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

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FEDERAL COMMUNICATIONS COMMISSION
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In The Matter of	)	
	)	
IMPLEMENTATION OF THE PAY TELEPHONE RECLASSIFICATION AND COMPENSATION PROVISIONS OF THE TELECOMMUNICATIONS ACT OF 1996	)	CC Docket No. 96-128

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REPLY COMMENTS OF THE TELECOMMUNICATIONS RESELLERS ASSOCIATION

TELECOMMUNICATIONS
RESELLERS ASSOCIATION

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SUMMARY

The Telecommunications Resellers Association ("TRA"), an organization consisting of more than 450 resale carriers and their underlying product and service suppliers, hereby makes the following points in response to the comments of other parties:

- In its comments, TRA urged the Commission, in structuring the Congressionally mandated per-call payphone compensation scheme, to be cognizant of the impact of its actions on, and to exercise care to avoid adopting rules and policies that would adversely effect, smaller interexchange carriers ("IXCs") and their primarily small business and residential customers. TRA further urged the Commission to be particularly sensitive to the impact of the payphone compensation mechanism adopted here on the fledgling prepaid calling card industry. Consistent with this approach, TRA urged the Commission to exempt from any per-call payphone compensation requirement, at least on an interim basis, IXCs which generate less than one billion dollars in annual interstate toll revenues. Such an exemption, TRA argued, would not only be consistent with past actions undertaken by the Commission in comparable circumstances, but would further other strongly-voiced Congressional goals.

- TRA believes that the comments submitted by other parties in this proceeding confirm the need to structure a per-call payphone compensation arrangement that minimizes the adverse impact on smaller IXCs and their generally small business and residential customers. The exemption sought by TRA is consistent with the exemption granted enhanced service providers from payment of interstate switched access charges and with the manner in which the Commission currently compensates private payphone operators for calls originated on their equipment, as well as with findings and actions of various States when confronted with the very issues facing the Commission here. The comments of various IXCs, including prepaid calling card providers, also confirm the need for an exemption for smaller IXCs from any per-call payphone compensation requirement. These carriers reinforce TRA's assertions that imposition of a per-call compensation requirement on smaller IXCs would not only produce the "rate shock" that prompted the Commission to exempt enhanced service providers from payment of interstate switched access charges, but would drain the limited resources of these small carriers through imposition of massive implementation costs and administrative burdens.

- Forbearing from applying the Section 276(b)(1)(A) per-call payphone compensation requirements to smaller IXCs is certainly consistent with the public interest. Forbearance would avoid the devastating impact that immediate assessment of per-call payphone compensation requirements would have on

smaller IXCs, particularly those engaged in providing prepaid calling card services. In so doing, it would further the strong Congressional desire to promote greater involvement by small business in the telecommunications industry. Forbearance would also help maintain the competitive population of the interstate, interexchange market, thereby preserving for small business in particular the availability of alternative sources of supply. Indeed, the only countervailing interest here is that of the payphone service providers ("PSPs") and the Commission has previously found that the public interest balance must be struck in this instance in favor of the small IXC community.

- The tracking and billing mechanism proposed by Ameritech is consistent with "the pattern universally followed in the telecommunications industry, as well as in the business world at large, that the party who expects payment should take the responsibility for preparing a bill and rendering it to the party who is going to pay." Moreover, the Ameritech approach equitably allocates the costs associated with a per-call payphone compensation mechanism among all the beneficiaries of the compensation scheme. Certainly, the Ameritech scheme would avoid the more devastating consequences of the Notice's approach on smaller IXCs. TRA also endorses a tracking and administrative approach suggested by Frontier, Cable &Wireless and other IXCs -- *i.e.*, an LEC-administered system in which the local exchange carrier bills IXCs per-call payphone use fees in conjunction with its access charges and forwards the receipts to the PSPs.

- TRA strongly urges the Commission in its determination of what is "fair compensation" for PSPs not to act without regard to the harm such actions may produce for smaller IXCs. The per-call payphone use fee should be predicated on costs, exclusive of opportunity costs, which are "forward looking," reflect the most efficient available technology and are predicated on long run incremental costs.

- Toll free numbers are attractive to providers of goods and services because they eliminate a key obstacle to customer response -- *i.e.*, cost. Prepaid and post-paid calling cards are attractive to consumers primarily because they provide user friendly access to telecommunications capabilities from remote locations. Requiring the use of coins in conjunction with such calling options reduces their utility and hence their value to consumers.

- Not only is it inequitable to levy a payphone use fee on calls which are not compensable to a long distance provider because they were not completed to the intended end user recipient, but treating a call as complete simply because it reaches a prepaid calling card provider's platform is contrary to consistent Commission precedent.

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REPLY COMMENTS OF THE TELECOMMUNICATIONS RESELLERS ASSOCIATION

The Telecommunications Resellers Association ("TRA"), through undersigned counsel and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.1415, hereby replies to the comments submitted by other parties in response to the Notice of Proposed Rulemaking, FCC 96-254, released by the Commission in the captioned docket on June 6, 1996 (the "Notice"). Specifically, TRA will discuss herein comments addressing the regulations the Commission has proposed to adopt in implementing the pay telephone compensation provisions of the Telecommunications Act of 1996 ("1996 Act"), as set forth in Section 276 thereof.[1]

I.

INTRODUCTION

In its comments, TRA urged the Commission, in structuring the Congressionally mandated per-call payphone compensation scheme, to be cognizant of the impact of its actions

[1] Pub. L. No. 104-104, 110 Stat. 56, § 276 (1996).

on, and to exercise care to avoid adopting rules and policies that would adversely effect, smaller interexchange carriers ("IXCs") and their primarily small business and residential customers. TRA further urged the Commission to be particularly sensitive to the impact of the payphone compensation mechanism adopted here on the fledgling prepaid calling (or debit) card industry. In so urging, TRA noted that the Congress fortunately had only voiced a general directive in Section 276, leaving to the Commission broad discretion in establishing the actual per-call payphone compensation mechanism, including the determination of such critical details as the levels of per-call compensation and how these values should be determined, who should pay the per-call compensation and on what calls it should be paid, and how overall compensation amounts should be computed, verified and collected.[2]

Consistent with this approach, TRA urged the Commission to exempt from any per-call payphone compensation requirement, at least on an interim basis, IXCs which generate less than one billion dollars in annual interstate toll revenues. Such an exemption, TRA argued, would not only be consistent with past actions undertaken by the Commission in comparable circumstances, but would further other strongly-voiced Congressional goals. The rationale for granting an exemption from per-call payphone compensation requirements to smaller IXCs, particularly smaller IXCs that provide prepaid calling card services, is remarkably similar to that which led the Commission to adopt and retain an exemption for the "fledgling" enhanced service

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[2] Notice, FCC 96-128 at ¶¶ 14 - 40.

industry from payment of interstate switched access charges[3] and to impose on only the largest IXCs the obligation to contribute to the current private payphone operators ("PPOs") compensation mechanism.[4] Moreover, granting smaller IXCs an exemption here would certainly further the strongly-voiced Congressional intent to increase the opportunities for and the participation of small business in the telecommunications industry.[5]

In a further effort to minimize adverse "customer impact or market displacement,"[6] TRA also urged the Commission to "grandfather" prepaid calling cards already in circulation or currently under contract for delivery from any per-call payphone compensation requirement and to provide for an extended -- *e.g.*, twelve months -- transition period before the imposition of such fees on any IXC. And still further to this end TRA argued that the Commission should make clear that per-call payphone compensation, when required, would only be levied on calls actually completed to the intended recipient and not to an intermediate switching facility. Finally

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[3] MTS and WATS Market Structure, 97 F.C.C.2d 682, ¶¶ 83-85 (1983), *modified on recon.* 97 F.C.C.2d 834 (1984), *aff'd in principal part and remanded in part sub nom.* National Association of Regulatory Utilities Commissioners v. FCC, 737 F.2d 1085 (D.C.Cir. 1984), *cert. denied* 469 U.S. 1227 (1985), *modified on further recon.* 99 F.C.C.2d 708 (1984), *aff'd sub nom.* American Tel. & Tel. Co. v. FCC, 832 f.2d 1285 (D.C. Cir. 1987), *modified on recon.* 101 F.C.C.2d 1222 (1985), *aff'd on further recon.* 102 F.C.C.2d 849 (1985); Amendment of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, 3 FCC Rcd. 2631, ¶ 2 (1988); Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, 6 FCC Rcd. 4524, ¶¶ 54-65 (1991), *modified on recon.* 7 FCC Rcd. 5235 (1992), *further recon. denied* 10 FCC Rcd. 1570 (1994).

[4] Policy and Rules Concerning Operator Service Access and Pay Telephone Compensation, 7 FCC Rcd. 3251, ¶ 51 (1992); 43 C.F.R. § 43.1301.

[5] 47 U.S.C. § 257; *see also* Joint Statement of Managers, S. Conf. Rep. No. 104-230, 104th Cong., 2nd Sess., p. 136 (1996) ("Joint Explanatory Statement"); *see also* Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses (Notice of Inquiry), GN Docket No. 96-113 (1996).

[6] MTS and WATS Market Structure, 97 F.C.C.2d 682 at ¶ 84.

to this end, TRA urged the Commission to "fairly compensate" payphone service providers ("PSP") for use of their equipment to complete toll free and access code, including prepaid calling card, calls by providing for their recovery of the long run incremental cost associated with originating such calls, but to refrain from awarding PSPs a regulatory-generated windfall. TRA concluded its comments by urging the Commission to avoid any compensation mechanism that would require consumers to deposit coins in payphones in order to make toll free or access code calls.

TRA believes that the comments submitted by other parties in this proceeding confirm the need to structure a per-call payphone compensation arrangement that minimizes the adverse impact on smaller IXCs and their generally small business and residential customers.

II

ARGUMENT

A. The Comments Confirm The Need To Exempt, At Least On An Interim Basis, Smaller IXCs From Any Per-Call Payphone Compensation Requirement (¶¶ 15 - 40)

As noted above, granting smaller carriers at least an interim exemption from any per-call payphone compensation mechanism would be consistent with the exemption granted enhanced service providers ("ESPs") from payment of interstate switched access charges and with the manner in which the Commission currently compensates PPOs for calls originated on their equipment. The rationales underlying these actions are certainly applicable here -- *i.e.*, avoidance of "rate shock," protection of a "fledgling" industry, as well as the consumers of its services, cognizance of the impact of other potentially disruptive changes, and minimization of regulatory-

created costs and other burdens. The exemption sought by TRA is also consistent with findings and actions of the California Public Utilities Commission ("CPUC") when confronted with the very issues facing the Commission here.

As noted in its comments,[7] the CPUC has instituted a "pay station service charge" ("PSSC") which requires a per-call payment of a $0.25 (less a processing charge) to PPOs for origination of non-coin intraLATA calls on their equipment. Currently, only AT&T Communications of California, Inc. and local exchange carriers ("LECs") actually make such payments; MCI Telecommunications Corporation ("MCI") and Sprint Communications Company, L.P. ("Sprint") are required to implement the PSSC within a reasonable time. Critically, the CPUC has exempted all IXCs that carry three percent or less of the intraLATA traffic within the State of California.[8] In exempting smaller IXCs, the CPUC cited the hardship the assessment of the PSSC would work on these carriers, emphasizing the limited availability of call tracking technology and the burden associated with billing and collection.

Also supportive of the exemption sought here by TRA for smaller IXCs are actions taken by other states. For example, when the Florida Public Service Commission ("FPSC") levied per-phone payphone compensation obligations on IXCs, it exempted all but the four largest carriers. As the FPSC explained:

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[7] Comments of the People of the State of California and the Public Utilities Commission of the State of California on the Notice of Proposed Rulemaking at 7-8 ("CPUC Comments").

[8] Public Utilities Commission of California, Resolution T-15782, Concerning Request of Pacific Bell (U-1001-C) to Clarify the Types of Calls to Which the $0.25 Pay Station Service Charge Applies, p. 8 (released March 13, 1996), *motions for stay and application for rehearing pending.*

> These four companies comprise approximately 90% of all the interLATA toll revenues in this state, according to the same regulatory assessment fee records. This method would be consistent with the FCC's method, simple to administer, and provide compensation to NPATS providers without unduly burdening small IXCs with relatively insignificant traffic.[9]

In addition to the State, the comments of various IXCs, including prepaid calling card providers, confirm the need for an exemption for smaller IXCs from any per-call payphone compensation requirement. These carriers reinforce TRA's assertions that imposition of a per-call compensation requirement on smaller IXCs would not only produce the "rate shock" that prompted the Commission to exempt ESPs from payment of interstate switched access charges, but would drain the limited resources of these small carriers through imposition of massive implementation costs and administrative burdens.

Certain per-call payphone compensation schemes present problems even for the largest carriers. Thus, as AT&T Corp. ("AT&T") explains, even it faces substantial developmental efforts and costs:[10]

> AT&T cannot, however, individually track 800 subscriber traffic (including debit card calls) to individual payphones. The inability to track such calls arises from the fact that, unlike most calls, billing for toll-free calls is based upon the ANI of the terminating telephone, not the originating phone. Because of this fact, AT&T's systems are not designed to maintain files of the ANIs of originating telephones that are necessary to compute per-call

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[9] Florida Public Service Commission, Dial-Around (10XXX, 950, 800) Compensation from Interexchange Telephone Companies to Pay Telephone Providers, Docket No. 920399-TP, Order No. PSC-93-0070-FOF-TP (released January 14, 1993) (emphasis added).

[10] Comments of AT&T Corp. at 14-15 ("AT&T Comments") (emphasis in original)..

> compensation for PSPs.[28] Moreover, AT&T estimates that it would take over a year to develop and implement a system to track AT&T toll-free calls from payphones

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[28] After substantial effort and expense, AT&T created a "work-around" system to enable it to pay compensation for intrastate 800 subscriber calls in Illinois, but that system is unable to accommodate more data than it presently handles.

Smaller carriers face insurmountable hurdles. Cable & Wireless, Inc. ("C&W") notes that "[e]ven for a carrier the size of CWI, which was ranked by the FCC as the nation's sixth largest interexchange carrier, the costs of [the per-call payphone compensation scheme contemplated by the Notice] are almost prohibitive."[11] Indeed, C&W questions whether many smaller IXCs will ever "be able to implement the procedures necessary to correctly monitor and remit payment to PSOs."[12] As C&W explains:[13]

> To implement the system proposed in the Notice, CWI would need to develop a report which can search all of its call records -- which average over 4 million per day -- to identify and separate out calls originating at the 1.85 million ANIs associated with payphones. Such a new report would require significant changes in CWI's current systems, and would necessitate the development of a new computer program to implement the report. Developing such a program will result in significant expenditures in computer programming time, and will result in various systems being taken "off-line" in order to ensure that the new report properly interacts with other reporting requirements.
>
> Once the list of the payphone ANIs are collected in a single report, these ANI's would need to be matched to the actual payphone owner to determine how and where payment should be remitted.

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[11] Comments of Cable & Wireless, Inc. at 10 ("C&W Comments").

[12] Id. at 9.

[13] Id. at 10-11 (footnotes omitted).

> This would require CWI to build a database to match each ANI with its owner. Because CWI does not have the necessary computer expertise within the company, it would have to hire outside consultants to design and build these new systems. Based on preliminary estimates from outside consultants, CWI believes that it would spend close to $1 million to build and implement the systems necessary to accomplish the FCC's objectives. Additionally, once the system is in place, the company would incur significant administrative costs simply to maintain the system and to product the quarterly updates received from the LECs.
>
> Overall, it would impose significant administrative and financial burdens on a company the size of CWI to spend $1 million to develop and implement systems whose sole purpose is to ensure fair compensation to payphone owners. Moreover, for the hundreds of smaller interexchange carriers, an expenditure of this size is practically impossible.

WorldCom, Inc. d/b/a LDDS WorldCom ("LDDS WorldCom") and Frontier Corporation ("Frontier") echo these concerns. Describing the magnitude of the problem, the latter notes:[14]

> Under the Commission's NPRM proposal, each of the more than 514 IXCs who purchase access and the 1000+ LECs who provide services originating from payphones would be required to track each of the 1000-2000 payphone provider's 1.85 million payphones, along with each and every call that such carrier carriers that originates on each of those payphones. In total and even considering the limited geographic scope of some of these carriers, far in excess of <u>a billion</u> cross-referencing call tracking transactions would be required to be done <u>each day</u> simply to determine whether compensation might be owed. However, the burden of massive and often redundant calculations will not stop there.

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[14] Comments of Frontier Corporation at 13-14 ("Frontier Comments") (emphasis in original).

And LDDS WorldCom confirms the current absence of the necessary call tracking capability among most carriers:[15]

> LDDS WorldCom submits that for the vast majority of interexchange carriers, there are no existing procedures which would permit carriers to identify, measure, and pay for access code and subscriber 800 calls originating from payphones. In CC Docket No. 91-35, LDDS WorldCom has already demonstrated that LDDS WorldCom currently lacks the ability to identify access code calls from pay telephones. While two large IXCs apparently can measure dial around calls originating from private payphones, there is simply no evidence that there are existing procedures in use by IXCs which would enable them to generally implement measurement of dial around calls from LEC and non-LEC payphones.

The Intellicall Companies ("Intellicall") touches upon the unique limitations confronting prepaid calling card providers:[16]

> Neither Intellicall nor other providers of similar services have any way of knowing the degree to which callers using their prepaid card use pay phones, but given the razor thin margins of the prepaid business, any further incompensable costs would have a potentially very detrimental impact.

As the carriers quoted above, as well as other commenters,[17] make clear, many smaller IXCs simply would be not be able to comply with the per-call payphone compensation

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[15] Comments of WorldCom, Inc. d/b/a LDDS WorldCom at 14 ("LDDS WorldCom Comments").

[16] Comments of Intellicall Companies at 22 ("Intellicall Comments").

[17] *See e.g.*, Comments of Excel Telecommunications, Inc. at 6-7 ("Excel Comments"); Comments of Scherers Communications Group, Inc. at 4 ("Scherers Comments"); Comments of International Telecard Association at 13 ("ITA Comments"); Comments of Competitive Telecommunications Association at 8-9 ("CompTel Comments").

mechanism envisioned by the Notice. Scherers Communications Group, Inc. succinctly captures the level of concern, noting:[18]

> If the Commission orders a payment method as proposed in the Notice, the cost in terms of time and resources would be devastating to all but the largest carriers.

And this assessment does not account for the "rate shock" smaller IXCs and prepaid calling card providers will experience if per-call payphone compensation obligations are assessed on them in the short term. As TRA emphasized in its comments, the customer relationships of smaller IXCs tend to be far more price sensitive than those of their far larger, more established competitors. Hence, the ability of smaller IXCs to simply pass through new regulatory-mandated costs is far more limited. And given the "razor thin margins" to which Intellicall and ITA refer,[19] the rate impacts, like those that the Commission feared would be "service disrupting" for ESPs, could well be "severe."[20] Moreover, like ESPs in the 1980s, smaller IXCs in the mid-1990s are currently confronting "a number of significant, potentially disruptive, and rapidly changing circumstances," primarily resulting from the passage of the 1996

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[18] Scherers Comments at 4 (footnote omitted).

[19] Intellicall Comments at 22; ITA Comments at 13.

[20] Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, 6 FCC Rcd. 4524 at ¶ 54.

Act and the entry of the Regional Bell Operating Companies ("RBOCs") into the long distance industry.[21] Hence, the force of the already severe rate impact will be magnified here.

In short, granting smaller IXCs at least an interim exemption from the imposition of any per-call payphone obligation adopted in this proceeding would represent sound public policy. Given the Commission's acknowledgment that "[d]espite the role of small businesses in the economy, and the growth of the telecommunications market, small businesses currently constitute only a small portion of telecommunications companies."[22] it certainly makes little sense to adopt rules and policies which would materially adversely impact the many small businesses that populate the interexchange resale and prepaid calling card industries. Indeed, the resale and prepaid calling card industries represent one of the few small business success stories in telecommunications today.

B. The Commission May Forbear From Applying Section 276(b)(1)(A) To Smaller IXCs

Under Section 401 of the 1996 Act, the Commission "shall forbear from applying . . . any provision of [the 1996] Act . . . to a class of telecommunications carriers or telecommunications services . . . if the Commission determines that:

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[21] Amendment of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture Policy and Rules Concerning Rates for Dominant Carriers, 6 FCC Rcd. 4524 at ¶ 54; *see also* Amendment of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, 3 FCC Rcd. 2631, ¶ 17 (1988) ("We believe that given the combined effects of the impending ONA implementation and the entry of the BOCs into certain aspects of information services, the imposition of access charges at this time is not appropriate and could cause such disruption in this industry segment that provision of enhanced services to the public might be impaired.").

[22] Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses (Notice of Inquiry), GN Docket No. 96-113 at ¶ 6 (footnote omitted).

> (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
>
> "(2) enforcement of such regulation or provision is not necessary for the protection of consumers; and
>
> "(3) forbearance from applying such provision or regulation is consistent with the public interest."[23]

Moreover, Section 10(c) further requires the Commission, in reaching the above-described determination, to "consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions."[24] And Section 10(d) in no way limits the Commission's ability to forbear from applying Section 276(b)(1)(A).[25]

As TRA has explained in its comments and in the preceding section, forbearing from applying the Section 276(b)(1)(A) per-call payphone compensation requirements to smaller IXCs is certainly consistent with the public interest. Forbearance would avoid the devastating impact that immediate assessment of per-call payphone compensation requirements would have on smaller IXCs, particularly those engaged in providing prepaid calling card services. In so doing, it would further the strong Congressional desire to promote greater involvement by small business in the telecommunications industry. Forbearance would also help maintain the competitive population of the interstate, interexchange market, thereby preserving for small business in particular the availability of alternative sources of supply. As the Commission has

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[23] 47 U.S.C. §160(a) (emphasis added).

[24] 47 U.S.C. §160(b).

[25] 47 U.S.C. §160(d).

acknowledged, smaller IXCs "are able to serve narrower niche markets that may not be easily or profitably served by larger corporations." Small business consumers of telecommunications constitute just such a "niche market."[26]

The only countervailing interest here is that of the PSPs and the Commission has previously found that the public interest balance must be struck in this instance in favor of the small IXC community. In adopting the current PPO compensation scheme, the Commission recognized that limiting responsibility for competitive payphone compensation to only the larger IXCs had little adverse impact on PPOs and avoided substantial damage to smaller IXCs.[27] As the Commission explained:

> We note that there are approximately 455 IXCs currently purchasing switched access, a great many of which provide operator services. To extend compensation obligations to all of these carriers would have significantly increased the administrative costs of a compensation mechanism. By contrast, limiting compensation obligations to IXCs providing operator services who earn $100 million or more in annual toll revenues (there are currently fourteen such carriers) will substantially ease the administrative burden of billing and collection. Moreover, IXCs earning less than $100 million in toll revenues per year collectively account for less than five percent of long-distance carrier toll revenues. Individually, they account for a much smaller percentage. Therefore, the payment obligations of these carriers, had they been included, would have been quite low in any case.[28]

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[26] Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses (Notice of Inquiry), GN Docket No. 96-113 at ¶ 6.

[27] Policy and Rules Concerning Operator Service Access and Pay Telephone Compensation, 7 FCC Rcd. 3251 at ¶ 51.

[28] Id. (footnotes omitted).

Interestingly, the comments of the American Public Communications Council ("APCC") actually confirm that an approach comparable to that described above would be appropriate here. Thus, APCC acknowledges that many IXCs are "too small to track subscriber 800 traffic," and hence suggests that instead of per-call payphone use fees, they be required to "pay flat-rate subscriber 800 compensation based on their percentage of toll revenue or (if available) their percentage of overall payphone and non-payphone 800 service traffic."[29] APCC then illustrates this proposed payment scheme by assuming a carrier with "a 1% share of the 800 service market" and a per payphone, per month average of $32.00 in "total subscriber 800 payments." Based on these assumptions, APCC derives a "$.33 per payphone per month" payment for its assumed carrier.[30] Given that most of TRA's resale carrier members have only a small fraction of "a 1% share of the 800 service market," APCC's illustration confirms that "[t]o extend compensation obligations to all of these carriers would . . . significantly increase[] the administrative costs of a compensation mechanism, while generating "payment obligations . . . [that are] quite low in any case."[31]

C. The Commission Should Adopt The Per-Call Payphone Compensation Administration Approach Recommended By Ameritech (¶¶ 29 - 34)

The Notice tentatively concludes that IXCs must bear the burden of not only tracking payphone-originated calls, but, pursuant to a reverse-billed arrangement, of advising

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[29] Comments of American Public Communication Council at 27 ("APCC Comments")

[30] Id.

[31] Policy and Rules Concerning Operator Service Access and Pay Telephone Compensation, 7 FCC Rcd. 3251 at ¶ 51.

individual PSPs of the number of toll-free and access code calls received from their payphones, calculating the amount due each PSP for originating such calls and remitting payment to the appropriate PSP.[32] The Notice predicates these conclusions on the erroneous assumptions that the requisite "tracking mechanisms and surrogates exist, or might be readily available," and that the reverse-billing arrangements proposed in the Notice would not be unduly burdensome, and on the misguided belief that it would be appropriate to impose the burden of implementing the per-call payphone compensation mechanism on IXCs because they alone receive the benefits of toll free calls.[33] The approach outlined in the Notice stands logic on its head, ignores the diverse flow of benefits, and, as noted in a preceding section of these comments, imposes obligations on the parties least able to meet them.

In its comments, Ameritech has suggested an alternate approach which is not only workable, but logically oriented.[34] Commencing with the blunt statement that "pay telephone owners who expect compensation should have to bill for it," Ameritech outlines a mechanism which renders such billing feasible.[35] Ameritech proposes to impose on LECs the obligation to create billing mechanisms which would identify and bill for payphone-originated toll-free and access code calls and then make such capability available to PPOs. Ameritech explains how it modified its carrier access billing system to isolate calls that originated at Ameritech payphones, noting that such modifications have made it possible for it to do "all the measuring and recording

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[32] Notice, FCC 96-128 at ¶¶ 29-34.

[33] Id. at ¶¶ 31-32.

[34] Comments of Ameritech at 8-12 ("Ameritech Comments").

[35] Id. at 8.

that is necessary to make [its] IXC pay telephone use fee tariff effective, billing the IXC for all calls made from Ameritech's pay telephones whether dialed '1+', '0+', with an access code, or using '800'."[36] Moreover, Ameritech notes both that "a billing mechanism similar to that which has functioned so successfully for Ameritech could be instituted by other LECs to bill compensation for their own pay telephones," and that "the billing capabilities of the various LECs can be utilized to overcome the shortcomings in the ability of private pay telephone owners to bill for each and every call, particularly their difficulty with '800' calls."[37] Indeed, Ameritech commits to "offer a service for billing charges for pay telephone compensation fees for various calls, including '800' calls, to any private pay telephone provider in Ameritech territory."[38]

Ameritech's proposed approach is, as the carrier points out, consistent with "the pattern universally followed in the telecommunications industry, as well as in the business world at large, that the party who expects payment should take the responsibility for preparing a bill and rendering it to the party who is going to pay."[39] Moreover, it equitably allocates the costs associated with a per-call payphone compensation mechanism among all the beneficiaries of the compensation scheme. Contrary to the Notice's assertion, IXCs are not the only, or perhaps even the primary, beneficiaries of dial-around payphone-originated calls in a per-call compensation environment. IXCs do benefit from receipt of such calls but then so do LECs which receive nearly fifty percent of the associated compensation through access charges. And PSPs will

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[36] Id. at 9.

[37] Id. at 10.

[38] Id.

[39] Id. at 11.

obviously benefit from receipt of per-call compensation. Thus, under the Ameritech proposal, LECs will be responsible for providing billing data. PSPs will be responsible for billing and collection, and IXCs will be responsible for verification and payment. Certainly, the Ameritech scheme would avoid the devastating consequences of the Notice's approach that are detailed in Section II(A) of these comments.

TRA also endorses a tracking and administrative approach suggested by Frontier, C&W and other IXCs -- *i.e.*, an LEC-administered system in which the LEC bills IXCs per-call payphone use fees in conjunction with its access charges and forwards the receipts to the PSPs.[40] As C&W points out, all billing relationships involved in such a system currently exist, including relationships between the LECs and the IXCs and the LECs and the PSPs, and all associated systems are already in place.[41] As described by Frontier in greater detail:

> The more efficient LEC administered system employs only a small subset of the transaction-based business relationships that would occur under the Commission's NPRM system that obliges all carriers to track compensation call. Thus, rather than each of the more than 1500 carriers tracking calls originating from 1.85 million payphones, only each LEC will be required to track the calls that originate from payphones directly connected to its local network. . . .
>
> Moreover, because every local exchange carrier has a transaction-based business relationship with each and every pay telephone owner connected to its local network, no new transaction based business relationships would be required that do not already exist today. Today, every local exchange carrier renders a bill to every payphone provider that connects to its network for local monthly charges, local usage charges, and any other services provided.

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[40] *See e.g.*, Frontier Comments at 12-17; C&W Comments at 11-13.

[41] C&W Comments at 11-12.

> Each of these billing systems is capable, and does from time to time, generate payments to these pay telephone providers (e.g., when an overpayment is received and must be paid back, or a deposit must be returned).
>
> Similarly, every local exchange has a transaction-based business relationship with the carrier that connect to its network (whether it be itself or another) over whose network a call from the payphone is initially carried. A further simplification is that a LEC-administered system need only be done on a "net-net" basis. That is, the LEC may track the payphone compensation paid separate and apart from the LEC collection system because the access billing system can cue off of the information digits indicating a payphone call, yet not be concerned with which particular payphone actually originated the call.
>
> Using this net-net compensation/collection system, payphone compensation can be easily, and cost-effectively collected and paid out through these existing transaction based business relationships using existing LEC systems.[42]

As with the Ameritech scheme, the Frontier/C&W proposal provides for delivery of a bill by the entity that expects payment -- albeit through a billing agent -- to the entity that is expected to make the payment and not vice versa. And it allocates responsibilities among all beneficiaries of the service arrangement, minimizing implementation costs by relying upon existing systems and relationships. Moreover, like the Ameritech approach, the Frontier/C&W proposal does not impose an undue cost or burden on any one party. Thus, like the Ameritech proposal, the Frontier/C&W scheme would not unnecessarily devastate the better part of the long distance industry in a misguided effort to compensate PSPs without allocating to them any of the responsibility associated with the compensation scheme.

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[42] Frontier Comments at 14-16.

D. The Commission Should Not Sanction Exorbitant Per-Call Payphone Use Fees (¶¶ 35 - 40)

The payphone industry proposes that per-call compensation for toll-free and access code calls be set at levels that generally range between $0.40 and $0.80 per call.[43] These figures represent a variety of different costing and investment analyses and are generally designed to recover fully-loaded costs, healthy profits and/or lost opportunities. The suggested values obviously represent very substantial increases over amounts previously received by PSPs, directly or indirectly, from IXCs.

TRA is not in a position to provide cost data to dispute the calculations and resultant fee recommendations of the PSP commenters. In response to the claims by the PSP commenters that large per-call payphone use fees are appropriate, TRA can only reiterate here the principals it suggested in its comments should guide the Commission's assessment of what constitutes "fair compensation" for origination of a toll-free or access code call and offer a single, and what it believes to be, compelling insight.

Principal No. 1: The per-call payphone use fee should be predicated on cost; while Section 276 offers no guidance as to what constitutes "fair compensation," elsewhere in the 1996 Act, the Congress expressed a consistent preference for cost-based pricing.[44] Principal No. 2: Opportunity costs are not an appropriate costing element. Principal No. 3: Costs should be "forward looking," reflect the most efficient available technology and be predicated on long

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[43] *See, e.g.*, APCC Comments at 33-34; Comments of Illinois Public Telecommunications Association at 15 ("IPTA Comments"); Comments of New Jersey Payphone Association at 9 ("NJPA Comments"); Comments of Peoples Telephone Company, Inc. at 14-15 ("Peoples Comments"); Comments of ACTEL, Inc. at 7-8 ("ACTEL Comments").

[44] *See, e.g.*, 47 U.S.C. § 252(d)(1)(A); 47 U.S.C. § 252(d)(3)

run incremental costs: "[e]conomists generally agree that prices based on [long run incremental cost] reflect the true economic cost of a service and give appropriate pricing signals to producers and consumers and ensure efficient entry and utilization of the telecommunications infrastructure."[45] In short, TRA agrees with AT&T that "[t]he most economically rational approach for calculating PSPs' per-call compensation is the [total service long run incremental ("TSLRIC")]-based method recommended by the Department of Justice, AT&T and many other commenters [including TRA] in the Commission's companion Local Compensation Proceeding."[46]

The insight TRA can offer is with respect to the impact on its members of an immediate assessment of a $0.40, or $0.50 or $0.80 per-call payphone use fee, in conjunction with the additional costs and administrative burdens associated with the imposition of such fees. As noted above, the customer relationships of smaller IXCs tend to be far more price elastic than those of larger, more well established providers and as detailed in TRA's comments, given the tiered structure of the telecommunications resale and in particular the prepaid calling card, distribution chain, the impact of cost increases resulting from regulatory fiat tends to be magnified for smaller IXCs. The margins of many smaller IXCs, particularly those in the middle of fixed long-term service arrangements with underlying network providers, are already being squeezed as more and more incumbent LECs enter the interstate, interexchange market. As noted previously, like the ESPs before them, smaller IXCs are confronting "a number of significant,

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[45] Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers (Notice of Proposed Rulemaking), 11 FCC Rcd. 5020, ¶ 47 (1995).

[46] AT&T Comments at 6.

potentially disruptive, and rapidly changing circumstances."[47] Immediate assessment of a substantial new cost on already vulnerable entities will greatly exacerbate what is already an extremely difficult situation for many smaller providers. For some, it may well constitute the fatal blow.

TRA strongly urges the Commission in its determination of what is "fair compensation" for PSPs not to act without regard to the harm such actions may produce for smaller IXCs.

E. The Commission Should Reaffirm Its Rejection Of A Coin-Deposit Compensation Arrangement (¶¶ 15 - 23)

Some commenters have suggested that a viable approach to compensating PSPs for origination of toll-free or access code calls on their equipment is to require the person initiating the call to deposit coins in the payphone.[48] As it noted in its comments, TRA strongly disagrees. Such an approach would seriously undermine the prime attribute of both toll-free and access code calling -- *i.e.*, convenience. Toll free numbers are attractive to providers of goods and services because they eliminate a key obstacle to customer response -- *i.e.*, cost. Prepaid and post-paid calling cards are attractive to consumers primarily because they provide user friendly access to telecommunications capabilities from remote locations. Requiring the use of coins in conjunction with such calling options reduces their utility and hence their value to consumers. In certain circumstances, such as promotional prepaid calling cards, a coin sent-paid approach

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[47] Amendment of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture Policy and Rules Concerning Rates for Dominant Carriers, 6 FCC Rcd. 4524 at ¶ 54.

[48] *See, e.g.*, Intellicall Comments at 24-34.