

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

In the Matter of)
)
Implementation of the)
Pay Telephone Reclassification) **CC Docket No. 96-128**
and Compensation Provisions of)
The Telecommunications Act of 1996)
)

WORLD.COM, INC.
COMMENTS ON PETITIONS FOR CLARIFICATION AND RECONSIDERATION

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I. Summary

WorldCom, Inc. (“WorldCom”) takes this opportunity to comment on Petitions for Reconsideration and Clarification filed in response to the Commission’s Fourth Order on Reconsideration. Petitions were filed by first facilities based carriers (“FFBs”), Sprint, WorldCom, and ITC^DeltaCom, and by payphone service providers (“PSPs”), RBOC Payphone Coalition and American Public Communications Council (“APCC”).¹

Sprint and WorldCom identify serious flaws in the Commission’s methodology for determining the per-phone call count for the Interim Period. Specifically, by not weighting call count data by sample volume, the Commission gave unrepresentative weight to calls reported by Independent Payphone providers, which are known to have higher call counts during the Interim Period, thereby biasing the call count upwards. Call counts were also biased upwards due to the phenomenon of declining call volumes per payphone beginning 1998. To counteract these known upward biases, the Commission must weight call count data by call volumes, and apply an annual percent decline factor beginning 1998.

The Commission must establish appropriate compensation responsibility for all carriers. The Commission is authorized to assign compensation responsibility to carriers with annual revenues less than \$100 million. Once the *Illinois* Court vacated the Commission’s exemption for this class of carrier, the Commission’s general requirement for all carriers to compensate PSPs for completed payphone calls applies. The Commission also may not assign payment responsibility of switch-based resellers to their first-facilities-based carriers. First facilities-

¹ Petitions for Reconsideration of Sprint, WorldCom, ITC^DeltaCom (“ITC ”), RBOC Payphone Coalition, and American Public Communications Council (“APCC”), Implementation of the Pay telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, filed April 3, 2002.

based carriers did not have this responsibility until November 23, 2001. Applying this responsibility to the Interim Period is illegal retroactive rulemaking.

The Commission must ensure that true-up procedures are handled in an administratively efficient manner. In their Petitions, APCC and WorldCom both discuss the complications of trueing-up payments between the Interim and Intermediate Periods. Therefore, the Commission should set the effective date of the true-up nine months after the end the quarter in which the Allocation Order is released. The Commission should also reject APCC's proposal to have underpaying interexchange carriers ("IXCs") compensate overpaying IXCs. The proposal will increase the administrative complexity of the true-up process. It will not reduce the number of IXCs to whom undercompensated PSPs will need to seek compensation, and it will add a new layer of complexity in the form of a pool administrator who will be needed to administer the netting of payments among IXCs. The Commission should also maintain its policy permitting IXCs to net their overpayments against future compensation payments.

Finally, the Commission should maintain its policy of applying the IRS rate to revenues associated with late payments. The IRS rate is the more reasonable interest rate to use when there are late or deferred payments. The average delay in Interim Compensation payments is 3 ½ years. The IRS rate for corporations is equal to the interest rate for bonds of maturity of 3 years or less, plus 2%. PSPs and carriers that might have needed to borrow funds until Interim Compensation payments were made would have had to borrow funds with an average maturity of 3 ½ years. Using the IRS rate adds an additional 2%, which should be more than sufficient to compensate PSPs and carriers for the deferred value of Interim Compensation revenues.

II. The Commission Must Reduce The Per-Phone Call Count

Sprint and WorldCom both identified serious flaws in the Commission's methodology for determining the per-phone call count for the Interim Period and for subsequent periods for payphones that do not transmit payphone-specific coding digits. Sprint focused on the various ways in which the Commission's method of increasing the call count from 131 to 148 is unreliable.² WorldCom agrees with each of those criticisms. WorldCom focused on the unreliability of the per-phone call count in periods subsequent to the Interim Period, citing evidence that the call count has been declining since 1998.³

The record shows strong for using a per-phone call estimate using data from the Interim Period. The record also shows nearly universal criticism of basing Interim Period compensation on compensation amounts paid during the Intermediate Period.⁴ Moreover, no party appealed the Commission's original 131 call count, nor did the Court direct the Commission to modify this call count.⁵ Therefore, the Commission was under no compulsion to modify the per-phone call count for the Interim Period.

The Commission may modify the call count if more accurate data is supplied. And, WorldCom recognizes that, due to the absence of the ability of carriers to track payphone specific calls during the Interim Period, compensation will necessarily be an approximate,

² Sprint Petition at 4-10.

³ WorldCom Petition at 2-3.

⁴ Of the eighteen parties that commented on the issues raised by *Illinois*, only 3 supported altering the 131 call count. Neither APCC, nor the RBOC Payphone Coalition found fault with the 131 call count. See, WorldCom Comments, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket 96-128, October 20, 2000, at 4.

⁵ *Illinois Public Telecomm. Ass'n v. FCC*, 117 F.3d (1997).

“roughly just,” amount. For these reasons, the Commission must utilize procedures that maximize accuracy within the limitations of the available data. At a minimum, the Commission must weight the call count data supplied by PSPs by call volumes, as suggested by Sprint. Otherwise, the higher than average call counts reported on Independent Payphones, which represent a minority share of payphone calls, will be overly represented, resulting in a call count estimate that is biased upward.⁶ The Commission must also account for declining call volumes since 1998 as suggested by WorldCom.⁷

The Commission should not hesitate to take these steps to make the call counts more accurate within the limitations of the data for, as Sprint points out, the data the Commission is relying upon is not a sample of *completed* calls, but rather a biased sample of call *attempts* that has been modified to yield an estimate of completed calls. The self-selected sample provided by PSPs is based on call attempts and uses a methodology to estimate completed calls out of that sample which overstates actual completions.⁸ To counteract these known biases, which overstates the call count, the Commission should at a minimum weight existing call count estimates by call volume, for a call count of 142.6,⁹ and apply a 9% annual decline factor for call counts, including 0+ calls, beginning 1998.¹⁰

⁶ Sprint Petition at 9.

⁷ WorldCom Petition at 2.

⁸ Sprint Petition at 5, fn 8.

⁹ Sprint Petition at 10.

¹⁰ WorldCom Petition at 2.

III. The Commission Must Establish Appropriate Compensation Responsibility For All Carriers

A. *Illinois* did not relieve “small carriers” from Interim Period compensation responsibility

ITC develops a novel, albeit misguided, argument that assigning Interim Period compensation to carriers with revenues less than \$100 million in annual revenues (“small carriers”) constitutes retroactive rulemaking.¹¹ ITC notes that in its *Illinois* decision, the U.S. Court of Appeals for the D.C. Circuit vacated the Commission’s decision to exempt carriers with annual toll revenues less than \$100 million from Interim Period compensation responsibility. ITC then concludes that as a result of the Court’s remand, no rule was governing this class of carrier during the Interim Period, and so by subsequently developing a rule to apply Interim Compensation obligations upon this class of carrier in its Fourth Reconsideration Order, the Commission illegally engaged in retroactive rulemaking. ITC contends that the Commission may not engage in retroactive rulemaking.¹²

ITC’s argument that the Commission engaged in retroactive rulemaking is a red herring. Its argument rests on the contention that by vacating the Commission’s rule exempting interexchange carriers with annual revenues less than \$100 million from Interim Period compensation responsibility, *Illinois* left no rule in place that would pertain to this class of carrier. This was not the case. When the Commission adopted Section 64.1300(a), it adopted a general rule requiring all carriers to whom completed calls were routed to compensate PSPs. The Commission modified that general requirement by exempting “small carriers” from this

¹¹ ITC Petition at 2-7.

¹² *Id.*, at 5.

obligation.¹³ *Illinois* did not vacate the Commission’s general decision to assign compensation responsibility to interexchange carriers. Rather the Court vacated the “small carrier” exemption. Having vacated the exemption, what remained was the general obligation of all carriers who received completed calls to compensate PSPs.

B. The Commission May Not Make First Facilities-Based Carriers Responsible For Interim Period Compensation Owed By Switch-Based Resellers

In its Fourth Reconsideration Order, the Commission illegally applied the new requirement, adopted April 5, 2001, for FFBs to compensate PSPs on behalf of their switch-based reseller (SBR) customers, back to the Interim Period, which began November 6, 1996.¹⁴ The Commission adopted this new requirement prospectively, and may not apply it retroactively to the Interim Period.

Besides being a *prima facie* case of prohibited retroactive rulemaking, the attempt to make FFBs directly responsible for SBRs is administratively unworkable in light of the Commission’s proposal to allocate per-phone compensation responsibility according to completed calls routed to individual Carrier Identification Codes (“CICs”).¹⁵ Many SBRs have

¹³ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket 96-128, Report and Order (“First Payphone Order”), Released September 20, 1996, &119.

¹⁴ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket 96-128, Fourth Order on Reconsideration (“Fourth Reconsideration Order”), Released January 31, 2002, &18. See also, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket 96-128, Second Order on Reconsideration (“Second Reconsideration Order”), Released April 5, 2001, &20.

¹⁵ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket 96-128, Report and Order (“Fourth Reconsideration Order”), Released January 31, 2002, &20.

their own CICs, and most of these SBRs obtain wholesale interexchange service from multiple FFBs. The Commission's Order fails to identify which FFB is responsible for each SBR. WorldCom does not believe there is a non-capricious method that might allocate each SBR's obligation among FFBs. Utilizing billing detail records from the Interim Period is not an option, since neither WorldCom nor Sprint have call detail records that identify the number of payphone calls routed to each SBR during the Interim Period.¹⁶ All other options would involve some estimate or proxy, the reliability of which would be untestable.

IV. The Commission Must Ensure That True-Up Procedures Are Handled In An Administratively Efficient Manner

A. The Commission Should Set The Effective Date Of The True-Up Nine Months After The End Of The Quarter In Which The Final Allocation Order Is Released

The RBOC Payphone Coalition petitions the Commission to require true-ups between the Interim and Intermediate Periods to be completed within one month after the Order establishing the CIC-based allocator is published in the Federal Register.¹⁷ Interestingly, APCC, the other PSP representative participating in this proceeding, finds that there are many complicated administrative issues associated with the true-ups.¹⁸

Once the Commission releases a final order allocating each IXC's share of per-phone compensation, IXCs will first need to carefully determine the business systems' modifications that will be needed to comply with these final requirements. While this may appear straightforward, WorldCom's experience implementing previous changes to its payphone

¹⁶ Sprint Petition at 14. Other carriers almost certainly also lack needed records from the Interim Period.

¹⁷ RBOC Coalition Petition at 7.

¹⁸ APCC at 10-16.

compensation system shows it takes many weeks of analysis and review, encompassing many business units. In addition, it may be necessary to seek clarification from the Commission about the modifications that are being considered. Once systems modifications have been made, IXC's can begin the true-up process.

First, for each claim quarter of the Interim period, a looped process with five iterations (4Q96-4Q97) must be executed for the following steps:

- Retrieve validated claims, restore them from archived records, and reincorporate them into current compensation processes;
- Retrieve and consolidate payments on these claims;
- Calculate actual compensation for these claims;
- Determine the difference between payments made and payments that are required under the Final Allocation Order;
- Calculate the interest to be applied to each claim;
- Establish detail compensation records to include in the current compensation quarter;
- Repeat this process for each of five quarters;

Second, for each claim quarter for the Intermediate Period (4Q97-2Q99), a looped process with 7 iterations must be executed for the following steps:

- Retrieve validated claims, restore them from archived records, and reincorporate them into current compensation processes;
- Retrieve and consolidate the paid per-phone payments on these claims;
- Calculate actual compensation for these claims.
- Determine the difference between payments made and payments that should have been paid;
- Calculate the interest to be applied to each claim;

- Establish a detail compensation records to include in the current compensation quarter;
- Repeat this process for each of seven quarters;

These procedures will be occurring in addition to the validation steps being undertaken to process the current quarter's compensation payments. This one-time addition will require IXCs to process four times the normal amount of data during the quarter in which the true-up occurs, putting great strain on both systems and personnel. In the past, the Commission has allowed a similar amount of time for carriers to handle administratively complicated payphone compensation tasks. The Commission allowed carriers one year to initially develop their payphone compensation systems.¹⁹ Similarly, the Commission allowed carriers nearly eight months to develop new tracking capabilities to comply with the Second Reconsideration Order.²⁰ WorldCom urges the Commission to grant IXCs enough time to accurately and carefully perform these Interim Period-Intermediate Period calculations. The Commission should allow nine months after the end of the quarter in which the Final Allocation Order is released

B. IXC-to-IXC Payments Would Increase Administrative Difficulties

APCC argues that it would be administratively difficult to require IXCs who owe compensation to pay PSPs, and difficult to require PSPs who have been overpaid to issue refunds to IXCs (although it is worth noting that the complications APCC describes fall primarily on IXCs).²¹ WorldCom agrees that the process will be involved, and for that reason has petitioned the Commission to grant enough time for carriers to complete the task.

¹⁹ First Payphone Order, &99.

²⁰ Second Reconsideration Order, &20.

²¹ *Id.*, at 12.

APCC petitions the Commission to require IXCs who owe payments to PSPs to first compensate IXCs who are owed payments from PSPs.²² APCC argues that IXC-to-IXC payments are administratively more efficient than the current true-up requirements, since fewer payments will be made under this method.²³ Actually, fewer payments will only result if the total amount of IXC overpayments exactly equal the amount of IXC underpayments. There is no reason to believe they will balance out. If, for example, IXC underpayments exceed overpayments, every PSP will still need to contact nearly every IXC to receive full compensation.

IXC-to-IXC payments would also increase industry administrative costs above the level required under the Commission's plan. IXCs do not know the compensation obligations of their competitors, and they do not wish their competitors to gain access to this information. Thus, carriers would not voluntarily choose to compensate each other in this fashion. It would be necessary to establish a pool administrator in order to calculate and process IXC-IXC payments. Thus, not only would APCC's proposal fail to reduce the volume of payments between PSPs and IXCs, it would also require the formation of a pool administrator to process payments between IXCs. The Commission should reject this inefficient proposal.

²² APCC Petition at 10.

²³ *Id.*, at 13.

C. The Commission Should Maintain Its Policy Permitting IXCs To Collect Overpayments By Reducing Future Payments

In its Third Report and Order, the Commission stated that carriers may collect any overpayments made to PSPs by reducing future payments.²⁴ APCC now petitions the Commission to reverse this finding, claiming that withholding payments for past overpayments, and by implication providing credits for past overcharges, is not a normal business practice.²⁵ On the contrary, many of WorldCom's customers withhold payments for perceived prior overpayments. WorldCom also regularly provides credits on future bills in the event it has inadvertently overcharged a customer. APCC's positions are inconsistent and self-serving. APCC advocates having underpaying IXCs net their payments against overpaying IXCs even though IXCs do not have billing or payment relations with each other, yet opposes IXCs netting past overpayments to PSPs against future payments even though they do have established billing and payment relations. APCC argues for establishing normal billing relation with IXCs, but only when its members are the recipients of the payments. It balks at normal billing relations when they would result in its members having to make payments.

²⁴ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket 96-128, Third Report and Order on Reconsideration of the Second Report and Order ("Third Payphone Order"), Released February 4, 1999, &198.

²⁵ APCC Petition at 17

V. The IRS Rate Is The Proper Interest Rate To Apply To Refunds And Late Payments

The RBOC Payphone Coalition petitions the Commission to apply an 11.25% interest rate to the amount IXCs owe PSPs, but to apply a lower rate, the IRS rate, to the amounts PSPs owe IXCs.²⁶ It argues that 11.25% is the rate that should apply to capital costs, and that PSPs have been forced to increase their capital costs due to the shortfall of Interim Period Compensation.

The RBOC Payphone Coalition confuses the term “capital costs” with the “cost of investment capital.” The rate of 11.25% is the weighted cost of long term corporate debt and equity, which the Commission applies to investment in new physical assets of rate-of-return companies. Capital cost is a generic term that refers to the cost of different financial instruments, ranging from short term instruments, such as 30 day Treasury bills, to long term corporate debt.

It would not be appropriate to apply 11.25% to the revenues owed for the Interim Period, or for any late payment, because those revenues are based on a per-call rate which permits recovery of operating expenses in addition to annualized investment costs. Rate-setting for rate-of-return regulated companies is not intended to a return on operating expenses.²⁷ Therefore, the Commission is correct to choose a lower interest rate than the weighted cost of (investment) capital.

²⁶ RBOC Payphone Coalition Petition at 5.

²⁷ For this reason, it was inappropriate in its Third Report and Order for the Commission to apply the 11.25% rate to the one quarter delay in payouts beginning with the Intermediate Period. Unfortunately, no party petitioned the Commission to apply an appropriate interest rate in a timely fashion.

The IRS rate is a reasonable choice. The average delay in Interim Compensation payments is 3 ½ years.²⁸ The IRS rate for corporations is equal to the federal short term rate, plus 2%.²⁹ The federal short term rate is the interest rate for bonds of maturity 3 years or less.³⁰ PSPs and carriers that might need to borrow funds until Interim Compensation payments were made would have had to utilize funds with an average maturity of 3 ½ years. Using the IRS rate adds an additional 2%, which should be more than sufficient to compensate PSPs and carriers for the deferred value of Interim Compensation revenues.

Moreover, as the Commission points out, it has regularly used the IRS rate to apply to refund amounts.³¹ The RBOC Payphone Coalition admits that the IRS rate is generally the proper rate to use when dealing with refund obligations and late payments, since it supports this rate for payments PSPs must make to IXCs.³² It simply believes that a higher rate ought to be used “to calculate costs incurred in the provision of service.”³³ As explained above, the Commission did indeed use the 11.25% rate to calculate the costs incurred in the provision of payphone service, when it applied this weighted cost of capital to the investment components of

²⁸ By the time the Commission issues the Order allocating payment responsibility among carriers, it will have been 6 years since Interim Compensation payments should have been made. The average delay is therefore computed by this formula: $(1+2+3+4+5+6)/6 = 3.5$.

²⁹ Internal Revenue Code, 26 U.S.C. §6621.

³⁰ Internal Revenue Code, 26 U.S.C. §1274.

³¹ Fourth Reconsideration Order, §32.

³² RBOC Payphone Coalition Petition at 6.

³³ *Id.*, at 6.

payphone service.³⁴ The interest rate at issue here does not pertain to compensation for the costs of providing service. This interest rate deals specifically with compensation for late or deferred payments. PSPs and carriers are entitled to be compensated only for the cost of borrowing to cover the average delay, which as explained above, is 3 ½ years. The IRS rate very reasonably accomplishes this goal.

VI. Conclusion

For the reasons stated herein, WorldCom urges the Commission to adopt the positions advocated in these Comments.

Sincerely,

Larry Fenster

Larry Fenster

³⁴ Third Payphone Order, &79.

Statement of Verification

I have read the foregoing and, to the best of my knowledge, information and belief, there is good ground to support it, and it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct.

Executed on May 1, 2002

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Certificate of Service

I, Elizabeth Bryant, do hereby certify that copies of the foregoing Petition for Reconsideration of WorldCom Inc. were sent on this 1st day of May, 2002, via first-class mail, postage pre-paid, to the following:

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