

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

In the Matter of)	
)	
The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996)	CC Docket No. 96-128
)	
RBOC/GTE/SNET Payphone Coalition Petition for Reconsideration)	NSD File No. L-99-34
)	

**PETITION FOR RECONSIDERATION
AND CLARIFICATION**

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Summary

Global Crossing Telecommunications, Inc. hereby petitions the Commission for reconsideration and clarification of the Second Order on Reconsideration in the above-docketed proceeding.

The Commission is understandably concerned that payphone service providers may not be receiving some compensation that they are due. In an effort to remedy this problem, the Commission has changed the compensation regime to one under which the first facilities-based interexchange carrier to handle a call is assigned responsibility for compensating the PSPs.

Global Crossing concurs with the Commission's judgment that -- under existing law -- the Commission must develop a system that seeks to ensure that PSPs are fairly compensated. In addition, Global Crossing conceptually does not disagree with the Commission's decision to assign per-call compensation responsibility to the first interexchange carrier that handles a compensable call. Nonetheless, the Commission's new regime does not cure the underlying problem that the Commission perceives. Where two (or more) facilities-based interexchange carriers handle a call, particularly where calls are handed off on a dedicated basis, neither carrier independently can see the call end-to-end to determine if that call has been completed and is, therefore, compensable. To address this situation, Global Crossing requests that the Commission establish specific timing surrogates that the first carrier may utilize to determine if a call has been completed. Such a bright-line test will achieve the Commission's objective of ensuring that PSPs are fairly compensated. Equally as important, such a rule will substantially reduce controversy regarding whether particular calls are compensable.

Accordingly, Global Crossing requests that the Commission reconsider its Second Order in this respect.

Second, Global Crossing requests that the Commission reconsider the reporting requirements that it has imposed. The reporting requirements will impose an undue burden on the first carrier and will not produce information that is particularly useful to PSPs in any event.

Third, Global Crossing requests that the Commission reconsider its decision to permit PSPs and carriers that do not have the compensation obligation in the first instance to enter into private contractual arrangements. The existence of such arrangements will only inject additional confusion and complexity into a process that is already complex enough.

Fourth, Global Crossing requests that the Commission clarify that, in the absence of an agreement between the first carrier and a PSP, the PSP is not entitled to "bill" carriers for calls that they believe are compensable. Under the current regime, the Commission's rules are clear that it is up to the responsible carrier to track and pay for compensable calls. This regime leaves no room for PSPs purportedly to bill carriers for calls originating from their payphones. Nonetheless, an entire cottage industry has grown under which intermediaries or billing agents hold themselves out to PSPs to perform precisely this function. Global Crossing itself has received numerous "bills" for compensation, despite the fact that the tracking obligation was placed on the carriers. Within the system that the Commission has established, there is simply no place for this practice and the Commission should put an end to it. If the Commission wishes to place the tracking obligation on the PSPs, it should do so directly.

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**PETITION FOR RECONSIDERATION
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Introduction

Global Crossing Telecommunications, Inc. ("Global Crossing") hereby petitions the Commission for reconsideration and clarification of the Second Order on Reconsideration in the above-docketed proceeding.¹

The Commission is understandably concerned that payphone service providers ("PSPs") may not be receiving some compensation that they are due.² In an effort to remedy this problem, the Commission has changed the compensation regime to one under which the first facilities-based interexchange carrier ("IXC") to handle a call is assigned responsibility for compensating the PSPs.³

Global Crossing concurs with the Commission's judgment that -- under existing law -- the Commission must develop a system that seeks to ensure that PSPs are fairly

¹ *Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Dkt. 96-128, Second Order on Reconsideration, FCC 01-109 (April 5, 2001) ("Second Order"). The Second Order was published in the Federal Register on April 27, 2001. 66 Fed. Reg. 21105 (April 27, 2001).

² Second Order, ¶ 1.

³ *Id.*, ¶ 9.

compensated. In addition, Global Crossing conceptually does not disagree with the Commission's decision to assign per-call compensation responsibility to the first interexchange carrier that handles a compensable call. Nonetheless, the Commission's new regime does not cure the underlying problem that the Commission perceives. Where two (or more) facilities-based interexchange carriers handle a call, particularly where calls are handed off on a dedicated basis, neither carrier independently can see the call end-to-end to determine if that call has been completed and is, therefore, compensable. To address this situation, Global Crossing requests that the Commission establish specific timing surrogates that the first carrier may utilize to determine if a call has been completed. Such a bright-line test will achieve the Commission's objective of ensuring that PSPs are fairly compensated. Equally as important, such a rule will substantially reduce controversy regarding whether particular calls are compensable. Accordingly, Global Crossing requests that the Commission reconsider its Second Order in this respect.

Second, Global Crossing requests that the Commission reconsider the reporting requirements that it has imposed. The reporting requirements will impose an undue burden on the first carrier and will not produce information that is particularly useful to PSPs in any event.

Third, Global Crossing requests that the Commission reconsider its decision to permit PSPs and carriers that do not have the compensation obligation in the first instance to enter into private contractual arrangements.⁴ The existence of such arrangements will only inject additional confusion and complexity into a process that is already complex enough.

Fourth, Global Crossing requests that the Commission clarify that, in the absence of an agreement between the first carrier and a PSP, the PSP is not entitled to "bill" carriers for calls that they believe are compensable. Under the current regime, the Commission's rules are clear that it is up to the responsible carrier to track and pay for compensable calls. This regime leaves no room for PSPs purportedly to bill carriers for calls originating from their payphones. Nonetheless, an entire cottage industry has grown under which intermediaries or billing agents hold themselves out to PSPs to perform precisely this function. Global Crossing itself has received numerous "bills" for compensation, despite the fact that the tracking obligation was placed on the carriers. Within the system that the Commission has established, there is simply no place for this practice and the Commission should put an end to it. If the Commission wishes to place the tracking obligation on the PSPs, it should do so directly.

Argument

I. THE COMMISSION SHOULD ADOPT SPECIFIC TIMING SURROGATES FOR DETERMINING WHETHER A PARTICULAR CALL IS COMPLETED, AND HENCE, COMPENSABLE.

In its Second Order, the Commission placed the obligation to track and pay per-call compensation on the first interexchange carrier to whom the originating local

⁴ See *id.*, ¶ 19.

exchange carrier ("LEC") hands the call. Although Global Crossing does not object *per se* to the Commission's reassignment of this responsibility, it believes that the Commission has failed to address the fundamental cause of the problem that the Commission perceives. Where two or more facilities-based carriers are handling a particular call, the first carrier cannot necessarily see the call on an end-to-end basis. This is particularly true where the first carrier hands off a call to the second carrier on a dedicated basis. This is a common arrangement in the industry, particularly in the case of 800 calls. The first carrier will initially receive the call from the originating LEC. However, rather than using switched services to hand off the call to the second carrier, the first IXC will transport the call to the second IXC over a dedicated facility for that carrier to handle the call through its own network the rest of the way. The first IXC only knows that the second IXC has received the call, typically at a calling card or debit card platform. At that point, it loses visibility to call and therefore cannot tell if the call has been completed to its ultimate destination. The Commission has been clear that a completed call is only one that the ultimate recipient of the call has answered.⁵

Nonetheless, to the PSPs, a call that has been handed off to a second carrier will look as if it has been completed. The calling card or debit card platform will return answer supervision to accept additional information -- such as, calling card number and personal identification number -- necessary for further processing of the call.⁶ This process takes time even if the call is ultimately not completed to the intended recipient.

⁵ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Dkt. 96-128, Report and Order, 11 FCC Rcd 20541, ¶ 63 (1996) ("Report and Order").

⁶ Calls may, in fact, be connected for substantial periods of time and still not be completed to the intended recipient. A caller may input his or her calling card number incorrectly or may inquire at a debit card platform as to how much credit is left on the consumer's debit card.

Under the Commission's definition of a completed call, such a call would not be completed and, hence, would not be eligible for compensation. In Global Crossing's experience, this has been the source of a significant amount of controversy. Global Crossing -- along with a number of other underlying carriers -- are involved in a substantial amount of litigation where this discrepancy is at issue.

One common theme that recurs throughout all of this litigation is the PSPs reviewing their own call records -- which smart payphones are able to record -- and determining that some form of answer supervision was received. In attempting to screen calls that may actually not have been answered by the intended recipient, the PSPs have relied upon timing surrogates to determine "completed" from "uncompleted" calls.

The use of timing surrogates is not new to the Commission. Ameritech, for example, sought and received a waiver from the Commission's earlier set-use fee regime on the basis that it was able to track calls on an end-to-end basis to determine that they were truly completed.⁷ Ameritech subsequently disclosed that it was relying on timing surrogates to make its determination on whether calls were actually completed to the intended recipient.⁸ Indeed, in the proceedings culminating with the initial Payphone Orders, the Commission rejected the use of timing surrogates.⁹

⁷ *Ameritech Operating Companies Petition for Waiver of Part 69 of the Commission's Rules To Restructure Its Rates To Establish a Pay Telephone Use Fee Element*, Order, 11 FCC Rcd. 5342 (Com. Car. Bur. 1996).

Southwestern Bell also requested and received a similar waiver although it never implemented program to take advantage of the waiver.

⁸ *Ameritech Operating Companies, Tariff F.C.C. No. 2, Transmittal No. 953*, Response to Petition To Reject at 7 (April 1, 1996).

⁹ Report and Order, ¶ 63.

Global Crossing believes that it is now time for the Commission to reconsider this decision and adopt a timing surrogate approach. The adoption of such a bright-line approach will substantially reduce - if not eliminate -- controversy between underlying carriers, facilities-based resellers and PSPs over which calls are truly compensable. In other contexts, the Commission has adopted such "bright-line" tests to reduce uncertainty and eliminate controversy. It did so, for example, in crafting rules for determining when to grant pricing flexibility to price cap incumbent LECs.¹⁰

In addition, the use of timing surrogates -- specifically those disclosed by Ameritech in the set use fee context -- will accomplish those objectives. Global Crossing believes that its estimates of completed calls and those of PSPs relying on timing surrogates are reasonably close. This experience provides a basis for the Commission to conclude that the use of timing surrogates would provide a reasonable basis for determining the number of compensable calls for which PSPs should receive compensation.

The use of timing surrogates would obviate the necessity for underlying carriers and their facilities-based resellers to develop systems that would permit both carriers to identify, on a call-by-call basis, whether an individual call was completed to the ultimate recipient. Global Crossing doubts that such systems could be implemented and they certainly could not be implemented in the seven-month implementation period established by the Commission.¹¹ Although Global Crossing has not been able precisely to estimate the costs of such systems, it believes those costs to be in the tens,

¹⁰ See, e.g., *BellSouth Petition for Pricing Flexibility for Special Access and Dedicated Transport Services*, CCB/CPD 00-20, Memorandum Opinion and Order, 15 FCC Rcd. 24588, ¶ 23 (Com. Car. Bur. 2000).

¹¹ Second Order, ¶ 20.

if not hundreds, of millions of dollars. If a better alternative exists, the Commission should not require carriers to waste resources of this magnitude.

Absent the use of timing surrogates, controversy will inevitably arise among carriers as to whether particular calls are compensable and therefore whether the first carrier may legitimately pass through to resellers the costs associated with paying compensation with respect to a particular call. Such controversy would inevitably lead to PSPs perceiving that they are still being undercompensated. If the affected carriers disagree as to whether a particular call is compensable, it is possible that calls could go uncompensated as the first carrier would not voluntarily place itself in the position of having to pay compensation on behalf of a reseller -- that has denied that a particular call was completed -- without being able to recover its costs from that reseller. In any event, some affected party will be -- or will at least perceive -- that it has been prejudiced. Thus, the same controversies that the Commission seeks to eliminate will inevitably occur under the new regime that the Commission has devised, that exist under the current regime. Only a bright-line test for determining whether a call has been completed will eliminate this controversy. Adopting the use of timing surrogates will create a uniform set of rules under which all industry participants will be required to operate. Only in this manner will the Commission remove the very controversies that it seeks to eliminate.

Toward this end, Global Crossing proposes that the Commission adopt the following surrogates that we developed in the context of Ameritech's set-use fee waiver proceeding. Calls would be considered completed if the carrier time field at the originating switch is over 25 seconds, except for 950- calls that would not be considered

completed until 45 seconds have elapsed.¹² Global Crossing agrees that this system is probably not perfect. Nonetheless, Global Crossing believes that it would be far more preferable than creating a system that engenders uncertainty.

II. THE COMMISSION SHOULD SUBSTANTIALLY EASE ITS REPORTING REQUIREMENTS.

In the Second Order, the Commission required the first interexchange carrier to:

send back to each PSP a statement indicating the toll-free and access code numbers for calls that the LEC routed to the carrier and the volume of calls for each toll-free and access code number that each carrier has received from each of that PSP's payphones.¹³

The burdens imposed by this reporting requirement are enormous and the reports themselves would be of minimal value. There are approximately 2 million payphones deployed nationwide and literally thousands of PSPs. This rule would require facilities-based interexchange carriers to generate a massive amount of call detail and find a way to provide these reports to thousands of PSPs. This requirement far exceeds what the Commission requires today. It would require facilities-based interexchange carriers to devote thousands of person-hours to generate these reports.¹⁴

Yet, in crafting this rule, the Commission did not offer *any* justification for an increase in the required reporting detail of this magnitude. Given the burden and expense imposed upon reporting carriers, the Commission was under some obligation to justify a change of course of this magnitude.

¹² See *Ameritech Operating Companies Tariff FCC No. 2, Transmittal No. 953*, Response to Petition To Reject at 7 (April 1, 1996).

¹³ Second Report, ¶ 18.

¹⁴ In one respect as well, the Commission's rule is vague. It is not clear whether the Commission envisions that the reports convey detail by reseller. If so, the burdens on reporting carriers would be magnified to an even much greater degree. At a minimum, the Commission should clarify that it only intends call detail to be provided by the originating carrier.

Moreover, the data required is not particularly useful. The Commission does not distinguish compensable from non-compensable calls that must be reported. Apparently, the Commission wants reporting carriers to report all access code and toll-free calls that it received. This requirement creates a serious disconnect between a carrier's compensation obligation and its reporting obligation. As the Commission is aware, calls may be delivered to the first carrier but may still not be compensable. Under the Commission's new reporting regime, carriers will be reporting more calls -- in many cases, a significantly higher number of calls -- than those on which they are required to pay compensation.

Such a requirement will do nothing other than to engender controversy regarding whether PSPs have been fairly compensated. PSPs -- seeing this discrepancy -- will naturally assert that they are continuing to be undercompensated. Thus, the same disputes that exist today will continue.¹⁵ In this significant respect, the Commission's reporting requirements are counterproductive. If left unchanged, the Commission's reporting requirements will create the very types of controversies that the Commission wishes to quell.

The Commission should, therefore, reconsider its reporting requirements. At the most, it should require reporting carriers only to report compensable calls, in the aggregate, by payphone ANI. This will provide PSPs with the information that they need to validate payments. Absent a compelling case to the contrary, the Commission should require no more.

¹⁵ This will be particularly true if the Commission fails to adopt a bright-line test for determining whether a call is compensable.

III. THE COMMISSION SHOULD LIMIT THE ABILITY OF CARRIERS TO NEGOTIATE PRIVATE CONTRACTUAL ARRANGEMENTS WITH PSPs ONLY FOR THOSE CALLS FOR WHICH THEY HAVE THE COMPENSATION OBLIGATION.

The Commission has encouraged private contractual arrangements between carriers and PSPs. The Commission apparently believes that this will permit market forces to govern compensation procedures. In furtherance of this view, the Commission:

include[d] in the revised rules a proviso that PSPs may continue to rely upon any current or future contractual arrangements they may have with underlying facilities-based carriers *or resellers*.¹⁶

As drafted, the rule creates potential for great mischief. The major reason that the Commission cited for changing the rules governing responsibility for per-call compensation was the perceived inability to identify the party responsible for paying compensation.¹⁷ To correct this, the Commission required the first interexchange carrier to assume responsibility for paying compensation. To the extent that the first carrier has this responsibility, the Commission should permit that carrier -- and that carrier alone -- to control the payment of compensation.

The reseller does not have the payment obligation. It should not be in a position to dictate the terms under which the facilities-based carriers pay compensation. This would place the facilities-based carrier in the position of policing the arrangements between PSPs and resellers. The proviso would require the underlying facilities-based

¹⁶ Second Order, ¶ 19 (emphasis added).

¹⁷ *Id.*, ¶ 20.

carriers to determine, for example, if any such purported arrangements were fraudulent or otherwise not *bona fide* arrangements. The proviso would, in effect, make the underlying facilities-based carriers unwanted third parties to arrangements between resellers and PSPs. So long as the resellers do not have the compensation obligation, they should not be permitted to play this role.

This proviso injects yet another level of uncertainty and controversy in the relationship between payors and payees. In this environment, that is the last result that the Commission should encourage. Accordingly, the Commission should reconsider its rule and permit only those carriers that have the compensation obligation to enter into private contractual arrangements with PSPs and only with respect to those calls for which they have the compensation obligation.

IV. THE COMMISSION SHOULD CLARIFY THAT, IN THE ABSENCE OF A PERMITTED PRIVATE CONTRACTUAL ARRANGEMENT TO THE CONTRARY, PSPs MAY NOT "BILL" CARRIERS FOR PER-CALL COMPENSATION.

The Commission's per-call compensation regime -- both in its current form and under the new rules -- places the obligation to track and pay on the responsible interexchange carriers. There is simply no justification for PSPs to "invoice" carriers and then demand payment on the basis of those sham invoices.

Nonetheless, despite the clarity of the Commission's track and pay regime, a number of PSPs have been routinely sending invoices to Global Crossing and other carriers and then demanding payment based upon those "invoices." A number of PSPs have also commenced litigation against Global Crossing on the basis of those invoices. This practice constitutes an abuse of the Commission's rules. Global Crossing has not

entered into any arrangements with any of these PSPs that would permit the PSPs to bill Global Crossing.

Had the Commission wished to place the tracking responsibility on PSPs, it easily could have done so. Instead, it chose the opposite course. It made clear that the reporting obligation rested with the responsible carriers. If the Commission wishes to continue this regime -- a policy with which Global Crossing has no objection -- it is incumbent upon the Commission forcefully to remind the PSPs that there is no role in the current per-call compensation regime for the PSPs to "invoice" carriers for per-call compensation.

Conclusion

For the foregoing reasons, the Commission should reconsider and clarify the rules adopted in the Second Order in the manner suggested herein.

Respectfully submitted,

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