

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

|   |   |                      |
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| In the Matter of                            | ) |                      |
|   | ) | WC Docket No. 11-141 |
| Petition of GCB Communications, Inc. d/b/a  | ) |                      |
| Pacific Communications and Lake Country     | ) |                      |
| Communications, Inc. for Declaratory Ruling | ) |                      |

**MEMORANDUM OPINION AND ORDER ON REVIEW**

**Adopted: February 22, 2013**

**Released: February 27, 2013**

By the Commission: Commissioner Pai issuing a statement.

1. The Commission has before it an Application for Review filed on July 30, 2012, by U.S. South Communications, Inc. (U.S. South).<sup>1</sup> U.S. South seeks review of a June 29, 2012 *Declaratory Ruling* by the Chief of the Wireline Competition Bureau (the Bureau) addressing a petition for declaratory ruling filed by GCB Communications, Inc. d/b/a Pacific Communications and Lake Country Communications, Inc. (GCB) in connection with a primary jurisdiction referral from the United States District Court for the District of Arizona.<sup>2</sup> In the *Declaratory Ruling*, the Bureau clarified that under section 276 of the Communications Act of 1934, as amended, (the Act)<sup>3</sup> and our implementing orders and rules, a Completing Carrier's obligation to pay per-call payphone compensation is not contingent on whether it receives payphone-specific coding digits.<sup>4</sup> With the exception of the issues we believe warrant

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<sup>1</sup> *Petition of GCB Communications, Inc. d/b/a Pacific Communications and Lake Country Communications, Inc. for a Declaratory Ruling*, WC Docket No. 11-141, Application of U.S. South for Full Commission Review (filed July 30, 2012) (*Application for Review*).

<sup>2</sup> *Petition of GCB Communications, Inc. d/b/a Pacific Communications and Lake Country Communications, Inc. for a Declaratory Ruling*, WC Docket No. 11-141, Declaratory Ruling, 27 FCC Rcd 7361 (Wireline Comp. Bur. 2012) (*Declaratory Ruling*); see also *Petition of GCB Communications, Inc. d/b/a Pacific Communications and Lake Country Communications, Inc. for a Declaratory Ruling to Clarify Payphone Service Providers' Responsibilities with Respect to the Transmission of Payphone-Specific Coding Digits in Order to Receive Per-Call Dial-Around Compensation for Completed Calls*, WC Docket No. 11-141 (filed Aug. 9, 2011).

<sup>3</sup> 47 U.S.C. § 276.

<sup>4</sup> *Declaratory Ruling*, 27 FCC Rcd at 7361-62, paras. 1-3. A Completing Carrier is "a long distance carrier or switch-based long distance reseller that completes a coinless access code or subscriber toll-free payphone call or a local exchange carrier [LEC] that completes a local, coinless access code or subscriber toll-free payphone call." 47 C.F.R. § 64.1300(a). "Payphone-specific coding digits provide a method for LECs to transmit, with the automatic number identification (ANI), information (coding number or digits) identifying a call as having been placed specifically from a payphone." *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Memorandum Opinion and Order, 13 FCC Rcd 4998, 4998, para. 1 n.2 (Wireline Comp. Bur. 1998) (*1998 Coding Digits Order*).

further discussion, which we address below, petitioner either fails to persuade us that the *Declaratory Ruling* was wrong or improperly raises new issues that were not first presented to the Bureau.<sup>5</sup>

2. U.S. South argues that the *Declaratory Ruling* interprets the Commission's payphone compensation rules in such a way as to overrule the Commission's settled decisions by making payphone compensation a matter of strict liability for carriers.<sup>6</sup> We disagree. The Bureau properly articulated existing requirements.<sup>7</sup> In 1996, when Congress enacted section 276, the Commission began implementing policies to "establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone . . . ." <sup>8</sup> The Commission defined a completed call as one "that is answered by the called party."<sup>9</sup> We recognize, as do the parties in this proceeding, that failures in Flex ANI transmission may sometimes occur.<sup>10</sup> U.S. South argues that it should not owe compensation in those instances because it would be without "fault, notice or knowledge" concerning liability for those amounts.<sup>11</sup> However, even in instances of Flex ANI transmission failure, a service was rendered and liability incurred when the Completing Carrier's customer made a call from a payphone.<sup>12</sup> A Completing Carrier is the only entity with knowledge—or the ability to obtain information—as to whether its customer made a call from a payphone and whether the call was "completed and therefore compensable (via answer supervision)."<sup>13</sup>

3. U.S. South incorrectly asserts that there are no legal or factual defenses available to Completing Carriers facing claims for compensation.<sup>14</sup> Completing Carriers do have the ability to raise

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<sup>5</sup> U.S. South makes the same arguments that were properly considered and rejected in the *Declaratory Ruling* and we deny those on the merits. For example, U.S. South states that: (1) the Commission has repeatedly reaffirmed that flexible automatic numbering identification (Flex ANI), where available, must be transmitted with every payphone call; (2) carriers were given the ability to utilize Flex ANI as a means of per-call tracking and compensation and therefore must be able to rely upon the presence or absence of coding digits; and (3) payphone service providers (PSPs) have the ability to monitor or confirm that Flex ANI is being transmitted by LECs with their payphone calls. *Application for Review* at 11–25.

<sup>6</sup> *Application for Review* at 3.

<sup>7</sup> See *Declaratory Ruling*, 27 FCC Rcd at 7378–79, para. 36.

<sup>8</sup> 47 U.S.C. § 276(b)(1)(A).

<sup>9</sup> See *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 96-128, 91-35, Report and Order, 11 FCC Rcd 20541, 20573, para. 63 (1996) (*First Payphone Order*).

<sup>10</sup> See *Declaratory Ruling*, 27 FCC Rcd at 7376, para. 31 ("We recognize that coding digit failures and mistakes will occur. However, if a Completing Carrier's customer places a call on the PSP's payphone, the legal obligation to compensate the PSP occurs when the called party answers the call. The Completing Carrier must ensure that it compensates for all completed calls.").

<sup>11</sup> U.S. South Reply at 2–3 (stating that "monetary obligations applicable without regard to fault, notice or knowledge and that admit of no legal defense" constitute strict liability).

<sup>12</sup> *Declaratory Ruling*, 27 FCC Rcd at 7372, para. 23.

<sup>13</sup> *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Report and Order, 18 FCC Rcd 19975, 19991, para. 35 (2003) (*2003 Tollgate Order*).

<sup>14</sup> U.S. South Reply at 2–3.

legal and/or factual defenses to claims for compensation for dial-around calls or to otherwise protect their interests. For example, a Completing Carrier could examine its records and determine that those calls were not “completed” (*i.e.*, not answered by the called party).<sup>15</sup> Under section 64.1310 of the Commission’s rules, Completing Carriers have the right to verify payphone ANIs by requesting information from the LEC.<sup>16</sup> As explained in the *Declaratory Ruling*, if the Flex ANI transmission failure occurred at either the LEC or the Intermediate Carrier level, the Completing Carrier has a business relationship with those carriers through which it can protect its interests, including the ability to seek compensation from those carriers for the failure to transmit Flex ANI.<sup>17</sup> A Completing Carrier is also protected against late-filed claims for payphone compensation by the two-year statute of limitations in section 415 of the Act.<sup>18</sup>

4. U.S. South’s argument amounts to a request that PSPs bear the cost of completed calls when Flex ANI digits are not transmitted. For reasons detailed in the *Declaratory Ruling*, we reject that position.<sup>19</sup> First, it is inconsistent with Commission decisions.<sup>20</sup> Second, it would shift the burden onto the party that has no ability to track calls and away from the only party that has such ability.<sup>21</sup> A Completing Carrier that wants to guard against claims for payphone compensation based on Flex ANI transmission failures could, for example, establish a tracking system that relies not only on Flex ANI but

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<sup>15</sup> *Declaratory Ruling*, 27 FCC Rcd at 7363, para. 5.

<sup>16</sup> 47 C.F.R. § 64.1310(d)–(f).

<sup>17</sup> *Declaratory Ruling*, 27 FCC Rcd at 7379, para. 35. U.S. South also argues that requiring any payphone compensation irrespective of the transmission of payphone coding digits would make coding digits irrelevant, stranding investment, and nullifying the per-call compensation plan. *Application for Review* at 19. We find this argument unpersuasive. Coding digits remain a useful tool that Completing Carriers can use to track calls, even if there can be instances where they need to be supplemented with additional information to comply with the payphone compensation rules. Completing Carriers may rely on any method to track payphone calls, but also have the option to reach an alternative compensation arrangement (ACA) with PSPs. See 47 C.F.R. §§ 64.1310(a) and 64.1320(a); *2003 Tollgate Order*, 18 FCC Rcd at 19994, 2000–01, paras. 39, 48. The Bureau interpreted the Commission’s rules properly in the *Declaratory Ruling*. The Commission’s rules give Completing Carriers various options to comply with our rules. However, should there be evidence of disruption in the payphone industry, we would consider reexamining the payphone compensation rules through a rulemaking.

<sup>18</sup> See 47 U.S.C. § 415.

<sup>19</sup> See, e.g., *Declaratory Ruling*, 27 FCC Rcd at 7378–79, paras. 34, 36.

<sup>20</sup> See *2003 Tollgate Order*, 18 FCC Rcd 19975; *Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Order on Reconsideration, 19 FCC Rcd 21457 (2004) (*2004 Tollgate Reconsideration Order*) (placing the tracking and compensation obligations on Completing Carriers); see also, e.g., *First Payphone Order*, 11 FCC at 20575, para. 66 (indicating that coding digits are simply a method to “assist in identifying [payphones] to compensation payors”); *1998 Coding Digits Order*, 13 FCC Rcd at 5009, 5048, paras. 17, 94 (same); *2003 Tollgate Order*, 18 FCC Rcd at 19994, para. 39 (stating that a Completing Carrier may use the technology of its choice to track coinless payphone calls to completion).

<sup>21</sup> *2003 Tollgate Order*, 18 FCC Rcd at 19988, para. 27 (stating that Completing Carriers “are the primary economic beneficiaries of coinless payphone calls transferred to their switch and because they possess the most accurate call completion information for such calls, it is appropriate as both a legal and policy matter to assign them liability under section 276 to fairly compensate the PSPs.”); *Declaratory Ruling*, 27 FCC Rcd at 7374, para. 26 (“The Commission has never said that Completing Carriers are excused from compensating PSPs for completed calls that are not accompanied by Flex ANI or ANI ii coding digits. That approach could lead to an inequitable result because the PSP has the least visibility into and control over the network.”).

also checks its call records against the lists of payphone ANIs to determine whether the Completing Carrier is completing calls from payphones that are not being tracked by Flex ANI.<sup>22</sup> A Completing Carrier is not required to pay for uncompleted calls; but, when presented with a claim that it has failed to pay required compensation, a Completing Carrier has the ability and the obligation to show when a call was not completed. The mere fact that the Flex ANI digits were not transmitted does not absolve the Completing Carrier's obligation to compensate for completed calls.<sup>23</sup>

5. Upon review of the remainder of the *Application for Review* and the entire record, with respect to the issues previously presented to the Bureau, we conclude that U.S. South has failed to demonstrate any error in the *Declaratory Ruling*. The Bureau properly decided the matters raised, and we uphold the decision for the reasons stated in its *Declaratory Ruling*. To the extent that U.S. South argues that the Bureau lacked authority<sup>24</sup> to issue the *Declaratory Ruling*, our affirmation of the decision renders such objection moot.<sup>25</sup>

6. To the extent that the *Application for Review* and supporting comments raise new arguments not previously presented to the Bureau, those arguments are barred by 47 C.F.R. § 1.115(c).<sup>26</sup> Among other things, APPPA asserted in a recent *ex parte* that, although adjudicatory decisions ordinarily apply retroactively, if the Commission affirms the Bureau's holding, it would cause "manifest injustice"

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<sup>22</sup> 2003 *Tollgate Order*, 18 FCC Rcd at 19993, para. 38 ("We require that the comprehensive call tracking system should analyze the SBR switch data and produce accurate reports on payphone originated completed calls."); *Declaratory Ruling*, 27 FCC Rcd at 7373, para. 24; 47 C.F.R. § 64.1310(d)-(f); see also APCC and GCB Joint Opposition at 3, n.6 (stating that this process can be "done by computer processing of the two sets of data . . . comparing the ANIs in the call detail records to the ANIs on the LEC payphone list.").

<sup>23</sup> 47 U.S.C. § 276(b)(1) ("[T]he Commission shall take all actions necessary (including any reconsideration) to prescribe regulations that— (A) establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone . . ."); see also GCB Reply Comments to Petition for Declaratory Ruling at 7, n.12 ("[U.S. South] admitted in this case that its contracts with the Intermediate Carrier, Level 3, did not require Level 3 to transmit payphone-specific coding digits to [U.S. South], that [U.S. South] had not even inquired of Level 3 whether Level 3 had ordered payphone-specific coding digits from the LEC, that U.S. South had done no testing with Level 3 to verify that U.S. South was receiving coding digits on all payphone calls, and that it never requested that Level 3 send it payphone-specific coding digits, despite the fact that U.S. South's entire ability to accurately track payphone calls depended on receipt of the digits."); APCC and GCB Joint Opposition at 21, n.35.

<sup>24</sup> See, e.g., *Application for Review* at 2 (arguing that "as a matter of both comity and Commission authority, decisions in 'primary jurisdiction' cases referred from the federal courts should be made by the agency and its members themselves").

<sup>25</sup> See *Motions for Declaratory Rulings Regarding Commission Rules and Policies for Frequency Coordination in the Private Land Mobile Radio Services*, Memorandum Opinion and Order, 14 FCC Rcd 12752, 12758, para. 12 (1999).

<sup>26</sup> For example, APPPA asserts that: "In the wake of the GCB Order, some APPPA members already have received compensation claims for large numbers of allegedly payphone-originated calls that were delivered without coding digits. These payphone operators have shown no willingness to negotiate towards a viable solution to allow Prepaid Service Providers to offer their customers a valuable product that is economically viable . . . . A clear going-forward regulatory solution is needed because both the payphone industry and the prepaid calling industry are characterized by large numbers of small companies operating on thin margins and lacking good access to information." APPPA Reply at 4-5. This constitutes a new argument that we dismiss as procedurally improper. To the extent APPPA raises a policy issue, it is more appropriately addressed in a rulemaking proceeding.

to give the ruling retroactive effect.<sup>27</sup> While we dismiss this argument as barred by section 1.115(c), we independently and alternatively find it unpersuasive on the merits.<sup>28</sup> As a threshold matter, if we applied our decision prospectively only, PSPs would not be compensated for completed calls and would be denied compensation owed to them under section 276 and established payphone compensation precedent.<sup>29</sup> Balanced against that are only speculative harms asserted by APPPA.<sup>30</sup> Although APPPA claims prepaid calling card providers will be “forced” to recover these increased costs from future customers, nothing in our rules requires them to do so,<sup>31</sup> and APPPA’s estimates that surcharges will

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<sup>27</sup> Letter from L. Charles Keller, Wilkinson Barker Knauer LLP, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-141, at 2 (filed Jan. 28, 2013) (APPPA Jan. 28, 2013 *Ex Parte* Letter); Letter from L. Charles Keller, Wilkinson Barker Knauer LLP, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-141 (filed Feb. 15, 2013) (APPPA Feb. 15, 2013 *Ex Parte* Letter).

<sup>28</sup> See Letter from Albert H. Kramer, PLLC, American Public Communications Council, Inc., and APCC Services to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-141, at 1 (filed Feb. 12, 2013) (APCC Feb. 12, 2013 *Ex Parte* Letter) (“Neither U.S. South nor APPPA nor any other commenter raised the issue of retroactivity in the proceeding below.”).

<sup>29</sup> See *supra* paras. 2–4; 47 U.S.C. § 276(b)(1)(A) (mandating that the Commission’s rules ensure that PSPs are “fairly compensated for each and every completed intrastate and interstate call using their payphone . . . .”); see also *NetworkIP v. FCC*, 548 F.3d 116, 123 (D.C. Cir. 2008) (observing “[t]hat NET has an unwinnable case under the retroactivity line is obvious; the correctness of NET’s interpretation was anything but ‘settled’, and many PSPs will be harmed if NET escapes liability.”); *Qwest v. FCC*, 509 F.3d 531, 540 (D.C. Cir. 2007) (observing that the Commission may not ignore the impact on parties of *failing* to apply adjudicatory decisions retroactively in finding no manifest injustice in retroactively applying a declaratory ruling holding that prepaid calling card providers were subject to access charges).

<sup>30</sup> We thus find the circumstances here distinguishable from those in the *Arya Order on Reconsideration* relied on by APPPA. See APPPA Jan. 28, 2013 *Ex Parte* Letter at 2-3; APPPA Feb. 15, 2013 *Ex Parte* Letter at 3; *Federal-State Joint Board on Universal Service; Access Charge Reform; Universal Service Contribution Methodology; Petition for Reconsideration and Clarification of the Fifth Circuit Remand Order of BellSouth Corporation; Petition for Reconsideration of the Fifth Circuit Remand Order of Arya Communications International Corporation; Joint Request for Review of Decision of Universal Service Administrator of Cable Plus L.P. and MultiTechnology Services, L.P.; Request for Review of Pan Am Wireless, Inc., and Request for Review of USA Global Link, Inc.*, WC Docket No. 06-122, CC Docket Nos. 96-45, 96-262, Order on Reconsideration, 23 FCC Rcd 6221 (2008) (*Arya Order on Reconsideration*). The *Arya Order on Reconsideration* involved a Commission finding of certain harm to current universal service contributors if they were required to pay an estimated \$1.6 billion to address improper universal service contributions made a decade earlier, with only speculative benefits to past universal service contributors if the decision applied retroactively—which the Commission found inconsistent with the objectives of section 254 of the Act. See generally *Arya Order on Reconsideration*, 23 FCC Rcd at 6227–29, paras. 15–20; see also APCC Feb. 12, 2013 *Ex Parte* Letter at 5, n.10. Here, by contrast, APPPA cites speculative harms from retroactivity, balanced against clear benefits to PSPs through compensation for completed calls within the two-year statute of limitations and the advancement of section 276(b)(1)(A) of the Act.

<sup>31</sup> *First Payphone Order*, 11 FCC Rcd at 20584, para. 83 (“Although some commenters would have the Commission limit the ways in which carriers could recover the cost-of per-call compensation, we conclude that the market place will determine, over time, the appropriate options for recovering these costs. In addition, under the carrier-pays system, individual carriers, while obligated to pay a specified per-call rate to PSPs, have the option of recovering either a different amount from their customers, including no amount at all.”); see also APCC Feb. 12, 2013 *Ex Parte* Letter at 4–5 (stating that “all retroactive charges imposed on carriers necessarily burden a later class of users than the users whose carriage caused the liability. No carrier has a static class of users.”).

likely increase from \$0.99 today to \$1.30–\$1.50<sup>32</sup> are based on assertions of a single prepaid calling card provider.<sup>33</sup> With respect to the decision’s claimed impact on incentives by PSPs to work with Completing Carriers on a solution to the “current problems with the reliability of the transmission of payphone-specific coding digits,”<sup>34</sup> APPPA does not explain why *retroactive* application, as opposed to the decision generally, has any significant impact on the PSPs’ incentives to work together on an industry-wide solution.<sup>35</sup> APPPA goes a step further and claims that “[a]bsent a solution to the signaling problem, prepaid providers are even more likely to block payphone-originated calls. . . .”<sup>36</sup> Under our rules, Completing Carriers not only have the ability to rely on any method to track payphone calls, but also have the option to reach an ACA with PSPs.<sup>37</sup> In addition, we note that Completing Carriers do not need to reach individual agreements with each PSP in order to reach an ACA.<sup>38</sup> Consequently, we conclude that retroactive application of this decision will not work a manifest injustice.

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<sup>32</sup> APPPA Jan. 28, 2013 *Ex Parte* Letter at 2 & Attach. 2 at 1; *see also* APPPA Feb. 15, 2013 *Ex Parte* Letter at 2.

<sup>33</sup> *See* APCC Feb. 12, 2013 *Ex Parte* Letter at 6, n.15 (stating “[t]he only source of the numbers is a single prepaid provider’s estimate, including his estimate of the current industry average payphone surcharge. Such a single data point’s reliability is inherently suspect.”); *see also* Letter from Albert H. Kramer, PLLC, American Public Communications Council, Inc., and APCC Services to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-141, at 2 (filed Feb. 22, 2013) (APCC Feb. 22, 2013 *Ex Parte* Letter).

<sup>34</sup> APPPA Jan. 28, 2013 *Ex Parte* Letter at 3. We also note that the potential for retroactive payments is limited as PSPs are required to submit claims for payment within the two-year statute of limitation set forth in section 415 of the Act. 47 U.S.C. § 415. Any period of uncertainty is now less than two years, because several months have lapsed since the Bureau released the *Declaratory Ruling*. *See* APCC Feb. 12, 2013 *Ex Parte* Letter at 4; APCC Feb. 22, 2013 *Ex Parte* Letter at 4.

<sup>35</sup> *See* APCC Feb. 12, 2013 *Ex Parte* Letter at 3, n.7 (“To the extent that, as APPPA argues . . . PSPs and carriers need to work together to resolve coding digits issues, the presence of the obligation to pay for past calls will not affect any cooperation that will or will not occur to resolve the coding digit issues going forward. The obligation to pay for past calls remains no matter what arrangements the parties work out for the future. It has nothing to do with “skewing” the parties negotiating power in a discussion about the future.”).

<sup>36</sup> APPPA Jan. 28, 2013 *Ex Parte* Letter at 3.

<sup>37</sup> *See supra* note 17; 47 C.F.R. §§ 64.1310(a) and 64.1320(a); 2003 *Tollgate Order*, 18 FCC Rcd at 19994, 2000–01, paras. 39, 48. APPPA’s claims that blocking of payphone calls will deny PSPs significant revenues also seems at odds with its claim that PSPs will be unwilling to negotiate. APPPA Jan. 28, 2013 *Ex Parte* Letter at 3; APCC Feb. 12, 2013 *Ex Parte* Letter at 3, n.7 (stating “APCC has repeatedly said it is anxious to arrive at alternative payment arrangements with all carriers.”)

<sup>38</sup> *See 2004 Tollgate Reconsideration Order*, 19 FCC Rcd at 21465–66, paras. 14–16; *id.* at 21465, para. 15 (stating that “it would be unduly burdensome to require a Completing Carrier to obtain an affirmative act of approval from each PSP to an ACA” and “a Completing Carrier must give the PSP adequate notice of an ACA prior to its effective date with sufficient time for the PSP to object to the ACA.”). The Commission provided an example in the 2004 *Tollgate Reconsideration Order* of an interexchange carrier (IXC) (on behalf of the Completing Carrier) placing notice of an ACA on an industry clearinghouse website. *Id.* at 21465–66, para. 15. While the specific example featured an IXC, the underlying principle—that Completing Carriers may enter into an ACA without individual negotiations as long as advance notice is provided with sufficient time for the PSP to object—was not limited and would pertain to all Completing Carriers. *See, e.g.,* APPPA Reply at 3 (claiming that prepaid calling providers must “attempt to negotiate multiple [ACAs] with a multitude of PSPs.”).

7. Accordingly, IT IS ORDERED that (1) the *Application for Review* IS DISMISSED, pursuant to section 1.115(c) of the Commission's rules, 47 C.F.R. § 1.115(c), to the extent that it relies on questions of fact or law not previously presented to the Bureau, and (2) the *Application for Review* otherwise IS DENIED, pursuant to section 1.115(g) of the Commission's rules, 47 C.F.R. § 1.115(g).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

## APPENDIX A

## Comments/Oppositions

| <u>Committer/Opponent</u>   | <u>Abbreviation</u> |
|---|---------------------|
| American Public Communications Council, APCC Services, Inc., and Petitioners GCB Communications, Inc., d/b/a Pacific Communications and Lake Country Communications, Inc. | APCC and GCB        |

## Replies

| <u>Replies</u>                         | <u>Abbreviation</u> |
|--|---------------------|
| American PrePaid Phonecall Association | APPPA               |
| U.S. South Communications Inc.         | U.S. South          |

**STATEMENT OF  
COMMISSIONER AJIT PAI**

Re: *Petition of GCB Communications, Inc. d/b/a Pacific Communications and Lake Country Communications, Inc. for Declaratory Ruling*, WC Docket No. 11-141.

Incumbent local exchange carriers (ILECs) and intermediate carriers send long-distance calls from payphones to long-distance carriers, who then send these calls to their destinations. In doing so, ILECs and intermediate carriers pass along “automatic number identification”—the unique fingerprint of a call, so to speak—including coding digits. When someone places a call from a payphone, coding digits help identify that call as having been placed specifically from a payphone. The question underlying today’s order is a bit technical and somewhat arcane: If a long distance call is made from a payphone, is the long-distance carrier that completes the call responsible for compensating a payphone service provider if the ILEC or intermediate carrier fails to deliver the appropriate coding digits? Our precedent says yes, as ably laid out in today’s order and the Wireline Competition Bureau’s declaratory ruling. I agree, and am thus voting to approve this item.

Looming on the horizon is another question: Does this identification-and-compensation scheme make sense anymore? Common sense says no, for at least two reasons. *First*, the requirement to transmit coding digits along with other automatic number identification is premised on the continued dominance of the public switched telephone network and the continued use of Signaling System No. 7 to set up calls over that network. But the number of access lines is steadily declining. And the network of the future—indeed, the network of today for many providers—is based on the Internet Protocol (IP), which frees providers from the less efficient signaling mechanisms of the past. As telephone operators transition their networks from time-division multiplexing to IP, the coding digit requirement is going to become increasingly burdensome and, many surmise, increasingly unlikely to work.

*Second*, the communications marketplace has changed dramatically since the Commission adopted the coding-digit requirement seventeen years ago. Back then, incumbents dominated local markets and could reasonably expect to recoup from their customers the cost of upgrading and maintaining the equipment needed to comply with this requirement. Now, incumbents face competition on all fronts and are mere middle-men in the transaction between completing carriers and payphone service providers, which renders outdated the one-sided, payphone-related regulatory burdens they face. Similarly, back then, most consumers had long-term relationships with their long-distance carriers, so if the coding digits did not transmit correctly, a carrier could bill its customer later for payphone use today.<sup>1</sup> Now, consumers increasingly use automatically decremented prepaid calling cards to make long-distance calls, so if the coding digits aren’t transmitted correctly, the provider *cannot* bill the customer for using a payphone—it’s now or never, as it were.

For these reasons, I hope we will soon consider revising our payphone compensation rules. Ensuring that payphone service providers are compensated for each and every completed call is not just fair, it is the law.<sup>2</sup> To stay true to that command, we must accept that the IP transition is underway and adapt our rules to the realities of the modern marketplace.

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<sup>1</sup> Cf. J. Wellington Wimpy, *Thimble Theatre* (Mar. 20, 1932) (“I’ll gladly pay you Tuesday for a hamburger today.”).

<sup>2</sup> See 47 U.S.C. § 276(b)(1)(A).