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October 22, 2001

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OCT 22 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

Dear Ms. Salas:

Enclosed please find an original and four copies of the Reply Comments of the RBOC Payphone Coalition on Petitions for Reconsideration and Clarification in the above referenced matter. Please date-stamp and return the extra copy to the messenger.

Thank you for your assistance. If you have any questions, please do not hesitate to call me at (202) 326-7921.

Sincerely,



Aaron M. Panner

Enclosures

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

RECEIVED

OCT 22 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Implementation 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

**REPLY COMMENTS OF THE RBOC PAYPHONE COALITION
ON PETITIONS FOR RECONSIDERATION AND CLARIFICATION**

The RBOC Payphone Coalition (the "Coalition")¹ respectfully submits these reply comments on the petitions for reconsideration and clarification filed in response to the Commission's *Second Recon. Order*.²

INTRODUCTION AND SUMMARY

The comments filed in response to the petitions for reconsideration filed in this docket almost uniformly mix up two distinct issues. The first issue concerns the regulations governing the payment of per-call compensation to payphone service providers ("PSPs"). Under the Commission's rules, interexchange carriers ("IXCs") are required to pay per-call compensation to PSPs for calls for which PSPs are not otherwise compensated pursuant to contract. The

¹ The Coalition includes BellSouth Public Communications, SBC Communications Inc., and the Verizon telephone companies.

² Second Order on Reconsideration, *Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 16 FCC Rcd 8098 (2001).

Commission was required to adopt a regulated rate and to regulate the terms and conditions for payment of per-call compensation because of a specific market failure identified in the *First Payphone Order*.³ Because PSPs are effectively barred from blocking calls sent to IXC, IXCs have no incentive to pay PSPs for the service that PSPs provide: “[t]his uneven bargaining between parties necessitates the Commission’s involvement.” *First Payphone Order*, 11 FCC Rcd at 20567, ¶ 49.

The second issue — which is entirely separate — is the question of how first-switch IXCs should recover per-call compensation payments from *their* customers. This is something that the Commission has not regulated and should not regulate. To be sure, the Commission held that switch-based resellers (“resellers”) are required to reimburse first-switch IXCs for amounts paid to PSPs. But the Commission should clarify that this requirement merely permits first-switch IXCs and resellers to renegotiate their contracts to take account of the regulatory requirements adopted in the *Second Recon. Order*. The Commission should not get involved in endorsing (or condemning) any particular reimbursement arrangement in this proceeding. To adopt regulations governing the relationship between first-switch IXCs and their reseller customers would be inconsistent with this Commission’s determination that “market forces will generally ensure that the rates, practices, and classifications of nondominant interexchange carriers for interstate, domestic, interexchange services are just and reasonable and not unjustly or unreasonably discriminatory.” Second Report and Order, *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, 11 FCC Rcd 20730, 20743, ¶ 21 (1996) (“*Detariffing Order*”). “[I]t

³ Report and Order, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 20541 (1996).

is unreasonable to assume that in a substantially competitive market, facilities-based carriers will not provide resellers with service options at reasonable rates.” Order on Reconsideration, *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, 12 FCC Rcd 15014, 15054, ¶ 72 (1997) (“*Detariffing Recon. Order*”).

Keeping in mind the distinction between the regulated transaction — the payment of per-call compensation to a PSP by the first-switch IXC — and what should remain an unregulated transaction — the reimbursement of that IXC by its reseller customer where appropriate — should greatly simplify the Commission’s task here. First, the Commission should not modify the basic obligation imposed on first-switch IXCs: to pay per-call compensation for every completed call routed to their switches for which compensation is not otherwise paid. The Commission should not alter the definition of “completed call,” either by adopting WorldCom’s suggestion or by adopting Global Crossing’s timing surrogate. Indeed, the opposition to both proposals is overwhelming.

Second, the Commission need not modify the reporting requirements adopted in the *Second Recon. Order*, but if it does, the Commission should follow the industry consensus and adopt requirements sufficient to ensure PSPs receive adequate call-tracking information to permit PSPs to verify IXCs’ compensation payments.

Third, the Commission should refuse to endorse (or to condemn) any particular practice with respect to reimbursement of per-call compensation payments and leave those arrangements to the market. Notably, comments in this docket testify to resellers’ ability to track completed calls and to provide that tracking information to first-switch IXCs in usable form; one reseller indicates that it has already adopted such an arrangement. That evidence undermines the always

dubious assertions by IXC that implementation of such arrangements is infeasible. In any event, if treating all attempts as completed calls is a more cost-effective approach in some circumstances than tracking resellers' calls to completion, first-switch IXCs and resellers should be free to follow it. If a particular reseller believes that a particular first-switch IXC is engaged in an unjust and unreasonable practice, or that the first-switch IXC has committed unlawful discrimination, or that first-switch IXCs have "colluded," the Commission's complaint process and the federal courts are open to pursue such claims.

DISCUSSION

In the *Second Recon. Order*, the FCC recognized that the prior regulations governing payment of per-call compensation — in which switch-based resellers could assume responsibility for tracking and paying per-call compensation without PSPs' consent — led to "shortfalls in compensation" and a "failure in the compensation regime." *Second Recon. Order* ¶¶ 8, 10. The principal drawback with the Commission's rules was that they permitted facilities-based IXCs and resellers to "determine independently that they are not responsible for compensating PSPs under our rules." *Id.* ¶ 14. Put less euphemistically, they cheated: IXCs refused to pay compensation for calls allegedly sent to resellers, even as many resellers refused to pay any compensation at all. *See id.* ¶¶ 8, 15. In the face of such conduct, PSPs had no leverage over IXCs and resellers for at least two reasons. First, they generally had no independent business relationship with resellers — in fact, they typically did not know who the resellers were, much less the volume of calls handed off to them by the IXC. Second, TOCSIA restricts PSPs' ability to block calls sent to a particular IXC or reseller, even if they were able independently to identify the guilty party's access numbers.

The Commission's determination in the *Second Recon. Order* that the first-switch IXC should be responsible for payment of per-call compensation is sound for two basic reasons. First, in the case of every long-distance payphone call, whether the call is ultimately delivered by a facilities-based IXC or a reseller, the call is initially routed by the LEC to a facilities-based IXC. *Id.* ¶ 12. The PSP will be able to identify the carrier to whom such a call is initially routed. Accordingly, while there may be disputes over other matters, the basic dispute — whether the IXC is responsible for paying default compensation on a particular call, if completed — is eliminated.

Second, and just as important, first-switch IXCs have existing business relationships with their reseller customers, and they can ensure that the parties' business relationship accommodates per-call compensation payment and tracking responsibilities. "[U]nderlying facilities-based carriers, who have a customer relationship with resellers, are in a far better position to track the calls and provide adequate information to PSPs to ensure that they are compensated for every compensable call." *Id.* ¶ 16. "[O]nly the first underlying interexchange carrier is reasonably certain to have access to the information necessary for per call tracking or to be able to arrange for per call tracking in its arrangements with switch-based resellers." *Id.*

None of the comments filed in this proceeding call these basic conclusions into question. Accordingly, the Commission should reconfirm that first-switch IXCs remain responsible for tracking and paying compensation and should reject any proposal to allow resellers to assume tracking and payment obligations without affected PSPs' consent. For example, IDT asks the Commission to "clarify" that a reseller has a "right to identify itself as the liable party" for per-call compensation. IDT at 19. IDT is mistaken: although a reseller may negotiate mutually

satisfactory compensation arrangements with PSPs, a reseller cannot unilaterally take on compensation payment responsibilities, and the Commission should not permit it to do so.⁴ To grant IDT's request would invite a return of the very problems that the *Second Recon. Order* was designed to address. For the same reasons, similar proposals by One Call (at 6-7) and TelStar should also be rejected.⁵

Beyond reaffirming the basic determination in the *Second Recon. Order* — a determination that none of the petitions for reconsideration question — the FCC should largely reject IXCs' requests for modification and clarification. The comments filed by resellers and facilities-based IXCs alike confirm that adopting WorldCom's altered definition of completed call would conflict with longstanding Commission policy and would risk creating an unfair distinction among different classes of IXCs. Almost no party offers any support for Global Crossing's proposal to adopt a timing surrogate; the comments make clear that to adopt such a

⁴ IDT recognizes that returning to the prior regime will likely impose "some loss as a result of non-payment from SBRs." IDT at 22 n.39. IDT blithely dismisses such losses as "the cost of doing business." *Id.* But the cost-based per-call compensation does *not* include any compensation for bad debt; unlike PSPs, first-switch IXCs and resellers can incorporate expected losses into the rates they charge each other and their customers. The *Second Recon. Order* quite rightly recognizes that the parties to a contract can efficiently allocate such risk of loss; PSPs cannot. Indeed, PSPs cannot even effectively litigate claims against resellers, because PSPs have no independent way of identifying which reseller is associated with a particular call. The Commission rightly placed the responsibility for non-compliance with per-call compensation obligations on first-switch IXCs, who can effectively protect themselves against non-payment by resellers through contract.

⁵ One Call is correct that a reseller and PSP may choose to allow existing compensation arrangements, but a first-switch IXC should not merely accept a reseller's undocumented assertion that it has such an arrangement, lest the first-switch IXC find itself holding the bag for an unscrupulous reseller. And pre-existing relationships with clearinghouses (TelStar at 20) cannot take the place of appropriately ratified agreements between resellers and PSPs or their legal agents.

surrogate on the present record would be wholly arbitrary. And while resellers and IXCs predictably ask for relaxation of the Commission's reporting requirements, their comments make clear that such data can be easily generated using available technology. Finally, the Commission should refuse to interfere with the negotiation of arrangements for reimbursement, and leave such arrangements to market forces.

I. THE COMMISSION SHOULD NOT ALTER THE DEFINITION OF COMPLETED CALL BUT IT SHOULD NOT PREVENT IXCs FROM PAYING COMPENSATION TO PSPs ON ALL CALLS DELIVERED TO RESELLERS

A. Almost every party to this proceeding — with the exception of AT&T, WorldCom, and (with qualifications) the APCC — strongly opposes WorldCom's sweeping request that the Commission redefine a completed call to include calls that are delivered to a reseller's switching platform. *See, e.g.*, Ad Hoc Resellers Coalition ("ARC") at 4-7; ASCENT at 6-11; Flying J at 3-5; Qwest at 2. And the APCC's support for WorldCom's proposal is qualified by its statement that any modification in the definition of completed call would have no impact on "the relationships between resellers and their underlying carriers." APCC at 2. In other words, APCC's views may well be consistent with the views of the Coalition: that is, although the Commission should permit first-switch IXCs to comply with their obligations to PSPs by paying compensation on certain calls that are not completed, the Commission should also make clear that the manner in which a first-switch IXC chooses to compensate PSPs does not automatically impose any obligation on the IXC's reseller customers. *See* Coalition at 5. In light of the nearly uniform opposition to WorldCom's request, the Commission should reject its petition as contrary to consistent Commission policy.

The very basis for WorldCom's request — that first-switch IXCs are unable to track calls that are handed off to resellers — is called into question by several parties. The ARC (at 3), CommuniGroup of K.C., *et al.* ("CommuniGroup") (at 10), Intellicall (at 3), IPCA (at 13), and Network IP ("NET") (at 4), among others, all testify to the resellers' ability to make call-completion data available to first-switch IXCs. Bulletins correctly notes that the tracking obligations are not really new; IXCs and resellers have always had the obligation to track completed calls and should be able, without undue difficulty, to coordinate this tracking function. Bulletins at 2-3. Bulletins systematically debunks all of WorldCom's claims concerning the difficulty of tracking compensable calls.⁶ And Intellicall states that, "together with an underlying carrier," it has "developed the systems and interfaces to accept [Intellicall's] existing call detail format to fulfil its compensation and reporting obligations under the *Second Report and Order*." Intellicall at 3. If Intellicall and its IXC partner can do it, so can other IXCs. "WorldCom has the power of the contract that could require SBR signatories to provide accurate data in a specified format as a condition of service." *Id.* at 4. Indeed, one party suggests that if a reseller refused to submit call completion data, this "could justify a switch-based reseller being charged for uncompleted calls." CommuniGroup at 4. The Commission need not modify its consistent policy to accommodate WorldCom's preferences, when WorldCom is free to implement systems to track compensable calls accurately.

⁶ WorldCom is shameless in its claims of technical ineptitude whenever the task involves payment to others. For example, WorldCom complains that meeting "tight quarterly compensation deadlines" taxes the limited resources of one of the largest communications companies in the world. WorldCom at 5. Yet WorldCom has no trouble billing tens of millions of end-users every month for the very same compensation that it can barely manage to pay out quarterly to, at most, a few thousand PSPs.

B. Likewise, few parties have anything good to say about Global Crossing's proposal that the Commission adopt a timing surrogate. To the contrary, the comments make clear that imposition of such a surrogate would raise intractable administrative problems. In particular, parties dispute whether Global Crossing's proposed 25-second surrogate is appropriate, with Qwest (for example) advocating a 40-second surrogate (Qwest at 5) and TelStar asserting that the surrogate would have to be "at least 120 seconds long" (TelStar at 20). *See also* IPCA at 11-12. Moreover, AT&T argues that most carriers' tracking systems "do not have mechanisms that would allow them to treat as compensable calls that are 'off hook' for any designated period." AT&T at 1. Moreover, as both a substantive and procedural matter, to adopt a timing surrogate on the present record — without any evidence to support the choice of surrogate — would be arbitrary and capricious. IDT at 44. Indeed, Qwest reveals just how administratively burdensome a timing surrogate approach would be when it suggests that the Commission may be required to adopt "*individualized* timing surrogates." Qwest at 6 (emphasis added). Such an approach would surely be infinitely more difficult to implement than a mechanism for tracking calls to actual completion.⁷

C. Even as the Commission should reject IXCs' efforts to alter the definition of a completed call, it should also reject attempts to *prevent* first-switch IXCs from paying PSPs for all calls delivered to resellers' platforms. As the ARC recognizes, "underlying carriers should

⁷ The Commission should likewise reject IPCA's proposal of using a "percent-completed-calls" method for calculating compensation obligations. *See* IPCA at 13-14. As IPCA itself acknowledges, no carrier "has sought to demonstrate that exchange of [call detail record] information . . . with switch-based resellers would present any logistical difficulty." *Id.* at 13. Given that IXCs and resellers can track calls to completion and account for them properly, there is no reason for the Commission to sanction any surrogate method.

[not] be prohibited from minimizing their administrative burden by erring on the side of overcompensating PSPs in lieu of implementing tracking methodologies.” ARC at 5.

Accordingly, to the extent that AT&T seeks clarification that its compensation method satisfies its compensation obligations towards PSPs, the Commission should grant that clarification.

Resellers’ opposition to AT&T’s request may rest on a misunderstanding. As the Coalition emphasized in its comments, AT&T’s request for clarification cannot be logically understood to say anything about the terms that AT&T and its reseller customers may negotiate for reimbursement of per-call compensation payment and tracking expense. That issue, as the Coalition explains below, should be left to the control of market forces and generally applicable restrictions on carriers’ charges for interstate service.

II. NO PARTY PRESENTS EVIDENCE THAT THE COMMISSION’S REPORTING OBLIGATIONS ARE UNREASONABLE; IF THE COMMISSION ACTS ON THIS ISSUE IT SHOULD FOLLOW THE INDUSTRY APPROACH PROPOSED BY THE COALITION

Resellers and IXCs alike — not surprisingly — object to the reporting requirements in the *Second Recon. Order* and ask that the Commission adopt less burdensome requirements. But none of the parties presents any evidence beyond vague assertions to support the claim that the reporting requirements imposed in the *Second Recon. Order* would be unduly burdensome. By contrast, the APCC and Flying J both agree that the reporting obligation adopted in the *Second Recon. Order* are “amply justified, based on record evidence.” APCC at 3; *see also* Flying J at 17-20. Bulletins — which specializes in handling similar data — credibly asserts that the new reporting requirements can be met relatively easily. Bulletins at 6; *see also* NET at 4-5.

Accordingly, the Commission need not modify its reporting requirements at all. But if it does choose to modify those requirements, it is imperative that the data that first-switch IXC are required to report is sufficient to permit PSPs to verify that IXCs are complying with payment obligations. Fortunately, the industry has largely reached consensus on what data would provide a minimum level of assurance to PSPs. That consensus is described in the Coalition's comments and in the comments of the APCC, AT&T, and WorldCom. To the extent the Commission adopts that approach, it should eliminate any basis for complaint that the reporting requirements are unduly stringent.

III. THE COMMISSION SHOULD NOT INTERFERE IN THE RELATIONSHIP BETWEEN IXCs AND THEIR RESELLER CUSTOMERS

The parties to this proceeding spill a great deal of ink over an issue that the Commission would be wise to decline to address. Resellers object that the proposals of WorldCom and AT&T to treat all calls routed to resellers as completed calls for compensation purposes would impose unjust, unreasonable, and discriminatory charges on resellers, because first-switch IXCs will "pass through" any compensation payments to their reseller customers. Several parties argue that the Commission should prohibit first-switch IXCs from charging resellers for call attempts, rather than on completed calls. As IDT puts it, such payments "must be, in every sense, a 'pass through.'" IDT at 33. IDT even calls for a cost proceeding to determine the amount of permitted tracking charges. *Id.* And several parties argue that to charge resellers for call attempts would be unjust, unreasonable, and discriminatory. *See, e.g.,* ASCENT at 11-12; IPCA at 5-6.⁸

⁸ Parties include other suggestions for Commission micro-regulation of the relationship between first-switch IXCs and resellers, down to asking the Commission to designate the appropriate billing period for reimbursement. *See, e.g.,* IPCA at 8-9. All such proposals threaten to entangle the Commission in what is and should remain an unregulated market relationship.

In fact, the Commission should make clear that the arrangement between a first-switch IXC and its reseller customer for reimbursement of per-call compensation payments and tracking expenses is a private business arrangement that the Commission will not regulate. It is true that section 64.1310(b) of the Commission's rules provides that a first-switch IXC "may obtain reimbursement from its reseller and debit card customers for the compensation amounts paid to [PSPs] for calls carried on their account and for the cost of tracking compensable calls." 47 C.F.R. § 64.1310(b). Both IXCs (*see, e.g.*, AT&T at 2) and resellers (*see, e.g.*, IPCA at 8) appear to assume that this regulation means that if a first-switch IXC chooses to pay on all reseller attempts, that the reseller is therefore obligated to pay the IXC for all attempts as well. That assumption is wrong.

Rather, this regulation simply means that — prior contractual arrangements notwithstanding — first-switch IXCs are permitted to require reseller customers to reimburse them for per-call compensation payments, even if resellers formerly had agreed to pay such compensation directly to PSPs (absent a valid agreement between resellers and PSPs). But the Commission has not regulated and should not regulate the rates, terms, and conditions for such reimbursements any more than it should regulate any other aspect of the IXC-reseller relationship. As the ARC correctly observes, first-switch IXCs may choose to pay on all call attempts for calls delivered to resellers' platforms, but this says nothing about the appropriate amount that resellers will agree to pay first-switch IXCs in reimbursement for such calls. ARC at 5. The Commission can rely on market participants to negotiate appropriate arrangements for reimbursement.

Indeed, the Commission has held repeatedly that the long-distance market — including the segment involving provision of wholesale long-distance service to resellers — is sufficiently competitive that rate regulation is unnecessary to prevent IXCs from imposing unjust and unreasonable charges on their customers. In requiring the deregulation and detariffing of all domestic long-distance service, the FCC has held that “it is highly unlikely that interexchange carriers that lack market power could successfully charge rates, or impose terms and conditions, for interstate, domestic, interexchange services that violate Sections 201 and 202 of the Communications Act.” *Detariffing Order*, 11 FCC Rcd at 20750, ¶ 36. Precisely for that reason, the Commission has decided to abandon all rate regulation of non-dominant IXCs, holding that “market forces, . . . the Section 208 complaint process, and our ability to reimpose tariff filing requirements, if necessary, are sufficient to protect consumers.” *Id.* Moreover, the Commission has relied on market forces specifically to ensure that “facilities-based carriers will . . . provide resellers with service options at reasonable rates.” *Detariffing Recon. Order*, 11 FCC Rcd at 15054, ¶ 72.

In light of this, the Commission should not establish any regulations to dictate the rates, terms, and conditions that first-switch IXCs and resellers may negotiate for reimbursement of per-call compensation payments. IXCs and resellers can be counted on to negotiate the most efficient arrangements for reimbursement. If tracking actual call completions for calls carried by resellers and reporting that data to PSPs is cheaper than paying on all attempts, there will surely be some facilities-based IXCs who are willing to exploit any reluctance by other IXCs to deploy such arrangements. In this regard, the Commission should take particular note of Intellicall’s statement that it has *already* implemented arrangements with a facilities-based IXC to track calls

to completion, as well as the statements of other resellers that they are fully prepared to implement such arrangements. Notably, NET states that it “could in short order implement systems that will enable” IXCs to track completed calls. NET at 4.

The Commission should not fall into the trap of attempting to dictate in advance what type of arrangements between first-switch IXCs and resellers are appropriate and which are inappropriate. The Commission has policies in place “barring prohibitions on resale and restrictive eligibility requirements.” *Detariffing Recon. Order*, 11 FCC Rcd at 15054, ¶ 72. Likewise, sections 201 and 202 continue to apply to provision of unregulated interstate common carrier services. *Id.* If a particular reseller believes a particular IXC’s practice runs afoul of the Commission’s rules or the Communications Act, it can file a complaint. If a reseller believes that IXCs have violated the antitrust laws, they may bring suit in federal court. But resellers should also recognize that tracking and payment of compensation creates costs, and first-switch IXCs can be expected to pass those costs through to their reseller customers. There is nothing improper in that.

By contrast, if the Commission does accept parties’ invitations to dictate the rates, terms, and conditions of recovery of per-call compensation payment and tracking expenses, the Commission is likely to foreclose efficient market solutions to this issue and to cause serious damage to the wholesale long-distance market. Indeed, the Commission itself has long recognized — and Congress has strongly affirmed — that in those circumstances where market forces can be counted on to constrain prices, there is no place for rate regulation. *See, e.g., First Payphone Order*, 11 FCC Rcd at 20567, ¶ 49. The Commission should apply that principle here and decline to intervene in the IXC-reseller market relationship.

In a similar vein, additional calls for Commission intervention in the market where not required to address a specific market failure should likewise be rejected. The opposition to proposed restrictions on agreements between PSPs and resellers for direct payment of compensation is nearly universal; the Commission need only require that first-switch IXC be fully informed of any such agreements and that resellers provide first-switch IXCs with adequate information to ensure that they can avoid duplicative payments. First-switch IXCs can easily enforce those requirements through their agreements with resellers. And the Commission should dismiss Global Crossing's silly suggestion that PSPs be barred from sending invoices. Even assuming that such a restriction were constitutional — in fact, such a restriction would violate First Amendment limitations on regulation of commercial speech — it would be simply irrational. Indeed, IXCs should welcome additional information that PSPs might provide, and such invoices would have no effect on IXCs' obligation to compensate PSPs pursuant to Commission regulations or any applicable private agreement.

CONCLUSION

For the foregoing reasons, the Commission should (1) maintain its definition of completed call, (2) modify its reporting requirements only if such modifications maintain PSPs' ability to verify per-call compensation payments, and (3) avoid regulation of the market relationship between IXCs and their reseller customers.

Respectfully submitted,



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October 22, 2001

CERTIFICATE OF SERVICE

I, Tara Brooks, hereby certify that on this 22nd day of October, 2001, copies of the Reply Comments of the RBOC Payphone Coalition on Petitions for Reconsideration and Clarification to be served upon the parties listed below by first class U.S. Mail, postage pre-paid or by hand delivery indicated by an asterisk (*).

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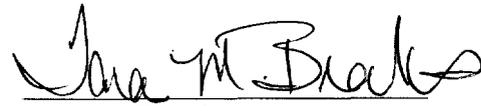
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