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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

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In the Matter of	)	
	)	
Implementation of the	)	CC Docket No. 96-128
Pay Telephone Reclassification	)	
and Compensation Provisions of the	)	
Telecommunications Act of 1996	)	

AT&T REPLY

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SUMMARY

Notwithstanding the Commission's obviously correct conclusion that payphone per-call compensation should be cost-based, PSPs have offered little evidence regarding their costs, preferring to argue for "market-based" surrogates that have nothing whatever to do with such costs. Moreover, the cost data on the record show that PSPs' compensable costs are substantially less than proposed and not properly representative of the efficient costs PSPs incur in making their phones available to non-presubscribed carriers.

Other commenters show, however, that efficient costs are the only proper basis for determining per-call compensation and that the surrogates the PSPs offer here -- as well as those the Commission used to develop the existing dial around compensation level for access code calls -- are not appropriate in this context. In particular, the comments show that the benefits of payphone use for non-presubscribed carriers are very different from the benefits derived from 0+ commissions paid by presubscribed carriers. Moreover, 0+ commissions have nothing whatever to do with PSP costs. Accordingly, such commissions cannot serve as a surrogate for PSP costs. In addition, the "market rate" compensation suggested by PSPs, which is based solely on rates for operator services calls, fails to account for the fact that the majority of calls for which per-call compensation will be due generate only a small fraction of the revenues for operator services calls. Further, contrary to some IPPs' claim, local coin calls are not a surrogate for per-call compensation, because payphone use is only one of many costs incurred in providing local coin service.

The comments also demonstrate that it is important for the Commission to establish a national rate for per-call compensation and that tracking of calls from payphones is not as advanced as some parties believe. Accordingly, the Commission must either adopt rules that will allow for a reasonable estimation of completed calls from payphones or, if feasible, move toward an access-type billing arrangement for per-call compensation. The comments further show that a "coin drop" compensation system would harm consumers and that a set use fee billing arrangement would impose unnecessary costs on carriers and customers alike.

The comments also vividly demonstrate that allowing ILECs to "negotiate" with location owners regarding the interLATA presubscribed carrier would harm the public interest as long as the ILECs maintain their monopoly power over the placement of payphones. Alarmingly, some LECs have already begun to take advantage of location owners, coercing them through a variety of means to "choose" carriers favored by the LEC. Such abuses can only increase if the Commission grants ILECs the right to negotiate for the PIC. Moreover, contrary to their claims, ILECs would not be substantially harmed by continuing the current rules. Thus, it is premature for the Commission to consider allowing ILECs to negotiate with location owners until they can demonstrate that they no longer have monopoly power over the payphones in their operating territories.

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Pursuant to the Commission's Notice of Proposed Rulemaking ("Notice") released June 6, 1996, AT&T Corp. ("AT&T") hereby replies to the July 1, 1996 comments on the Commission's proposals to implement Section 276 of the Communications Act, as adopted in the Telecommunications Act of 1996 ("1996 Act"), and related matters.[1]

I. PER-CALL COMPENSATION ISSUES

A. Per-Call Compensation For PSPs Must Be Cost-Based.

With the predictable exception of payphone service providers ("PSPs"), the commenters generally agree with the Commission (Notice, nn.54 & 64) and AT&T (pp. 5-12) that per-call compensation should be cost-based. Thus, the proponents of

1 A list of the commenters and the abbreviations used to refer to each is appended as Attachment A.

this view include PUCs, carriers and others.[2] This view is consistent with the compensation arrangements required under Section 251(c)(2)&(3), and economically sound.[3] It is also obviously "fair," as required by Section 276(b)(1)(A), because a cost-based price will fully compensate PSPs for their costs of providing payphone access.

AT&T's comments (pp. 6-9) showed that the TSLRIC standard -- which is more generous that the "marginal cost" standard referenced in the Notice[4] -- provides an appropriate ceiling for per-call compensation. A TSLRIC-based charge will allow PSPs to recover the portion of the payphone costs which benefit the carriers whose customers initiate calls at payphones, including the costs of the telephone

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2 See, e.g., Pennsylvania PUC, p. 3; Oklahoma Corporation Commission, p. 2; CompTel, p. 16; Excel, p. 2; Frontier, p. 7; Sprint, p. 17 ("costs must be the touchstone of any determination of what constitutes 'fair' compensation"); and ACI-NA, p. 6.

3 See also Competitive Telecommunication Association v. FCC, D.C. Cir. No. 95-1168, July 5, 1996 (slip op.) ("CompTel v. FCC"), p. 19 (directing Commission to "move expeditiously upon remand to a cost-based alternative to the [residual interconnection charge], or to provide a reasoned explanation why a departure from cost-based ratemaking is necessary and desirable"); and Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection, 10 FCC Rcd. 6375 (1995) (rejecting market pricing for expanded interconnection services).

4 The "marginal" cost of using a payphone to place an interLATA or intraLATA non-coin call is zero, because it entails nothing more than the use of an existing payphone equipped to provide local calls -- which PSPs themselves acknowledge is the overwhelmingly predominant use of their phones (see below). There are no incremental cash costs associated with such usage, and the "wear and tear" related to the dialing of a telephone number and use of a handset is de minimis (see Sprint, p. 18).

instrument itself and related maintenance (excluding all coin-related functions), the Subscriber Line Charge ("SLC") and the specific screening and fraud protection features that benefit all carriers whose networks are accessed from payphones.[5] The Notice (¶ 38) recognizes that there are virtually no data in the record on PSP costs, and it solicits cost information from payphone providers. Rather than supplying credible data on their actual costs, however, PSPs seek compensation based upon "market related surrogates"[6] that have nothing whatever to do with their own costs.[7]

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[5] Frontier (p. 7) further shows that PSPs can generate non-telecommunications revenues, such as advertising revenues and enhanced services, which makes it unnecessary even to assure that PSPs receive their full TSLRIC-based costs.

[6] APCC, p. 31. See also MICPA, pp. 3, 4. In addition, APCC (id.) acknowledges that the surrogates the Commission relied upon to determine dial-around compensation are "market based." This confirms AT&T's position (p. 6) that those surrogates -- none of which reference PSP costs -- are inappropriate to establish a per-call compensation rate in this proceeding (see also Sprint, p. 20).

[7] Clearly, the burden of showing the appropriateness of any specific amount of per-call compensation, whether interim or permanent, must rest on the PSPs who will benefit from the receipt of such money (see Sprint, pp. 17, 19). With respect to interim compensation, ILECs are, of course, not entitled to any form of per-call compensation until the costs of their payphones are removed from access charges (see Section 276(b)(1)(A) and RBOC Coalition, p. 31). Recognizing this fact, the RBOC Coalition (pp. 19-20) opposes interim compensation for IPPs on "competitive" grounds, and numerous commenters cite the administrative difficulties of implementing an interim compensation mechanism (e.g., AT&T, p 11; Sprint, p. 25; RBOC Coalition, p. 20). Most fundamentally, however, the data from IPPs shows that no interim compensation is needed at all. According to CPA (n.17),substantial premiums above cost are now being paid for existing IPP payphones. This eliminates any economic rationale for APCC's claim (p. 36) that the Commission should impose an interim compensation requirement pending the adoption of final compensation rules that will apply to all calls from payphones.

Moreover, the notion of "market pricing" of per-call compensation for non-presubscribed carriers is nonsensical. Unlike presubscribed carriers, non-presubscribed carriers cannot negotiate with PSPs concerning the per-call compensation rate. They must either accept and pay the PSP's rate or risk having calls blocked -- an unacceptable market alternative.[8] Thus, the only appropriate basis for a fair per-call compensation charge is PSP costs.

Notwithstanding this fact, the RBOC Coalition (pp. 8-15) rejects the Commission's conclusion that per-call compensation should be based upon costs and expressly seeks "market-based" compensation, based principally on 0+ commissions paid to large IPPs. However, the RBOCs contend (n.15) that their average total cost per call for all payphone calls, including both local and toll calls, "ranges from $.25 to $.32." The information provided by the Coalition is totally aggregated and fails to

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[8] The RBOC Coalition (p. 12) asserts that carriers can identify calls from specific payphones and block calls from such phones if the PSP's charge is too high. This claim is wrong on several counts. First, in most cases, carriers, including AT&T, cannot recognize in real time that a call is being placed from a "high priced" payphone, which is necessary for a carrier to implement blocking procedures. This is especially true for calls to 800 subscriber numbers, which exceed the number of dial-around calls from payphones (see below). Second, the RBOCs' assertion incorrectly assumes that carriers will always know what the PSP's per-call charge is, even though a "market driven" compensation system would permit PSPs to change their charges at any time without notice. More fundamentally, however, even if carriers had perfect knowledge and were technically able to respond immediately to excessive PSP rates, customers would be harmed by such blocking, because they would be denied the opportunity to access the carrier of their choice (or to place toll-free calls) from such phones. Moreover, blocking is unacceptable from a marketing perspective, because customers would view carriers that are only available from some payphones as unreliable.

disclose data on any specific item of actual cost.[9] For example, the "model" used to calculate RBOC costs acknowledges that it includes their "fully embedded asset base," but it does not specifically define what "assets" are included, their individual values, or the method used to derive such value.[10] In addition, the model expressly incorporates a "reasonable" rate of return, but does not state what that rate is.[11] Accordingly, the RBOC information is insufficient for the Commission to establish any sort of cost-based per-call compensation rate.

Moreover, the RBOCs' limited explanation of their cost analysis reveals that their reasonably recoverable costs are much less than the stated amount. The RBOC model incorporates every cost item that an RBOC would conceivably incur to run its entire payphone business, including costs for services that are unrelated to the completion of the calls for which per-call compensation is required, as well as costs for portions of the RBOC's payphone business that are (or may be) in direct competition with the carriers who must pay such compensation. Thus, for example, the model includes "volume sensitive local usage" costs that are incurred exclusively to support the RBOCs' own provision of local coin service, as well as local line charges for the payphones, even though carriers must also pay the LEC access charges for use of the

9 See Attachment to RBOC Coalition Comments ("RBOC Attachment"), pp. 8-10.

10 RBOC Attachment, p. 9.

11 Id.

same lines. The RBOC model also includes the costs of coin supervision, collection and counting functions, none of which are used in originating the non-coin calls that are handled by other carriers.[12] The model further includes "forecasting and budgeting," "product management," "marketing and sales," and "advertising" costs, all of which are unrelated to, and may be in direct competition with, the services of carriers whose customers use an RBOC payphone. Finally, the model incorporates RBOC commissions, which relate exclusively to calls for which they are the service provider and retain all the revenues.[13] Thus, the RBOCs' data show that the actual TSLRIC costs relating to other carriers' use of their payphones are at most a fraction of the $.25 to $.32 they have identified, and significantly less than the $.25 per call AT&T and Sprint now pay on a per-call basis for dial-around calls.

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12 All coin services from IPP payphones, and all local and intraLATA coin services from LEC payphones, are provided by the PSPs themselves. Therefore, no per-call compensation would be due from other carriers for such calls. LEC coin collection services for sent-paid interLATA calls from LEC payphones are currently provided for in LEC tariffs, again eliminating the need for the Commission to establish a compensation obligation for such services. Even if such services were subsequently rendered by the LEC payphone affiliates (if the LECs or their affiliates do not simply provide all interLATA coin services themselves if and when they are permitted to do so), such services should be offered under contract on comparable terms to those provided to the PSP itself, and separate from the per-call compensation charge applicable to use of the payphone's non-coin features.

13 AT&T (pp. 8-9) showed why commissions on 0+ calls should be excluded from the calculation of per-call compensation under Section 276. Nevertheless, reasonable commissions on local calls may be an appropriate expense to recover in the rates for local service (see Part I.B below).

APCC has offered no data at all on PSP costs. However, two IPPs, Peoples and CCI, also purport to present data on their costs, and seek "cost-based" per-call compensation amounts that are substantially above the costs identified by the RBOCs. The IPPs' analyses also suffer from many of the deficiencies described above. For example, the IPPs include all costs associated with their own coin services, none of which benefit the carriers who must pay per-call compensation.[14] Furthermore, they include commissions and substantial overhead costs, as well as depreciation expenses that reflect extraordinary equipment costs. Thus, for example, Peoples (p. 21) cites a $61.06 per month "Depreciation/Interest/Amortization" cost per phone. Over the stated 10-year expected life of its equipment, this implies a cost of over $7,300 per payphone station, clearly an excessive amount that has nothing to do with the efficient costs of deploying payphones.[15] In all events, Sprint (p. 2) correctly notes that the Commission should not look to the costs of every payphone provider in establishing the per-call compensation rate, but only to the costs of efficient providers.[16] Moreover, the failure to use such costs merely encourages economic inefficiency and would burden

[14] Such costs are included both in the costs of their equipment (where the coin rating and coin control services are performed) and in their operations costs (which include coin collections and the treatment of fraud).

[15] Although the basis for this calculation is not provided, it appears to be based in large part on the IPP's acquisition of preexisting payphones on a going concern basis, including substantial amounts for goodwill (see CPA, n.17).

[16] A TSLRIC analysis requires the use of forward-looking efficient costs (see AT&T, p. 10).

carriers and their customers with the duty to pay uneconomic subsidies to PSPs. Thus, the Commission should not consider these IPPs' data in establishing a per-call compensation rate.

As noted above, PSPs provide all coin calls -- and retain all coin revenues -- from their phones, or collect separately for coin-related services. Accordingly, the most appropriate analog for the costs to be included in per-call compensation is the cost of "traditional" non-coin payphones. AT&T operates 6000 of such stations nationwide, and is likely the largest provider of such phones. AT&T's average costs for such phones, based upon new equipment costs,[17] are as follows:

Payphone station...........	$250	
Payphone enclosure........	$250	
Installation..................	$385	
Total Equipment & Installation..................	$885	
Amortized equipment and installation cost (10 years)[18].......		$ 7.38/mo.
Maintenance/warehouse/ parts/staff.		$ 23.28/mo
Subscriber Line Charge (maximum)		$ 6.00/mo

[17] The amounts identified here assume the use of new "11A" type stations and associated enclosures that are used by AT&T. Such amounts if anything, exceed true economic costs, because comparable equipment (and refurbished equipment) is currently available at a lower price. Moreover, the prices quoted assume that every station requires the use of a pedestal. It should also be noted that AT&T and other PSPs also install "trimline"-type coinless phones in some locations. Such phones have an installed cost of less than $250 and a monthly amortized cost of about $2.00.

[18] Ten years is the amortization period suggested by Peoples (p. 21).

LEC blocking/screening...........	<u>$5.00-17.00/mo</u>
Total..................................	$41.66-53.66/mo

Thus, AT&T's cost for its coinless phones is between 28.7% and 36.9% of the $1,744 annual cost per phone identified by the RBOCs.[19]

Despite the clear lack of economic rationale for compensation above their TSLRIC, the RBOC Coalition (pp. 8-13) proposes per-call compensation rates for <u>all</u> payphone calls that are in the $.80+ range. These "market based" rates are based upon commissions for the highest priced (<u>i.e.</u>, 0+) calls at the highest aggregation levels for the largest IPPs. This proposal is not only inconsistent with the Commission's conclusions in the Notice, the standards applicable in analogous portions of the 1996 Act and relevant precedent,[20] but it also ignores the fact that 0+ commissions are very different from the per-call compensation required under Section 276.

Specifically, commissions on 0+ calls are marketing expenses[21] which provide carriers many benefits and opportunities that per-call compensation does not. First, presubscribed carriers' customers are able to place their calls by dialing 0+, the easiest dialing protocol. Second, TOCSIA requires that the carrier's name appear on

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19 RBOC Attachment, p. 9.

20 <u>See</u> Sections 251(c)(2)&(3) and 252(d)(1) and the cases cited in n.3 above.

21 <u>See</u> National Telephone Services, Inc, 8 FCC Rcd. 654, 655 (1993).

the phone's signage, providing the carrier with an advertising presence on the phone and assurance to its customers that it can be reached without the need to dial access codes. Third, when phones are presubscribed, the carrier need not expend money to educate customers to "dial around" a competing carrier that has been selected by the PSP (or a location owner). Indeed, APCC (p. 20) confirms that 0+ commissions "are [paid] for the value to the IXC of receiving presubscribed traffic from the location (emphasis added)." Thus, the "value" to an IXC of receiving non-presubscribed calls is different, and neither "value" bears any relationship to a PSP's costs.[22]

Furthermore, APCC (pp. 5, 7) acknowledges that IPPs have experienced a "dramatic imbalance" in revenues and "have been driven to disproportionate reliance on revenue from a single category of payphone traffic -- 0+ interstate calls," so that "[i]nterstate 0+ calls are being used as a source of subsidy for virtually all other categories of calls (emphasis added)." ACTEL (p. 5), adds "[t]he sole source of profit for the entire [IPP] business is focused on [the] 2.6% of 0+/0- calls."[23] These statements further support the conclusion that commissions paid on interstate 0+ traffic must be exceedingly high compared to IPPs' actual costs and that 0+ commissions cannot serve as an appropriate surrogate for PSP costs.

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22 See AT&T, n.4.

23 See also NJPA, n.5 (the small group of 0+ calls "is forced to bear the brunt of the costs incurred by IPPs for all of the other calls for which no revenue is received or which generate a loss").

The PSPs' compensation proposals also ignore a second important fact, namely that revenues for 800 subscriber calls, which reportedly account for half of all non-coin calls from IPP phones -- and twice the number of access code calls[24] -- are only a small fraction of the revenues for 0+ calls. Indeed, AT&T's average per-call revenue for its toll-free services calls is no more than about $.50, less than one-fifth of its average revenues for 0+ calls. Thus, a per-call compensation rate in the $.80+ range suggested by the RBOC Coalition, or even the $.40 (or higher) range suggested by APCC and other IPPs,[25] is exorbitant and decidedly "unfair" to 800 service providers. Indeed, the wide range of revenues generated from the different types of calls placed from payphones reinforces the Commission's conclusion that costs are the only appropriate basis for determining "fair" compensation for PSPs.[26]

B. The Rate For Local Coin Calls Is Not An Appropriate Surrogate For Per-Call Compensation

Contrary to APCC's claim (p. 16), local coin calls provided to end users are substantially different from the phone use that is made available to carriers and subject to compensation under Section 276. Thus, local coin rates cannot be an appropriate surrogate for per-call compensation. Moreover, there is no need or basis to

[24] See APCC, p. 6; Peoples, p. 9.

[25] APCC, p. 31; CCI, p. 3; NJPA, p. 8; Peoples, pp. 22-23.

[26] Setting the per-call compensation rate based upon cost is also a deterrent to fraudulent dialing of toll-free numbers to increase per-call compensation (see AT&T, pp. 15-16; Sprint, p. 11).

establish a nationwide coin rate for local calls,[27] a matter that has traditionally been within the purview of state regulators.[28]

Sprint's comments (p. 9) clearly show why the local coin rate is not an appropriate surrogate for -- and indeed should be greater than -- the per-call compensation rate under Section 276. When a carrier uses a payphone to complete a call over its own network, the PSP merely delivers the call from the payphone to the serving LEC central office. The carrier is responsible for all other aspects of the call, including the payment of access, transport and switching charges to the originating LEC, the costs of its own network facilities, any terminating access costs, and all billing, collection and related expenses. In contrast, when a customer places a local coin call from a PSP's payphone, the PSP itself is the carrier for the entire call, and it receives all revenues and bears all financial costs and risks relating to the call. Thus, the PSP must not only have a phone available, it must arrange for local switching, call completion to the terminating party, central office coin service functionalities (if applicable) and all aspects of coin rating and collection, including risks of fraud. Thus, the use of the PSP payphone is merely a part -- and clearly not all -- of a local coin

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27 See, e.g., APCC, p. i; CCI, p. 8; Peoples, p. 15.

28 See, e.g., Maine, et al., pp. 1, 7; Ohio PUC, p. 3; Texas PUC, pp. 2-3. See also USTA, p. 3. Even some IPPs oppose a nationwide coin rate (see MICPA, pp. ii-iii).

call, and the costs associated with per-call compensation are less than the costs necessary to provide a local coin call.[29]

There are several reasons why it is appropriate to include the full local line cost and local coin commissions in the cost of local coin calls and not in per-call compensation. First and foremost, as AT&T noted (p. 3), IXCs already pay for the use of such lines through access charges paid directly to the LEC. Moreover, the costs of a local line are fixed, and additional non-coin calls generate no incremental line costs for the PSP. Furthermore, calls from payphones are predominantly local, representing about 70% or more of the total traffic from such phones, and it is appropriate to assess such costs against the predominant use. As described below, it is also important for administrative reasons that the per-call compensation rate be set on a national basis for all types of calls, whereas the prices for local lines vary from state to state.[30] By extracting the basic local line cost (but not the cost of the SLC or of payphone blocking and screening features) from the calculation of per-call compensation, the Commission has a relatively constant set of costs to establish a national per-call compensation rate. Finally, because state regulators are responsible for establishing local coin rates, they should be permitted to do so in conjunction with establishing the rates for the local line, and with the understanding that the entire rate for the line will be included in the costs

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[29] See also Maine et al. pp. 5-6; APCC, n.15.

[30] See Oklahoma Corporation Commission, p. 3.

for local coin calls. With respect to commissions on local coin calls, unlike competitive 0+ calls, all of the local coin calls from a particular PSP's phone will be routed to the PSP itself. Thus, any reasonable commissions the PSP incurs on such calls are a cost which it alone must bear as part of its provision of local coin service.

C. A National Per-Call Compensation Rate Is Essential.

In contrast to the admittedly local nature of the "local" coin rate, logic and administrative efficiency require that the Commission establish a national per-call compensation rate for all calls qualifying for compensation under Section 276.[31] The comments show that compensation tracking and calculation issues relating to payphones will be complex at best, with over 500 carriers responsible for compensating 2000 or more PSPs for calls from about 2.1 million payphones.[32] Moreover, applying different compensation rates to different call types is irrational, because payphones perform identical functions for all types of calls.[33] In addition, applying different per-call compensation rates to calls placed from different locations could create unnecessary and unwarranted administrative complexities. In any event, the cost items that should be included within the TSLRIC analysis for per-call compensation do not vary

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31 See Sprint, p. 24.

32 See, e.g., AT&T, p. 6; CompTel, pp. 6-8. Given the complexities inherent in the tracking and billing for per-call compensation there is no reason to require carriers to move from a quarterly to a monthly payment schedule, especially if carriers must do their own tracking (see MICPA, p. 8; Peoples, p. 26).

33 See, e.g., AT&T, p. 10; CPA, p. 3.

substantially based on location. Therefore, the Commission should establish a single per-call compensation rate that will apply to all calls which qualify for such compensation.

As shown above, there are three basic types of expenses that are reasonably includable in the per-call compensation analysis.[34] The first is the cost of the non-coin functions of the payphone instrument itself, a cost which does not vary meaningfully based upon geography,[35] including the costs of maintaining the non-coin aspects of payphones, which are also relatively constant. Second, the SLC is fixed at a maximum of $6 month for all payphones. Third, the payphone blocking and screening services that benefit all carriers lie within a relatively narrow range of $5 to $17 per month, with most in the lower portion of that range. In addition, the comments show that the average number of calls per month from payphones appears to range between about 500 at RBOC phones[36] and 700 at IPP phones.[37] These data are sufficient to enable the Commission to establish a per-call compensation rate that would apply to all qualifying calls placed from PSP phones.

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34 See also AT&T, pp. 6-8.

35 For example, payphones are frequently offered for sale in trade publications or catalogs.

36 See RBOC Attachment, p. 9 ($1,744 total average annual cost per payphone/$.29 average cost per call/12 months = 501 calls per month).

37 APCC, p. 5.

In this context, "qualifying calls" should be defined on a nationwide basis to exclude local coin and any other calls for which the PSP is in the direct carrier relationship with the end user. Qualifying calls should include, however, all calls for which another entity is the direct carrier (including LECs) and that are not covered by a commission agreement with the PSP. Thus, for example, interLATA 0+ calls from ILEC (or other) payphones that are not covered by a commission agreement with the PSP would generate per-call compensation,[38] as would intraLATA 0+ calls carried by LECs from IPP payphones, unless there is a commission agreement between the LEC and the IPP.[39] Similarly, PSPs would also be entitled to per-call compensation for coin calls carried by entities other than the PSP itself.[40] In contrast, 0+ calls, and any other types of calls included in a commission agreement between a carrier and a PSP should not generate per-call compensation.[41] Finally, Sprint (p. 16) correctly suggests that no PSP should be entitled to per-call compensation unless the payphone line it uses delivers appropriate information digits that identify the phone as a payphone. This requirement is necessary in order to assure proper tracking, and also to help prevent

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[38] See Ameritech, p. ii; RBOC Coalition, pp. 4-5.

[39] See APCC, p. 24; Brill, p. 3; USTA, p. 4.

[40] See RBOC Coalition, pp. 4-5.

[41] See USTA, p. 3 (negotiation process insures fair compensation); Sprint, p. 6. In essence, this rule would allow any PSP to agree by contract to waive its right to receive per-call compensation.

fraud, because carriers rely on the information digits as a guide to implementing fraud protection mechanisms.

D. Call Tracking And Administrative Matters.

Contrary to some parties' understanding of carriers' tracking capabilities,[42] many carriers do not have call tracking mechanisms for many types of calls, particularly toll-free calls. Thus, even though large carriers can estimate or track 0+ and access code calls made from payphones over their networks, most smaller carriers apparently cannot.[43] Moreover, AT&T itself is unable to track toll-free calls to specific payphones, because its systems aggregate call information for toll-free calls by the terminating number, not the originating number.[44] Thus, some type of alternate mechanism is necessary to implement the requirements of Section 276.

AT&T (pp. 15-16) suggested a workable method of identifying calls to 800 toll-free numbers by using statistically valid studies conducted from LEC central-office implemented payphones,[45] and it continues to believe that such a system would be appropriate, particularly for larger carriers that wish to do their own tracking.

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42 See Notice, ¶ 30; MICPA, p. 5.

43 CompTel, pp. 8-9; CWI, pp. 9-10; TRA, pp. 16-18.

44 AT&T, pp. 14-15.

45 The reason for using central-office controlled phones is to reduce, if not eliminate, the possibility of fraudulent calls from "smart" payphones to toll-free numbers for the purpose of generating per-call compensation.

However, contrary to the suggestion of some smaller carriers, there is no basis to exclude them from the obligation to compensate PSPs when their customers place calls from payphones, especially since they will be the beneficiaries of lower access charges when access subsidies are removed from LEC payphones.[46] It may be wasteful, however, to require every carrier to implement its own tracking capabilities if LECs can perform an access billing type function for payphone use. Thus, AT&T would not oppose LEC tracking and billing of PSP per-call compensation as suggested by CompTel (pp. 9-11) and others,[47] provided that appropriate confidentiality of carrier information can be maintained and that procedures are established to assure that carriers only pay compensation for completed calls.[48] LECs, however, may not have accurate information on whether certain calls are completed, particularly calls to services

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46 In particular, there is no basis to adopt TRA's suggestion (p. ii) that per-call compensation obligations should be limited to carriers generating over a billion dollars in annual revenue (see CompTel v. FCC, p. 21 (assigning overheads in setting rate elements "must be supported upon the basis of cost, not justified as a means by which smaller competitors can be subsidized")). Similarly, the existing $100 million threshold in the Commission's dial-around compensation rules should not be incorporated in the permanent rules adopted pursuant to Section 276.

47 E.g., CWI, pp. 11-13; CALTEL, p. 5 In such a circumstance, it might also be possible to change to a monthly billing schedule, as requested by PSPs (see MICPA, p. 8; Peoples, p. 26).

48 Section 276(b)(1)(A) mandates compensation only for "completed" calls, which include only calls actually answered by the called party (see AT&T, n.2, CompTel, pp. 11-13; CWI, pp. 6-8; Excel, p. 5).

provided through toll-free "platforms," such as debit card services.[49] Accordingly, if tracking and billing of per-call compensation is performed by LECs, they must either have accurate call completion information or apply a call completion ratio factor. The use of such factors is particularly important for calls that are routed to debit card platforms, such as AT&T's, which cannot track individual calls to specific originating telephones, but can generate an overall call completion ratio.[50]

If a LEC tracking and billing system were feasible, it could have several advantages. First, it would place per-call compensation on an equal footing with virtually all other services, in which the supplier renders a bill for services rendered to the consumer of such services.[51] Second, LEC tracking and billing could be economically efficient, and avoid the need to develop and implement duplicative tracking mechanisms. Finally, such a system might also help to avoid some of the

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49 Contrary to APCC's suggestion (p. 25), the "carriers" for debit (or prepaid) card services are the the entities which issue such cards for use by consumers. Thus, the toll-free numbers used to access the platforms used by these entities are access codes, and calls to such platforms should be treated in the same manner as all other access code calls. Accordingly, issuers of debit/prepaid cards should be required to identify themselves (and their toll-free access numbers) to appropriate parties for purposes of implementing and paying per-call compensation.

50 See Sprint, n.7 (additional development is needed to track completed prepaid card calls from payphones).

51 Under such a system, AT&T assumes that LECs would bill the PSPs for the data collection and billing function involved in the tracking and billing functions, and the PSPs would include such costs in their overall costs that would be incorporated into the calculation of per-call compensation.

disputes that have previously arisen in connection with IXCs' dial-around compensation payments to IPPs.

With respect to the issue of who should pay per-call compensation, although a few commenters suggest a customer coin payment mechanism,[52] a large majority support some form of "carrier pays" arrangement.[53] As APCC (p. 23) states, such a system "is the least appealing of all methods . . . [because it] would violate customer expectations and would be inconvenient for consumers."[54] Moreover, there is no need to add the additional costs that would result from a "set use" charge billed to end users by carriers.

Contrary to APCC's claim (p. 29), however, there is no reason to require IXCs to pay per-call compensation on ANIs that are not positively verified by the LEC.[55] IXCs should not be required to make payments to anyone in the absence of reasonable proof that it is entitled to compensation for the specific payphone.

Finally, there is general agreement that a one-year limitations period is reasonable for PSPs to make initial claims for compensation.[56] The record-keeping

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52 E.g., Intellicall, p. 24; PageNet, p. i.

53 E.g., AT&T, p. 12; Ameritech, p. 8; RBOC Coalition, p. 6; USTA, p. 5.

54 See also MICPA, p. 4 (set use fee "inappropriately entangles end users in the business arrangements between telecommunications carriers").

55 See Sprint, p. 15; AT&T, pp. 17-18.

56 E.g., APCC, p. 30; RBOC Coalition, p. 7.

associated with per-call compensation will be significant, and there is no reason to require carriers or PSPs to retain data for protracted periods. Thus, the Commission's rules should bar any PSP from making an initial claim for per-call compensation more than one year after a call is placed.

II. THE PUBLIC INTEREST WILL BE HARMED IF ILECS ARE PERMITTED TO NEGOTIATE THE SELECTION OF AN INTERLATA CARRIER WITH LOCATION OWNERS.

Location owners, carriers and IPPs all express significant concern over the likely anticompetitive effects of allowing ILECs to negotiate with location owners concerning the selection of a presubscribed interLATA carrier ("PIC") from ILEC payphones.[57] These commenters confirm that there are many ways in which ILECs can use their influence to exert untoward pressures on location owners to abandon their right to make the carrier selection.[58] Examples of abuses are already apparent, and such abuses can only increase if the Commission expressly grants ILECs the right to negotiate for the PIC.

As a threshold matter, CompTel (p. 20) agrees with AT&T (p. 24) that BOCs cannot be given a right to negotiate with location owners in their regions for the PIC until they meet the in-region interLATA requirements of Sections 271 and 272,

[57] The Commission's long-standing policy requiring all LECs to exercise neutrality in the carrier selection process should apply to all ILECs, not just BOCs (see AT&T, pp. 24-25 and n.48)

[58] See Section 276(b)(3) and the Joint Statement of Managers, S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. (1996), p. 44 and Notice, ¶ 68.