



PAYPHONE COMPENSATION/FLEX ANI
DECLARATORY RULING
WC Docket No. 11-141
**THE *DECLARATORY ORDER* CORRECTLY STATES
STATUTORY REQUIREMENTS AND COMMISSION
RULES AND POLICIES AND SHOULD BE AFFIRMED**

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THE FCC'S PAYPHONE COMPENSATION RULES PLACE THE TRACKING AND PAYMENT BURDENS SOLELY ON THE COMPLETING CARRIER

- On June 29, 2012 the Declaratory Ruling in the *Declaratory Order* unequivocally rejected and declared utterly inconsistent with statutory and Commission requirements US South's attempts to justify its past failures to pay payphone dial-around compensation ("DAC") as well as U.S. South's arguments that Completing Carriers are not required to make DAC payments where there may have been Flex ANI failures somewhere in the call path. ¹
 - The *Declaratory Order* confirmed the duty of carriers under the statutory mandate and Commission Rules to make such payments, regardless of any such failures or purported failures.
 - Moreover, the *Declaratory Order* reiterated that under the Commission's Rules, a payphone service provider's ("PSP"s) only duty is to order a payphone line; PSPs are not responsible for FLEX ANI transmission and it is the clear duty of the Completing Carriers to make sure that digits are transmitted.
- The Commission's statutory mandate is to ensure that PSPs are fairly compensated for "each and every" completed interstate and intrastate call. 47 U.S.C. § 276.
 - The Commission's Rules impose an unconditional and unqualified payment obligation on "the Completing Carrier that completes a" dial around call. 47 CFR § 64.1300(b), (d).
 - Completing Carriers are not relieved of their payment obligations by the loss of coding digits. Indeed some Completing Carriers do not rely on coding digits.

1. *Petition of GCB Communications, Inc. d/b/a Pacific Communications and Lake Country Communications for Declaratory Ruling*, 27 FCC Rcd 7361, WC Dkt. No.11-14 (WCB DA12-1046)(2012).("Declaratory Order")



THE FCC'S PAYPHONE COMPENSATION RULES PLACE THE TRACKING AND PAYMENT BURDENS SOLELY ON THE COMPLETING CARRIER (cont'd)

- The payment obligation is independent of the obligation for Completing Carriers, not PSPs, to accurately track dial around calls. 47 CFR § 64.1310(a)(1).
- The Commission recognized that Completing Carriers were much better situated than PSPs to track the calls and monitor the network.
 - PSPs have no visibility into and no ability to control the network.
 - PSPs are given no tracking responsibilities.
- As discussed below, the fact that problems may occur in transmission of the coding digits does not relieve a Completing Carrier of its separate duty to track accurately.



THE *DECLARATORY ORDER* REITERATED THAT PAYPHONE SPECIFIC CODING DIGITS WERE NOT REQUIRED TO ACCOMPANY EACH PAYPHONE CALL FOR THE CALL TO BE ELIGIBLE FOR COMPENSATION

- From the *First Payphone Orders*, the Commission stated that payphone calls would be compensated on a per call basis once payphone specific coding digit (“PCSD”) capability was installed in LEC facilities.
 - During a one year transition period while the LECs were supposed to deploy PCSD, Completing Carriers were required to pay per phone compensation, after which per phone compensation would end.
 - The LECs failed to install the PSCD capability within the one year period, and thus the condition precedent for per call compensation was not met so PSPs would receive no compensation.
 - To prevent this result, in the *October 1997 Waiver Order*, the Bureau had to direct the Completing Carriers to pay per call based on other per call tracking capability the Completing Carriers had available.
 - The *March 1998 Coding Digit Waiver Order* continued the directive to pay per call. It also clarified that once PSCD were available to be transmitted from a LEC end office, Completing Carriers were required to pay per call compensation for calls from payphones served by that end office.
 - It was in this context that the Bureau stated that PSCD were a prerequisite to per call compensation.



THE *DECLARATORY ORDER* REITERATED THAT PAYPHONE SPECIFIC CODING DIGITS WERE NOT REQUIRED TO ACCOMPANY EACH PAYPHONE CALL FOR THE CALL TO BE ELIGIBLE FOR COMPENSATION (cont'd)

- It is thus clear that when the *Declaratory Order* stated (at ¶ 24) that, “the *March 1998 Coding Digits Waiver Order* simply did not address whether compensation was owed for completed calls when Flex ANI PSCD were not transmitted with each call,” it was not stating that the Petition in this matter raised a novel issue but rather that *whether individual calls from payphones had to be accompanied by PSCD had already been resolved by the Commission in the Payphone Orders* and that nothing in the *March 1998 Coding Digits Waiver Order* related to that issue or could affect the Commission’s earlier determination.



THE *DECLARATORY ORDER* AFFIRMED THE COMMISSION'S ASSIGNMENT TO COMPLETING CARRIERS OF RESPONSIBILITY TO "ENSURE THAT THERE ARE NO PROBLEMS IN PROVIDING AND RECEIVING THE FLEX ANI DIGITS FOR A PARTICULAR IXC OR LEC"

- IXCs, not PSPs, are the LECs' customer for Flex ANI.
 - Flex ANI is an exchange access service which the IXC must order (although there is no charge to IXCs for the service because PSPs were assessed the total cost of deployment).
- IXC's are free to use the technology of their choice for tracking payphone calls but they must track the calls accurately. *See, e.g., April 3, 1998 Per Phone Waiver Order, 13 FCC Rcd 10893, 10904 ¶ 19.*
- A Completing Carrier must be responsible for the accuracy of its call tracking system no matter what system it uses.
- The Completing Carrier must initiate ordering Flex ANI (either directly or through the Intermediate Carrier). *March 9 1998 Coding Digit Waiver Order, 13 FCC Rcd 5020, ¶ 37* ("IXCs must request . . . this service PSPs are not required to request the LEC payphone-specific coding digits transmission service to IXCs").
- Completing Carriers, not PSPs, either directly or through the Intermediate Carrier, must make sure Flex ANI is working. "IXCs must request, *test, and coordinate with LECs* to obtain this service under carrier to carrier procedures *to ensure that there are no problems in providing and receiving the FLEX ANI digits for a particular IXC or LEC*" *Id.* (Emphasis added.)



IT IS FAIR FOR THE COMMISSION TO REQUIRE COMPLETING CARRIERS TO BEAR THE BURDEN OF ADDRESSING FLEX ANI PROBLEMS

- Every one of the “Flex/ANI Problem Points Identified” by the American Prepaid PhoneCall Association, with the exception of ordering a payphone line, is something over which the PSP has no control, which occurs entirely in the network, and which can occur at any time since network activity is constant. Only regular network monitoring and oversight will reveal failures in a timely manner.
 - Indeed for “[t]he biggest issue uncovered” by the APPPA, a default “to NO Flex/ANI when changes were made to facilities between LEC and IXC”, the PSP has no way to even know when such a facilities change occurs, much less any ability to know of any consequent disruption of Flex ANI.
 - Changes in interconnected facilities are entirely between the LECs and IXCs and go on routinely and often.
 - Only the two carriers involved can make sure they are implementing the change so as not to disrupt the Flex ANI function.
- The PSP has no way to know whether or to make sure the Completing Carrier and the other carrier(s) in the chain are doing what is necessary to make the system work. To make sure the system is working requires coordination and testing between carriers.
- Because of their tariff and/or contractual privity with LECs and/or Intermediate Carriers, Completing Carriers are in the best position to conduct the monitoring and repair that may be necessary to ensure that the tracking system the Completing Carrier has chosen is working. And only carriers can conduct the carrier to carrier testing which, as mentioned above, is required to ensure the systems are functioning properly.



IT IS FAIR FOR THE COMMISSION TO REQUIRE COMPLETING CARRIERS TO BEAR THE BURDEN OF ADDRESSING FLEX ANI PROBLEMS(cont'd)

- The contractual and/or tariff privity between the carriers also means, as the *Declaratory Order* (at ¶135) observes, Completing Carriers are in the best position to allocate responsibility/liability for failures among themselves.
- In the absence of being responsible for payment for calls without payphone-specific coding digits, the Completing Carriers would not be motivated to ensure that the coding digits are being properly transmitted through the call path. PSPs would be unfairly deprived of compensation in derogation of the statute.
- By contrast, PSPs have no ability to prevent, detect, or mitigate Flex ANI failures:
 - PSPs don't even know if a Completing Carrier is using Flex ANI
 - PSPs don't receive any transmissions so they have no way of knowing whether correct coding digits are being sent.
 - PSPs receive no information about Flex ANI in any report required by the Commission's Rules., a requirement the Commission would have imposed if it intended for PSPs to have responsibility for monitoring Flex ANI.
 - PSPs will only be able to detect *possible* Flex ANI failures (by a drop in compensation) at least three and up to six months after the failure, when it is too late to recover any compensation.
 - PSPs have no way of knowing where failure is occurring and no relationship with carriers that would require the carrier to address the issue.



IT IS FAIR FOR THE COMMISSION TO REQUIRE COMPLETING CARRIERS TO BEAR THE BURDEN OF ADDRESSING FLEX ANI PROBLEMS(cont'd)

- Test lines give only very limited information
 - They give only a snapshot of whether a particular line is sending PSCD at the very moment the call is made.
 - Carriers are not required to make them available.
 - Indeed U.S. South refused requests to make a test line available



THERE ARE NO LEGAL OR POLICY REASONS TO OVERTURN THE *DECLARATORY ORDER* AND IT SHOULD BE AFFIRMED.

- U.S. South asks the Commission to overturn the *Declaratory Order* on several grounds. Some are policy arguments not appropriately raised in a proceeding for a rule interpretation but are in any event lacking in merit.
- The same market mechanisms continue to operate.
 - PSPs remain market oriented.
 - PSPs are motivated to enter into alternative compensation arrangements (“ACA”s). They certainly would do so when appropriate rather than seeing wide spread carrier blocking of calls.
 - APCC has entered into and continues to be willing to enter into discussions and alternative compensation arrangements with carriers.
 - In any event, the effect on incentive structures within the regulatory framework is a matter to be raised in a rulemaking, not in a proceeding to interpret a rule.
- There is no “strict” liability. As the *Declaratory Order* (at ¶136) points out, carriers are free to assert compensation is not owed for any valid reason.
 - To the extent a Completing Carrier is, as discussed above, asserting that another carrier in the call chain should be held responsible to the Completing Carrier for the DAC the Completing Carrier is required to pay to PSPs, the carriers have the necessary privity between themselves to resolve the issue.
 - In any event, the PSP is totally outside the chain of responsibility for the failure and should not be denied due compensation.



THERE ARE NO LEGAL OR POLICY REASONS TO OVERTURN THE *DECLARATORY ORDER* AND IT SHOULD BE AFFIRMED (cont'd)

- Similarly, since Flex ANI failure can occur at multiple points in the call path after the call has left the LEC end office, a remedy against the LEC is insufficient to protect the PSPs interests in the statutorily mandated compensation.
 - Again, the PSP is totally outside the chain of responsibility for the failure and should not be denied due compensation.
- Flex ANI is not rendered “irrelevant.”
 - As mentioned above, under the Commission’s Rules, a Completing Carrier must ensure the integrity of its call tracking system no matter what tracking system it uses.
- There are alternate means of “real time” debiting” and they are being used.
 - Many Completing Carriers do not use tracking by PCSD.
 - Indeed U.S. South used an alternate system to block calls in real time from GCB’s payphones during the time it has been in this dispute. The same system could have been used to track payphone calls.
- Concerns regarding Commission procedures for addressing primary jurisdiction referrals are appropriately addressed in a general context.
- As U.S. South acknowledges, the Commission should resolve this proceeding now.