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July 15, 1996

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VIA FEDERAL EXPRESS

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RE: Reply Comments of the Illinois Public Telecommunications Association in CC Docket No. 96-128, In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996.

Ladies and Gentlemen:

Enclosed for filing, please find an original and twelve copies of the Illinois Public Telecommunications Association's Reply Comments in the above matter. We would also appreciate it if you would return a filed-stamped copy of the Comments in the enclosed self-addressed stamped envelope

If you have any questions, please feel free to contact me.

Sincerely,

Henry T. Kelly

HTK:cj

Enclosures

No. of Copies rec'd 0+11
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

REPLY COMMENTS OF THE ILLINOIS PUBLIC TELECOMMUNICATIONS ASSOCIATION

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Dated: July 15, 1996

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FEDERAL COMMUNICATIONS COMMISSION
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REPLY COMMENTS OF THE
ILLINOIS PUBLIC TELECOMMUNICATIONS ASSOCIATION

The Illinois Public Telecommunications Association, by its attorneys O'Keefe, Ashenden, Lyons and Ward, states as follows for its Reply Comments related to the FCC's Notice of Proposed Rulemaking.[1] Many of the initial comments filed by the parties indicate that the industry may not be as far apart on some issues as one would think. Virtually all parties agree that payphone providers are entitled to compensation for dial-around calls as well and subscriber 1-800 calls, and that calls such as telecard (or debit card) calls are also compensable under Section 276 the Telecommunications Act of 1996.

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[1]The Illinois Public Telecommunications Association does not reply to every comment filed by all other parties. If the IPTA does not reply to the comments of other parties, this should not necessarily be construed as agreement to the positions taken by the other parties to this proceeding.

The plain language of the Act obviously requires compensation for such calls, but at least there is no longer any dispute as to this fundamental premise. Of course, beyond this fundamental issue, there is not total harmony among all the industry participants.

The more detailed the discussion on implementing the compensation procedures reveals some disagreement among the parties. Many of the comments filed are quite compelling and warrant further investigation (*i.e.* Comptel and Worldcom's suggestion that the intraLATA carriers have the ability to, and should be responsible for, tracking calls and compensating carriers.) Other comments are fairly absurd given the mandate of Section 276 of the Act (*i.e.* Sprint's comment that the compensation to payphone providers for the use of their services and facilities is a "government mandated fee, for which the IXCs are simply acting as conduits between the PSPs and consumers. . . ." (Sprint Comments at p. 12.)) Still other statements are outlandishly false (AT&T's statement that it "cannot . . individually track 800 subscriber traffic". (AT&T Comments at p. 14.)

The IPTA again focuses its comments on the NPRM's request for information on how to develop fair and equitable procedures whereby all payphone providers would receive compensation for the use of their phones to complete nonpresubscribed 0+ calls and subscriber 1-800 calls.

I. THE COMMISSION SHOULD INVESTIGATE THE ABILITY OF LOCAL EXCHANGE CARRIERS TO TRACK COMPLETED COMPENSABLE CALLS. (NPRM ¶¶29-31.)

Several of the parties, particularly the small IXCs and Telecard companies, suggest that they are not equipped to identify which calls are made by their customers and through their networks from payphones. They further suggest that they are not able to identify which payphone providers would receive compensation, and that to impose these burdens on the would cripple their industries through increase administrative burdens and expenses. Worldcom and the Competitive Telecommunications Association suggest that the local exchange carrier, which provides access services to both the payphone provider and the facilities based IXC, is the best equipped to identify which calls are completed, and which IXC is responsible for compensating the payphone provider. (Worldcom Comments at pp. 6; 16-18; Comptel Comments at pp. 9-11.) These suggestions, if technically feasible, should be further explored with an eye to adopting their proposed procedure for implementing the compensation mechanism.

Those parties that suggest that the originating LEC be responsible for identifying which calls are compensable, identifying the IXC responsible for paying the

compensation[2], and who is entitled to the compensation have made a compelling argument. If the LEC can verify calls that are completed, the administration of the compensation required under the Act would be dramatically better than the procedure being abused today by the IXCs. The local exchange carrier already has account information (name, address, and contact person) for both the payphone provider and the carrier responsible for paying the compensation. Several of the large IXCs (AT&T and MCI) continue to demand that the LEC verify that the ANI is a payphone ANI. This request becomes moot if the LEC is responsible for tracking, collecting and paying all compensation. (MCI Comments at p. 8.)

There are three issues that must be addressed prior to the FCC mandating the suggestions made by these carriers:

1. Will the originating LEC receive and retain the answer supervision signal from a called station so that it is able to identify which calls are completed, and therefore compensable?[3]

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[2]The IPTA agrees with the suggestion that the facilities based IXC which has established the point-of-presence (POP) with the local exchange carrier, and is the first IXC which carries the dial-around or 1-800 call, should be responsible for making the payment to the payphone provider. This IXC, to the extent it has leased or sold its facilities to another carrier or reseller, can then recover whatever payments it needs from the other IXCs to whom it interconnects.

[3]Section 276 of the 1996 Act requires fair compensation for all "completed" calls. For purposes of this discussion, the IPTA assumes that the FCC ultimately adopts a procedure whereby the calls which are completed to the called station are compensable, and calls which are

2. If the LECs can track the compensable calls, can they segregate the calls which are directed to the presubscribed carrier from the dial-around and subscriber 1-800 calls which would be compensable under Section 276 of the 1996 Act.

3. Any charge assessed against the payphone provider for the LEC services must be a) nondiscriminatory and b) added to the rate of compensation paid by the IXCs (assuming a cost-based rate of compensation.)

If the Commission ultimately adopts a compensation procedure whereby a "completed interstate and intrastate call" is deemed completed when answer supervision is triggered by the called station, and the originating LEC tracks calls and administers the compensation, then most of the administration problems described by the telecard industry, small IXCs, the payphone providers (including the IPTA which complained of the three-to-six month time lag for receiving compensation), and the large IXCs (who continue to insist upon LEC verification) may be resolved.

Under the plan proposed by Worldcom and Comptel, the originating LEC could use its existing carrier access billing system ("CABS") to issue charges and credits between facilities based IXCs and payphone providers. One of the advantages of the LECs doing the tracking is that it takes advantage of existing procedures and technology

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completed to a 1-800 carrier platform (but not completed to a called station) are not compensable.

already deployed on the network. This mechanism will work, however, only if the originating LEC receives *and* retains answer supervision signals from the terminating LEC to identify that a call has been completed to the called station. The IPTA does not have information to know whether this is the case; however, proper verification by the originating LEC that a call has been completed is critical for these procedures to be adopted.

MCI's comments suggest that LECs currently have the ability to track calls on a "real time" basis, using the existing ANI Information Digit ("07" for non-LEC payphones and "27" for LEC payphones.) (MCI Comments at p. 10.) The ability of the LEC to track a call when made, rather than the current system where calls are tracked in arrears on a quarterly basis, could be valuable in minimizing the administrative burdens.

To fully develop a system where by the LECs track, bill and pay all compensation, the LEC must also be able to segregate from its tracking, calls made to a payphone provider's presubscribed 0+ and 1+ carriers. The IPTA has conducted some experiments with Ameritech in which Ameritech has attempted to track the number of completed intrastate dial-around and subscriber 1-800 calls. These experiments have had limited success. Part of the problem has been that Ameritech produces records of all calls to IXCs from a payphone, not just dial-around or subscriber 1-800 calls. Consequently,

when Ameritech tracks all calls to an IXC, it identifies calls made to the presubscribed 0+ carrier, the presubscribed 1+ carrier, and all other calls delivered to an IXC POP. If the Commission adopts a compensation plan which allows PSPs to negotiate separately for 0+ and 1+ calls (as the Commission should), then much of the tracking done by the LECs is unnecessary. The LEC should not be able to charge the IXC for tracking and billing services which are not necessary for compensation.

For example, if ABC Payphone Company presubscribes its payphones to AT&T for 0+ calls, and receives compensation from AT&T under contract, there is no need for Ameritech (or another LEC) to track 0+ calls to AT&T. However, the existing tracking services used by Ameritech will identify all calls made to AT&T, not just dial-around or 1-800 calls. The tracking by the LECs, for purposes of compensation under Section 276, should be only for calls made to those carries who do not have negotiated agreements with the payphone provider.

Finally, any costs incurred by the LEC for tracking and collecting the compensation should be assessed against the IXCs. If costs are imposed by the LEC on PSPs for the tracking and administration, these costs must be nondiscriminatory, and added to the rate of compensation. The first of these tenets, that the costs be nondiscriminatory, is obvious considering much of the requirements of the 1996 Act.

However, Ameritech's admissions that it is using network billing and tracking functions, to gain a competitive advantage over other PSPs, needs to addressed. Congress has gone to great lengths to eliminate disparities in the payphone market created by LECs using their network functions to gain a competitive advantage (such as a price squeeze) over competitive payphone providers. Ameritech has indicated that its payphone division uses the network-provided CABS to track and bill for dial-around calls. (Ameritech Comments at p. 9.) The Commission must prohibit Ameritech, and any other LEC, from using network functions to track and bill for compensable calls until the Commission sets up the procedures whereby these network services are uniformly used by the LECs to serve all payphone providers under the same rates, terms and conditions.[4]

Many of the IXCs argue that any rate of compensation ultimately adopted by the Commission should be based on costs (most argue that TSLRIC is the appropriate standard). Therefore, any additional costs incurred by the LEC tracking and billing for

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[4]Ameritech argues that payphone providers should be responsible for tracking and billing for completed calls, and then describes how its payphone division uses the carrier access billing systems to track and bill for calls. It should be clear that Ameritech - the local exchange carrier - is tracking and billing for completed calls. Ameritech - the payphone provider - has no mechanism to track calls completed to other IXCs. If Ameritech - the payphone provider - is using network functions to gain another advantage over its competitors in an area so critical as dial-around compensation, then perhaps the FCC and Congress should reconsider the structural separations required in the Commission's *Computer II* proceedings.

calls should be borne by the IXCs. If the Commission sets a rate of compensation based on cost, and there are costs assessed against payphone providers for LEC tracking and billing services, then these costs must be included in the cost studies for setting the rate of compensation. Consequently, if the Commission adopts the IPTA's suggested cost-based rate of compensation of $0 55 per call (for an average five minute call), and PSPs were charged an additional $0.01 per call for tracking and billing services per call record, then the rate of compensation should be increased to $0.56 per call.

The Commission should strongly consider whether the originating LECs have the technical ability, by simply modifying their existing carrier access billing system (CABS), to identify all completed compensable calls, bill the facilities based IXC to whom a call is first directed, and compensate PSPs on a monthly basis. This is a procedure which IXCs, LECs, and payphone providers have agreed could provide the most accurate, and least administratively burdensome, method for implementing Section 276.

II. THE COMMISSION SHOULD CONSIDER IMPLEMENTING A PER-MINUTE RATE OF COMPENSATION. (NPRM ¶23.)

Worldcom suggests that the Commission should consider adopting a per-minute rate of compensation. (Worldcom Comments at p. 20.) The IPTA emphatically agrees that the "fair" rate of compensation is one which most accurately reflects a carriers' use of

a payphone provider's services and facilities. A per-minute rate of compensation is the most equitable form of compensation. In addition, a per-minute rate of compensation would resolve the unfounded concerns the IXCs have with payphone providers attaching autodialers to their payphones to increase the number of compensable call. A per-minute rate of compensation would also more accurately reflect the negotiated compensation arrangements among PSPs and OSPs. Most 0+ compensation agreements do not provide payphone providers with a flat fee, but provide payphone providers with a rate of compensation contingent on the end user charges (which are time and distance sensitive.) A per-minute rate of compensation would more closely resemble a market-based mechanism for compensation.

In its initial Comments, the IPTA indicated that the appropriate cost-based rate of compensation was at least $0.55 per call, for an average five minute call. If the Commission adopts a per-minute rate of compensation, the IPTA recommends that the rate of compensation be set at $0.11 per minute, plus whatever additional costs are imposed on payphone providers for the LEC tracking and billing services (these additional costs should be assessed against the IXCs.)

III. CALLS COMPLETED TO A CARRIER PLATFORM SHOULD BE COMPENSATED. (NPRM ¶¶15-23.)

Several parties argue that calls completed by a facilities based carrier (such as AT&T) to a telecard resellers' platform are not "completed" for purposes of compensation under Section 276. (See e.g. International Telecard Association Comments at pp. 17-12.) The plain meaning of the 1996 Act contemplates that when a call is completed to AT&T's customer (the telecard provider), AT&T is required to compensate the payphone provider for the completion of the call.

Telecard providers conveniently argue that only calls which are completed to the called station are compensable, and then argue that they do not have the mechanism or technical ability to track which calls from payphones are completed. These arguments are virtually identical to the old AT&T/Sprint arguments that they cannot track completed calls, so therefore there should be no compensation. If the telecard providers wish to compensate payphone providers for only completed calls to called stations, then the Commission must impose the burden on the telecard providers to specifically identify which calls are completed to the called stations. Payphone providers do not receive answer supervision information to be able to identify which calls are completed. However, telecard companies do have the ability to obtain and retain this information. If the Commission adopts a billing procedure which requires IXCs to track completed calls

(the IPTA supports a billing procedure administered by the LECs), then the Commission should require all calls completed to a telecard platform to be compensated. The Commission can then allow the telecard carriers a waiver to not pay compensation on all calls completed to their network where they demonstrate the technical ability to track calls completed to a called station. The burden to track calls completed to a called station must be imposed on the telecard platform providers. Until these carriers develop the procedure to track completed calls, all calls completed to the telecard platform should be compensated.

The ITA's reference to *Long Distance/USA, Inc. v. Bell Telephone Company of Pennsylvania,* 10 FCC Rcd 1634 (1995) is interesting. There, although a call was completed from a LEC to AT&T (the 800 service provider), then to the reselling carrier, LECs assessed CCL charges against AT&T. AT&T (or the facilities based IXC) then billed the reselling carriers rates which included CCL charges. The Commission found that the reselling carriers were entitled to refunds of the CCL charge they paid directly to the LECs, and that it was proper for the facilities based IXCs to pass on CCL charges to the resellers:

> Moreover, the Commission has recognized that carrier common line charges are included in the rates for the services that an underlying carrier provides to resellers. [FN53] In addition, because we have found that the higher CCL charge was assessed on the IXCs

> providing 800 service and that the IXCs included that charge in their 800 rates, the participation of the IXCs providing 800 service is not essential to these proceedings.

Long Distance/USA, 10 FCC Rcd at 1640.

The same method for compensating the LECs in *Long Distance/USA* should be used to compensate payphone providers - - the compensation should be paid by the facilities based carrier on all calls completed to a telecard carrier's platform. Other than the LEC tracking and billing system suggested by Worldcom and discussed in Section I of these comments, this is the only way in which payphone providers could be assured compensation for completed calls (again, telecard companies contend they do not have the ability to track completed calls made from their platform.)

IV. THE COMMISSION SHOULD ADOPT A "CARRIER PAYS" MECHANISM OF COMPENSATION. (NPRM ¶¶24-28.)

Several parties provide comments that are patently absurd, and require only brief comment. Sprint argues that the Commission should adopt a set use fee approach so that the compensation to the payphone provider can be listed as a "separate line item on the bill of the party paying for the call, gives visibility to the public of the cost of the per-call compensation program . . Consumers are entitled to know what they are being required, through the actions of the legislature, if not this Commission, to pay for." Sprint

continues to argue that the set use fee "is a government-mandated fee, for which the IXCs are simply acting as conduits between PSPs and the consumers responsible for paying the fee." (Sprint Comments at p. 12.)

Sprints comments demonstrate a clear lack of understanding by Sprint of the purpose of the compensation. Sprint has historically instructed its customers to place calls from payphones. For these calls, Sprint has charged rates and surcharges for the use of its services and facilities, and the services and facilities of interconnecting carriers, to complete the calls. When Sprint was the presubscribed carrier, it also paid compensation to the originating payphone provider. However, when Sprint was not the presubscribed carrier, Sprint refused to compensate payphone providers for the use of the payphone providers facilities (even though Sprint's charges to its end users were the same whether or not a call was made from a presubscribed payphone.) Because Sprint's customer uses a payphone to complete a Sprint call, Sprint is required to compensate the payphone provider. The compensation mandated by Section 276 is not a government imposed tax, and Sprint is not acting merely as the conduit between "a consumer" and the payphone provider; Sprint is compensating the payphone provider for *Sprint's customer's* use of the payphone. The compensation mandated under Section 276 is a fee for Sprint's (and its customer's) use of the payphone to complete calls.

Sprint's argument for a set use fee is merely an attempt by Sprint to charge more to its customers (despite per call revenues sufficient to cover the additional cost), retain its existing revenue, and pass the blame for increased rates to payphone providers. Let it be clear, under the IPTA's proposal, there should be no need to increase rates. Existing Sprint operator service rates already have sufficient margin to compensate payphone providers without any increase in rates. In addition, there is currently no other procedure where intercarrier compensation arrangements are disclosed on a customer's bill as "set use fees."

Pagenet's arguments also require comment. Pagenet argues that [unlike the large IXCs like Sprint, MCI and AT&T], its existing contracts do not have compensation to payphone providers built into its subscriber contracts. (Pagenet Comments at p. 10.) In addition, Pagenet supports a "set use fee" method because "it can think of no other circumstance where the called party would be required to pay for the premises equipment or local transport of the calling party." (Pagenet Comments FN 12, p. 12.) Pagenet's argument is similar to Sprint's: both argue that irrespective of what Congress has ordered, and irrespective of the underlying equity for the compensation, the Commission should adopt a scheme which has no effect on Pagenet's revenue. To adopt Pagenet's rationale, however, would be to ignore the fact that it is Pagenet's customers who are using the

payphone to generate revenue for Pagenet, and the payphone provider is the only interconnecting carrier that does not receive compensation for the use of its services and facilities. All interconnecting LECs, IXCs and other service providers receive compensation when a call is place from a payphone to a pager. The payphone provider is also entitled to receive compensation.

V. AT&T, MCI AND SPRINT HAVE THE ABILITY TO TRACK OPERATOR SERVICE CALLS AND SUBSCRIBER 1-800 CALLS MADE FROM PAYPHONES. (NPRM ¶¶29-31.)

AT&T and Sprint argue that they need additional time to develop the technology to track completed calls which are made from payphones (AT&T Comments at p. 26; Sprint Comments at p. 13.) These statements are outlandishly false. AT&T, Sprint, and MCI have been ordered by the Illinois Commerce Commission to track completed intrastate operator service calls and subscriber 1-800 calls. AT&T, Sprint and MCI are *currently tracking completed intrastate operator service calls and subscriber 1-800 calls*. For these carriers to deny that they have the ability to identify compensable calls on a ANI-specific basis is an extreme misrepresentation and should be disregarded entirely.[5]

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[5]If the FCC wishes, the IPTA can provide the FCC with the names of individuals at these companies who will confirm the carriers' ability to track all completed calls on an ANI specific basis.

CONCLUSION

The Illinois Public Telecommunications Association respectfully requests that the Federal Communications Commission adopt the recommendations made in these comments, and the Initial Comments filed on July 1, 1996.

Respectfully submitted,

ILLINOIS PUBLIC TELECOMMUNICATIONS ASSOCIATION

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