

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

**TELSTAR INTERNATIONAL, INC.
REPLY COMMENTS ON PETITIONS FOR RECONSIDERATION AND/OR
CLARIFICATION**

INTRODUCTION AND SUMMARY

Telstar International, Inc. (“Telstar”) submits these Reply Comments in response Party Comments filed on October 9, 2001 in the above proceeding. In its initial Comments, Telstar opposed petitions of WorldCom and AT&T which would force switch-based resellers (“SBRs”) to compensate PSPs for incomplete calls, while their IXC competitors would only remit compensation to PSPs for calls that are answered by the end user. As Telstar discussed in its comments, this result is contrary to the Act, the Commission’s rules, is discriminatory and would result in a vast overcompensation of PSPs at resellers’ expense.

The comments indicate an overwhelming consensus that the AT&T and WorldCom petitions should be denied. Specifically, the comments have demonstrated that adoption of the AT&T/WorldCom proposals will result in discrimination against resellers, forcing them from the 800 access market – a result that is antithetical to the Act

and the Commission's mandate to open and maintain a vibrantly competitive telecommunications marketplace. In its Initial Comments Telstar discussed in detail why the AT&T/WorldCom proposal should be denied. Specifically, Telstar explained that the AT&T/WorldCom proposal:

- Violates Section 276 of Act by requiring resellers to compensate PSPs for incomplete calls;
- Violates Section 202(A) of the Act by discriminating against resellers who compete directly with IXCs in the 800 access and dial-around marketplace;
- Violates Section 201(b) of the Act by imposing unjust and unreasonable costs and practices on resellers;
- Is anti-competitive and predatory;
- Will unjustly enrich PSPs at reseller expense; and
- Undermines the Commission's determination that PSP compensation should be market based.

Telstar's views expressed in its initial comments have been widely supported in the comments of other parties, and will not be reargued here.¹ Instead, Telstar uses the opportunity of these reply comments to address specific points raised in the initial Comments of other parties to this proceeding.

I. NO PARTY TO THIS PROCEEDING HAS PROVIDED ANY LEGAL BASIS TO SUPPORT A CHANGE IN THE DEFINITION OF A COMPLETED CALL.

¹ Telstar adopts the positions expressed in its initial comments in their entirety by reference.

As discussed in Telstar's Initial Comments, Section 276 of the Act mandates compensation for completed calls made from payphones.² The Commission has long held that a completed call is one that is answered by the called party.³ WorldCom has now asked the Commission to retool its definition of a completed call to include *all calls* that are passed to a reseller's intermediate switch regardless of whether those calls actually are answered by the end user.⁴ Most parties -- including the PSPs who will benefit tremendously from the overcompensation afforded by WorldCom's proposal-- recognize that WorldCom's proposal will unfairly harm resellers.⁵ Only Bulletins supports revising the definition as WorldCom suggests. However, neither WorldCom, nor Bulletins, nor any other party to this proceeding has provided any legal basis for modifying the definition of a completed call as proposed by WorldCom. On this ground alone, the WorldCom petition fails.

Similarly, no party has presented any legal basis to support the "SBR pays all" approach proposed by AT&T and being implemented by all of the major IXCs. This

² Telstar Comments, p. 5

³ *Id.* citing The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, *Report and Order*, Docket No. 96-128, 11 FCC Rcd 20,541 (1996) (*First Payphone Order*), ¶ 63.

⁴ Originally WorldCom proposed redefining a completed as, "one that is completed on the underlying carriers network or one that is handed off to switch-based reseller customers..." In its October 9 submission, WorldCom modified its proposed definition of completed calls as, "calls that are automatically verified as completed by the carrier responsible for compensating PSPs." (WorldCom Comments, p. 4) This "new" proposal is in effect identical to WorldCom's original proposal since under either definition resellers would be assessed PSP compensation for all calls that WorldCom hands off to resellers whether or not those calls are ultimately answered by the called party. Similarly, APCC requests that the Commission define a completed call as one that is answered by the SBR switch. (APCC at 2 and Attachment 1 (proposed amended rule). The APCC proposal, like WorldCom's definition would require resellers to pay PSP compensation for all calls rather than completed calls.

⁵ Telstar, p. 5, IDT, pp. 23-29, Global Crossing, pp. 2-5, Qwest, pp. 2, 6-7, Ad Hoc Resellers, p. 3, Flying J, pp. 3-7, ASCENT, pp. 2-12, Century Tel, p. 2, One Call, pp. 4-6, Vartech, p. 4, ILD, pp. 6-7. Network IP, p. 7. *See also*, RBOC Coalition, p. 2, "WorldCom's proposal would arguably create unfair distinctions between switch-based resellers and facilities-based carriers; moreover, the Commission has always treated only those calls that are answered by an end-user as completed calls."

approach, as explained in Telstar's initial brief is the *de facto* equivalent to the WorldCom approach because it forces resellers to pay for all calls whether or not those calls are completed. As such, the "SBR pays all" approach is discriminatory since it imposes unnecessary and unlawful costs on resellers that their IXC competitors do not bear.

II. COMMENTS OVERWHELMINGLY DEMONSTRATE THAT THE WORLDCom AND AT&T PROPOSALS ARE DISCRIMINATORY.

The vast majority of the parties in this proceeding oppose the WorldCom and AT&T proposals, which can best be characterized as the "SBR pays all" proposals. Under this approach, resellers will be forced to pay PSP compensation for all calls that are passed to their switches while WorldCom and other IXCs will continue to only pay PSP compensation for completed calls. The "SBR pays all" approach will allow IXCs to unfairly undercut resellers in the 800-access, prepaid and dial-around marketplace. No party to this proceeding has denied that SBRs will be competitively harmed if the Commission permits IXCs to charge their reseller customers for incomplete calls. Specifically, WorldCom's proposal is discriminatory because it will foist unnecessary and unjustified costs on resellers that their IXC competitors will not bear, allowing IXCs who provide 800 access services to unfairly undercut reseller rates and forcing SBRs from the 800 access marketplace. This point was illustrated poignantly by IDT:

If an SBR and a facilities-based carrier have an identical number of calling card calls originating from a payphone (e.g. 1,000,000) and identical call completion rates (e.g. 60%) the facilities-based carrier will remit \$14,400.00 in per-call compensation. For the same calls and completion rate, under WorldCom's altered definition, a SBR would remit \$24,000.00 in per call compensation. Moreover, since the SBR will also be required to remit "tracking fees" for all "completed" calls under WorldCom's definition, the SBR would remit an additional \$8,000.00 in tracking fees. As a result, SBRs

will be required to remit \$17,600.00 more than facilities based carriers in the above example.⁶

As demonstrated by IDT and others, resellers will have to recover excessive PSP compensation from their end users, while IXC's who compete with resellers will not have those same costs providing IXC's with an unfair competitive advantage in the prepaid and 800-access marketplace. WorldCom's comment that, "SBRs should be able to easily recover these payphone compensation costs from their customers,"⁷ ignores both the realities of a competitive marketplace and existing law. Section 226 of the Act prohibits carriers for charging customers for uncompleted calls from payphones, making it impossible for resellers to recover PSP compensation for end users.⁸ Accordingly, SBRs will have to raise their general rates to compensate for costs associated with paying PSPs compensation for incomplete calls. Because IXC's like WorldCom will continue to only pay PSP compensation for calls that complete to their end users, IXC's will not face the increased PSP compensation costs faced by SBRs, allowing them to offer their 800 access and prepaid products at lower cost. The prepaid and 800 access market is highly competitive and customers are acutely price sensitive. Accordingly, customers in the prepaid and 800 access markets will not tolerate the increased prices that resellers will have to charge to compensate for the "SBR pays all" practice, and as a result, SBRs will be forced from the market.

Finally, the Commission should not be persuaded by WorldCom's attempts to justify any disparate treatment between itself and SBRs. WorldCom is plainly incorrect that "the additional expenses associated with the Commission's new mandate result from

⁶ IDT Comments, p. 27

⁷ WorldCom Comments, p. 8

the need for underlying carriers to compensate PSPs on behalf of SBRs.”⁹ It is disingenuous for WorldCom to lay blame for its “SBR pays all” proposal at the Commission’s feet. First, there is nothing “new” in the Commission’s requirement that IXCs perform call tracking and reporting. Indeed, this has been a requirement since the *First Payphone Order*.¹⁰ Second, the Commission’s rules require WorldCom to track, “or arrange for tracking,” all compensable calls and allows WorldCom to recoup its reasonable expenses for implementing those tracking arrangements.¹¹ Instead, WorldCom has refused to implement any tracking arrangements with resellers, in favor of charging them for all calls that are transferred to the SBR switch. Accordingly, WorldCom cannot now claim that the costs it proposes to levy on SBRs are the direct result of the Commission’s tracking mandate. All of the proposals suggested by parties in this proceeding – including the exchange of CDRs, use of a billing clearinghouse, use of a percent call completion, or even a carefully crafted timing surrogate – are preferable to and less costly than the onerous and anticompetitive “SBR pays all” proposal.

III. COMMENTS TO THIS PROCEEDING CLEARLY DEMONSTRATE THAT REQUIRING RESELLERS TO SUBMIT PSP COMPENSATION FOR INCOMPLETE CALLS IS AN UNJUST AND UNREASONABLE PRACTICE.

The “SBR pays all” proposal is a blatant violation of Section 201(b) of the Act. Section 201(b) of the Act requires that the charges, classifications, and practices of

⁸ 47 U.S.C. 226

⁹ WorldCom Comments, p. 8

¹⁰ *First Payphone Order*, 11 FCC Rcd. At 20, 586 *aff'd Second Order on Reconsideration* ¶20.

¹¹ 47 C.F.R. §641310(b) states that, “[t]he first facilities-based interexchange carrier...may obtain reimbursement from its reseller and debit card customers...for the cost of tracking compensable calls.”

common carriers must be just and reasonable.¹² As Telstar explained, the proposal violates Section 201(b) because by billing resellers for uncompleted payphone calls – on which the IXC's have no legal, regulatory, contractual or other obligation to pay PSP compensation – the IXC's have imposed an unjust and unreasonable practice on their reseller customers. No party to this proceeding has provided any evidence or legal theory to demonstrate how the practice of forcing resellers to pay excessive compensation can be squared with the Act. The only support offered for the “SBR pays all” proposal is that adopting this proposal will relieve IXC administrative costs. As discussed above, if IXC's are allowed to charge resellers for incomplete calls, SBR's will face greater compensation obligations, thereby creating an unfair advantage for IXC's like WorldCom who compete with SBR's in the 800-access market. Given this discrimination, the IXC practice of charging resellers for uncompleted calls clearly violates the requirements of Section 201(b).

In its Reply Comments submitted on October 22, WorldCom attempts to demonize SBR's, essentially stating that it is fair to assess excessive PSP compensation because, in WorldCom's view, SBR completion data is unreliable.¹³ SBR completion data garnered from answer supervision at the called end is exactly the same as the completion data WorldCom receives from its own end users. Accordingly, SBR call completion data is no more unreliable than that of WorldCom. The frustrations faced by the PSP's in obtaining call completion data that led to the Commission's adoption of the “first switch pays” rule is a problem caused not by inaccurate SBR call completion data

¹² 47 C.F.R. §201(b)

¹³ WorldCom Reply Comments, pp. 5-6.

as WorldCom contends, but instead by IXC's refusal to identify to PSPs the responsible reseller from whom to collect PSP compensation.¹⁴

In its Reply Comments, WorldCom discusses its "experience" and failure in attempting to reconcile call completion data with one anonymous reseller.¹⁵ Although little is divulged in WorldCom's Reply Comments to demonstrate how it attempted to reconcile with its reseller, what is evident is that WorldCom attempted to impose on its reseller nothing short of a Rube-Goldberg solution to what is really a straight forward analysis. The bottom line is this: An SBR knows when it receives a call from a payphone based on the info digits that are passed to it. An SBR knows when and if a call is completed via receipt of answer supervision. An SBR's call detail records clearly indicate all of this information, and these very same CDRs can be provided to IXCs like WorldCom. There should be no discrepancies in the data because all of the data is generated by the SBR. Any discrepancies between PSP data and SBR data can – and should – be addressed by the SBR and the PSP. There is absolutely no reason to engage in the sort of klugey resolution process that WorldCom tried to impose on its reseller customer (i.e. matching up times that calls were sent from payphones with call times to SBR platforms – to determine whether a particular call was completed) when the most accurate data – the industry standard data -- *answer supervision data* – is available for determining call completion. Although Telstar is not a WorldCom customer, Telstar can understand why WorldCom's reseller would not accept the results of WorldCom's retrofitted exercise, when answer supervision is the industry standard method for

¹⁴ See *Second Order* at para 8: "Illustrating how carriers avoid payment, APCC claims that IXCs unilaterally determine that they are not responsible for paying compensation for calls routed to switch-based resellers, but at the same time the IXCs do not identify which resellers are responsible for compensation, even when the PSP requests this information."

determining whether a call is completed. In any event, WorldCom's failure to develop a workable system for exchanging call completion records does not warrant the drastic remedy that WorldCom would impose on SBRs and the destruction of the prepaid and 800 access markets that WorldCom's proposal would engender.

IV. THE "SBR PAYS ALL" PROPOSAL WILL CONFER A WINDFALL ON PSPS AT THE EXPENSE OF SBRS

Most parties to this proceeding recognize that the "reseller pays all" approach advocated by WorldCom and AT&T unjustly enriches PSPs at resellers' expense.¹⁶ Even AT&T recognizes that its practice of compensating PSPs for all calls is "clearly favorable" to PSPs, while WorldCom recognizes that its proposal will compensate PSPs for all calls sent to an SBR switch, "even if some of these calls were not completed..."¹⁷. The only party who disputes this is Bulletins.¹⁸ Bulletins claims that PSPs are not truly overcompensated, when one considers, "the minimal volume of unanswered subscriber 800 calls."¹⁹ As Telstar explained in its initial Comments, call completion rates vary widely. Call completion rates for some of the most called overseas destinations range from 45-12%. Indeed, if payphone surcharges were levied on incomplete calls made on Telstar's network, Telstar would face increased payphone surcharges of approximately 330%. No one can deny that this would result in a significant windfall for PSPs. Accordingly, Bulletins severely underestimates the impact that AT&T's proposed rule would have on resellers. Bulletins also erroneously claims that debit card providers will

¹⁵ WorldCom Reply Comments, p 7.

¹⁶ Telstar Comments, p. 15, Global Crossing, p. 3, Flying J, p. 13.

¹⁷ WorldCom comments, p. 7

¹⁸ See Bulletins Comments, p. 4

not be harmed because, “the FCC Record already suggests that such debit card providers may even still charge a consumer for such uncompleted calls.”²⁰ This claim is false. As explained in Telstar’s initial comments, carriers do not charge end users for uncompleted calls, and both Federal law and several states have regulations prohibiting them from doing so.²¹ Finally, Bulletins has provided absolutely no evidence besides its “belief” that resellers use “chain dialing” to avoid assessing PSP compensation on their end users. As Bulletins itself notes, the Commission has required that each completed call is subject to PSP compensation and Bulletins has provided no evidence that carriers are failing to comply with this requirement.

V. THE ADMINISTRATIVE EASE OF IMPLEMENTING THE “SBR PAYS ALL” PROPOSAL DOES NOT EQUAL OR OUTWEIGH THE ENORMOUS HARM THAT IT WOULD WREAK ON THE 800 ACCESS INDUSTRY.

As noted above, no party has provided any legal support for approval of the SBR pays all proposal being implemented by the IXC. In short, the SBR pays all proposal is based on the one self-serving contention that it is easier and cheaper for IXCs to charge SBRs PSP compensation for all calls than to conform with the Commission’s tracking and reporting requirements.²² IXC desires to avoid administrative costs associated with tracking or arranging for tracking of completed calls do not justify the SBR pays all proposal and forcing resellers to endure the discrimination and anti-competitive effects that this proposal would wreak on the 800 access industry.

¹⁹ Id.

²⁰ Id.

²¹ See WorldCom Comments, p. 7, and ftnt. 17 citing The Commission’s TOCSIA Rules, 47 U.S.C. §226(b)(F)(G) and Texas P.U.C. §26.344(d)91)(G)

²² WorldCom Comments, p. 6.

WorldCom offers two very weak arguments to support its position, each of which should be dismissed out of hand. First, WorldCom complains that the new tracking and reporting requirements would be overly burdensome and costly to implement, because resellers will not provide data in a standardized format, or at standardized intervals.²³ While it is true that there will be costs associated with the IXCs' new role as clearinghouses for PSP compensation, Telstar believes that these costs can be substantially reduced if IXCs would work with switch-based resellers to ensure that resellers submit their call completion data to the IXC in a uniform format and at time intervals agreed to by the parties.²⁴ Unfortunately, WorldCom has made few if any efforts to work with members of the SBR community to developing standardized reporting processes. Judging from the comments filed by resellers, if WorldCom had done so, it would have found resellers more than willing to work with WorldCom, given that their alternative would be to be forced to pay for all call attempts.²⁵

WorldCom's second argument, that "AT&T has been compensating PSPs for calls handed off to SBRs in this fashion,"²⁶ also misses the mark. As Telstar explained in its initial comments, prior to the release of the *Second Order*, resellers often used nationally recognized clearinghouses to directly remit compensation to PSPs. The reseller would then apprise the IXC that it would be compensating PSPs directly through the clearinghouse and IXCs would waive any PSP collection terms in their standard IXC-reseller contracts. Accordingly, even if it were AT&T's practice to generally charge

²³ WorldCom comments, p. 7

²⁴ *Id.*, p. 5.

²⁵ Many commenters in addition to Telstar have indicated a willingness to work with IXCs to develop call tracking procedures including IDT, Flying J, p. 11, Vartech, p. 4, ILD p. 3.

²⁶ WorldCom, p. 8.

resellers for PSP compensation, reseller could “opt out” of this requirement if it established a relationship with a clearinghouse to handle PSP compensation directly.

The behavior of the IXCs in the wake of the *Second Order*, has eliminated an SBR’s ability to “opt out” of unacceptable, IXC imposed PSP compensation practices. Specifically, IXCs have stopped recognizing reseller arrangements with clearinghouses, and have threatened to begin billing SBRs for PSP compensation on resellers for all call attempts. As a result, resellers must now use an IXC to handle their PSP compensation requirements, and are therefore held hostage to unreasonable IXC policies and charges that they once were able to avoid.²⁷

VI. THE COMMISSION SHOULD REJECT THE RULE CHANGES PROPOSED BY THE IXCS AND APCC.

A. The APCC-IXC Proposed Rule Changes turn Section 276 on its Head by Rewarding IXCs for Compensating PSPs for Uncompleted Calls

Apparently, APCC and members of the IXC community have been holding discussions and have drafted modifications to the Commission’s existing rules regarding payphone compensation and tracking.²⁸ Unfortunately, members of the SBR community were not invited to take part in these discussions. As a result, SBR concerns were largely overlooked or ignored in the draft rule modifications, even though the proposed rules profoundly affect the rights and responsibilities of SBRs. While Telstar supports industry

²⁷ APCC’s claim that the Commission should not bar IXCs from forcing SBRs to remit compensation for uncompleted calls, because it believes that, “under the Commission’s deregulatory policies for the long distance market, the relationships between resellers and their underlying carriers are treated as a private matter,” is inapplicable here. (See *APCC Comments*, p. 2) Indeed Commission action is necessary. As has been demonstrated in this proceeding, all of the major IXCs – WorldCom, Sprint, Global Crossing, Qwest and AT&T, which account for almost 100% of the facilities-based marketplace -- have informed their customers that they intend to force SBRs to pay for uncompleted calls. Accordingly, SBRs now face few if any competitive alternatives and must either submit excessive compensation to PSPs or cease providing 800 access services from payphones.

efforts to standardize reporting requirements, Telstar cannot support the rule modifications proposed in APCC's comments.

APCC's proposed new Section 64.1310(3) would offer IXCs a choice of either (1) remitting payphone compensation for *all calls* terminated to SBRs (including incomplete calls)²⁹ or (2) remitting compensation for completed calls only.³⁰ If the IXC chooses to remit PSP compensation for all calls, the IXC will be subject to reduced reporting requirements.

The APCC proposal is unacceptable. First, the APCC proposal turns Section 276 on its head. While Section 276 mandates compensation only for *completed calls* made from payphones, APCC's proposal makes payment compensation for all call attempts the rule, while compensation for completed calls is the exception. As discussed at length by the Parties to this proceeding, such a result is clearly at odds with Congressional intent, the Commission's definition of a completed call, and the Commission's long held position that "uncompleted calls should not be compensable as a general rule."³¹

Second, the APCC proposal inappropriately rewards IXCs for overcompensating PSPs by reducing IXC reporting requirements if the IXC compensates PSPs for all calls that are passed to a resellers switch regardless of whether those calls are completed.³² If the IXC chooses to compensate PSPs for completed calls only, then IXC must provide additional data to the PSP. Telstar has no objection to providing the kinds of call detail that the IXC would need to comply with proposed rule 64.1310(a)(3)(B). Telstar's

²⁸ APCC Comments, Summary, p. i.

²⁹ APCC proposed rule section 64.1310(3)(A)

³⁰ APCC proposed rule section 64.1310(3)(B)

³¹ 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 Rule Making*, 6 FCC Rcd. 4756 ¶ 37 (rel. August 9, 1991). See Also Telstar, p. 5, ASCENT, p. 11.

³² APCC Attachment 1, proposed Section 64.1310(a)(3)

objection is that the APCC proposed rules allow the IXC to unilaterally determine whether to force resellers to compensate PSPs for incomplete calls regardless of the fact that switch based resellers have the ability to track completed calls. As AT&T explained, “if 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, *it has the option to do so.*”³³ The APCC proposed rule would deny the SBR that option. Both WorldCom’s comments in this proceeding and the letters that IXCs have sent to their reseller customers,³⁴ make it clear that if permitted by the Commission, these carriers will choose the less burdensome reporting requirements proposed in Section 64.1310(a)(3)(A) and force any overcompensation downstream to SBRs. As discussed at length in Telstar’s initial comments, this result is discriminatory, constitutes an unjust and unreasonable practice, and will have crushing anti-competitive effects on resellers.

WorldCom asks the Commission to adopt the APCC rules because application of the rules would “drastically reduce the administrative expenses associated with tracking compensable calls....”³⁵ If indeed WorldCom wishes to overcompensate PSPs, then it should be allowed to do so, *but the Commission should make it clear that WorldCom cannot then expect to collect that overcompensation from its reseller customers.*

Accordingly, if the Commission decides to adopt rules that would allow IXCs to choose to compensate PSPs for all calls handed off to a reseller switch, those new rules must also make it crystal clear that resellers will not be responsible for reimbursing IXCs for payments the IXC makes to PSPs for incomplete, and therefore, uncompensable calls.

³³ AT&T p. 2.

³⁴ Letters from WorldCom, Global Crossing, Qwest, and Broadwing were attached as Attachment B to Telstar’s initial Comments. Sprint too has sent letters to its reseller customers indicating its intent to begin assessing PSP compensation on all calls passed to an SBR regardless of whether those calls are completed.

B. IXCs Should Not Be Permitted to Inject Themselves into Private Contractual Relationships Between PSPs and SBRs.

Finally, Telstar objects to the 64.1310(a)(4) and its subparts. These proposed rules provide detailed requirements and terms that the SBRs and PSPs must include in contracts in the event that they choose to enter into direct agreements for PSP compensation. In its Order, the Commission encouraged PSPs and resellers to enter into direct agreements for alternative PSP compensation. The APCC proposal however, would allow PSPs and resellers to enter into alternative compensation arrangements *only if the IXC also agreed to that arrangement*. Specifically, proposed rule 64.1310(a)(4) states:

If the switch based reseller has agreed with the PSP *and the IXC* respectively that the reseller shall compensate the PSP for all compensable calls terminated to the reseller switch, then the IXC is not required to compensate the PSP....³⁶

The IXC should not be permitted to usurp an SBR's and PSP's private right of contract. Because the agreement is between the PSP and the reseller, any requirement that the IXC must agree to the PSP-reseller arrangement should be removed from the rule proposal.³⁷ Second, Telstar believes that the rule should not spell out the specific terms of any PSP-reseller arrangement for compensation. PSPs and resellers may choose to enter into private contracts that obviate the need to share this type of data. Accordingly,

³⁵ WorldCom p. 7

³⁶ APCC proposed rule, Section 64.1310(a)(4)

³⁷ In its Comments, WorldCom suggests that it must be notified of any compensation agreements between SBRs and PSPs to avoid compensating PSPs on the SBR's behalf. Telstar agrees that some notification to

the terms of any contract between individual PSPs and SBRs should be left to the parties and should not be dictated by force of Commission rule.

C. The Commission Should Amend Its Rules To Recognize Resellers' Rights To Use Clearinghouses To Directly Compensate PSPs.

While Telstar objects to the proposed rules developed by APCC and the IXC's, Telstar does support efforts to develop an industry proxy to facilitate direct relationships between resellers and PSPs. As discussed in Telstar's initial comments, the Commission should clarify its decision in the *Second Order on Reconsideration* to allow resellers to meet their PSP compensation obligations by using one of the nationally recognized billing clearinghouses, obviating the need for IXC's to remit payphone compensation on the reseller's behalf.³⁸ It would be inefficient, and virtually impossible for resellers to attempt to enter into individual relationships with each and every one of the thousands of PSPs in the country. Indeed, since the IXC's have announced that they will begin to remit PSP compensation for all reseller calls, PSPs have refused to enter into direct agreements with resellers.³⁹ Additionally, IXC's, LECs and PSPs all have established relationships with clearinghouses.⁴⁰ Accordingly, if a reseller enters into an agreement with a clearinghouse, that agreement should be considered a proxy for entering into individual contracts with each PSP. The agreement with the clearinghouse can be fashioned to include the kind of audit requirements that APCC and the IXC's have agreed to for auditing IXC records in their proposed rule modifications. These audit requirements, in

the IXC is necessary. (WorldCom comments, p. 9). Making the IXC a party to the contract between the SBR and PSP is not.

³⁸ Telstar Comments, p. 20.

³⁹ IDT comments, p. 28

⁴⁰ Telstar comments, p. 20.

connection with rules reflecting the Commission's recent *Memorandum Opinion and Order* in *Bell Atlantic-Delaware vs. Frontier, et al*, which requires IXCs to assist PSPs in determining to whom specific 800 numbers are assigned,⁴¹ should ensure that PSPs are properly compensated for each completed call made from their payphones as required by Section 276 of the Act. Telstar has provided, as Attachment A to these Reply Comments, revisions made to the APCC proposal that reflect these comments.

VII. PARTY COMMENTS DEMONSTRATE THE DIFFICULTY OF ADOPTING AN APPROPRIATE TIMING SURROGATE.

Global Crossing, Qwest and ASCENT all support using a timing surrogate to act as a proxy for determining when a call made by a reseller customer has been completed.⁴² Global Crossing has proposed a 60 second timing surrogate, Qwest has proposed a 40 second timing surrogate, while ASCENT proposes that the Commission convene a proceeding to determine an appropriate timing surrogate. Telstar believes that a timing surrogate would be more favorable than the "SBR pays all" proposal advocated by WorldCom, APCC and Bulletins, but believes that a timing surrogate is ultimately unnecessary since SBRs can and do determine when a call is completed via answer supervision. Accordingly, SBRs can provide the kind of CDRs that would allow IXCs to verify call completion rates. Moreover, arriving at an acceptable and fair timing surrogate would be difficult if not impossible. As Telstar explained in its initial comments, completion times vary widely depending on a wide variety of factors depending on a number of factors including network reliability, post dial delay, and the

⁴¹ *Bell Atlantic-Delaware Inc., et. al., v. Frontier Communications Services, Inc., et. al*, File No. E-98-48 2001 WL 327619 (F.C.C.) rel. April 5, 2001.

particular country's telecommunication infrastructure. Accordingly, perhaps a series of surrogates would be necessary to account for call completion to different countries and domestically. As such, if indeed the Commission chooses to adopt a timing surrogate, it will be necessary to open a proceeding to discuss these and other relevant issues, as ASCENT, in its comments suggests.

VIII. THE COMMISSION SHOULD DEFER THE EFFECTIVE DATE OF THE NEW RULES PENDING THE OUTCOME OF THIS PROCEEDING.

Telstar agrees with Global Crossing that, "the Commission's new rules have created...substantial uncertainty and controversy."⁴³ IXC's have either already begun, or are preparing to assess PSP compensation on resellers for incomplete calls imminently.⁴⁴ Accordingly, SBRs are already beginning to suffer under the discriminatory practices of IXC's, and conflicts between SBRs and IXC's resulting from this uncertainty are already beginning to escalate. Accordingly, the Commission should postpone implementation of the first switch pays rule until it has addressed the issues raised in this proceeding. Until then, PSPs should continue to be compensated under the last switch pays rule. This rule, coupled with the Commission's decision in *Bell Atlantic vs. Frontier, et al*, obligating IXC's to assist in identifying SBRs should assure that PSPs continue to receive compensation, "for each and every completed intrastate and interstate call using their payphone..."⁴⁵ to which they are entitled. The Commission should not be swayed by APCC's complaint that, "PSPs have waited five years for a workable system of

⁴² Global Crossing, p.5, Qwest, p. 3, ASCENT, p. 13.

⁴³ Global Crossing Comments, p. 5

⁴⁴ WorldCom and Qwest intend to implement an "SBR pays all" approach to PSP compensation starting December 1, Sprint plans to begin doing so on November 1, and Global Crossing intends to do so imminently.

⁴⁵ 47 U.S.C. 276(b)(1)(B)

compensation...”⁴⁶ Allowing IXCs to impose their discriminatory payphone compensation practices on resellers is not “workable.” Indeed, allowing IXCs to impose these costs on their reseller customers will possibly force resellers out of the 800-access market, destroying one of the few truly competitive telecommunications market segments. Accordingly, Telstar requests that the Commission act to postpone implementation of the *Second Order* until it has carefully considered and acted on the issues presented in this proceeding.

CONCLUSION

WHEREFORE, for the foregoing reasons, Telstar International, Inc. respectfully requests the Commission to adopt the positions expressed herein.

Respectfully submitted,

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⁴⁶ APCC Comments , p. 13