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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

October 24, 2001

VIA COURIER

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128

Dear Ms. Salas:

Enclosed for filing please find an original and four (4) copies of the Reply Comments of the International Prepaid Communications Association in the above-captioned docket.

Also enclosed is a copy of this document marked "Stamp In". Kindly date stamp this copy and return it to me in the self-addressed envelope provided.

Please do not hesitate to contact me with any questions or concerns.

Sincerely,

Stephanie A. Joyce
Counsel for International Prepaid Communications Association

Enclosures

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OCT 24 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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 Clarification	)	NSD File No. L-99-34

REPLY COMMENTS OF THE INTERNATIONAL PREPAID COMMUNICATIONS ASSOCIATION ON PETITIONS FOR RECONSIDERATION AND/OR CLARIFICATION

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Dated: October 24, 2001

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REPLY COMMENTS OF THE
INTERNATIONAL PREPAID COMMUNICATIONS ASSOCIATION
ON PETITIONS FOR RECONSIDERATION AND/OR CLARIFICATION

The International Prepaid Communications Association ("IPCA"), by its attorneys, submits these reply comments in further response to the petitions for declaratory ruling, reconsideration and clarification[1] on the Commission's *Second Order on Reconsideration*[2] issued in the above-captioned docket.[3]

SUMMARY

Although the record in this proceeding clearly reflects that the *Second Order on Reconsideration* did not permit billing for uncompleted payphone calls, it nonetheless weighs overwhelmingly against the changes proposed to the Commission's payphone compensation

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[1] AT&T Petition for Clarification and/or Reconsideration (filed May 29, 2001) ("AT&T Petition"); WorldCom, Inc. Petition for Declaratory Ruling and Petition for Clarification (filed May 29, 2001) ("WorldCom Petition"); Global Crossing Petition for Reconsideration and Clarification (filed May 29, 2001) ("Global Crossing Petition").

[2] *Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Second Order on Reconsideration, FCC 01-109 (rel. Apr. 5, 2001) ("*Second Order on Reconsideration*").

[3] IPCA notes that the notice for comment published in the Federal Register listed the date for replies as October 22, 2001. 66 Fed. Reg. 46793. The Public Notice in this case, however, provided 15 days for replies, or until October 24, 2001. *Common Carrier Bureau Seeks Comment on Petitions for Declaratory Ruling, Reconsideration and/or Clarification of the Payphone Compensation Second Order on Reconsideration*, CC Docket

rules by the various petitioners. The proposal of AT&T and WorldCom that IXCs should pay PSP compensation on any payphone call that is routed by the first switch, regardless of whether completed ("AT&T/WorldCom Proposal"), was correctly and uniformly denounced as discriminatory, unreasonable, and squarely in violation of Section 276. For IXCs to wrest control of PSP compensation from switch-based resellers ("SBRs") and administer it according to their own administrative liking is not only unnecessary, but could well drive many SBRs from the market entirely and cause substantial harm on consumers in the form of increased rates. Equally disfavored is WorldCom's request to amend the definition of a completed call to comport with its proposal – a proposal that in fact is already company policy – in contradiction of the plain language of Section 276 in which Congress mandates compensation only for *completed* calls.

The majority of commenters also agree that the Commission should expressly preserve the rights of SBRs to establish and/or maintain existing contractual relationships with PSPs and clearinghouses to remit compensation. As even the RBOC Payphone Coalition admits, there is "no justification" to preclude such arrangements,[4] which have proved thus far to be an efficient and reliable method of compensating PSPs. On this basis, the Commission should not only reiterate its holding that such arrangements are not disturbed, but should create a rebuttable presumption that industry clearingouse compensation arrangements must be accepted by PSPs with any requesting SBR – without interference from IXCs – unless the PSP can demonstrate that an SBR has repeatedly and substantially failed to comply with its Section 276 compensation obligations.

No. 96-128, DA 01-1967 (rel. Aug. 20, 2001). IPCA has confirmed with FCC Staff that October 24, 2001 is the correct date.

[4] Comments of the RBOC Payphone Coalition at 8.

The record also shows that, although acceptable in principle, timing surrogates are an unworkable mechanism for calculating PSP compensation. Having already rejected timing surrogates in 1996, the Commission will find little evidence in the record on which to select a call length that fairly addresses the legitimate concerns of both PSPs and SBRs. Yet it remains true that, absent full implementation of call tracking capabilities, which still may not provide fully automated call verification, a failsafe method for ensuring that SBRs remit the appropriate payment to PSPs is required. IPCA therefore reiterates its suggestion that the Commission adopt the percent-call-completed ("PCC") factor as a means for determining, on an SBR-by-SBR basis, what the default level of compensation shall be, subject to PSP audit and verification. Adoption of this proxy, which is closely analogous to the Percent Interstate Usage ("PIU") factor used for more than a decade by the Commission as a default for determining the proportion of interstate terminating access, is a reasonable and fair means of assessing PSP compensation for SBRs.

Finally, the Commission should accept Global Crossing's suggestion that the effective date of the *Second Order on Reconsideration* should be postponed pending resolution of the instant petitions. The implementation of that order has raised fundamental questions about PSP compensation, and has generated considerable controversy, such that further Commission guidance is required before the industry can begin to comply with the new rules.

I. THE COMMISSION SHOULD EXPRESSLY REJECT THE IXCs' UNLAWFUL POLICY OF ASSESSING PSP COMPENSATION FOR UNCOMPLETED CALLS

Commenters agree that the AT&T/WorldCom proposal to assess PSP compensation for any payphone call that reaches an IXC switch is unreasonable, discriminatory, and in violation of Section 276.[5] Unfortunately, as shown in the initial comments of IPCA and Telstar, this

[5] IPCA Comments at 5-9; Ad Hoc Resellers Coalition ("ARC") Comments at 5; Comments of the Association of Communications Enterprises ("ASCENT") at 11-12; CenturyTel Long Distance Comments at 3-4; Opposition of CommuniGroup et al. at 5-7; Comments of Global Crossing at 4-5; Initial Comments of IDT at 25-28.

proposal has already been implemented by several carriers and is, today, a reality for SBRs.[6] SBRs are now forced to address the IXCs' pay-all policy as both a rulemaking and an enforcement matter, because the IXCs have implemented the policy immediately, without awaiting FCC review or approval of their petitions here.[7] IPCA therefore urges the Commission to deny the AT&T/WorldCom petitions and to state affirmatively that any attempt by a carrier to require full reimbursement from an SBR for non-compensable payphone calls is a violation of Section 276, and Commission Rule 64.1300, and will be sanctioned accordingly.

As several commenters have made clear, the AT&T/WorldCom proposal would bring severe, unrecoverable financial harm to all resellers. Under the proposal, the IXCs would demand reimbursement for all payphone calls from resellers, whether or not compensable, that will increase their present PSP compensation liability by 40% to 1000%.[8] Even if pass-through of these increased compensation costs were lawful – which it is not[9] – these carriers could not recoup their losses from customers without losing substantial share in the competitive dial-around market. The IXCs, however, will not suffer the same fate, as they can track their own calls to completion.

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[6] IPCA Comments at 2; Telstar Comments Attachment B (policy letters of WorldCom, Qwest, Global Crossing and Broadwing).

[7] Qwest and Broadwing will commence charging SBRs for all payphone calls effective October 1, 2001; WorldCom has indicated that its policy will be implemented on December 1, 2001. *See* Telstar Comments Attachment B.

[8] CenturyTel and ARC state, and AT&T agrees, that the completion rate for payphone calls averages 70%. CenturyTel Comments at 4; ARC Comments at 3 (*citing* AT&T Petition at 3 n.4). Though the comments do not specify the destinations of these calls, in IPCA's experience that high a completion rate could only apply to calls originated and terminated on the American PSTN. In the international market, however, call completion rates are as low as 10 to 30%. Telstar Comments at 11.

[9] Billing end users for uncompleted payphone calls is unlawful. 47 U.S.C. §§ 226(b)(F) & (G). *See also* IPCA Comments at 7. Thus, SBRs will be unable to recover payphone compensation charges imposed on calls that reach an IXC switch, but that are not actually completed by the SBR.

Finally, Bulletins' suggestion that any potential overpayment will be offset by so-called "chain dialing" is unfounded.[10] Unlike the call completion figures provided by IDT and Telstar – corroborated by AT&T – Bulletins can offer no quantifiable evidence of the frequency of chain dialing. Moreover, most carriers are equipped to handle chain dialing and impose the requisite PSP charge on each call. The Commission should not accept such facile justifications for violating the plain meaning of Section 276. Rather, it should denounce the AT&T/WorldCom proposal, as well as the IXC practices already in place, as an unlawful, reactionary response to the *Second Order on Reconsideration*.

II. COMMENTERS OVERWHELMINGLY OPPOSE WORLDCOM'S PROPOSAL TO AMEND THE DEFINITION OF A COMPLETED CALL

There is little support and absolutely no legal basis in the record for amending the definition of a completed call as WorldCom has requested. Nearly all parties agree that amendment of the definition is unnecessary, would violate Section 276 and, as succinctly put by the ARC, is "nonsensical."[11]

As IPCA and others have explained,[12] the Commission's long-standing interpretation of Section 276's compensation mandate for "all completed calls"[13] requires carriers to pay PSPs for all calls that reach the called party.[14] WorldCom's self-serving proposal to require compensation

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[10] Comments of Bulletins at 5.

[11] ARC Comments at 3. *See also* ARC Comments at 3, 4-5; ASCENT at 2-6, 8; CenturyTel Comments at 1; CommuniGroup Comments at 4-5; Global Crossing at 2-4; IDT Comments at 23-25; Comments of Network Enhanced Telecom ("NET") at 3-4; Qwest Comments at 6-7.

[12] IPCA Comments at 5-6, 8; ARC Comments at 4; ASCENT Comments at 4; IDT Comments at 23-24; NET Comments at 3-4.

[13] 47 U.S.C. § 276(b)(1)(A).

[14] *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Report and Order, 11 FCC Rcd. 20,541, 20, 573 (1996) ("*First Payphone Compensation Order*").

for any payphone call routed by its switch, supported in modified form in APCC's comments,[15] bears no relation either to Congress's clear mandate or the Commission's holding. In fact, rather than attempt to reconcile their proposed definitional change with the language of Section 276, WorldCom and APCC justify their position merely as a matter of expedience: that amending the definition of a completed call will "drastically reduce administrative expenses"[16] for IXCs and provide them "flexibility."[17] Yet such concerns with IXCs' administrative overhead – exacerbated out of the IXCs' demonstrated unwillingness to implement call tracking mechanisms ordered by the FCC five years ago – cannot justify the adoption of a definition so flatly contrary to Congress's express language.

Further, several commenters have noted the discriminatory intent and effect of WorldCom's proposed definition.[18] WorldCom seeks to define a completed call as a call that is either "completed on the underlying carrier's network" or "handed off to its [SBR] customers."[19] On its face, this definition is inequitable. The definition would expressly permit IXCs to avoid paying for uncompleted calls while forcing resellers to do so. In practice, even if modified to appear even-handed, any definition that deemed unanswered payphone calls complete would have the same effect. Whatever the controversy surrounding whether IXCs can in fact track all payphone calls regardless of destination,[20] it is uncontested that IXCs can track their own

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[15] APCC proposes that the Commission define a completed call as one that is answered by the SBR's switch, which, like the WorldCom definition, does not ensure that the call is actually answered by the called party. APCC at 2 and Attachment 1 (proposed amended rule).

[16] WorldCom Comments at 7.

[17] APCC Comments at 2. *See also* Comments of Bulletins at 5 (stating that compensating PSPs for all payphone calls is a "sensible result").

[18] IPCA Comments at 8; ARC Comments at 5; ASCENT Comments at 11-12; CommuniGroup Comments at 5-7; Global Crossing Comments at 4-5; IDT Comments at 25-28; Comments of VarTec Telecom at 3.

[19] WorldCom Petition at 2.

[20] *Compare* RBOC Coalition Comments at 2, 4 (IXCs can track all calls) *with* AT&T Comments at 2 (IXCs are unable to track calls).

payphone calls. Having that ability, the IXCs can ensure that they do not overcompensate PSPs while simultaneously forcing resellers to pay PSPs tenfold what they are owed.

The Commission should not even entertain discussion on changing the definition of a completed call. As it has unequivocally stated, its aim in this docket is to secure PSPs' right to be compensated as Congress has required.[21] To adopt WorldCom's, or even APCC's, amended definition would unlawfully expand their right to compensation at the extreme expense of the reseller industry.

III. WORLDCOM's PURPORTED LIABILITY CONCERNS SHOULD NOT DETER THE COMMISSION FROM RE-AFFIRMING THE RIGHTS OF RESELLERS TO ARRANGE PSP COMPENSATION THROUGH PRIVATE CONTRACTS AND CLEARINGHOUSES

Many commenters agree that resellers must be permitted to establish and rely upon direct contractual relationships with PSPs, and to use clearinghouses, in order to administer PSP compensation.[22] Even AT&T has stated that the industry can and has cooperated to form "a reasonable process that carriers, PSPs and SBRs can use to create the business and legal relationships necessary to implement the Commission's new policy."[23] In fact, many SBRs have relied upon these relationships to compensate PSPs since 1996 without accusations of deliberate underpayment.

The Commission was thus correct when it held that all PSP-SBR and clearinghouse contracts may remain intact under the new rules. As the record demonstrates, however, SBRs now require a stronger endorsement of the validity of these relationships. IPCA therefore urges the Commission to create a presumption that PSP-SBR contracts and arrangements with clearinghouses are a valid means of administering PSP compensation that must be accepted by

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[21] *Second Order on Reconsideration* ¶¶ 8, 10.
[22] IPCA Comments at 9-10; AT&T Comments at 3; CenturyTel Comments at 5-6.
[23] AT&T Comments at 3.

PSPs unless a PSP can demonstrate that a resale carrier has repeatedly and substantially failed to remit compensation.

In its comments, WorldCom explains its concern about the ability of PSPs to obtain compensation were SBRs permitted to administer payment through separate contracts and clearinghouses.[24] Purporting to fear for its own liability if a PSP-SBR contract for compensation were not performed, WorldCom sets forth the mechanisms it has unilaterally devised for allowing its SBR customers to continue paying PSPs on their own behalf. These mechanisms require SBRs to sign liability releases for WorldCom and to indemnify WorldCom for any claim, whether or not meritorious, "arising out of or relating to" PSP compensation.[25] In addition, citing administrative concerns no more onerous than those it has voluntarily taken on in its pay-all proposal, WorldCom seeks to require SBRs to execute contracts with 11 separate PSPs or be forced to submit to its policies.[26] For any carrier to dictate the terms by which another carrier does business is patently unreasonable. Moreover, WorldCom's concern for its own liability is oversolicitous at best and arrogant at worst. Under the *Second Order on Reconsideration,* it is clear that if a PSP and SBR have a contractual relationship, WorldCom cannot be secondarily liable for any PSP-SBR dispute over payphone compensation. And the financial windfall WorldCom stands to gain under its pay-all policy belies its superficial concern for PSPs.

The Commission should also find striking the proposals of WorldCom and APCC that IXCs become a third party in the PSP-SBR contracting process.[27] WorldCom in fact boldly states that it "considers underlying carriers to be one of the parties necessarily involved in the decision as to whether SBRs may directly compensate PSPs," as if SBRs were not also

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[24] WorldCom Comments at 9.
[25] WorldCom Comments, Attachment 2.
[26] WorldCom Comments at 10.
[27] WorldCom Comments at 8-9; APCC Comments at 10.

guaranteed a free right of contract or are unable to manage their own businesses.[28] APCC likewise suggests that any PSP-SBR contract may occur only "with the IXC's consent" and adds several tracking and reporting requirements that it believes must be explicit within that relationship.[29] In fact, APCC would require SBRs to implement call tracking systems that, to date, the IXCs themselves are unable to provide.[30] The Commission should reject such proposals to usurp SBRs' right to contract with PSPs and clearinghouses as both unnecessary and unworkable.[31] Further, the Commission should state clearly that there is a rebuttable presumption that industry clearinghouse arrangements are a valid means of compensating PSPs, and that PSPs must accept contracts between clearinghouses and SBRs, absent a showing of deliberate and consistent underpayment.

IPCA reiterates its commitment to ensuring that PSPs receive fair and timely compensation for all completed payphone calls.[32] Where PSPs have not been compensated in the manner mandated by Congress, they can and should seek relief in the courts – or from the FCC – under Section 276 and the Commission's rules. In fact, APCC has successfully obtained judicially-ordered compensation from several IXCs and SBRs that have intentionally flouted paying Section 276 compensation. Having this right, PSPs are assured that they will be compensated. As such, IXCs do not require and are not owed the opportunity to participate in, or demand certification of, the contractual process between SBRs and PSPs.

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[28] WorldCom Comments at 10.

[29] APCC Comments at 10.

[30] AT&T Comments at 2-3.

[31] IPCA's recommendation assumes that the Commission has the jurisdiction and authority to create such rules.

[32] IPCA Comments at 3-4.

IV. CONTRARY TO QWEST'S POSITION, TIMING SURROGATES ARE NEITHER ACCURATE NOR FAIR AS A MEANS OF DETERMINING COMPENSABLE CALLS

Timing surrogates similarly drew few supporters in this proceeding. In fact, even the RBOC Payphone Coalition, whose members are anxious to receive PSP compensation payments as they are due, opposes timing surrogates on the grounds that there is "no evidence that [the] proposed surrogates are accurate either in general or as to any particular class of calls."[33] IPCA's comments echo this notion,[34] for it can think of no call length that will adequately address the wide variation in network efficiency throughout the globe while assuaging PSP concerns about underpayment.[35] A two-minute timing surrogate will address Telstar's international call completion requirements[36] but will likely raise concerns over call fraud for domestic calls. The Commission cannot win on this one.

Qwest in fact acknowledges the inherent impossibility of choosing a timing surrogate. It suggests that the Commission pick Global Crossing's 25/45-second surrogate, but "[i]f SBRs produce credible evidence that the timing surrogates are not an accurate reflection of the overall volume of calls completed by SBRs, as a group, then the Commission should revise" them.[37] Qwest's recommendation illustrates the point exactly: if it were to adopt any timing surrogate, the Commission would be forever revisiting the issue and "tweaking" the surrogate in order to find a fair number.

The proposal is all the more unsound for its lack of necessity. First, the Commission must remember that it has ordered IXCs to perform call tracking and reporting since the *First*

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[33] RBOC Payphone Coalition Comments at 8.

[34] IPCA Comments at 11-12.

[35] Qwest's insistence that PSPs presently use a 40-second timing surrogate as support for the proposal is slightly misleading. Qwest Comments at 5. Often PSPs assume a 40-second timing surrogate for calculating the amount of compensation shortfall in presentations to the Commission, but this assumption has never been accepted by the Commission or within the industry.

[36] Telstar Comments at 19.

Payphone Compensation Order.[38] Secondly, where call tracking is not in place or is not possible, SBRs provide – where the IXCs cooperate – call detail records ("CDRs") that can be reconciled with the IXCs' data to determine the number of compensable calls. The industry has used on this system in the PSP compensation context for five years, and even longer in the long-distance resale context.[39] It is more reasonable for the Commission to rely on such inter-carrier cooperation than to reconsider a proposal that it flatly rejected in 1996[40] and for which it today has little support. Should it find that a failsafe remains necessary despite existing assurances, IPCA has suggested a "percent-call-completed" mechanism, discussed in the next section, that is more accurate and equitable than any timing surrogate.

V. ADOPTION OF THE PCC FACTOR WILL RESOLVE COMPENSATION DISPUTES WHERE CARRIERS ARE UNWILLING OR UNABLE TO TRACK COMPLETED CALLS OR EXCHANGE CDR RECORDS

The record in this proceeding, if nothing else, demonstrates that devising a regime whereby PSPs compensation is calculated with laser precision is unlikely. Although IPCA acknowledges AT&T's modified position that SBRs need not pay for uncompleted calls where "an SBR has (or develops) the capability to track its own calls and to provide its call completion data to the first switch-based carrier,"[41] it finds unrealistic the proposition that SBRs can obtain the cooperation of IXCs and PSPs necessary to reconcile their call completion data. Indeed, AT&T itself cannot be so precise in its call tracking.[42]

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[37] Qwest Comments at 5.

[38] *First Payphone Compensation Order*, 11 FCC Rcd. at 20,586, *aff'd Second Order on Reconsideration* ¶ 20.

[39] The allegations by APCC and the RBOC Payphone Coalition that SBR records are unreliable is unfounded. APCC Comments at 4-5; RBOC Coalition Comments at 5-6. IPCA's members use the same call records presently used by other carriers, including other IXCs. *E.g.*, Telstar Comments at 18-19. Any attempt to discredit the ability of SBRs to provide accurate call data – which is in fact provided to a neutral third-party clearinghouse for reconciliation with coding digits – should be met with suspicion by the FCC.

[40] *First Payphone Compensation Order*, 11 FCC Rcd. at 20,574.

[41] AT&T Comments at 2.

[42] AT&T Comments at 3.

Despite IXC call tracking and reporting requirements and the best efforts of SBRs to obtain cooperation in reconciling CDR records, calculating PSP compensation remains a difficult process. Most importantly, inter-carrier cooperation is required to assess and confirm completed calls; absent that cooperation, SBRs are less able to calculate their compensation accurately. Understanding the Commission's commitment that PSPs not be undercompensated, however, IPCA has suggested adoption of a PCC factor that will act as a default to ensure proper compensation.[43] The PCC factor will ensure, with better accuracy than timing surrogates and certainly more fairly than a pay-all system, that each SBR incurs compensation liability in accurate relation to its actual payphone call volume, subject to PSP audit and verification.

The Commission should adopt the PCC factor as a default method for calculating PSP compensation where (1) the IXC is unable to track calls to completion, (2) a PSP refuses to accept payment from a clearinghouse, and (3) SBRs are unable to secure the cooperation of carriers in reconciling CDRs with coding digits to identify completed calls. It is a failsafe method, more fair than the AT&T/WorldCom proposal and more accurate than timing surrogates, for ensuring that PSPs receive compensation for completed calls as Section 276 requires.

The PCC approach is based on the similar PIU (percent interstate usage) factor that the Commission has long applied for tracking jurisdictional classification of access traffic where IXCs lack the technical ability to determine call origination. In the *EES Order* of 1989,[44] for instance, the Commission adopted the Entry-Exit Surrogate (EES) as a proxy for allocating Feature Group A and B traffic among intrastate and interstate access.[45] The Commission

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[43] IPCA Comments at 12-14.

[44] *Determination of Interstate and Intrastate Usage of Feature Group A and Feature Group B Access Service*, CC Docket No. 85-124, Memorandum Opinion and Order, 4 FCC Rcd. 8448 (1989) ("*EES Order*").

[45] *EES Order*, 4 FCC Rcd. at 8450.

established the EES to "assur[e] the accuracy of the IXC usage estimates" without "impos[ing] verification requirements that were discriminatory, unduly burdensome, or intrusive on IXC operations."[46] The Commission's aim in that proceeding bears a striking resemblance to its task in creating a fair PSP regime; the fact that the PIU remains in use today[47] should provide comfort that usage proxies are a workable method for normalizing complex network operations.

As IPCA demonstrated in its initial comments, the PCC factor has several clear advantages for calculating PSP compensation.[48] It more fairly reflects an SBR's actual payphone call volume, as it is based on the carrier's own average call completion factor. More importantly, it avoids the AT&T/WorldCom pay-all proposal which, even under the best IXC call completion rates, is grossly in excess of what compensation is due. Finally, the PCC factor is and, and proposed by IPCA, would be verifiable through an audit if a PSP believes that an SBR has deliberately understated its completion average. Adoption of the PCC factor will thus fill in any gaps in call tracking and inter-carrier CDR reconciliation, ensuring that PSPs continue to receive the appropriate payphone compensation.

VI. IPCA AGREES THAT THE COMMISSION SHOULD POSTPONE THE EFFECTIVE DATE OF THE NEW COMPENSATION RULES PENDING RESOLUTION OF THE PETITIONS

Global Crossing requests in its initial comments that the Commission "suspend the effective date of the new rules until it has acted upon the petitions before it," on the ground that the *Second Order on Reconsideration* has created "substantial uncertainty and controversy" in PSP compensation.[49] As the growing dispute between IPCA and WorldCom — and indeed the instant petitions themselves — demonstrate, the Commission's reversion to a first-switch-pays

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[46] *EES Order*, 4 FCC Rcd. at 8448-49.

[47] ILECs retain provisions describing the PIU audit procedure in their federal tariffs. *E.g.*, BellSouth Tariff F.C.C. No. 1, §§ 3.10.

[48] IPCA Comments at 13-14.

rule has raised fundamental questions about the meaning of Section 276 as applied to today's multi-carrier network. IPCA therefore strongly supports Global Crossing's request and urges the Commission to keep its earlier payphone compensation regime intact until it has resolved the critical issues in this proceeding. Pending that outcome, PSP compensation under the last-switch-pays rule should remain in effect, which, coupled with the Commission's requirement that IXCs inform PSPs of the carrier responsible for the call,[50] will ensure that PSPs continue to receive full and fair compensation as they have since 1996.

APCC's opposition that "PSPs have waited five years for a workable system of payphone compensation"[51] should not dissuade the Commission from postponing the effective date of the rules. Adopting a system that forces SBRs to pay up to ten times the amount of compensation that PSPs are lawfully due is not "workable." It is a recipe for further appellate review and delay and for destroying one of the few competitive markets in telecommunications. The Commission should therefore take a cautious approach at this juncture and stay its own rules until it has carefully deliberated and decided the crucial issues at stake.

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[49] Global Crossing Comments at 5.

[50] "If the IXC will not be the paying party because it transferred the call to a switch-based reseller, it is incumbent upon the IXC at that juncture to identify the reseller." *Bell Atlantic-Delaware v. Frontier Communications Services*, File No. E-98-48, Memorandum Opinion and Order, FCC 01-110, 16 FCC Rcd. 8112, 8119 (rel. Apr. 5, 2001).

[51] APCC Comments at 13.

CONCLUSION

For all these reasons, IPCA urges the Commission to (a) reject the AT&T/WorldCom proposal that underlying carriers may pay PSP compensation on all payphone calls; (b) deny WorldCom's and APCC's request to amend the definition of a completed call; (c) expressly reaffirm its holding that resellers may administer PSP compensation through private contractual relationships with PSPs, including through third-party clearinghouses, and create a rebuttable presumption that all such arrangements must be accepted by PSPs absent a showing of repeated and substantial failure of an SBR to satisfy Section 276 and the Commission's Rules; (d) reject timing surrogates as a proxy for determining completed calls; (e) adopt a PCC factor to calculate SBR compensation liability where the SBR has no direct contract with the PSP and the underlying carrier cannot perform CDR reconciliation with the SBR; and (f) postpone the effective date of the new first-switch-pays rule until resolution of all matters pending in the instant petitions.

Respectfully submitted,

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Dated: October 24, 2001

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document in CC Docket No. 96-128, NSC File NO. L-99-34, was sent by United States First-Class mail, postage prepaid on this 24th day of October, 2001 to the following parties:

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