CONTRIBUTION RULES MUST NOT FURTHER ENDANGER PAYPHONE DEPLOYMENT

WC Docket No. 6-122

GN Docket No. 09-151

American Public Communications Council

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SUMMARY

- Under Section 254(d), the FCC can require payphone service providers (PSPs) to contribute to USF only if "the public interest so requires."
  - The rationale for requiring PSPs to contribute no longer exists.
- The public interest is served by "releasing" PSPs from paying USF contributions.
  - Payphones provide a unique part of universal service
  - Unlike other industry segments that seek relief from USF contributions, payphones serve a public function.
    - In Section 276, Congress mandated the Commission to "promote widespread deployment of payphone service."
  - Other public interest reasons dictate releasing PSPs from USF contribution.
    - Payphones remain in service in emergencies and disasters.
- Releasing PSPs fits with the efficiency, fairness, & sustainability of USF
- If PSPs are required to contribute, they should be in a special category with their own rate.
- If PSPs are required to pay based on revenue, *de minimis* payors should be allowed to file and pay directly.

PSPs SHOULD BE RELEASED FROM HAVING TO PAY USF CONTRIBUTIONS

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

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

PSPs SHOULD BE RELEASED FROM HAVING TO PAY USF CONTRIBUTIONS (cont'd)

The Rationale and Factual Predicate for Requiring PSPs to Contribute No Longer Exists

- The primary rationale for requiring PSPs to contribute was that ILECs, their direct competitors, had to contribute to USF.
  - If this premise was ever legally correct, it no longer has any factual basis.
  - At the time of the Commission's ruling, ILECs owned at least 75% of the payphones in service.
  - The ILECs have abandoned the payphone business. All the BOCs, Sprint (Embarq), and other major non-BOC LECs are no longer in the business.
  - Independent (non-LEC) PSPs now account for at least 90% + of the market
- Thus, there is no longer any basis for requiring independent PSPs to pay into USF.

PSPs SHOULD BE RELEASED FROM HAVING TO PAY USF CONTRIBUTIONS (cont'd)

It Serves the Public Interest to Release PSPs From Making USF Contributions

- Payphones provide and are themselves a unique part of universal service
  - Payphones offer 24/7/365, on-demand, reliable call anywhere service with a range of payment options; there is no advance subscription, equipment requirements, up-front fees or monthly charges; free 911 and TRS calling,.
  - Payphones serve primarily low income end users who are the targeted beneficiaries of USF programs.
  - Payphones provide essential service to the almost 50% of qualified low income units who, even under the Commission's own projections, won't be reached by USF reform or who cannot afford wireless phones and to the 5% of U.S. households with no home phone.

PSPs SHOULD BE RELEASED FROM HAVING TO PAY USF CONTRIBUTIONS (cont'd)

It Serves the Public Interest to Release PSPs From Making USF Contributions (cont'd)

- Unlike other industry segments that seek relief from USF contributions, payphones serve a public function.
  - As noted, payphones provide a part of universal service, filling a vacuum otherwise unaddressed.
  - In the Telecommunications Act, Congress mandated the Commission to "promote widespread deployment of payphone service." 47 U.S.C. § 276.

PSPs SHOULD BE RELEASED FROM HAVING TO PAY USF CONTRIBUTIONS (cont'd)

It Serves the Public Interest to Release PSPs From Making USF Contributions (cont'd)

- For other reasons as well, payphones are particularly deserving of being released from paying USF charges.
    - PSPs are unable to pass on USF charges
    - Payphone service is severely endangered today.
    - Payphone deployment declined from 2,000,000+ in 2000 to about 425,000.
- Loss of a single payphone disenfranchises multiple users.
- Payphones are part of the nation's emergency response infrastructure.
- Payphones provide critical access to communications in times of disaster.
- Payphones provide last-resort network access to travelers and others when wireless alternatives are unavailable or unusable

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PSPs SHOULD BE RELEASED FROM HAVING TO PAY USF CONTRIBUTIONS (cont'd)

Releasing PSPs is Consistent with the Goals of USF Reform

- Consistent with sustainability.
  - The total contribution from all PSPs, currently about $2,000,000 annually, while a major burden to the payphone industry, is extremely small relative to the $8.5 billion annual USF revenue requirement
- Consistent with fairness.
  - Original rationale was to equalize terms of competition with LECs. No longer applicable, as discussed.
- Consistent with efficiency.
  - No special procedures required.
    - Same mechanism as apply to other wholesale relations.
    - LECs don't assess pass through on payphone class of service.

PSPs SHOULD BE RELEASED FROM HAVING TO PAY USF CONTRIBUTIONS (cont'd)

Implementation of a Payphone Release

- Under the current end-user revenues-based plan:
  - Eliminate the direct contribution requirement for PSPs;
  - Exclude payphone line revenues from LEC and IXC end-user contribution base.
    - Follow wholesale rules or notify carriers
- Under a numbers-based or connections-based contribution plan:
  - Exclude payphone numbers/lines from the contribution requirement.
- Under a total revenue on assessable services plan:
  - Exclude PSPs

IF PSPs MUST CONTRIBUTE, A SPECIAL PSP CATEGORY WITH SPECIAL RATES SHOULD BE CREATED

- PSPs should pay at the lowest of several options as developed in the comments.
  - One fourth the rate of the single line business /residential rate.
  - The paging rate.
  - The current average rate per payphone line, about $.40.
- In any event, under any revised contribution scheme, PSPs cannot be required to subsidize costs attributable to other contributors or customers.
  - *See Federal-State Joint Board on Universal Service, et.al,* 23 FCC Rcd 2567, CC Dkt. No. 96-45, et. al (2008) (Order rescinding LEC's imposition on payphones of any portion of pass-through of Centrex contribution shortfall recovery charge).

If PSPs Are Required to Pay, PSPs Qualifying for the USF *De Minimis* Exemption Should Be Able to Make Direct USF Payments if They Choose

The Current Situation

- Under the FCC rules, direct USF payers may not be assessed "pass-through" charges by LECs and other carriers. Only *de minimis* payers are subject to USF pass-through charges.
- Most PSPs qualify for the *de minimis* exemption.
- LEC pass-through charges alone greatly exceed the direct contributions large PSPs pay.
  - Most PSPs have very little interstate/international end user revenue.
  - As of November, 2008, large PSPs pay about $.27/mo/payphone.
  - As of November, 2008, LEC USF pass-through charges imposed on *de minimis* PSPs were about $..65/mo/payphone.

If PSPs Are Required to Pay, PSPs Qualifying for the USF *De Minimis* Exemption Should Be Able to Make Direct USF Payments if They Choose (cont'd)

The Current Situation (cont'd)

- Under the *de minimis* exemption, payers whose annual USF contribution would be under $10,000 "will not be *required* to submit a contribution . . ." form unless otherwise required. 47 CFR § 54.708 (emphasis added).
  - The rule does not *preclude* service providers qualifying for the *de minimis* exemption from making direct USF contributions if they choose.
- Currently, however, USAC does not accept direct USF contributions from service providers qualifying for the *de minimis* exemption.
- USAC's refusal to accept direct contributions from *de minimis* payers is unfair to small independent PSPs
- It puts them at an unfair competitive disadvantage vis-à-vis large PSPs, imposes extra economic hardship, and leads to the removal of payphones.
- It contravenes Commission's policy in adopting the *de minimis* exemption.

If PSPs Are Required to PAY, PSPs Qualifying for the USF *De Minimis* Exemption Should Be Able to Make Direct USF Payments if They Choose (cont'd)

The Remedy

- The Commission should direct USAC to accept direct USF contributions from service providers who choose to make them, even if a service provider qualifies for the *de minimis* exemption.
- Allowing *de minimis* PSPs to make direct contributions would have a very low impact on overall USF revenue.