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Ex Parte

September 21, 2001

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
Portals II
Room TW-A325
445 12th Street, S.W.
Washington, D.C. 20554

RECEIVED

SEP 24 2001

FCC MAIL ROOM

Re: Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, File No. NSD-L-99-34

Dear Ms. Roman Salas:

On September 20, 2001 Hope Halpern and Constantin Barbulescu of Telstar International Inc., Lyle Ryter and Howard Segermark of I-PCA and Stephanie Joyce of Patton Boggs, LPP, met with Diane Griffin-Harmon of the Network Services Division of the Common Carrier Bureau to discuss issues associated with Interexchange carrier petitions for reconsideration/clarification submitted in the above proceeding. The enclosed material was provided to Ms. Griffin-Harmon during the course of the meeting.

In addition, enclosed also please find a copy of the IXC letters to resellers that were discussed in the meeting. Copies of these letters are being submitted in response to Ms. Griffin-Harmon's request.

In accordance with Section 1.1206(b)(2) of the Commission's Rules, an original and one copy of this letter are being filed with your office for inclusion in the public record for the above proceeding. In addition, in accordance with Section 1.1206(b)(2), a copy of this letter is also being provided to Ms. Griffin-Harmon. Acknowledgement and date of receipt of this submission are requested. A duplicate letter is attached for this purpose.

If you have any questions regarding this information, please contact me.

No. of Copies rec'd 0+1
List A B C D E

Sincerely,

Hope Halpern
Director of Regulatory Affairs

Enclosures
cc: Ms. Diane Griffith-Harmon, NSD, CCB

TELSTAR INTERNATIONAL, INC. ONE NORTH BROADWAY, WHITE PLAINS, NY 10601 TEL: (914) 428-5555 FAX: (914) 428-5640

I-PCA Ex Parte Presentation

Docket No. 96-128

September 20, 2001

THE IXC PRACTICE OF CHARGING RESELLERS PSP COMPENSATION FOR UNCOMPLETED CALLS IS ILLEGAL

The IXC Practice:

- Violates Section 276 of the '96 Act
- Violates Prior Commission Rulings
- Violates State law
- Violates Section 201 of the Act
- Violates Section 202 of the Act
- Is Anti-competitive, Discriminatory, Predatory and Anti-consumer.

THE IXC PRACTICE VIOLATES SECTION 276 OF THE ACT:

LAW:

Section 276 mandates that payphone providers are to be compensated for *completed* calls only. Specifically, Congress mandated that PSPs receive compensation for, "each and every *completed* call."[1]

VIOLATION:

The IXC Practice violates Section 276 of the Act because it forces resellers to compensate PSPs for uncompleted calls.

[1] 47 U.S.C. §276(b)(1)(A)

THE IXC PRACTICE VIOLATES COMMISSION RULINGS

RULE:

- The FCC has defined a completed call as, " a call that is answered by the called party."[2]
- The FCC has determined that uncompleted calls are not compensable.[3]

VIOLATION:

The IXC Practice violates Commission Rulings because it requires resellers to compensate PSPs for incomplete, and therefore, non-compensable calls.

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[2] *Implementation of the Pay Telephone Reclassification and Compensation of the Telecommunications Act of 1996, First Report and Order*, 11FCC Rcd 20541, para. 181 (1996) (*First Report and Order*)

[3] *In the Matter of Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation*, CC Docket No. 91-35, *Report and Order and Further Notice of Proposed Rulemaking*, 6 FCC Rcd. 4736 (rel. August 9, 1991)

THE IXC PRACTICE VIOLATES THE 2ND Order on Reconsideration

LAW:

The 2nd Order on Reconsideration requires underlying IXCs to: "(1) compensate the PSP for completed calls at a mutually agreeable rate; (2) track or arrange for tracking of the call to determine whether it is completed and therefore compensable; and (3) provide to the PSP a statement of the number of coinless calls it receives from each of that PSP's payphones."[4]

VIOLATION:

- The IXC Practice is an attempt to avoid this responsibility – instead of tracking completed calls, IXCs bill resellers for *all* call attempts.
- If the IXCs believe the Commission reached its conclusion on tracking in error, the appropriate procedure is to petition the Commission for reconsideration – not to foist unlawful, uneconomic, and discriminatory costs on resellers.

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[4] *Second Order on Reconsideration*, para. 2.

THE IXC PRACTICE VIOLATES SECTION 201 OF THE ACT

LAW:

Section 201(b) requires that charges, classifications, and practices of common carriers be just and reasonable.

VIOLATION:

The IXC proposal violates Section 201(b) of the Act:

- There is no economic basis for charging resellers for uncompleted calls.
- WorldCom has not provided any support for its 0.02 handling fee
- The IXC practice is an attempt to avoid the Commission's mandate in the 2nd Order on Reconsideration that IXC's implement tracking systems.[5]

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[5] *Second Order on Reconsideration*, para. 2

THE IXC PRACTICE VIOLATES SECTION 202(a) OF THE ACT

LAW:

Section 202(a) prohibits common carriers from engaging in unjust and unreasonable discrimination in connection with the provision of its services.

VIOLATION:

The IXCs are treating resellers differently from themselves, giving IXCs an unfair competitive advantage. The IXC Practice:

(1) Discriminates between resellers and IXCs both who provide 800 access services:

- IXCs pay PSPs for completed calls while resellers pay for each customer attempt from a payphone, giving IXCs an unfair and anti-competitive advantage.

(2) Discriminates against carriers providing mostly international services:

- Domestic completion rates are much higher than international completion rates – i.e. US completion rate is approx. 70% while international rates range from 10-60% depending on the destination.

THE IXC PRACTICES VIOLATE SECTION 202(a) OF THE ACT (cont'd)

(3) Discriminates between different classes of end users

- Users calling countries with low completion rates will suffer more than those calling domestically or to Western Europe (i.e completion rates to most African nations are about 10-15%, rates to South America are often as low as 20-30%, while domestic rates and rates to Western Europe are significantly higher).

THE IXC PRACTICE IS ANTI-COMPETITIVE AND PREDATORY

WordCom and AT&T are treating resellers differently from themselves, putting resellers at an unfair competitive disadvantage.

- Resellers who must pay PSP compensation for uncompleted calls cannot compete against IXCs who do not have the same compensation requirement.
- The discrimination is even more acute when the IXC, like AT&T and Qwest are payphone providers.
- WorldCom, AT&T and Qwest all use clearinghouses to handle their PSP compensation requirements but will not allow resellers to do the same.
    - Resellers become captive customers of IXCs with no opportunity to avoid unacceptable IXC overcharges.
    - IXCs "corner the market" on processing compensation, charging unacceptably high processing fees (WorldCom is charging $0.02 per attempted call)

AT&T And WorldCom's Market Dominance Exacerbates The Problem

- AT&T and WorldCom have over 80% of the facilities based IXC market in the US – other carriers (i.e. Broadwing and Qwest have also indicated their intention to follow AT&T and WorldCom's lead)

- Resellers have few if any competitive options.

HOW TO SOLVE THE PROBLEM:

THE FCC MUST STEP IN TO PREVENT IXC ANTICOMPETITVE AND DISCRIMINATORY PRACTICES. TO THAT END, THE FCC SHOULD:

1. Clarify the Second Order on Reconsideration to explicitly permit resellers to use clearinghouses to handle compensation between resellers and PSPs, and avoid IXC anti-competitive practices.

    - Resellers use answer supervision – the industry standard to determine whether calls are completed.

    - PSPs have the right to review reseller data in the event of disputes.

OR

2. Explicitly prohibit IXCs from charging resellers for uncompleted calls.

Howard Segermark
202-547-7517
7417

WORLDCOM.

July 31, 2001
Mailed Via Airborne Express

In response to FCC Order Docket No. 96-128, this letter will serve as notice that MCI WorldCom intends to modify its handling of calls originating from payphones. Commencing October 1, 2001, MCI WorldCom will charge all of its wholesale customers a payphone surcharge in the amount of $0.26 per call on all calls that originate from a payphone. This charge will cover the compensation due payphone service providers (PSPs) as well as MCI WorldCom's costs associated with making these payments to the PSPs.

All calls that originate from a payphone that are delivered for completion to a facilities based reseller (FBR) (i.e., an entity that has its own switch/platform) will be deemed completed and will be assessed the payphone surcharge. This charge is applicable to all carrier origination service purchased from MCI WorldCom. If you do not want to be assessed the payphone surcharge for any or all toll free numbers, you must submit to MCI WorldCom an order to block such toll free numbers from being able to be used from a payphone. You will remain liable for payment for all calls originating from a payphone and delivered to your switch/platform, however, MCI WorldCom will make every effort to implement any payphone access restrictions in a timely manner

Those FBR's purchasing carrier origination services whom elect to compensate the PSPs directly for the payphone surcharge must execute and deliver to MCI WorldCom a letter of indemnification that can be obtained from your sales representative. The letter of indemnification will state that you agree to compensate the PSPs directly for all payphone surcharges and that you will indemnify MCI WorldCom for any payphone surcharges that MCI WorldCom incurs. You will also be required to include with the letter of indemnification a letter from certain PSPs whereby the PSPs acknowledge that you will compensate them directly.

Please note that commencing October 1, 2001, MCI WorldCom will no longer consider "07" a payphone identifier digit. Consequently, MCI WorldCom will not assess the payphone surcharge (nor block from payphone access) any calls labeled with the 07 identifier digit unless and until the FCC directs that payphone compensation is owed for such calls.

If you have any questions, please contact your sales representative.

Best Regards,

Dennis Kolb

Dennis Kolb
Vice President, MCI WorldCom Wholesale Marketing

Qwest

September 10, 2001

Subject: **Payphone Compensation**

In response to the FCC Second Order On Reconsideration In CC Docket No. 96-128, this letter will serve as notice that Qwest intends to modify its handling of calls originating from payphones. Pursuant to the language in your agreement concerning regulatory mandates, commencing October 1, 2001, Qwest will charge all of its Wholesale customers a payphone surcharge in the amount of $0.26 per call on all calls that originate from payphones as indicated by information digits 07, 27 or 70. The charge will cover the compensation due payphone service providers (PSPs) as well as Qwest's costs associated with making these payments and meeting its reporting requirements to the PSPs.

All calls that originate from a payphone that are completed on a reseller product or all calls that are delivered for completion to a facilities-based carrier (FBC) (i.e., an entity that has its own switch/platform) will be assessed the payphone surcharge. This charge is applicable to all carrier origination and reseller services purchased from Qwest outside of Qwest's 14 state operating territory. This change does not affect customers who only utilize in-region intraLATA services.

If you do not want to be assessed the payphone surcharge for any or all toll free numbers, you must submit to Qwest an order to block such toll free numbers from being able to be used from a payphone. However, you will remain liable for payment for all calls originating from a payphone and delivered to your switch/platform. Qwest will make every effort to implement any payphone access restrictions in a timely manner.

Those resellers and facility-based carriers whom elect to compensate the PSPs directly for the payphone surcharge must execute an amendment to their Wholesale Services Agreement that can be negotiated with your sales representative. The amendment will state that you agree to compensate the PSPs directly for all payphone surcharges. In addition, all resellers and carriers electing to compensate PSPs directly must provide call completion information (including originating ANI, date, time of day, and 1-800 number called) by PSP to each PSP in computer readable format indicating the toll free and access number that Qwest has delivered and the volume of calls for each toll free and access number that you have received from each of the PSPs. In this amendment you will also agree to indemnify Qwest for any payphone surcharges and related costs that Qwest may incur as a result of any failure or delay in your payment to the PSPs and for any costs that Qwest may incur as a resul! t of your failure to provide the call completion and volume information. You will also be required to include with the amendment, a letter of agreement from each PSP whereby the PSP acknowledges that you will compensate them directly and provide the required call completion and volume information.

If you have any questions or would like to discuss this notice please contact your Qwest Sales Representative

Sincerely,

Dana Filip

Senior Vice President Wholesale Customer Operations Qwest

cc:

Global Crossing Telecommunications, Inc.
Carrier Services Group
180 South Clinton Avenue
Rochester, NY 14646
Tel +1.800.675.6209
www.globalcrossingcarrier.com

Global Crossing

September 14, 2001

Constantin Barbalescu
President
Telestar Intl
One North Broadway, Suite 128
White Plains, NY 10601

Dear Mr. Barbalescu:

On April 5, 2001 the FCC released its Second Order on Reconsideration in *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996,* CC Docket No. 96-128 ("Second Reconsideration Order"). In that Order, the FCC changed the manner in which it allocated responsibility among interexchange carriers for the payment of compensation for dial-around calls that originate from payphones. Specifically, the Commission has now placed the responsibility for the payment of per-call compensation upon the first interexchange carrier that handles such calls. Therefore, Global Crossing shall terminate the *Payphone Dial-Around Compensation Agreement* that exempts payphone surcharge with your company.

Global Crossing will determine how to meet this change in responsibility in the next few weeks. Given the inconvenience and sensitivity of this industry-wide issue Global Crossing will be sending another formal written letter providing more detail on our solution.

If you have any questions regarding payphone compensation or about the changes required by the FCC Order, please contact David Farrance at 716-777-8243.

Sincerely,

Todd M. Tribunella
Product Manager, Toll Free Services

Broadwing
11101 Metric Blvd
Suite 821-A
Austin, Texas 78758
phone 512.742.2400
www.broadwing.com

September 1, 2001

Dear Valued Customer:

This letter is notification that in response to FCC Order Docket No. 96-128, Broadwing Communications Services Inc. will modify its handling of calls originating from payphones. Beginning October 1, 2001, Broadwing will charge your company a payphone surcharge of $0.35 per call for calls that originate from a payphone. Broadwing will consider all calls that originate from a payphone that are delivered for completion to a facilities based reseller (FBR) (i.e. an entity that has its own switch/platform) to be completed calls and will assess the payphone surcharge on such calls. This surcharge will cover the compensation due payphone service providers (PSPs) as well as Broadwing's costs associated with making these payments to PSPs.

To assist you in reconciling these calls, it is important to note that this only refers to CDR with a call type = P and a Record Type = 07, 27, 29, 70. Broadwing will only assess the payphone surcharge to any calls labeled with the "07" identifier digit if the originating ANI is identified to be a payphone by the National Payphone Clearinghouse (NPC) and thus requires that a surcharge be assessed for such calls. To help you further, please refer to position 47 for Calltype and Positions 299-300 for Record Type of the CDR ASCII layout found in your Broadwing On Line Users Guides.

If you have any questions, please contact your Broadwing Account Manager.

Nancy Rogowski
Vice President and General Manager - Wholesale Switched Services
Broadband Sales Division