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May 14, 1998

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OFFICE OF THE SECRETARY

BY HAND DELIVERY

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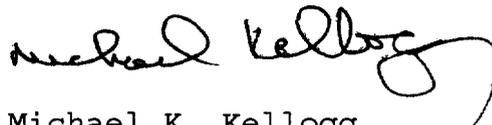
Re: In the Matter of Implementation of the Pay
Telephone Reclassification and Compensation
Provisions of the Telecommunications Act of
1996, CC Docket No. 96-128

Dear Ms. Salas:

Please find enclosed for filing an original and four copies
of the RBOC/GTE/SNET Payphone Coalition's Opposition to Sprint's
Petition for Reconsideration in the above-captioned proceeding.

Please date-stamp and return the extra copy provided to the
individual delivering this package.

Sincerely,



Michael K. Kellogg

Enclosures

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List A B C D E

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

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MAY 14 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

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

THE RBOC/GTE/SNET PAYPHONE COALITION'S
OPPOSITION TO SPRINT'S
PETITION FOR RECONSIDERATION

The RBOC/GTE/SNET Payphone Coalition hereby opposes Sprint's Petition for Reconsideration (May 4, 1998). In its Memorandum Opinion and Order of April 3, 1998, DA 98-642 ("April 3 Order"), the Common Carrier Bureau followed clear and binding Commission precedent by requiring IXCs to compensate PSPs for delays in paying per-call compensation at an annual rate of 11.25 percent. Sprint now argues that this rate is "too high." Sprint's argument is both procedurally barred and wrong on the merits. Moreover, Sprint incurs the obligation of which it complains only because it chose to avail itself of the extension granted by the Bureau. Given Sprint's flagrant disregard for binding Commission orders -- it has paid but a small fraction of the compensation that is now at least two weeks, and for the most part nearly seven weeks, overdue -- its decision to seek review of this aspect of the decision amounts to cynical abuse of the Commission's processes.

I. THE PETITION FOR RECONSIDERATION IS AN UNTIMELY ATTEMPT TO SEEK REVIEW OF AN UNDERLYING COMMISSION ORDER.

Sprint states that "the Bureau may have relied on the Commission's use of [the 11.25 percent interest rate] in the Second Report and Order" in setting PSPs' compensation for delays in payment of compensation for coinless calls. Sprint understates the case: the Bureau had no choice but to set the interest rate equal to 11.25 percent.¹ Sprint as good as admits that what it seeks here is Commission reconsideration of the 11.25 percent cost of capital that it applied in its Second Report and Order, 13 FCC Rcd 1778 (1997). That bid for reconsideration is more than five months out of time.

In the Second Report and Order, the Commission held that because per-call compensation is to be paid on a quarterly basis, with at least a three-month lag between the time that the IXC incurs the obligation and the time the IXC renders payment, PSPs should be compensated for the "additional cost of providing access code and subscriber 800 service calls that would not be included in the market rate for local coin calls." Id. at 1805, ¶ 59. For this reason, the Commission adopted an 11.25 percent rate -- equal to the return requirement for payphone investment suggested by AT&T -- to compensate payphone providers for this delay in receipt of compensation. Id. at 1805-06, ¶ 60. Until Sprint's Petition, no party, in any forum, had challenged this interest rate.

¹In addition to requiring compensatory interest payment, the Bureau could have imposed penalties on IXCs for failure to comply with valid orders.

In its April 3 Order, at the IXCs' request,² the Bureau waived the requirement that IXCs pay compensation on a per-call basis for payphones that are not capable of transmitting payphone specific digits with their ANIs. Instead, the Bureau instituted a per-phone compensation mechanism, but only for those phones that are not coding-digit-capable. April 3 Order ¶ 2. The Bureau also gave the IXCs an additional 30 days to implement the per-phone mechanism. Id. ¶ 3.³ To compensate the PSPs for this additional delay, the Bureau naturally adopted the same rate of interest that the Commission had already indicated was appropriate for this purpose. This point was so obvious, it required no discussion. Sprint does not and cannot claim to have any real doubts about it. Indeed, it is almost inconceivable that the Bureau would have adopted some different rate of interest.

Sprint gives no reason to doubt that the Bureau was actually bound by the Commission's earlier decision. It lamely suggests that "nothing in the Commission's Second Report and Order purported to require the use of [the 11.25 percent] rate of interest for any other purpose." Petition at 3. This is ridiculous: the purpose for which the Bureau adopted the 11.25 percent rate was the same as the purpose for which the Commission applied that rate: to compensate PSPs for delay in receiving compensation. Sprint's claim that "the Bureau was free to adopt the IRS rate," id. -- suggested by no party, including Sprint, which has commented repeatedly in this docket -- is transparently false.

²Sprint specifically supported this request. See April 3 Order at n.44.

³The Commission did not grant an extension of time for per-call compensation, but only for per-phone compensation. Sprint's compensation for coding-digit-capable phones has thus been due and owing for six weeks; Sprint has paid almost nothing.

Because the Bureau's decision was directly controlled by the earlier Commission decision, Sprint's Petition amounts to an effort to gain reconsideration of the Second Report and Order. That effort is more than five months late: Petitions for Reconsideration were due on December 1, 1997. In all events, Sprint chose to appeal the Second Report and Order, rather than to seek reconsideration; it did not appeal the use of the 11.25 percent rate. It therefore cannot be heard to complain now of the Commission's decision. Again, Sprint's claim that it seeks reconsideration not of the Second Report and Order but only of the April 3 Order is nonsense. The Commission cannot overturn the later order without revisiting the principle established in the earlier order; review of this issue is plainly barred.

II. SPRINT'S PETITION IS FRIVOLOUS

The Commission clearly explained its decision to adopt the 11.25 percent rate in its Second Report and Order. The delay in compensation imposes capital costs on PSPs. The Commission therefore determined that the rate of compensation for such delay should be set equal to the authorized rate of return for LECs, that is, their weighted average of debt and equity costs. See Second Report and Order, 13 FCC Rcd at 1805-06, ¶ 60. That rate had been determined in an elaborate rulemaking,⁴ and Sprint does not challenge its validity. Indeed, if anything, the use of the authorized rate of return was conservative, because the cost of capital for independent PSPs is likely to be considerably higher than the 11.25 percent rate the Commission adopted. See id. n.160.

⁴See Order, Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers, 5 FCC Rcd 7507 (1990).

Sprint now claims that instead the Commission should have used the IRS rate, which it applies in the case of refunds mandated by the Commission. But the analogy is utterly inapt. Where a customer has overpaid on a tariff, it must be compensated for the opportunity cost of being deprived of the funds during the period prior to the refund. PSPs, on the other hand, incur capital costs when deprived of payments.⁵ Obviously, in this instance, capital costs are significantly higher than opportunity costs, just as one must pay significantly higher interest to borrow money from a bank than one can earn on money deposited there.

For this reason, Sprint's argument that the Bureau should have adopted a lower rate than the Commission used in the Second Report and Order is flatly wrong on the merits.

III. SPRINT'S BEHAVIOR FLOUTS THE COMMISSION'S AUTHORITY

Sprint's effort to invoke this Commission's mechanisms for relief is particularly disturbing for two additional reasons. First, Sprint complains of a benefit granted to it by the Bureau. Sprint was not only free to pay compensation on April 1, it was positively required to do so.⁶ And had it done so, it would have incurred no additional interest obligation. The fact that Sprint ignored its obligations means that the Bureau would have been entirely within its

⁵Indeed, the Bureau's use of 11.25 percent as the cost of capital in this context is doubly conservative, for there is little doubt that PSPs incur higher capital costs when they incur unexpected delays in promised cash flow. Sprint was obligated to pay per-call compensation for a majority of LEC payphones on April 1; it paid nothing. And Sprint was similarly required by valid Commission orders to pay per-phone compensation on April 20; again, it paid virtually nothing. The costs this behavior has imposed on PSPs likely exceeds by far the interest that Sprint has been obligated to pay.

⁶The Bureau granted a 30-day extension on that obligation -- with respect to payphones that are not coding-digit-capable only -- on April 3, two days after Sprint's per-call compensation payment was due in full.

authority to apply a penalty, in addition to the Commission-mandated compensatory rate. That Sprint complains of this gesture of administrative indulgence is shameful.

But Sprint's behavior is yet more execrable: not only is its Petition procedurally barred; not only is its argument on the merits frivolous; but also Sprint has flouted the very Orders that it now seeks to amend. Even under the most generous possible reading of the Bureau's April 3 Order, Sprint was obligated to pay 100% of compensation due to PSPs by April 30.⁷ Yet, as of May 6, Sprint had paid no compensation at all to any member of the RBOC/GTE/SNET Payphone Coalition.⁸ This despite unmistakable language in the Bureau's Memorandum Opinion and Order, DA 98-481 (rel. Mar. 9, 1998):

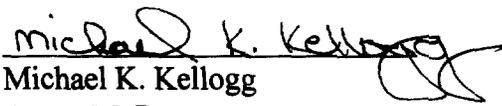
As required in the Payphone Orders and the Second Report and Order, absent a negotiated agreement, IXC's must pay per-call compensation of \$0.284, for all calls they receive from payphones not otherwise compensated. . . . The payment for the October 1997 through December 31, 1997 period must be paid no later than April 1, 1998.

Memorandum Opinion and Order ¶ 4 (emphasis added). Sprint thus appears before the Bureau and the Commission having flagrantly defied their authority.

⁷Again, while the April 3 Order gave the IXCs an additional 30 days to pay per-phone compensation, it gave no extension for payment of per-call compensation. A sizeable majority of Coalition payphones were coding digit capable in the last quarter of 1997.

⁸It would be futile for Sprint to claim that it had not received certification of these carriers' compliance with the requirements of the Order on Reconsideration, 11 FCC Rcd 21233, 21293-94, ¶ 131 (1996). Each of the Coalition members sent such certification months ago and can prove it.

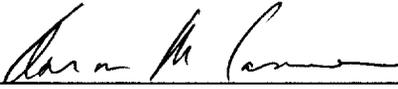
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May 14, 1998

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of May, 1998, I caused copies of the foregoing RBOC/GTE/SNET Payphone Coalition's Opposition to Sprint's Petition for Reconsideration to be served upon the parties on the attached service list by first-class mail.



Aaron M. Panner

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

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