

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209

(202) 326-7900

FACSIMILE:
(202) 326-7999

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May 13, 2002

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

By Hand

Marlene H. Dortch, Secretary
Federal Communications Commission
236 Massachusetts Avenue, N.E.
Suite 110
Washington, D.C. 20002

Re: In the Matter of *Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket 96-128

Dear Ms. Dortch:

Please find enclosed for filing the original and four copies of the RBOC Payphone Coalition's Reply to Comments on Petitions for Reconsideration of the Fourth Order on Reconsideration and Order on Remand. Also enclosed is one extra copy of the motion. Please date-stamp and return the extra copy.

Thank you for your assistance. If you have any questions, please call me at 202-326-7921.

Sincerely,



Aaron M. Panner

Enclosures

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II. Sprint, WorldCom, and AT&T have filed comments opposing the APCC's petition, which contended that the Commission should reconsider its decision to omit the \$.009 cost element from interim and intermediate compensation. These arguments should be rejected, and the APCC's petition granted to the extent set forth in the Coalition's earlier comment. The \$.009 cost element ensures that PSPs are compensated for the delay between the time that a call is placed and the time that payment for that call becomes due. To the extent that the Commission suggested that the \$.009 cost element does not apply for per-call compensation paid during the interim and intermediate periods despite comparable delays built into the payment system, it should reconsider that determination to ensure that PSPs are fully compensated for this delay.

III. WorldCom, Sprint, and AT&T continue to challenge the Commission's calculation of payphones' average monthly call volume during the interim and intermediate periods raised by Sprint in its petition for reconsideration. As the Coalition explained in its comments, these challenges are without merit. And although Sprint repeats WorldCom's argument that *per-phone* call volumes fell during the intermediate period, the contention still lacks any support.

IV. The National Payphone Clearinghouse, WorldCom, AT&T, and Sprint reiterate the view that the effective date of the order should be delayed. Their arguments still fail to present any convincing evidence that a delay is needed. The IXC's have had ample warning that their compensation obligations will come due. There is no reason why the compensation process should be subject to a further delay once the Commission finally resolves the interim compensation issues; indeed, as the Coalition's petition explains, the order should be made effective as soon as possible.

DISCUSSION

I. THE COMMISSION SHOULD RECONSIDER THE DECISION TO APPLY THE IRS INTEREST RATE TO DELAYED PAYMENTS FOR THE INTERIM PERIOD.

As explained in the Coalition's Petition, the Commission should reconsider the decision in the *Fourth Recon. Order* to apply the IRS rate of interest, rather than the LEC's cost of capital, to calculate interest on interim period compensation obligations due to PSPs. The Commission has consistently recognized that where PSPs' receipt of compensation is delayed, they must be compensated for the full economic cost. And the proper rate to apply to ensure that PSPs are fully compensated is the LECs' cost of capital: 11.25%. Sprint and WorldCom's contrary arguments are unpersuasive.

WorldCom contends that it would not be appropriate to apply the 11.25% rate to late payments from the interim and intermediate periods because those payments were based on a per-call rate that permits recovery of operating expenses in addition to annualized investment costs. *See* WorldCom Comments at 10 (FCC filed May 1, 2002).¹ But WorldCom's argument actually makes the Coalition's point: in order to maintain their business operations in the period during which no compensation was paid, PSPs were required to obtain alternative financing for their operation -- and the cost thus incurred is the cost of capital, 11.25%. Indeed, this is the very rate that the Commission applied before to compensate PSPs for the delay in payments built into the compensation

¹ WorldCom also takes issue with the Coalition's use of the term "capital costs" rather than the term "cost of capital," *see id.*, but a careful review of the Coalition's petition makes clear that the Coalition was referring to the "cost of capital" interest rate first adopted in the Second Report and Order, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 13 FCC Rcd 1778 (1997) ("*Second Report and Order*"), *aff'd in part and remanded in part sub nom. MCI v. FCC*, 143 F.3d 606 (D.C. Cir. 1998).

system. But the delay in payment of interim compensation is likewise the result of a systemic delay, and WorldCom offers no reason why the 11.25% rate is not mandated by section 276(b)(1)(A) and the Commission's prior orders.

Sprint also takes issue with the Coalition's argument that PSPs should be compensated at the 11.25% rate but that IXCs who overpaid should be compensated at the IRS rate. *See* Sprint Comments at II.A (FCC filed May 1, 2002). As the Coalition explained in its petition, however, IXC overpayments were made pursuant to the FCC's rate prescription, and thus the purpose of refunds is not to compensate IXCs for the cost of capital but to avoid unjust enrichment. *See* RBOC Coalition Petition at 5. Because the two payments serve these different purposes, there is no inconsistency in the Coalition's position.

II. THE COMMISSION SHOULD REINSTATE THE \$.009 COST ELEMENT FOR THE INTERIM AND INTERMEDIATE PERIODS.

In its Petition for Reconsideration, the APCC demonstrated why the Commission should reinstate the \$.009 interest cost element in the per call compensation rate to ensure that PSPs are fully compensated for calls placed on their payphones, as required under section 276(b). The Coalition supported the APCC's position in its comments. Sprint and AT&T, on the other hand, contend that the \$.009 interest element should not be added back to interim and intermediate compensation.

As the Coalition explained in its comments, the \$.009 amount was included in the compensation rate set by the Third Report and Order, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 2545, 2630, ¶ 187 (1999) ("*Third Report and Order*"), because IXCs' payments to PSPs were, by virtue of the payment system, made an average of at

least four months after the call for which compensation was paid. Because the same delay was present during the intermediate compensation period, the \$.009 interest element must be included in the compensation rate. Moreover, a similar calculation must be made to ensure that compensation for the interim period likewise compensates PSPs for this cost of doing business.

The IXCs contend that the interest element is not necessary because payment will be due on the last day of the quarter in which the call was made. *See, e.g.*, AT&T Comments at 3 (FCC filed May 1, 2002); Sprint Comments at III.A. But nothing in the *Fourth Recon. Order* makes this explicit, and, in any event, that would still mean that PSPs would experience an average payment delay of a month and a half, and the Commission must include an appropriate cost element to account for that. Unless the Commission makes it clear that payment is due on the 15th day of the second month of the quarter and calculates the interest payment at an 11.25% rate from that date, it should reinstate the \$.009 cost element.

III. THE COMMISSION'S METHODOLOGY FOR DEFINING THE AVERAGE NUMBER OF CALLS PER PAYPHONE WAS SOUND.

Sprint, WorldCom, and AT&T challenge the 148 per-phone call average for the interim period set in the *Fourth Recon. Order*. These challenges basically reiterate the arguments made in Sprint's Petition for Reconsideration, and for the reasons explained in the Coalition's comments on Sprint's petition, they should be rejected. The average call volume defined for the interim period in the *Fourth Recon. Order* is supported by substantial evidence and should not be reconsidered.

Additionally, there is no support for the argument, first made by WorldCom but also adopted by Sprint in its comments, that the average call volume figure should be

reduced for the intermediate period. As the Coalition explained in its comments, the Commission has reliable evidence concerning per-payphone call volumes during the intermediate period. *See* RBOC Coalition Comments at 14-15 (FCC Filed May 1, 2002) (citing Letter from Marie Breslin to Magalie Roman Salas (FCC filed Jan. 22, 2002); Letter from Marie Breslin to William Caton (FCC filed Mar. 12, 2002)). That data refutes WorldCom's claim that per-payphone call volumes fell during the intermediate period. Accordingly, the Commission has a solid record basis for applying the 148 call average during the interim and the intermediate periods.

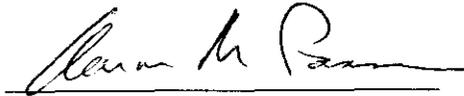
IV. THERE IS NO BASIS TO DELAY THE EFFECTIVE DATE OF THE ORDER.

The National Payphone Clearinghouse, AT&T, and Sprint, join WorldCom's call to delay the effective date of the order to nine months after the order is published in the federal register. These parties claim that attempting to true up the interim and intermediate periods while continuing current compensation calculations will be administratively difficult. But their arguments are unconvincing. Although the IXCs' have, for the first time, attempted to identify some of the tasks associated with true up, the nine month period they claim to need for true up seems to have been plucked from thin air. The obligations finally set for the interim and intermediate periods will hardly come as a surprise, and all IXCs should be prepared to make compensation as soon as possible once the final allocation is settled. The Coalition should reject this attempt to impose a further delay on compensation and should instead revise the effective date of the order so that the compensation rules for the interim period are effective as soon as possible.

CONCLUSION

The Commission should deny the IXCs' petitions for reconsideration.

Respectfully submitted,



MICHAEL K. KELLOGG

AARON M. PANNER

TEAL E. LUTHY

KELLOGG, HUBER, HANSEN,

TODD & EVANS, P.L.L.C.

1615 M Street, NW

Suite 400

Washington, DC 20036

(202) 326-7900

*Counsel for the RBOC Payphone
Coalition*

May 13, 2002

CERTIFICATE OF SERVICE

I hereby certify that, on this 13th day of May 2002, I caused copies of the RBOC Payphone Coalition's Reply to Comments on Petitions for Reconsideration of the Fourth Order on Reconsideration and Order on Remand to be served by first-class mail on the following:

American Public Communications Council

Albert H. Kramer
Robert F. Aldrich
Robert N. Felgar
Dickstein Shapiro Morin
& Oshinsky LLP
2101 L Street, N.W.
Washington, D.C. 20037-1526

Association of Communications Enterprises

Charles C. Hunter
Catherine M. Hannan
Hunter Communications Law Group
1424 Sixteenth Street, N.W., Suite 105
Washington, D.C. 20036

AT&T

Mark C. Rosenblum
Stephen C. Garavito
Teresa Marrero
AT&T
295 North Maple Avenue
Basking Ridge, NJ 07920

ITC^DeltaCom Communications, Inc.

Robert J. Aamoth
Steven A. Augustino
Randall W. Sifers
Kelley Drye & Warren LLP
1200 19th Street, N.W.
Suite 500
Washington, D.C. 20036

National Payphone Clearinghouse

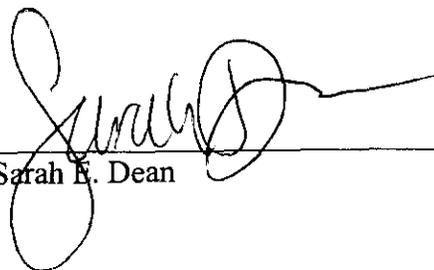
Christopher J. Wilson
Associate General Counsel
Cincinnati Bell Telephone Company
201 East Fourth Street
Cincinnati, OH 45202

Sprint Corporation

John E. Benedict
H. Richard Juhnke
Sprint Corporation
Suite 400
401 9th Street, N.W.
Washington, D.C. 20004

WorldCom, Inc.

Larry Fenster
WorldCom, Inc.
1133 19th Street, N.W.
Washington, D.C. 20036



Sarah E. Dean