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September 27, 2002

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Marlene H. Dortch, Secretary  
Federal Communications Commission  
The Portals  
445 12<sup>th</sup> Street, S.W. TW-A325  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: Average number of compensable calls and IXC unilateral determination of reseller responsibility for dial-around compensation: Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128

Dear Ms. Dortch:

The American Public Communications Council ("APCC") respectfully submits this *ex parte* letter in response to Sprint's *ex parte* letters dated August 21, 2002 ("Sprint Call-Volume *Ex Parte*") and August 23, 2002 ("Sprint Reseller *Ex Parte*"). In its Call-Volume *Ex Parte*, Sprint repeats its argument contesting the Commission's estimate of the average number of compensable calls in *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Fourth Order on Reconsideration and Order on Remand, 2002 FCC LEXIS 513 (2002)* ("*Fourth Recon. Order*"). In its Reseller *Ex Parte*, Sprint argues that IXCs should determine unilaterally how much of their allocated share of Interim Period compensation they, as opposed to their resellers will pay. Each of these *ex partes* will be addressed in turn.

**I. THE AVERAGE NUMBER OF COMPENSABLE CALLS ASSUMED IN THE FOURTH RECON. ORDER IS REASONABLE**

The Sprint Call-Volume *Ex Parte* once again repeats arguments made in Sprint's petition for reconsideration of the *Fourth Recon. Order*, contesting the order's estimate of the average number of compensable calls per payphone. APCC has already addressed these arguments in detail in Reply of the American Public Communications Council to Comments on Petitions for Reconsideration of the Commission's *Fourth Order on Reconsideration and Order on Remand* at 3-4 (April 3, 2002) ("*Reply Comments to Fourth Order on Reconsideration and Order on Remand*"). Sprint's *ex parte* fails to address APCC's rebuttal.

As APCC's reply comments explained, if the Commission lowers its estimate of the number of compensable calls made from an average payphone during the Interim Period, the Commission must reconsider its decision to apply the \$.24 (adjusted to \$.229)

compensation rate to the Interim Period. See Reply Comments to *Fourth Order on Reconsideration and Order on Remand* at 3-4. The cost basis for the \$.24 rate included the premise that there are 142 dial-around calls from a marginal payphone. *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Third Report and Order and Order on Reconsideration, 14 FCC Rcd 2545, n.302 (“*Third Report and Order*”). Since marginal payphones are by definition low volume phones, the number of calls from the average payphone must be substantially larger than the number of calls from a marginal payphone.<sup>1</sup> If there were fewer than 148 calls made from an average payphone, then there could not have been 142 calls made from a marginal payphone. It would be wholly inconsistent for the Commission to assume, *for the same time period*, one set of call volume estimates for the purpose of setting the dial-around rate and a much lower set of call volume estimates for the purpose of effectuating a true-up.

In urging the Commission to reduce its estimate of call volumes but to continue applying the \$.24 (or \$.229) rate, Sprint wants to have it both ways. On the one hand, Sprint wants to keep the benefit of a relatively high call-volume estimate that accrued to Sprint when the high-call volume was being used as a *divisor* to calculate a lower per-call rate. On the other hand, Sprint wants the Commission to use a much *lower* call volume estimate when the call volume is used as a *multiplier* to calculate a per-phone compensation payment based on that same per-call rate. Sprint’s blatantly inconsistent advocacy should be ignored.

## II. IXCS SHOULD NOT UNILATERALLY DETERMINE HOW MUCH OF THEIR ALLOCATED SHARE OF COMPENSATION THEY SHOULD PAY

Sprint argues, in the Sprint Reseller *Ex Parte*, that if the Commission uses the RBOC estimate of the average number of calls for allocating payphone compensation, the Commission should “expressly allow a first-switch IXC to subtract from its allocation any calls that its actual data for a proximate period show were routed to facilities-based resellers, so long as it provides PSPs with the percentage of calls routed to each facilities-based reseller.” This is not only bad policy,<sup>2</sup> it is also a recipe for chaos and an open invitation

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<sup>1</sup> In the *Third Report and Order*, the Commission estimated that there were 155 dial-around calls per month from the average payphone. See *Third Report and Order* at 2614, ¶ 151. Thus, the Commission’s current estimate of 148 calls is already unduly conservative. Given the recent IXC bankruptcies, which guarantee that PSPs will *not* be paid for even 148 calls, nothing should be done to further lower estimated call volume.

<sup>2</sup> The previous rule for allocating Interim Period payments was vacated by the court of appeals; therefore, a different one must be devised. In selecting a new allocation scheme, there is no need to include resellers. The Commission has reasonably determined that facilities-based IXCs should pay the compensation for calls routed to resellers. *The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of* (footnote continued on next page)

for IXCs to shortchange PSPs. The Commission must not allow the IXCs to determine unilaterally how much of their allocated share of Interim Period compensation they will pay. If allowed to hand off a portion of their share to resellers, IXCs will obviously have a built-in incentive to inflate the resellers' share. The IXCs' estimate of resellers' share of compensation cannot be verified by PSPs, and would be disputed by resellers. Thus, Sprint's proposal will generate litigation and confusion, and once again leave PSPs holding the bag.

In any event, as demonstrated by APCC in IXC Over-Recovery of Compensation Payments, *Ex Parte* Letter to Marlene H. Dortch, Secretary, FCC, from Albert H. Kramer, Robert F. Aldrich and Robert N. Felgar (September 23, 2002), Sprint has already recovered more than the cost of its Interim Period compensation through a variety of cost recovery measures – including per-call surcharges assessed on its resellers. If Sprint were allowed to shift Interim Period compensation obligations to its resellers, Sprint would avoid payment for calls for which it already recovered its costs, while resellers would pay twice for those calls. While the Commission's allocation scheme need not be perfect, it should not allow wholesale payment avoidance by facilities-based IXCs.

Sincerely,



Albert H. Kramer  
Robert F. Aldrich  
Robert N. Felgar

AHK/mjo

cc: Jeff Carlisle  
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1996, Third Order on Reconsideration, 16 FCC Rcd 20922 (2001). The allocation scheme adopted here, while it need not be perfect, should be reasonably consistent with that determination.