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

In the Matter of	)	
	)	RM No. 10568
Request to Update Default Compensation Rate for	)	
Dial-Around Calls From Payphones	)	

OPPOSITION OF IDT CORPORATION

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INTRODUCTION

Pursuant to 47 C.F.R. § 1.405 and in accordance with the Commission's Public Notice,[1] IDT Corporation ("IDT") submits its comments in opposition to the petitions filed by the American Public Communications Counsel ("APCC") and the RBOC Payphone Coalition ("the Coalition")(collectively, "the Petitioners") in the above-listed proceeding. The petitions should be denied because the Petitioners do not meet the standard for review set forth by the Commission in the Third Report and Order.[2] In the event the Commission declines to deny the petitions, however, it should release a notice of inquiry ("NOI") rather than a notice of proposed rulemaking ("NPRM"), as the issues raised by the Petitioners implicate the design and purpose of the dial-around compensation methodology as much as the economic inputs of the Commission's existing methodology.

If the Commission were to release a NOI, IDT recommends that the Commission consider the following issues. First, the Commission should seek comment on the effect of wireless communications on the declining deployment and use of payphones. Second,

[1] Public Notice, *Wireline Competition Bureau Seeks Comment on Petitions For Rulemaking Regarding Payphone Dial-Around Compensation Rate*, RM 10568; DA 02-2381 (September 30, 2002)

the Commission should seek comment on how "widespread deployment" should be defined in the current and future telecommunications environment. Third, the Commission should seek comment on payphone funding mechanisms other than per-call compensation to ensure widespread deployment. Fourth, the Commission should seek comment on how it may ensure that providers of dial-around compensation are not forced to subsidize non-working payphones or payphones that do not accept dial-around calls. Fifth, the Commission should seek comment on how to evaluate the business practices of payphone service providers ("PSPs"), including but not limited to rate increases, and quantify the decrease of calls per payphone station as a result of certain PSP practices and rate increases. Finally, the Commission should seek comment on whether to add, remove or revise cost categories to the dial-around contribution methodology.

ARGUMENT

I. PETITIONERS HAVE NOT MET THE THIRD REPORT AND ORDER'S STANDARD FOR REVIEW OF THE DEFAULT COMPENSATION RATE

In setting the default compensation rate in the Third Report and Order, the Commission noted, "If by January 31, 2001, parties have not invested the time, capital and effort necessary to remove these technological impediments [that inhibit the ability of payphone owners and carriers to negotiate fair compensation for dial around calls], or we determine that other impediments to a market-based resolution continue to exist, the parties may petition the Commission regarding the default compensation amount, related issues pursuant to technological advances and the expected resultant market changes."[3] Accordingly, one of the two requirements mentioned above has to be met before a party

[2] Third Report and Order, and Order on Reconsideration of the Second Report and Order, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd. 2545, 2571, ¶ 59 (1999)(footnote omitted)("Third Report and Order").

may petition the Commission regarding the default compensation amount. A petition is not permissible simply because it is filed after January 31, 2002. Neither formal requirement has been met. There has been no demonstration in this or any other proceeding that the parties have not invested the time, capital and effort necessary to remove technological impediments to negotiate fair compensation. Additionally, the Commission has not determined that any impediments to a market-based resolution that previously existed continue to exist. Therefore, since neither petition meets the requirement and the Commission has not made the required determination, both petitions must be dismissed under the standard set forth in the Third Report and Order.

If the Commission chooses not to dismiss the petitions outright, it should decline to issue a NPRM. Instead, it should issue a NOI to examine the status of the payphone industry, dial-around compensation and any changes that should (or should not) be made to the existing methodology.[4] A NOI is more appropriate than a NPRM because IDT and other interested parties should be granted the opportunity to present evidence that the payphone market has changed so greatly that it would be inappropriate to simply "drop in" new figures to the Commission's existing compensation model, as requested by the Petitioners, and that a wholesale re-examination of the compensation scheme is appropriate as a result of changing market conditions.

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[3] *Id. at* ¶ 18.

[4] This suggestion is consistent with that recommended by the Federal-State Joint Board on Universal Service in Recommended Decision, *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; FCC 02J-1 (Rel. July 10, 2002) at ¶ 50.

II. AN INCREASED DIAL-AROUND COMPENSATION RATE WILL NOT REVERSE THE TREND OF DECLINING PAYPHONE DEPLOYMENT AND USE

A. Increased Wireless Use Is The Cause Of Decreased Payphone Deployment And Use

The Petitioners present a schizophrenic argument to the Commission, on the one hand arguing that an increase in dial-around compensation is critical to the widespread deployment of payphones ("Increasing the dial-around compensation rate to reflect current costs is a critical step in reversing this negative trend [of declining payphone deployment] and promoting the widespread deployment of payphones.")[5] while on the other hand acknowledging that reduced payphone deployment and use has been caused by the proliferation of wireless service ("The dramatic expansion of wireless services has had the effect of reducing the overall volume of calls made at payphones[;]"[6] "[the number of calls from payphones has decreased] due to the proliferation of wireless telephones[;]"[7] "This decrease [in the number of payphone stations] is due … largely to wireless substitution"[8] and "[a]s a result [of the decline in the volume of payphone calls,] payphone deployment has fallen sharply … .")[9] Indeed, the APCC has consistently presented the argument before the Commission that "The expansion of wireless services since 1998 has had a dramatic effect in reducing the overall volume of calls made at payphones."[10] The Commission should not be fooled by the APCC's half-hearted about-

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[5] "Request That The Commission Issue A Notice Of Proposed Rulemaking (Or In The Alternative, Petition For Rulemaking) To Update Dial-Around Compensation Rate," *In the Matter of Request to Update Default Compensation Rate for Dial-Around Calls from Payphones,* RM 10568 (August 30, 2002)("APCC") at 8.
[6] APCC at 7.
[7] "Petition for Rulemaking," *In the Matter of Petition for Rulemaking to Establish Revised Per-Call Payphone Compensation Rate,* RM 10568 (September 4, 2002) ("Coalition") at 1.
[8] *Id.*at n. 45 at 12.
[9] *Id.*at 1.
[10] "Comments of American Public Communications Council," *In the Matter of Federal-State Joint Board on Universal Service,* CC Docket 96-45 (April 22, 2002) at 11.

face in this proceeding. Clearly, the decrease in the number of calls made from payphones and the alleged threat to the widespread deployment of payphones is unrelated to dial-around compensation, but rather, is caused by competition from wireless services. Therefore, any resolution to the problem of decreased payphone deployment and use must account for the impact of wireless services.

The wireless industry, of course, is dominated by the members of the Coalition - SBC, BellSouth and Verizon ("Going by sheer number of subscribers, Verizon Wireless is top dog in the United States *** Verizon has about 24 percent of the overall market … Cingular Wireless [which is jointly owned by BellSouth and SBC Communications is in second place and] has about 17 percent.")[11] Indeed, this proceeding is primarily about members of the Coalition replacing their payphone service with their wireless service, yet expecting to be subsidized for the "losses" their wireless divisions are causing their payphone divisions.

B. "WIDESPREAD DEPLOYMENT" IS RELATIVE TO CHANGES WITHIN THE MARKETPLACE

The Commission last considered "widespread deployment" at a time when wireless service had not been nearly so pervasive. The Commission must re-examine "widespread deployment" of payphones in light of recent marketplace changes and how it may continue to ensure widespread deployment of payphones. Petitioners compare the number of payphones that existed in 1998 and their diminished number in 2001 as evidence that payphones are not sufficiently widespread. Yet the Commission, in setting the default compensation amount on marginal payphones, explicitly recognized that the "vast majority" – not *all* payphones – would remain in existence after the implementation

of a default dial-around compensation rate. Commission figures report that, as of March 31, 2001, 1,919,640 payphones were deployed.[12] Thus, of the 2,150,000 payphones deployed in 1999, nearly 90% remained as of March 31, 2001. Moreover, as of the same date, there were actually 300,000 more payphones than in 1984.[13] Clearly, the "vast majority" of payphones still exist. Regardless of the particular figures, IDT believes that the marketplace will determine whether payphones are widespread. Any reduction in the deployment or use of payphones is most likely the result of more affordable and efficient wireless services. The Commission cannot presume that payphone distribution and/or use will be as great in the future as they have been in the past.

C. The Commission Must Further Examine The Relationship Between Reduced Deployment Of Payphones And "Widespread Deployment"

The APCC claims that, "[When payphones disappear,] the need simply goes unmet… . In some cases, there may be another payphone nearby that the caller can use instead. But in many cases, the removed payphone could be the only payphone within several blocks, or miles."[14] IDT asserts that it is overly simplistic, if not downright wrong, to conclude that the loss of each payphone bears equal weight when examining the widespread deployment of payphones. For example, the loss of a one payphone from a "bank" of payphones (resulting, for example, in three payphones in the bank instead of four) or where another payphone is located nearby cannot compare to the loss of a payphone on a reservation that has low teledensity: the latter example impacts

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[11] "How Wireless Carriers Stack Up," Wireless News Factor (December 27, 2001) http://www.wirelessnewsfactor.com/perl/story/15518.html.
[12] FCC Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service* Table 8.5 (May 2002).
[13] APCC at 7-8.
[14] *Id.*at 5.

widespread deployment while the former does not. IDT believes that the Petitioners, in their haste to inflate the default compensation rate, have ignored this distinction.

An example of "diminished deployment" given by the APCC is instructive. The APCC states, "To appreciate this trend toward the removal of payphones, one need only glance at the growing number of empty backplates on payphone banks at airports and elsewhere. For example, at the payphone bank in the lobby at the Commission's offices, there are backplates for nine payphones, yet only five payphones are installed."[15] On its face, this example suggests that there has been a 44% reduction in payphones at the Commission – a great cause for alarm among PSPs and, possibly, the Commission. However, Commission staff reviewing this Petition should consider: as a result of this reduction in payphones in the Commission's offices, are payphones no longer "widespread" at the Commission? Has there *ever* been a time when all five payphones have been in use at the same time making a prospective caller wait even one additional second to make a call? Has there *ever* been an emergency that has gone unreported or delayed in being reported due to this 44% decrease of payphones in the lobby of the FCC? IDT suspects that the answer is "No."

The Commission staff should also consider the following. Is it possible that there is no need for nine payphones in the lobby of the FCC? Are five payphones (or even less) more than enough to ensure widespread availability? Is it just possible that removing 44% (or more) of the payphones from the lobby of the FCC is capitalism at its most efficient: the marketplace meeting the needs of consumers and not overwhelming them with unwanted product? IDT urges the Commission not to be influenced by Petitioners unreliable figures of payphone loss. The Commission should require

Petitioners to submit data that will permit it to examine whether the reduction in the number of payphones has led to a concurrent reduction in meaningful loss of service to consumers. Such an examination should consider the following: of the number of removed payphones, how many were part of a payphone bank that has at least one remaining payphone? How many were located in a building or other easily defined location, such as an airport, subway station, bus depot, etc. that retains one or more payphone? How many removed payphones were located on a street that has one or more payphones remaining on the street or within the immediate area? The Petitioners should be required to present documentation on the geography of eliminated phones and the Commission should determine, based on this information, whether that has resulted in payphones not being sufficiently widespread. It is only when the Commission considers the facts, rather than the hyperbole, that it may adequately examine whether the decline in the number of payphones is contrary to Congress's intent for widespread deployment. Absent such a fact-based analysis, no such conclusion may be found.

III. THE COMMISSION SHOULD CONSIDER ALTERNATIVE WAYS TO ENSURE FAIR COMPENSATION AND WIDESPREAD DEVELOPMENT

Petitioners present no evidence that an increase in dial-around compensation will reverse the trend of declining payphone deployment or calls per payphone. Rather, the evidence suggests that if PSPs continue to fail to adjust to the competitive marketplace, the Commission should anticipate continued declines in call volume and payphone deployment as a result of increased wireless competition. To offset the loss of revenue to payphones from the wireless industry, the Commission should undertake a review of a funding mechanism imposed upon wireless use to ameliorate the harm wireless service

[15] APCC at n. 16, p. 8.

has caused the payphone industry. Such a mechanism could require wireless carriers to remit to a fund for PSPs to offset payphone call volume losses to wireless providers. Wireless carriers could remit to the fund in accordance with revenue or market share. For example, if Verizon has 24% of the wireless market, Verizon would remit 24% of the PSP Fund. Similarly, if Cingular has 17% of the wireless market, SBC and BellSouth would remit 17% of the PSP fund.

This proposal is perfectly reasonable and equitable for all interested parties. It is equitable to the wireless carriers (particularly those mentioned above and the other large wireless providers) because they are also the largest PSPs, so they will, in effect, be remitting payments to themselves. It is equitable to PSPs, as each payphone provider will still continue to receive "fair compensation," as the term as presently defined, partly from dial-around providers and partly from wireless providers. Under the fund, PSPs would recover the difference between the average number of calls from a marginal payphone previously determined by the Commission and the actual number of calls made from each payphone. Finally, the proposal should be acceptable to the Commission because it should stem the tide of payphones being taken out of service, because PSPs will benefit from the fund only in proportion to the number of payphones they make available to the public.

IV. THE COMMISSION SHOULD CONSIDER PSPS QUALITY OF SERVICE AS PART OF ITS REVIEW

Petitioners argue that the service they provide is of such great importance that a 100% increase in the default dial-around compensation rate is warranted. The APCC states, "[R]eady access to a payphone is frequently a matter of critical importance – to

report a crime in progress or to summon emergency rescue help."[16] IDT asserts that part of the reason the payphone industry has suffered losses and become vulnerable to competition is through its own inadequacies: payphones often do not work properly (if at all) and when they do, their rates are outrageously high. For example, a survey of 789 payphones at 100 randomly selected New York City subway stations found that 31% were non-functioning.[17] Additionally, IDT has conducted studies of payphones in New York City and found that over 5% do not permit dial-around calls to be completed, thus violating 47 USC § 226 by depriving consumers of the right to choose their carrier.

More importantly for the purpose of this proceeding, payphones that do not work increase the dial-around compensation amount. For example, if only 75% of marginal payphones work, it is reasonable to assume that as much as 25% of attempted calls will go uncompleted. If the 25% of non-working marginal payphones operated properly, instead of a marginal payphone having 219[18] calls per month, it would have an additional 25%, or a total of 275 calls per month. If you place the 275 figure into the Coalition's equation, it reduces the dial-around compensation figure proposed by the Coalition by approximately $0.09. Inclusion of a "nonworking payphone factor" is fair for several reasons. First, it will encourage PSPs to ensure that their phones are in working order. Second, dial-around providers should not be have to pay an inflated dial-around compensation rate simply because PSPs fail to maintain their payphones in working order. Therefore, if the Commission considers retaining the existing model, or modifying the model to reflect a reduced number of calls per payphone station, it is appropriate to

[16] APCC at 4.
[17] "One in Three Payphones in the Subways Don't Fully Work, Surveys Find," (August 14, 2002) http://www.straphangers.org/phones02/index.htm.
[18] Coalition at 12.

reduce dial-around compensation by the number of calls "lost" as a result of nonworking payphones.

The APCC also claims that "Ready, affordable access to the network through payphones is vital for [those who do not own a home phone], both for day-to-day calls and for emergency communications."[19] This concern for the most needy members of society is contrary to the PSPs' treatment of these consumers. The inflated rates of payphones, for example, demonstrate how PSPs recognize that they provide a service of last resort and can to charge accordingly. As noted by the Coalition, "In most of the country, the price of a local coin call was typically $0.35 in 1998. That market price has risen to $0.50."[20] This is a 43% increase. In an era of decreasing telecommunications costs, no telecommunications end-user rates have increased this much. As justification for this unwarranted increase, the Coalition claims that certain payphones have become unprofitable "despite the fact that PSPs have raised local call rates in an attempt to offset falling call volumes … ."[21] The Commission should consider the impact of PSPs' rate increases on decreases in the amount of calls made from payphones. IDT believes the evidence will show that the amount of calls declined at least in part *because* of rate increases. PSPs have recognized the relationship between increased rates and reduced call volume and have implemented reduced rates at numerous payphone locations.[22] PSPs have lost market share, in part, due to unprecedented rate increases that have forced former users to more moderately priced services. PSPs should not be rewarded for their

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[19] APCC at 6 (footnote omitted).
[20] Coalition at 2.
[21] *Id.*at 5.
[22] "Verizon Cuts Payphone Prices to Lure Callers in Norfolk, VA, Area," Virginian-Pilot (January 29, 2002) http://www.pilotonline.com

predatory pricing policies. The Commission should consider the impact of the PSPs actions on their reduction of calls per payphone.

The Commission should also seek comment on whether an increase in the dial-around compensation rate will result in increased rates to calling card customers, many of whom use such products specifically to avoid outrageous payphone rates. Many of these customers are from the lowest economic classes and may not have telephones of their own. IDT believes that any increases in dial-around compensation, which the calling card industry will be compelled to pass through to our customers, will simply harm our country's most needy consumers. As a result, they will not be able to afford the calling cards that serve as their link to the outside world. Moreover, since these consumers will make fewer dial-around calls from payphones, the number of calls per payphone station will further decrease, thus defeating the alleged purpose of this proceeding.

Finally, the APCC states, "Many payphones are equipped to provide Internet access … payphone-based Internet access is likely to remain the most dependable method of accessing the Internet for travelers on the road."[23] This statement is unsupported and irrelevant to this proceeding. Moreover, no evidence that Internet-equipped payphones were contemplated by Congress in its directive. The Commission should examine expenses incurred by PSPs to offer non-essential Internet services via payphones and reduce the costs incurred by payphones for all Internet-related expenses.

[23] APCC at 5.

V. THE COMMISSION SHOULD NOT ADD NEW COMPONENTS TO THE COMPENSATION MECHANISM AS REQUESTED BY PETITIONERS

Petitioners concede that the cost of providing payphone service has barely gone up since the default dial around compensation was determined ("the per-payphone costs have not changed dramatically;")[24]("costs for the cost categories included in the Commission's model were … roughly 6% higher than the … total costs found by the Commission in the *Third Report and Order*.")[25] Therefore, they attempt to add additional costs to the compensation formula to reflect their request for an inflated per-call compensation rate. Their attempts should be rejected completely.

The APCC argues that "[T]he Commission should add an element for collection costs,"[26] noting that the Commission previously declined to do so previously because inadequate information was presented. The APCC does not provide any more adequate information than previously so. Further, it is inappropriate for the Commission to rely on the APCC's figures of "the cost of routine billing" because billing has changed for calls due to the changes in the compensation scheme. It is even more inappropriate to include "costs resulting from litigation necessary to collect from many carriers who have failed to meet their payment obligations"[27] from the formula. There is no basis for dial-around providers to underwrite PSPs counsel. Further, there is no basis to determine that the litigation is "necessary" and no basis to determine that carriers have "failed" to meet obligations. If PSPs initiate litigation to recover unpaid dial-around compensation, the PSPs can seek recovery of legal fees before a court of competent jurisdiction: to permit recovery in rates would amount to double recovery.

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[24] APCC at 12.
[25] *Id.*
[26] *Id.*at 13.

The APCC has not included Bad Debt in its calculation while the Coalition has. Regardless, both entities claim, without support, that they have "collected much more reliable data relating to bad debt."[28] However, there continues to be no evidence that what the payphone providers deem "bad debt" is anything other than payments withheld due to legitimate billing disputes and billing errors. In support of the inclusion of bad debt, the APCC states, "[I]n order to fully reflect such risks of loss [of dial-around compensation payments as a result of bankruptcies], a factor would need to be added to reflect the likelihood of future carrier bankruptcies or similar events dramatically increasing the rate of non-payment by IXCs."[29] As a threshold matter, even if the Commission were to include bad debt, it would have to determine how bad debt should be calculated and not simply accept the methodology devised by the Coalition.[30] Second, there is no proof that PSPs will not be made whole or partially whole for any "bad debt" owed by bankrupt carriers. Thus, to wholly account for such "bad debt" could result in double recovery. Third, to the extent that PSPs seek to include losses due to IXC bankruptcies, the Commission must acknowledge that the PSPs requested that the Commission grant PSPs the right to collect payphone compensation directly from IXCs, rather than their reseller-customers. Despite the Commission's encouraging PSPs to contract directly with the resellers, the PSPs have refused to do so. Had PSPs entered into such negotiations, they would have been able to recover revenues from resellers. Since any such losses are purely the result of PSP actions contrary to Commission policy,

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[27] *Id.*at 14.
[28] Coalition at 10.
[29] APCC at 15.
[30] Coalition at n. 37 at 10.

PSPs should not be permitted to include any bad debt associated with IXC's reseller customers.

The Commission should also seek comment on other means to lower the compensation rate. Among these means is more frequent payment of compensation for completed calls (*e.g.,* monthly or bi-monthly, rather than quarterly). More frequent payment than the current quarterly remittance would permit the Commission to reduce the portion of the default compensation rate incurred as a result of months of interest. Additionally, the Commission should seek comment on whether there should be an advertising revenue component for revenue received from third parties as well as for advertising of the PSPs' name and products. The payphone industry has reported that "payphone advertising sales have achieved a turning point. Advertisers and their agencies have caught on to the value of the medium, and some have started to embrace it as part of their core advertising campaigns."[31] Additionally, many PSPs include advertising of the PSPs name and/or products on the payphone. While there may be no advertising revenue *per se* incurred for such advertising, there is a tremendous benefit gained by this advertising that should be accounted for by the Commission. For example, in New York's Penn Station, there are dozens of payphones with the name "Verizon" in large letters on the payphone. This amount of free advertising space would cost a non-payphone provider thousands annually. Such a benefit should be accounted for in the compensation methodology.

Finally, while the Commission has rejected a "top down" approach to dial-around compensation, examining the compensation structure when first determined is instructive. Initially, the $0.24 dial-around compensation rate was 69% of the average $0.35 cost of a

call. Under the current proposal, the $0.49 rate is 98% of the $0.50 cost of a call. This figure become inflated to 196% of the cost of a call when you consider that many PSPs have reduced rates to $0.25[32] to compete with wireless services. The Commission has defined "fair compensation" as "the amount to which a willing seller (*i.e.*, PSP) and a willing buyer (*i.e.,* customer, or IXC) would agree to pay for the completion of a payphone call."[33] It would be inconsistent with the definition of fair compensation to permit PSPs to receive dial-around compensation that is equal to or greater than the amount PSPs charge their own users as it is clearly more than "the amount to which a willing seller … agrees to pay for the completion of a payphone call."[34] Moreover, by permitting PSPs to charge a higher dial-around rate than the rate for a coin call, the Commission would "unfairly require one segment of payphone users [*i.e.,* dial-around users] to disproportionately support the availability of payphones to the benefit of another segment of payphone users."[35]

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[31] "The 'ad' – vantage of payphones," *Perspectives*, April 2000 at 16.
[32] "Verizon Cuts Payphone Prices to Lure Callers in Norfolk, VA, Area," Virginian-Pilot (January 29, 2002) http://www.pilotonline.com
[33] Third Report and Order at ¶ 57 (citation omitted).
[34] *Id.*
[35] *Id.*

CONCLUSION

For the reasons stated herein, IDT respectfully requests that the Commission deny the petitions of the APCC and the Coalition or, in the alternative, issue a NOI consistent with the issues raised in these comments.

Respectfully submitted,

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Dated: October 30, 2002

CERTIFICATE OF SERVICE

I, Carl Billek, hereby certify that on this 30th day of October 2002, copies of the foregoing were deposited in the U.S. Mail, first-class, postage prepaid (unless otherwise noted) to the following:

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