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VIA ELECTRONIC FILING, OVERNIGHT MAIL AND EMAIL

Jeffrey Carlisle, Senior Deputy Bureau Chief, Common Carrier Bureau
Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

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

Dear Mr. Carlisle:

Please accept these further comments on behalf of IDT Corporation, its affiliates and subsidiaries ("IDT") in the above-captioned proceeding. As the implementation date of the Commission's modified payphone compensation rules, adopted in *Second Order on Reconsideration* ("*Second Order*"),¹ grows nearer, the Commission is compelled to delay the implementation of the rules until it has addressed the many outstanding issues in this proceeding. Of critical importance to IDT is that the Commission clarify that switch-based reseller providers of coinless calling services ("resellers") have the right to "come forward," in a manner that provides sufficient notice to payphone service providers ("PSPs") and sufficient indemnification to facilities-based toll origination service providers, to remit per-call compensation directly to payphone service providers.

At the heart of the dispute over per-call compensation has been the apparent past failure of facilities-based carriers to provide the required notice of its reseller customers to PSPs. As stated in the *Second Order*, the facilities-based carrier has been required to notify PSPs that its switch-based reseller customer is responsible for paying per-call compensation for a particular 800 number and identify the switch-based reseller responsible for paying PSP compensation for that particular 800 number. Neither the facilities-based carrier nor the switch-based reseller may avoid compensating PSPs by

¹ *Second Order on Reconsideration, In the Matter of the Pay Telephone Reclassification And Compensation Provisions of the Telecommunications Act of 1996; RBOC/GTE/SNET Payphone Coalition Petition for Clarification*, CC Docket No. 96-128; NSD File No. L-99-34; FCC 01-109 (March 28, 2001) ("*Second Order*").

withholding the name of the carrier responsible for paying per-call compensation.² IDT is confused at the alleged difficulties faced by PSPs in collecting per-call compensation for switch-based reseller calls since, if the facilities-based carriers failed to provide the information required to permit PSPs to contact resellers, as alleged by the PSPs, the facilities-based carriers would be responsible for the compensation. PSPs in this proceeding have not alleged that resellers fail to remit compensation when presented with evidence of their obligation, but rather, that facilities-based carriers failed to provide this evidence in the first place. With this in mind, IDT's proposal eliminates facilities-based carriers' ability to hinder PSPs' rightful collection of per-call compensation by placing the notice, tracking and compensation obligation squarely on the shoulders of the switch-based reseller customers, who have shown the interest and ability to remit their own per-call compensation.

IDT's proposed notice, tracking and compensation system is fully consistent with the goals of two interest groups representing PSPs in this proceeding – the RBOC Payphone Coalition and the American Public Communications Council (“APCC”). For example, in its “Reply Comments of the American Public Communications Council on the RBOC/GTE/SNET Payphone Coalition’s Petition for Clarification,”³ the APCC suggested that “The key criteria of a workable compensation rule include: (1) clear delineation of compensation payment responsibilities; (2) limitation of payment responsibility to a manageable group of payers; and (3) timely availability to PSPs of information needed to identify responsible payers.”⁴ As demonstrated below, IDT's recommended approach is fully consistent with the APCC's suggestions.

² *Second Order* at ¶ 6. For reasons which remain baffling to IDT, In the *Second Order*, after the Commission detailed exactly how the *Coding Digit Waiver Order* clarified facilities-based carrier's notice obligations under the *Payphone Order on Reconsideration*, the Commission then went on to say only a few short paragraphs later, “We agree with APCC that the Commission's decision in the *Payphone Order on Reconsideration* leaves switch-based resellers in the position of having to identify themselves voluntarily to the IXC as the party liable for paying compensation to PSP, and that resellers have little incentive to do so.” *Second Order* at ¶ 15 (Footnote omitted). This is utterly and completely wrong and contrary to the Commission's statements in the same *Order*.

This is also contrary to a statement made in another Commission Order *released on the same day*. In *Memorandum Opinion and Order, In the Matter of Bell-Atlantic-Delaware, Inc. et al. v. Frontier Communications Services, Inc. et al.*, File No. E-98-48; File No. E-98-49; FCC 01-110 (Rel. April 5, 2001), the Commission wrote, “If, as Verizon suggests, the Common Carrier Bureau intended to excuse a facilities-based carrier from its payment obligation only when a reseller identifies itself to the PSP, the *Coding Digit Waiver Order* would have included that limitation expressly. Moreover, Verizon's interpretation of the relevant sentence in the *Coding Digit Waiver Order* makes no sense.” *** “The logical construction of the language from the *Coding Digit Waiver Order* requires a first facilities-based carrier to pay unless the reseller has identified itself to the first facilities-based carrier as being responsible for paying compensation.” *Id.* at ¶ 14. *** “[I]n order to receive tracking information, a PSP must inquire in writing whether a facilities-based IXC will be paying per-call compensation relating to a particular toll-free number. 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.” *Id.* at ¶ 15. In seeking justification for its decision, the Commission simply chose to ignore its interpretation and application of its regulations, as well as facilities-based carriers' obligations and PSPs' rights.

³ “Reply Comments of the American Public Communications Council on the RBOC/GTE/SNET Payphone Coalition's Petition for Clarification,” *In the Matter of the Pay Telephone Reclassification And Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128 (May 17, 1999).

⁴ *Id.* at pp. 6-7.

First, IDT's proposal is consistent with these goals because the party responsible to remit per-call compensation is clear, since, in the absence of a reseller "coming forward," to the carrier and the PSP, the first facilities-based carrier is responsible. IDT has proposed procedures by which a reseller will come forward to its facilities-based provider and the PSP community, thereby assuring no discrepancy between any of the parties as to the entity responsible for per-call compensation. Furthermore, IDT has recommended procedures to ensure that PSPs have the information necessary to contact resellers in the event of a dispute.

This serves a second function on behalf of the PSPs. In its Comments, APCC noted that it must "determine which of the calls handled by facilities-based carriers have been *incorrectly* identified by the facilities-based carrier as routed to switch-based resellers, and provide proof that the customers receiving these calls are not switch-based resellers..."⁵ Under IDT's proposal, if calls associated with a facilities-based carrier are not affirmatively claimed by the carrier's reseller customer, the calls are the responsibility of the facilities-based carrier. If there is any discrepancy between the responsible parties, it is a discrepancy between the carrier and its customer – not the PSP. This provides the protection required by the PSPs and provides incentive for carriers and their reseller customers to implement effective notice procedures.

Second, under IDT's proposal, the payment responsibility is limited to only two players: the first facilities-based carrier and its reseller customer. As noted above, if the reseller "comes forward," it assumes the per-call compensation responsibility. If it declines to do so, the first facilities-based carrier is responsible. In the event there are multiple resellers in the chain of a call, the Commission can limit a PSP's obligation to seek compensation from either the facilities-based carrier or its reseller customer – whichever is responsible (by default or affirmative action, respectively). Any reseller (or other party of any sort) further down the chain would handle its reimbursement of compensation as a contractual matter with its provider and not directly with a PSP.

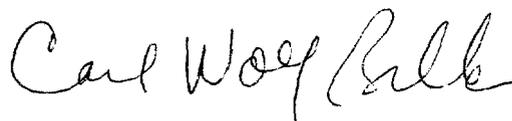
Third, under IDT's proposal, information needed to identify responsible players could be made available quickly and easily. Facilities-based carriers and their reseller customers could update all relevant information (contact information, active ANIs, etc.) on a monthly basis. This would eliminate any reasonable concerns PSPs might have regarding access to updated information.

⁵ APCC Comments at p. 4, n.4.

In conclusion, IDT supports a delayed implementation of the Commission's rules, since, quite simply, the uncertainty surrounding the *Second Order* has prevented the relevant parties from implementing the procedures necessary to realize the Commission's goals. If the Commission chooses to clarify its *Second Order* to permit switch-based resellers to come forward and claim responsibility for their per-call compensation, there would be no need for an extended delay, as the procedures recommended by IDT could be implemented quickly. IDT urges the Commission to work toward a solution that fairly and equitably addresses the concerns of all parties in a technologically feasible manner consistent with the Commission's rules.

Please contact me if you wish to discuss this matter further.

Sincerely,



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