



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Fax-On-Demand 202 / 418-2830
TTY 202 / 418-2555
Internet: <http://www.fcc.gov>
ftp fcc.nov

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SUMMARY OF ENFORCEMENT BUREAU'S MULTI-PARTY INITIAL MEETING REGARDING PROCEDURES FOR RESOLVING END USER COMMON LINE INFORMAL COMPLAINTS

This Public Notice summarizes the key points raised by Enforcement Bureau ("Bureau") staff at the multi-party May 23, 2001 Initial Meeting regarding informal complaints filed by independent payphone providers ("IPPs") alleging improper assessment of end user common line ("EUCL") charges by certain local exchange carriers ("LECs"). At that meeting, the Bureau initiated preliminary procedures to resolve these numerous disputes. In addition, this Notice memorializes and modifies the Bureau's schedule for information exchanges between the parties and participation in settlement discussions facilitated by the Bureau.

At the outset of the Initial Meeting, the Bureau noted that the fair and efficient resolution, whether through adjudication or settlement, of these cases is a high priority. The Bureau, therefore, is evaluating the proposals submitted by parties, in response to the Bureau's May 2, 2001 Public Notice (DA 01-1127), to facilitate an effective and efficient process to resolve the EUCL informal complaints in the public interest. The Bureau further emphasized that, while it moves forward with establishing procedures for efficient processing of the formal complaints that will be filed, parties should continue to explore settlement of their disputes.

Concurrent with its development of a framework for formal adjudication of the disputes at issue, the Bureau will also facilitate their informal resolution by assisting in settlement discussions. Because the exchange of information is central to resolving the complaints at issue, the Bureau encouraged parties to exchange full information regarding damages as part of the settlement process. In that regard, the Bureau noted that, if damages claims are adjudicated, it is likely that the provision of such information would be required pursuant to requests for discovery.

Settlement Efforts

To initiate Bureau-facilitated settlement discussions, the Bureau has divided parties who wish to settle into two groups.

Group 1:

Group 1 is comprised of Complainants who currently possess documentation sufficient on its face to show the EUCL charges they paid and the number of their public payphones during the time period at issue.

We encourage Group 1 Complainants to pursue settlement discussions as soon as possible.

Given the date of issuance of this Public Notice, we modify the initial deadlines for Group 1 Complainants.

By **Wednesday, June 6, 2001** (rather than Friday, June 1, 2001 as noted at the Initial Meeting), Complainants who identify themselves to be in Group 1 and who wish to engage in Bureau-facilitated settlement discussions, should contact their respective Defendants and inform them that they seek to explore settlement of their dispute.

Also, by **Wednesday, June 6, 2001** (rather than Friday, June 1, 2001 as noted at the Initial Meeting), Group 1 Complainants should inform the Bureau regarding their desire to pursue facilitated settlement discussions via electronic mail, with "Group 1" noted in the subject line at: EUCLMTG@fcc.gov. They should also provide the following information: (1) the names of the informal Complainants, (2) the names of the Defendants, (3) type of information in their possession that is relevant to settlement discussions, and (4) the date the Complainants contacted the Defendants.

On **Wednesday, July 11, 2001**, Commission staff will host an omnibus meeting for Group 1 Complainants and their respective Defendants to discuss how the Commission may assist in facilitating settlement. More information about the location and time for this meeting will be provided subsequently.

By **Tuesday, July 3, 2001**, those parties wishing to participate in the July 11 settlement meeting should contact the Bureau via email at EUCLMTG@fcc.gov. They should note "Group 1" in the subject line of the email and state the names of the parties and associated case number. To assist the Bureau in preparing for this Group 1 meeting, parties are also asked to provide in this email to the Bureau: (1) a summary of the nature of the discussions they have had, without including any confidential details; (2) a summary of the type of information exchanged; (3) the issues that are outstanding between the parties and any strategies the parties are considering to resolve them.

Group 2:

Group 2 is comprised of Complainants who do not currently possess documentation sufficient on its face to show the amount of the EUCL charges they paid and/or the number of their public payphones during the time period at issue.

Bureau staff also encourages those parties whose cases fall within "Group 2" to pursue settlement discussions promptly. To the extent document retention is perceived as a "stumbling block" to individual settlement of these cases, Bureau staff has encouraged the parties to consider some form of omnibus settlement.

By **Wednesday, July 25, 2001**, the Bureau asks that Complainants who identify themselves to be in Group 2, and who wish to engage in settlement discussions, should contact their respective Defendants and inform them that they seek to explore settlement of their dispute.

Also by **Wednesday, July 25, 2001**, Group 2 Complainants should notify the Bureau regarding their desire to pursue Bureau-facilitated settlement discussions via electronic mail, with "Group 2" noted in the subject line at: EUCLMTG@fcc.gov. They should also provide the following information: (1) the names of the informal Complainants, (2) the names of the Defendants, (3) information in their possession that is relevant to settlement discussions, and (4) the date Complainants contacted the Defendants.

On **Wednesday, August 8, 2001**, Commission staff will host an omnibus meeting among Group 2 Complainants and their respective Defendants to facilitate possible settlements.

By **Wednesday, August 1, 2001**, those parties wishing to participate in the August 8 omnibus meeting for Group 2 Complainants should contact the Bureau via email at EUCLMTG@fcc.gov. They should note "Group 2" in the subject line of the email and state the names of the parties and associated case number. Parties are also asked to provide in that email: (1) a summary of the nature of the discussions they have had, without including any confidential details; (2) a summary of the type of information exchanged, (3) the issues that are outstanding between the parties and any strategies the parties are considering to resolve them.

Formal Adjudication

As an initial matter, consistent with its determinations in the *C.F. Communications Corp. et al. v. Century Telephone of Wisconsin, Inc. et al.* proceeding,¹ the Bureau intends to limit its adjudication to issues of liability and refer damages claims to an administrative law judge. Because it is unlikely that any discovery is needed for the liability determinations, the Bureau anticipates that the liability phase of this proceeding will move quickly.

At the Initial Meeting, the Bureau presented several proposals to process the formal complaints in an expedited manner. Currently, the Bureau is focusing on the following measures to create an efficient process:

Consolidation: The Bureau stated that it was considering some form of consolidation, either by complainant, defendant, or complainant's counsel.

Speedy Adjudication of Liability: Prior to the filing of formal complaints, the Bureau proposes to issue a Public Notice soliciting comment on the issues that should be briefed. The Bureau would then issue an order initiating a rapid briefing cycle, in which Complainants would file an initial brief along with their Complaints. Defendants would then file a responsive brief with their Answers. Complainants would file a closing brief with their Replies.

Waiver of Filing Fees: The Bureau is considering whether the filing fees should be reduced in some manner, given the consolidation that is likely to occur.

The Bureau has not made any determinations as yet, and, thus, strongly encourages all parties to present their thoughts on these proposals, as well as other proposals previously submitted by parties to these proceedings. As the Bureau seeks to expeditiously establish adjudication procedures for these complaints, the Bureau encourages all parties to present their views on procedural issues at this juncture. Previous proposals from the parties were distributed via email on May 15, 2001. Parties who have not

¹ The Bureau recently consolidated all outstanding formal complaints for a hearing on monetary damages before an administrative law judge. See *C.F. Communications Corp. et al. v. Century Telephone of Wisconsin, Inc., et al.*, Hearing Designation Order, DA 01-1044, (E.B. released April 24, 2001); see also *C.F. Communications Corp. et al. v. Century Telephone of Wisconsin, Inc., et al.*, Memorandum Opinion and Order on Remand, 15 FCC Rcd 8759 (2000) ("*Liability Order*") (discussing the improper assessment of EUCL charges on independent payphone providers); *C.F. Communications Corp., et al. v. Century Telephone of Wisconsin, Inc., et al.*, Order on Reconsideration, 15 FCC Rcd 22906 (2000) ("*Reconsideration Order*"). The *Liability Order* is currently on appeal. See *Bell Atlantic Telephone Companies, et al. v. FCC*, No. 00-1207 (D.C. Cir. filed May 15, 2000).

seen these proposals should contact the Bureau at EUCLQUIK@fcc.gov. We also encourage all parties to consider and present additional proposals for efficient resolution of these cases. Proposals and feedback should be submitted to EUCLLIST@FCC.gov by **Friday, June 15, 2001**.

At the Initial Meeting, the Bureau provided all attendees with copies of: (1) the Common Carrier Bureau's *Waiver Order*,² (2) the *C.F Communications Hearing Designation Order*, (3) the Commission's current list of "Open and Pending" informal EUCL complaints,³ and, (4) lists of informal Complainants and Defendants that were created by and submitted by the parties prior to the Initial Meeting. Please notify the Bureau with corrections or additions to these lists via electronic mail at: EUCLQUIK@fcc.gov.

On May 29, 2001, the Bureau distributed a service list of all the parties of whom it is currently aware. The Bureau requests that any corrections or additions to this service list be submitted via email to: EUCLMTG@fcc.gov. Those who are not currently on the service list, but believe they should be, should also contact us at the above email address.

Please direct all questions to Bureau staff at: EUCLQUIK@fcc.gov.

By the Deputy Chief, MDRD, Enforcement Bureau.

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² *Informal Complaints Filed By Independent Payphone Service Providers Against Various Local Exchange Carriers Seeking Refunds on End User Common Line Charges*, File No. 89-170, DA 99-1854, Order, Common Carrier Bureau (C.C.B. rel. Sept. 10, 1999) ("Waiver Order").

³ The Bureau's current records show that approximately 2,300 parties filed informal complaints in this matter. The Bureau is continuing to check Commission databases for the existence of additional parties.