

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 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 CINCINNATI BELL ANY DISTANCE INC.

Cincinnati Bell Any Distance Inc. (“CBAD”) submits these comments in support of the Commission’s recent proposal in the above-captioned dockets¹ to eliminate the requirement of an annual audit of payphone call tracking systems and the associated reporting requirement imposed on Completing Carriers under the Commission’s rules.²

Summary

In light of steeply declining payphone traffic since the audit rule was adopted in 2003,³ and the rise in the proportional cost of the audit to payphone compensation amounts, the annual audit requirement imposes a substantial burden, especially on smaller carriers such as CBAD, that is disproportionate to any benefit the rule might have intended. Moreover, experience has demonstrated that the annual audit requirement is unnecessary. Call tracking systems are well

¹ *Modernization of Payphone Compensation Rules et al.*, WC Docket Nos. 17-141 *et al.*, Notice of Proposed Rulemaking and Order, FCC 17-79 (rel. June 22, 2017) (the “NPRM”).

² *See id.* ¶ 5. *See generally* 47 C.F.R. § 64.1320(f).

³ *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 (2003).

established, and compensation of payphone service providers (“PSPs”) through clearinghouses such as the National Payphone Clearinghouse (“NPC”) is both accurate and efficient.

Elimination of the annual audit and related rules will reduce regulatory costs and serve the public interest, and no new certification obligation is needed.

The Annual Audit No Longer Can Be Justified

The NPRM recognizes the steep decline in payphone use since the adoption of the audit requirement, noting that the number of payphones in service has declined by 95 percent, from over 2.1 million at the peak in 1999 to fewer than 100,000 in 2016.⁴ The Commission asks whether there is any reason to expect this trend to change. CBAD’s own completion of coinless calls made from payphones has dropped precipitously in the past decade, and all evidence suggests that this trend will continue. The number of payphone calls completed by CBAD declined by approximately 94 percent between 2007 and 2016.⁵ However, the cost of the annual audit did not proportionately decline – it has remained roughly the same.⁶ This means that the cost of the audit on a per-completed call basis went from less than ten cents per call to over a dollar per call. To CBAD, this represents a disproportionately burdensome requirement.

The Commission seeks comment on the relationship between the amount of payphone compensation paid by Completing Carriers to PSPs and the cost of compliance with the annual audit requirement.⁷ CBAD’s total payments to PSPs in a year is now less than \$10,000, but

⁴ NPRM ¶7, citing *Payphone Statistics: 1997 – Most Recent*, Wireline Competition Bureau Industry Analysis and Technology Division, posted April 11, 2017 at: <https://www.fcc.gov/general/iatd-data-statistical-reports>.

⁵ As CBAD previously described, the compensation amounts remitted to PSPs similarly dropped by 97 percent between 2005 and 2016. Cincinnati Bell Any Distance Inc. Petition for Waiver in CC Docket No. 96-128 (filed Apr. 25, 2017) at 3 (“CBAD Waiver Petition”).

⁶ Not only has the cost of the audit failed to decline, but other carrier compliance costs, such as internal personnel costs and external legal costs, have increased. See NPRM ¶8.

⁷ NPRM ¶9.

CBAD continues to pay for an annual audit to fulfill its FCC obligations, at a cost to CBAD of nearly five times what it pays the PSPs. Effectively, CBAD is required each year to spend \$5 to audit every \$1 of compensation.⁸ As payphone use continues to decline, this expense only can be expected to grow even more disproportionate to the traffic being measured and the compensation being paid. The annual audit has become an irrational requirement.

Moreover, as CBAD has demonstrated,⁹ the intended purpose of the audit requirement is served by other comprehensive FCC rules requiring accuracy in payphone call tracking and compensation, rendering the audit requirement entirely superfluous. For example, the Commission requires that Completing Carriers establish and maintain a call tracking system that “accurately tracks coinless access code or subscriber toll-free payphone calls to completion.”¹⁰ In addition, Completing Carriers must pay compensation to PSPs on a quarterly basis, and with each such tender of compensation the Completing Carrier must attest that the amount tendered for that quarter is accurate and complete.¹¹ Previous audits have identified no deficiencies in CBAD’s tracking compliance methods. For more than a decade, CBAD has been found to be appropriately compensating PSPs.

The Commission notes that no payphone compensation complaints have been filed in the last four years, and no formal complaints in the last six years or more.¹² . The payphone compensation arena is an example of the industry having successfully established systems and processes, guided by the Commission’s rules, which work for all involved. The Commission now may and should eliminate the audit requirement, knowing that these systems and processes

⁸ CBAD Waiver Petition at 3-4.

⁹ *See id.* at 4.

¹⁰ 47 C.F.R. § 64.1310(a)(1).

¹¹ 47 C.F.R. § 64.1310(a)(3).

¹² NPRM ¶10.

will continue to work, and that adequate regulatory safeguards remain in place, to ensure continued compliance as long as payphones remain in operation.

For all of these reasons the payphone compensation audit requirement, which is no longer rationally related to the purpose for which it was adopted, should be eliminated. The public interest will not be harmed by the elimination of this rule. Rather, the Commission will reduce regulatory burdens and unnecessary expenses, thereby serving the public interest.

The Commission Should Eliminate Section 64.1320 In Its Entirety

The Commission proposes “simply eliminating the audit requirement and associated reporting requirement.”¹³ However, it is appropriate for the Commission to delete Section 64.1320 in its entirety. With the adoption of an order eliminating the annual payphone call tracking system audit requirement under Section 64.1320(f), the detailed specifications as to those audits set forth in subsections 64.1320(b) through (d), as well as the filing requirement of subsection (e) and the documentation requirement of subsection (g), all are moot.¹⁴ Moreover, it appears unnecessary to maintain even an initial audit requirement under Section 64.1320(a) for new carriers establishing payphone call tracking systems, because other Commission rules put the burden on Completing Carriers to accurately track coinless access code or subscriber toll-free payphone calls to completion, and accurately compensate PSPs on a quarterly basis.¹⁵

¹³ NPRM ¶12. *See also id.*, Appendix A, “Proposed Rules” (proposing deletion of subsection 64.1320(f) only).

¹⁴ *See* NPRM ¶13. CBAD notes that no PSP has ever requested the underlying working papers or other documents specified in subsection 64.1320(g) in the case of a CBAD audit.

¹⁵ 47 C.F.R. § 64.1310(a).

No New Regulatory Safeguards Are Necessary

Although CBAD and others previously suggested that a Completing Carrier might be willing to provide an annual officer certificate to the Commission in lieu of engaging an independent auditor each year, CBAD supports the NPRM's proposal to eliminate the annual audit requirement entirely, without imposing any new self-certification requirement.¹⁶ As discussed above, the Commission's other rules amply protect PSPs and ensure that payphone call tracking and PSP compensation will continue to be accurate and complete without any such requirement. In addition, the Commission retains authority to investigate any complaint that should arise concerning the accuracy of any Completing Carrier's call tracking system or PSP compensation. The Commission should not adopt new paperwork burdens without substantial justification.

Conclusion

For the reasons stated herein, CBAD urges the Commission to adopt its proposal to eliminate the annual payphone compensation system audit requirement and related regulations as outdated and no longer justified.

Respectfully submitted,

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¹⁶ NPRM ¶12.