currently, PSPs are assessed universal service fees based on revenue generated by interstate coin calls, but such contributions are minimal because the calls generate so little revenue.

the rate increase. As for intrastate coin calls (which are predominantly local), it would be inconsistent with Section 152(b) of the Act and the spirit of the Fifth Circuit's *Universal Service Decision*⁴ to recover federal universal service payments from such calls. The Fifth Circuit's reading of Section 152(b) of the Act precluded the Commission from taking intrastate revenues into consideration even where the Commission contemplated assessing universal service payments as a percentage of a provider's interstate revenues.⁵ If PSPs were required to make payments of any significance, PSPs would be in the position of having to recover such payments through price increases for local coin calls, a result at odds with the underlying purpose of Section 152(b).

Moreover, it would be inequitable, unfair and contrary to principles of cost causation to force those end users who make local and/or long distance coin calls to bear the entire burden of PSP payments to federal universal service support mechanisms. In its 1983 *Access Charge Order*,⁶ the Commission was faced with a similar issue of equitable recovery of access charges from end users of payphone service. The Commission initially imposed an access charge on coin calls by end users of interstate and international public payphone services,⁷ but on reconsideration abandoned that approach because it violated cost causation principles. The Commission explained its decision as follows: :

The Commission established a pay telephone element to which it apportioned a LEC's investment in payphones, payphone lines, and associated appurtenances. Initially, this revenue requirement was to be recovered solely through end user usage charges only on coin calls, which

⁴ *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) ("*Universal Service Decision*"), *cert. denied* 530 U.S. 1210 (2000).

⁵ *Id.* at 446-48.

⁶ *MTS and WATS Market Structure*, CC Docket No. 78-72, Third Report and Order, 93 FCC 2d 241 (1983) ("*Access Charge Order*"), *modified on recon.* 97 FCC 2d 682 (1983) ("*Reconsideration Order*").

⁷ *Access Charge Order* at 280.

are referred to as 'sent paid' calls. Because the majority of all calls placed from payphone lines were billed on a collect, credit card, or third party basis,⁸ however, such a rate structure would have recovered this revenue requirement from only a minority of the persons using payphones, a violation of the 'cost causation' principle.⁹

On reconsideration, the Commission decided to eliminate the separate pay telephone element.¹⁰

The same inequities that led the Commission in 1983 to abandon an access charge on coin calls apply equally to any requirement that PSPs make payments to universal service – there simply is no equitable way to impose the requirement on coin calls.

As for recovery of universal service payments from dial-around compensation, the Commission-prescribed per call charge that applies to interstate dial-around calls does not include an element that covers the cost of payments to universal service. Dial-around compensation covers a variety of costs (*e.g.*, equipment, line, maintenance and SG&A costs), but does not provide for recovery of universal service contributions.¹¹

In short, the Commission in deciding on a universal service assessment policy for payphone lines should not premise its decision on the erroneous assumption that PSPs can recoup their assessment costs by adjusting their end user rates.

⁸ Footnote added. Today, given the introduction of prepaid cards, and numerous other “dial around” products, a much greater percentage of payphone calls are non-coin calls than was the case in 1983.

⁹ *C.F. Communications Corp. v. Century Telephone of Wisconsin, Inc.*, File Nos. E-89-170 et al., Memorandum Opinion and Order, 10 FCC Rcd 9775, 9777, ¶ 9 (1995).

¹⁰ *Reconsideration Order* at 703-06.

¹¹ *See Payphone Third Report and Order* at ¶¶ 165-91.