

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

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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 SPRINT CORPORATION

Sprint hereby responds to the comments of other parties regarding the RBOC Payphone Coalition’s Proposal (“RBOC Proposal”) for establishing the compensation obligations of long-distance carriers for the Interim Period (November 7, 1996 through October 6, 1997). In its initial comments, Sprint supported the RBOC Proposal to base settlements for the Interim Period on 1998 call count data, with a few modifications designed to ease implementation of the RBOC Proposal, as well as specifying a rate of interest that would prevent unjust enrichment from taking place really as a result of the delay in resolving this issue.

The American Public Communications Council and the Colorado Payphone Association (APCC/CPA) raise two threshold issues that require only brief comment. They argue that it is premature to resolve the Interim Period issue until the Commission acts on CPA’s petition for reconsideration of the Third Report and Order in this proceeding.¹ They also argue that for equitable reasons, if after netting the compensation

¹ 14 FCC Rcd 2545 (1999) (subsequent history omitted).

adjustments for the Interim Period against those for the period beginning October 7, 1997 and ending April 20, 1999, a PSP owes money to a particular IXC, the PSP should be relieved of the obligation to make any refund to the IXC. First, Commission action to resolve Interim Period compensation three and a half years after the issue was remanded to the Commission by the Court of Appeals² can hardly be called “premature.” If the Commission believes that it must address CPA’s petition for reconsideration of the Third Report and Order — a petition that itself has been ripe for action for more than a year — before it can resolve Interim Period compensation, then it should act on both matters simultaneously. Second, APCC/CPA’s “heads I win, tails you lose” approach to netting compensation for the two periods for which retroactive adjustments are necessary is too self-serving to be given any credence. Sprint addressed CPA’s equitable arguments in its July 7, 1999 opposition to CPA’s petition, and will not burden the record in this proceeding with a repetition of its arguments.

Turning to the substance of the issue, many other parties fault the use of 1998 call volume data as a surrogate for Interim Period volumes. Cable & Wireless and Global Crossing argue that because of an overall increase in calling volumes between 1997 and 1998, 1998 call volumes should be adjusted downward — by 17% — to produce a more accurate call count for the Interim Period. If the Commission believes it has sufficiently reliable data in the record to support such an adjustment, Sprint would support such an

² *Illinois Public Telecommunications Ass’n. v. FCC*, 117 F.3d 555 (D.C. Cir. 1997) (subsequent history omitted).

adjustment. However, with this possible exception, Sprint still believes that 1998 call counts are the best proxy for the Interim Period.

Although both AT&T and APCC/CPA both take note of the difficulty of obtaining accurate call counts during 1998 because of the RBOCs' failure to implement Flex ANI on a timely basis, Sprint, for one, was able to track completed calls without relying on Flex ANI. Thus, the dependence that AT&T may have had on Flex ANI should not preclude other carriers (like Sprint), that were not dependent on Flex ANI for accurate call tracking, from using 1998 data, as proposed in Sprint's initial comments, to calculate the compensation due for the Interim Period. As for carriers that did have Flex ANI-related problems, the Bureau orders in this case established a means of paying per-line compensation during the Flex ANI waiver period that could be used as surrogates for actual call count data.³ Alternatively, these carriers could seek waivers proposing different periods of time to which they believe they had accurate call count data.

Sprint also objects to various proposals to utilize PSP-generated estimates of call counts and to allocate those estimated call counts among the industry on some revenue market share basis. In the first place, PSPs, by definition, were unable to accurately track "completed" calls as that term was defined for payphone compensation purposes.⁴ Moreover, any such estimates, to be reliable, would have to be shown to be statistically valid, and no such showings have been made on this record. For example, APCC/CPA proposes (at 18-19) to utilize a call count based on only 5,000 payphones from 23 PSPs,

³ Memorandum Opinion and Order, 13 FCC Rcd 10893 (CCB 1998); and Order, 13 FCC Rcd 7303 (CCB 1998).

⁴ See Report and Order, 11 FCC Rcd 20541, 20589-90 (1996) (subsequent history omitted). Despite WorldCom's argument to the contrary (at 3), the accuracy of the call count of 131 per month used in the original interim plan was disputed. See, e.g., Reply Comments of Sprint, June 13, 1997, at 3-4.

without any indication as to how this sample was selected, or any demonstration that it is a statistically valid estimate for the industry as a whole.

Second, proposals to allocate compensation obligations among carriers using revenue market share as a proxy for each carrier's actual share of payphone-generated calls are obviously flawed for the very reasons the *Illinois* court remanded the interim plan to the Commission in the first place. APCC/CPA (at 19) suggest using shares of the "total telephone service market," which is even more illogical than the use of toll service revenues rejected by the court in *Illinois*.

AT&T's proposal to use toll-free revenues (also suggested by APCC/CPA at 19-20) as the allocator is flawed for two reasons. First, IXCs do not customarily report revenues from toll-free services separately, and thus there are no data of which Sprint is aware on which to base such an allocation. Second, this proposal ignores the fact that compensable calls include not only commercial toll-free calls, but also dial-around operator services calls. Not all IXCs participate in these two market segments in equal measure. Most notably, AT&T's proposal takes no account of the substantial number of operator-services calls that are generated from the heavy promotion by WorldCom and AT&T of their 1-800-COLLECT and 1-800-CALLATT services. There is no reason why the rest of the IXC industry should bear the costs of payphone compensation that is properly attributable to those two carriers' very successful marketing of those services.

WorldCom's proposal to subtract reported private line revenues reported on Form 457 from reported toll service revenues as an allocator is subject to the same flaw. Again, WorldCom is simply seeking to evade the compensation related to its 1-800-COLLECT service.

The fact is that no publicly reported IXC revenue data serve as a close and accurate surrogate for the number of 800 calls handled by each IXC. While 1998 payphone compensation data may not be perfect, they have a far more logical nexus to the calls handled by each carrier during the Interim Period than any of the proposed substitutes.⁵

In short, Sprint continues to believe that 1998 call count data (using derived call counts from per-line compensation paid by carriers with Flex ANI problems) are the most reliable basis for determining the proper level of Interim Period compensation. If the Commission uses any surrogate that fails to take into account the actual operational characteristics of each IXC — particularly those who heavily market dial-around operator services that can be expected to be widely used from payphones — it will unfairly burden the rest of the industry and simply invite yet another remand in this protracted proceeding.

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⁵ In that regard, while Excel, *et al.*, claim that there are significant year-to-year changes in the number of calls received by various IXCs (Comments at 8), they offer no factual support for this proposition.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **REPLY COMMENTS** of Sprint Corporation was sent by hand or by United States first-class mail, postage prepaid, on this the 31st day of October, 2000 to the below-listed parties:

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