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

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

COMMENTS OF SPRINT CORPORATION

Sprint Corporation, on behalf of operating subsidiaries that include both a substantial payor of payphone compensation and a recipient of such compensation for roughly 50,000 payphones, hereby files its comments, pursuant to the Common Carrier Bureau's Public Notice released September 26, 2000 (DA 00-2189), in response to a proposal of the RBOC Payphone Coalition, submitted as an *ex parte* letter dated August 8, 2000 ("RBOC Proposal") for establishing the compensation obligations of long-distance carriers for the period November 7, 1996 through October 6, 1997 ("Interim Period"). As explained below, with slight modifications that simply clarify the RBOC Proposal, Sprint supports that proposal and urges that it be implemented promptly.

As the RBOC Coalition correctly states, the original compensation plan for the Interim Period was vacated by the D.C. Circuit Court of Appeals[1] because (1) the per-line compensation that the Commission had ordered was based on a flawed per-call rate; (2)

the Commission had arbitrarily excluded long-distance carriers with revenues of under $100 million from the plan; (3) the plan arbitrarily allocated each carrier's share of the per-line compensation based on total toll revenues, rather than each carrier's share of payphone-originated calls; and (4) the Commission had improperly excluded RBOC 0+ calls and calls from inmate phones from the interim compensation scheme. The RBOC proposal would base each carrier's obligation for the Interim Period on its actual compensable call volumes for 1998. Specifically, the RBOCs would have each IXC calculate the number of compensable calls for each payphone during 1998 and use that number, together with the subsequently revised compensation rate, to compensate that payphone for the Interim Period. In cases where the payphone was in service during the Interim Period, but taken out of service prior to 1998, the IXC would base its compensation on its overall average per-payphone payment.

With a few slight modifications, Sprint believes the RBOC Proposal is a fair and reasonable resolution of payphone compensation for the Interim Period and adequately resolves the issues remanded by the Court. The modifications or clarifications that Sprint would make to the RBOC Proposal are the following:

1. A rate of 23.8 cents per call should be used in calculating the revised compensation for the Interim Period. This is the rate that the Commission found to be applicable for retroactive adjustments in the Third Report and Order in this proceeding.[2]

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[1] *Illinois Public Telecommunications Ass'n. v. FCC*, 117 F.3d 555, *clarified* 123 F.3d 693 (D.C. Cir. 1997), *cert. denied sub nom., Va. State Corp. Comm'n. v. FCC*, 523 U.S. 1046 (1998).

[2] 14 FCC Rcd 2545 (1999), affirmed, *American Public Communications Council v. FCC*, 215 F.3d 51 (D.C. Cir. 2000). See ¶¶ 196-197 at 2635-36. The RBOC Proposal (n. 7 at 3) refers instead to the rate of $.24 per call adopted only for prospective purposes in that order.

2. The RBOC Proposal (at 3) would calculate compensation for each payphone based on the call count during the "corresponding" per-call period. The use of the "corresponding" period of 1998, taken literally, would be an administrative nightmare. Each IXC, for each payphone, would have to measure per-call traffic for whatever period in 1998 "corresponds" to the portion of the Interim Period that phone was in service (and eligible for interim compensation). And it is not clear what the "corresponding" period of 1998 would be for a payphone that was in service and eligible throughout the Interim Period: Would it be January 1 – October 6, 1998 plus November 7 – December 31, 1998? If so, why is the RBOC Coalition proposing November 7 – December 31, 1998 as "corresponding" to November 7 – December 31, 1996, instead of the more contemporaneous period of November 7 – December 31, 1997 (when per-call compensation was already in effect)? Rather than forcing each IXC to engage in these complex calculations for each payphone, Sprint proposes that each IXC should calculate (using the 23.8 cent rate) the total compensation payable for each phone for 1998 and then apply the monthly average compensation to whatever period of time the payphone qualified for compensation during the Interim Period. Thus, if, for a particular payphone, a carrier would have paid $60 in compensation in 1998 (using the 23.8 cent rate), and the payphone were in service or eligible for compensation for 3.5 months of the Interim Period, the carrier would be obligated to pay $17.50.[3] As the RBOCs proposed (RBOC Proposal, n. 8), any amounts previously paid by the carrier for the Interim Period would be deducted from this liability.

[3] $60 divided by 12 x 3.5 = $17.50.

3. For payphones that were removed from service before 1998, the carrier would calculate the average monthly compensation paid in 1998 to that PSP and then use that average for Interim Period compensation during the period of time the payphone was in service and eligible for compensation. Using the per-PSP average, rather than the overall average proposed by the RBOC Coalition, has two advantages: It is likely to more accurately compensate the particular PSP, and it is more easily verifiable by the PSP, since the PSP will know what its average compensation is from each carrier but will not know the amount of that carrier's compensation to other PSPs.
4. In cases where an IXC made payments to PSPs during the Interim Period, that IXC should pay the revised interim compensation for each payphone ANI for each calendar quarter of the Interim Period to the same PSP that the IXC initially paid during that quarter for that ANI. Payphones may have changed hands both during the Interim Period and subsequently. The Commission should not burden IXCs with making new determinations of which PSP should be paid for each payphone that may have undergone a change of ownership. Likewise, in any given quarter, it is common for more than one PSP to claim ownership of a particular payphone. The IXC's resolution of that dispute during the Interim Period should govern the true-up of compensation for the Interim Period.
5. The true-up for the Interim Period and the true-up for the excess compensation — *i.e.*, the difference between the original 28.4 cent per-call rate and the 23.8 cent rate — paid on a per-call basis between October 7, 1997 and April 20, 1999 should happen simultaneously in a single transaction.

6. As the Commission's Third Report and Order contemplates (see ¶ 198, 14 FCC Rcd at 2636), interest must be paid on both true-ups, and in calculating interest owed to PSPs for the Interim Period, IXCs are entitled to an appropriate allowance for interest on any overpayments that may have been made for a portion of the Interim Period.[4] In the Third Report and Order, the Commission, while holding that interest should be paid for these retroactive adjustments, did not specify what rate of interest should apply. Although the Commission utilized an interest rate of 11.25% for other purposes elsewhere in the order (¶187, 14 FCC Rcd at 2630), it did not refer to this rate in ¶198. For these true-ups, the Commission should continue its standard practice of using the rates set by the Internal Revenue Service.[5] Use of the IRS rates — which Sprint believes have been in the range of 8% during the relevant period — is not only consistent with standard Commission practice in other proceedings, but is also far more equitable to the parties than the 11.25% rate used for other purposes in the Third Report and Order. The Interim Period remand has been pending for more than three years, and private parties should not have to bear the cost — in the form of an excessive interest rate — of agency delay.
7. In cases where the net true-up (including interest) owed to a particular PSP by a particular IXC (or vice versa) is less than $5.00, payment does not have to be made.

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[4] For example, until the interim compensation plan was vacated by the D.C. Circuit, payments were based on a 35 cent per-call rate, as well as the Commission's implicit market share assumptions, and thus a particular IXC's payments to a particular PSP for the early part of the Interim Period in most cases would exceed the amount ultimately due. The IXC should be able to credit interest on these overpayments against interest on any subsequent underpayments.

[5] *See, e.g., Cablevision Systems Corporation*, 13 FCC Rcd 10576, 10578 (1998); *Beehive Telephone Company, Inc., et al.*, 13 FCC Rcd 2736, 2746 (1998); *1997 Annual Access Tariff Filings*, 13 FCC Rcd 3815, 3866, 3909 (1997).

The administrative cost to each party of processing such small checks outweighs the value of this negligible sum.

8. A reasonable period of time should be allowed for completing the true-ups. If the Commission adopts the foregoing procedures, Sprint believes 90 days after release of the Commission's order should suffice.

With the modifications described above, Sprint believes that this is as fair a plan to cover Interim Period compensation as any. Obviously, the very reason the Commission instituted an interim plan was that some carriers did not yet have the ability to track the number of calls from each payphone. By its nature, no interim plan could ever exactly replicate the operation of a per-call compensation plan during this period, but basing liabilities on the first calendar year of per-call compensation comes close enough. The only possible distortion in this plan is that the number of calls received by a particular carrier from a particular payphone in 1998 may not be representative of the number of calls received from the payphone during the Interim Period. However, the very lack of actual data that gave rise to the need for an interim plan to begin with makes it impossible to correct for this possible flaw, and in any event, Sprint is not presently aware of any systemic bias toward either the IXCs or the PSPs from using the next-best data, namely, 1998 data.

It has been more than three years since the Court of Appeals remanded the initial compensation plan for the Interim Period, and it is time to let PSPs and IXCs alike settle their accounts and close their books. Sprint urges the Commission to adopt the RBOC Proposal with the modifications discussed above, and to do so expeditiously.

Respectfully submitted,

SPRINT CORPORATION

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October 20, 2000

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **COMMENTS** of Sprint Corporation was sent by hand or by United States first-class mail, postage prepaid, on this the 20th day of October, 2000 to the below-listed parties:

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