

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Modernization of Payphone Compensation Rules)	WC Docket No. 17-141
)	
Implementation of the Pay Telephone)	CC Docket No. 96-128
Reclassification and Compensation Provisions of)	
The Telecommunications Act of 1996)	
)	
2016 Biennial Review of Telecommunications)	WC Docket No. 16-132
Regulations)	

**COMMENTS OF
THE USTELECOM ASSOCIATION**

The USTelecom Association (USTelecom)¹ submits these comments in response to the Notice of Proposed Rulemaking and Order² adopted by the Federal Communications Commission (Commission or FCC) seeking comment on eliminating the annual audit requirement as well as making additional reforms to the payphone compensation rules in order to reflect the current payphone compensation ecosystem. While popular at one time, payphones have become virtually extinct since the current Commission rules were adopted, replaced by a myriad of new technologies. Consequently, USTelecom urges the Commission to eliminate 47 C.F.R. § 64.1320(f) relating to the annual payphone tracking system audit requirement; eliminate or significantly amend 47 C.F.R. § 64.1310(a)(3) relating to the requirement of a quarterly sworn statement by the Chief Financial Officer (CFO) of any carrier that completes calls originating from payphones (Completing Carrier); eliminate 47 C.F.R. §§ 64.1301(a-d) relating to expired

¹ USTelecom is the premier trade association representing service providers and suppliers for the telecom industry. Its diverse member base ranges from large publicly traded communications corporations to small companies and cooperatives – all providing advanced communications service to both urban and rural markets. USTelecom members provide a full array of services, including broadband, voice, data and video over wireline and wireless networks.

² *Modernization of Payphone Compensation Rules, et al.* Notice of Proposed Rulemaking and Order, WC Docket Nos. 17-141 and 16-132 and CC Docket No. 96-128, 32 FCC Red 5397 (Jun 22, 2017) (*Payphone Compensation NPRM*).

interim requirements; and eliminate 47 C.F.R. §§ 64.1320(a)-(e) and (g) relating to the initial payphone call tracking system audit and attendant requirements. USTelecom greatly appreciates that the Commission correctly perceived the current state of the payphone marketplace in waiving the 2017 and 2018 annual payphone tracking system audit while it conducts this proceeding.³ Now the Commission should make the removal of this requirement a permanent rule change.

I. THE COMMISSION SHOULD ELIMINATE ITS CURRENT ANNUAL AUDIT REQUIREMENT GIVEN THE DRAMATIC CHANGES IN THE PAYPHONE MARKETPLACE.

In its Payphone Compensation NPRM, the Commission seeks comments on its proposal to eliminate the annual audit requirement and associated reporting requirement in Section 64.1320(f) because significant changes in the payphone marketplace indicate that the benefits no longer justify the concomitant costs.⁴ Currently, a Completing Carrier must “undergo an [initial] audit of [its] §64.1310(a)(1) tracking system by an independent third party auditor... to determine whether the call tracking system accurately tracks payphone calls to completion.”⁵ In addition, on an annual basis thereafter, Section 64.1320(f) requires, among other things, a Completing Carrier to file an audit report prepared by an independent third-party auditor in order to verify ongoing compliance . For the following reasons, USTelecom supports the Commission’s proposal to remove the annual audit requirement as no longer warranted in light of today’s payphone marketplace.

Given the clear record evidence⁶ of the dramatic and continuing decline over the past decade in the number of payphone calls and even the number of operational payphone and/or payphone

³ Completing Carriers are required to engage an independent third party auditor to file with the FCC no later than July 1st annually and the report must verify either that: 1) no material change has been made to the Completing Carrier’s previous year’s system audit report, and it remains in compliance with the FCC’s requirements for such reports; or 2) any material changes that were made to the Completing Carrier’s system audit report remain in compliance with the FCC’s requirements for such reports.

⁴ See *Payphone Compensation NPRM* at 5399, ¶6.

⁵ 47 C.F.R. § 64.1320(a).

⁶ See *Payphone Compensation NPRM* at 5399, ¶7.

lines in service, it is unmistakable that the annual audit requirement provides benefits, if at all, to only a sparse few payphone service providers (PSPs). As the Commission has noted, the number of payphones has dropped precipitously in recent years, with fewer than 100,000 in use as of year-end 2016.⁷ As expected, this has caused a corresponding steep decline in the amount of per-call payphone compensation paid by Completing Carriers. Indeed, USTelecom's information is that, in some instances, the cost of the annual audit has already, or is about to, surpass the amount paid in per-call payphone compensation. In fact, USTelecom understands that it is increasingly difficult for some Completing Carriers to even find enough payphone transactions for audit statistical sampling.

The Commission goes on to ask whether there is any reason to expect a change in this downward trend of the payphone market.⁸ In the past, payphones played an important role in societal communications, and those circumstances may have justified the Commission's annual audit requirements. However, the current and predicted future penetration rate of mobile phones, mobile Internet usage, and connected devices in general preclude any reasonable expectation that the steep decline in the number of payphones and compensable payphone calls will reverse or even moderate. For example, mobile penetration rates show that, according to the FCC, as of mid-2016, there were more than 338 million mobile telephony subscriptions in the U.S.⁹ And according to the Pew Research Center, as of November 2016, 95 percent of U.S. adults owned a cellular phone.¹⁰ This ubiquitous mobile phone penetration places insurmountable competitive pressure on the payphone market. However, all the while, the burdensome annual audit requirement needlessly remains in place, to the benefit of perhaps only a

⁷ *See Id.*

⁸ *See Id.*

⁹ *See* "Voice Telephone Services: Status as of June 30, 2016, Industry and Analysis Division, Wireline Competitions Bureau Federal Communications Commission https://apps.fcc.gov/edocs_public/attachmatch/DOC-344500A1.pdf (Table 1) (last viewed Aug. 3, 2017).

¹⁰ *See* Pew Research Center, Institute for Technology, Mobile Worksheet, <http://www.pewinternet.org/fact-sheet/mobile/> (last viewed Aug. 3, 2017).

statistically small number of telephone calls. As a result, now is the time for the Commission to modernize its payphone compensation rules by granting relief from annual audits.

The Commission queries whether the annual audit and associated reporting requirement would have the benefit of increasing/maintaining completing carrier compliance.¹¹ The short answer is no. Sprint noted in its original waiver petition that it has not been able to any identify material changes to its tracking systems since the audit rule was imposed.¹² USTelecom concurs with this assertion and filed supporting comments explaining that it has been years since any audits have identified material changes to companies' payphone call tracking systems, and that this is largely due to the proficiencies in Completing Carriers' systems and the decline of the number and use of payphones.¹³

Moreover, as the Commission correctly notes, in the last several years, there have been virtually no informal or formal complaints filed at the Commission regarding compliance with the payphone compensation rules.¹⁴ This plainly signals that the payphone compensation process has "matured" over the years such that the bases for intractable disputes have virtually disappeared. Furthermore, the National Payphone Clearinghouse (NPC) serves as a long-term proxy for data compliance, payment remediation in some cases, and mediation of disputes if needed.¹⁵ The NPC updates information and provides the necessary data to Completing Carriers for compensation quarterly; and in that data, there are no recent examples of substantiated payment issues from payphone service providers (PSPs). Even more, Commission rules dictate a data retention period for this very reason.

¹¹ See *Payphone Compensation NPRM* at 5400, ¶10.

¹² See Sprint Petition for Waiver, CC Docket No. 96-128 (filed Apr. 7, 2017) at 3. (*Sprint Petition*).

¹³ See Letter from B. Lynn Follansbee, Vice President of Law & Policy, USTelecom to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-128 (filed Apr. 21, 2017).

¹⁴ See *Payphone Compensation NPRM* at 5400, ¶10.

¹⁵ NPC online landing page states, "The National Payphone Clearinghouse (NPC) has over fifteen years' experience in providing the service of dial-around compensation (DAC) to Inter-exchange Carriers (IXCs). Since its inception in 1992 as the first DAC clearinghouse, the NPC has remained an industry leader providing quality customer service to all of its clients and responding quickly to changes in the payphone compensation rules mandated by the FCC."

The foregoing evidence of continuous Completing Carrier compliance throughout a sharp decline in payphone use and compensation shows that continuing to mandate the time and expense of an annual audit requirement is unnecessary to protect the financial interests of the PSPs. As long as Completing Carriers are bound by Commission rules to compensate PSPs, Completing Carriers will maintain the carefully crafted tracking systems and network facilitation systems already developed and fine-tuned to ensure compliance with that obligation, notwithstanding the absence of an annual audit requirement.

II. THE COSTS OF COMPLIANCE WITH THE ANNUAL AUDIT REQUIREMENT ARE MATERIAL AND OUTWEIGH THE BENEFITS.

The Commission also seeks input on the costs of compliance.¹⁶ USTelecom agrees with Sprint and Cincinnati Bell that the costs of compliance with the payphone compensation rules -- such as labor, system updates (to more effectively track and properly compensate PSPs) and maintenance -- have likely increased over time.¹⁷ And even if it were true that the costs of compliance -- including audit fees -- have remained relatively stable, it is certainly correct that the pace of market decline far outstrips any trend in compliance costs, simply based on the massive decline in the number of payphones and compensable payphone calls.

In other words, as noted herein, there is clear evidence that the number of payphones has dramatically declined, yet the costs of performing the unchanged regulatory obligations have changed far less, if at all, because the requisite data systems, programs, network systems, and audit fees of Completing Carriers remain relatively fixed or include rising costs. Basic math demonstrates that the Commission's suppositions are correct that (i) the compliance costs per payphone and/or per compensable payphone call have steeply risen, and (ii) this steep rise is a powerful factor in the cost/benefit analysis supporting elimination of the annual audit requirement.

¹⁶ See *Payphone Compensation NPRM* at 5399-5400, ¶¶8-9.

¹⁷ See *Sprint Petition* at 2; Cincinnati Bell Any Distance, Inc. Petition for Waiver, CC Docket No. 96-128 (filed Apr. 25, 2017 at 3).

The foregoing discussion clearly demonstrates that the costs of the annual audit requirement far outweigh its benefits. Payphones have become a rarity and only continue to decline in number; Completing Carriers must expend material resources to comply with the annual audit requirement; and record evidence indicates overwhelmingly that Completing Carrier compliance with the Commission's payphone compensation rules does not depend on the continued existence of the annual audit requirement. Accordingly, the Commission should adopt its proposal to eliminate the annual audit requirement.

III. THE COMMISSION SHOULD ALSO ELIMINATE THE QUARTERLY CFO SWORN STATEMENT REQUIREMENT, OR AT LEAST ADOPT A MUCH LESS BURDENSOME ALTERNATIVE.

The Commission also asks whether it should replace the annual audit requirement with a less burdensome requirement such as an annual self-certification that would not only replace the annual audit requirement but also the quarterly CFO sworn statement requirement under Section 64.1310(a)(3).¹⁸ The Commission should eliminate the quarterly CFO sworn statement requirement for the same reasons described above that warrant eliminating the annual audit requirement, without substituting any replacement requirement. However, if the Commission decides to adopt an annual self-certification requirement as a "less burdensome" alternative, this new requirement should (i) replace the annual audit requirement; (ii) replace the quarterly CFO certification requirement; (iii) permit the self-certification to be signed by a knowledgeable company official other than the CFO; (iv) allow posting of the self-certification to a web site and/or to NPC; and (v) be limited to instances when a Completing Carrier meets or exceeds an annual payphone compensation threshold of \$50,000 or more. We propose adopting the following language to accomplish some of the foregoing goals:

Annual self-certification is based on a due diligence standard by a company official with knowledge of and responsibility for the accuracy of the Payphone Service Provider (PSP) compensation process. This includes attesting that there have been no material changes to the

¹⁸ See *Id* at 5401, ¶12.

payphone call tracking system and network that would affect accuracy with respect to data capturing and payment of per call compensation.

Earlier this year, Commissioner O’Rielly blogged of his concern that an assessment of recordkeeping and data collection mandates needs to be done based on cost data provided by OMB, but not without consideration for whether the rules have continued to exist past their relevance.¹⁹ In this instance, the payphone compensation reporting and data collection rules linger despite the massive changes in the payphone market rendering such rules unduly burdensome. Permanent relief from unnecessary regulatory requirements will more accurately reflect the dramatic declines in payphone usage and consequently, PSP compensation.

IV. THE OPTION TO ENTER INTO ALTERNATIVE PAYMENT ARRANGEMENTS PROVIDES NO BASIS TO JUSTIFY RETENTION OF THE ANNUAL AUDIT REQUIREMENT.

USTelecom agrees with the Commission that the alternative compensation arrangements as contemplated by Section 64.1320(a) were not ever and still are not a n e c o n o m i c a l l y f e a s i b l e alternative to the annual audit. Alternative arrangements with individual PSPs would require ongoing negotiations, administrative maintenance, legal review and expenses that are too high and unnecessary given the success of the current practices and the relatively tiny amount of payphone compensation owed. Certainly, such significant transaction costs preclude the option of alternative payments arrangements as a reason to retain the annual audit requirement.²⁰ As Sprint notes in its Petition for Waiver, payments in recent years have been at an all-time low.²¹ The option was an allowance by the

¹⁹ Commissioner O’Rielly’s March 3, 2017 blog post, <https://www.fcc.gov/news-events/blog/2017/03/03/taking-stock-fcc-paperwork-burdens>. Commissioner O’Rielly states “While I strongly believe in data driven decision making and the need to ensure accountability, I have to question how much of the existing information collection is truly justified. I’ve observed that every new FCC policy seems to require a brand new data collection. And, once in place, the rules can live on long past their usefulness. Moreover, without sufficient coordination within the agency, the burdens can pile up without any clear understanding of the total burden on any given segment of the industry.”

²⁰ *Payphone Compensation NPRM* at 5401, ¶ 12.

²¹ See *Sprint Petition* at 4 (“Sprint made payments in 2015 to 85 payphone service providers and aggregators. Of those 85 PSPs, Sprint paid compensation of less than \$1,000 to 76 of them. In fact, payments to 62 were for less than \$10.”)

Commission, however it is not a feasible option for carriers, especially considering the very efficient payphone clearinghouse in service.

V. ADDITIONAL REFORMS ARE NECESSARY.

The Commission states that “[w]e believe Sections 64.1301(a)-(d), by their terms, no longer apply to any entity and can be eliminated.”²² US Telecom agrees. Clean-up of these sorts of outdated regulations is precisely the kinds of steps the Commission should be taking, and USTelecom appreciates the Commission’s continued efforts in this regard.

²² See *Payphone Compensation NPRM* at 5402, ¶14.

VI. CONCLUSION

For the reasons discussed herein, USTelecom respectfully requests that the Commission recognize that the annual payphone call tracking system audit and quarterly CFO certification requirements are burdensome rules that have lived on long past their usefulness given the current state of the payphone marketplace. USTelecom appreciates the temporary waiver of the annual audit rule and asserts that the Commission should take the next step forward and change its rules to permanently remove the aforementioned rules as well as the interim and outdated payphone compensation requirements for all covered Completing Carriers. This is with an expectation that current tracking systems and subsequent appropriate compensation will persist. Clearly, the public makes far less use of, and has far less need for, traditional payphones than twenty years ago because of other technological options. Therefore, the Commission should quickly transition to streamlined rules through elimination and amendments. The elimination of prescriptive payphone rules will allow Completing Carrier resources to be better directed to network investment, innovation, and improved prices for consumers -- all of which is in the public interest.

Respectfully submitted,

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