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Federal Communications Commission
1919 M Street, N.W.
Washington, D. C. 20554

DA 97-943

Released: May 13, 1997

COMMISSION SEEKS COMMENT ON PETITION

OF AN INTEREXCHANGE CARRIER

TO COMPENSATE PAYPHONE PROVIDERS ON A PER-CALL BASIS

(CC Docket No. 96-128)

Comments Due: **June 3, 1997**
Reply Comments Due: **June 13, 1997**

Telco Communications Group, Inc. (Telco) has petitioned the Commission for a waiver of Section 64.1301 of the Commission's rules[1] to permit Telco to compensate payphone providers on per-call basis for the entire interim compensation period, from November 6, 1996 through October 6, 1997, provided by the Commission's *Payphone Order*.[2]

In the *Payphone Order*, the Commission required that carrier-payors track certain types of calls and compensate payphone service providers for those calls on a per-call basis, as of October 7, 1997.[3] As an interim measure,[4] the Commission required that carrier-payors with

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[1] 47 C.F.R. §§ 1.3, 64.1301.

[2] Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Report and Order, FCC 96-388 (rel. Sept. 20, 1996) ("*Payphone Order*"); Order on Reconsideration, FCC 96-439 (rel. Nov. 8, 1996) ("*Order on Reconsideration*"), appeal docketed *sub nom.* Illinois Public Telecommunications Assn. v. FCC and United States, Case No. 96-1394 (D.C. Cir., filed Oct. 17. 1996) (both orders together "*Payphone Reclassification Proceeding*"). *See* 47 U.S.C. § 276(b)(1)(A).

[3] *Payphone Order* at para. 99. The effective date of per-call compensation is tied to publication of the *Payphone Order* in the Federal Register. Publication took place on October 7, 1996.

annual toll revenues in excess of $100 million are required to pay payphone providers a flat monthly rate of $45.85 in amounts proportional to each carrier-payor's market share.[5] Telco is one of the carrier-payors required to participate in this interim compensation mechanism.

The Commission subsequently stated in the *Reconsideration Order* that during the interim period individual carrier-payors and the payphone service providers have the option of mutually agreeing to pay per-call compensation for all or a portion of a particular carrier's share of the interim flat rate.[6] The Commission further stated that before implementing such an arrangement, a carrier-payor would have to petition the Commission for a waiver of its flat-rate compensation obligations. Telco has petitioned the Commission for such a waiver.[7]

In its petition, Telco states that, as applied to it, the interim compensation requirement is "patently unfair" because Telco receives "an extraordinarily small percentage of calls from payphones."[8] Telco estimates, for example, that during the month of January, 1997, Telco received less than one-half of one percent of its calls through payphones. Telco alleges that it currently has the technical capability to track and compensate for payphone calls by linking payphone call identifiers to a payphone provider database, thereby allowing Telco to calculate on a regular basis the amount owed each payphone provider.[9] It further states that it has the capability to track payphone calls for the entire interim period.[10] Telco, therefore, seeks Commission authority to pay payphone service providers at a per-call rate of $.35 instead of paying its proportional share of the monthly flat-rate, as set forth in the *Payphone Order*, for the entire interim period of November 6, 1996 through October 6, 1997.[11] In support of its request, Telco asserts that the Common Carrier Bureau granted similar waivers from the obligation to pay compensation on a flat-rate basis for access code calls in another proceeding.[12]

Interested parties should file an original and four copies[13] of comments on Telco's petition by June 3, 1997, and of reply comments by June 13, 1997, with the Secretary, Federal Communications Commission, Room 222, 1919 M Street, N.W., Washington, D.C. 20554. In

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[4] From November 5, 1996 until October 6, 1997.

[5] *Payphone Order* at para. 119.

[6] *Reconsideration Order* at para. 129.

[7] Telco Petition at 1. Telco's petition does not reference a mutual agreement to pay per-call compensation between it and any payphone service providers. *See Reconsideration Order* at para. 129.

[8] *Id.* at 4-5.

[9] *Id.* at 7-8.

[10] *Id.* at 1-2.

[11] *Id.*

[12] *Id.* at 6 (citing Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, Memorandum Opinion and Order, CC Docket No. 91-35, 10 FCC Rcd 1590 (Com. Car. Bur 1994); Memorandum Opinion and Order, 10 FCC Rcd 5490 (Com. Car. Bur. 1995); Memorandum Opinion and Order, DA 97-482 (rel. March 7, 1997)).

[13] In accordance with Section 1.51(c) of the Commission's rules, 47 C.F.R. § 1.51(c).

addition, one copy should be sent to Chief, Enforcement Division, Common Carrier Bureau, Mail Stop 1600A, Room 6008, 2025 M Street, N.W., Washington, D.C. 20554, and one copy should be sent to the Commission's contractor for public service records duplication, International Transcription Service, Inc. (ITS), 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Telco's petition will be available for public inspection during regular business hours in the FCC Reference Room, Room 239, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554, or through ITS at 202/857-3800.

This proceeding will be treated as a non-restricted notice and comment proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules.[14]

For further information, contact Greg Lipscomb or Michael Carowitz, Enforcement Division, Common Carrier Bureau, 202/418-0960.

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[14] *See generally* 47 C.F.R. §§ 1.1202, 1.1203, and 1.1206(a).