

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
The Pay Telephone Reclassification)	CC Docket No. 96-128
And Compensation Provisions of)	
The Telecommunications Act of 1996)	
)	
RBOC/GTE/SNET Payphone Coalition)	NSD File No. L-99-34
Petition for Clarification)	

**COMMENTS OF TELSTAR INTERNATIONAL, INC.
AND THE INTERNATIONAL PREPAID COMMUNICATIONS ASSOCIATION,¹
INC., IN RESPONSE TO THE COMMISSION’S FURTHER NOTICE OF
PROPOSED RULEMAKING**

INTRODUCTION AND BACKGROUND

Telstar International, Inc. (“Telstar”) and the International Prepaid Communications Association (“IPCA”) (collectively “Joint Commenters”) submit these Comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) *Further Notice of Proposed Rulemaking* released May 28, 2003 in the above proceeding (“*Further Notice*”). The *Further Notice* re-examines issues that the Commission addressed in its *Second Order on Reconsideration* (“*Second Order on Reconsideration*”) in the above proceeding. In that Order, the Commission adopted rules

¹ IPCA represents the prepaid communications industry. In these comments, IPCA does not purport to represent any of its members that are IXC’s, RBOC’s, or PSP’s.

governing the relationship and payment obligations between Interexchange Carriers (IXCs), Payphone Service Providers (“PSPs”) and Switch Based Resellers (“SBRs”) when coinless calls are placed from payphones. More specifically, the Commission found that, “the first underlying facilities-based IXC to which the LEC directly delivers coinless calls from payphones was best situated to provide call routing information to the PSPs and to reimburse the PSPs for completed coinless calls.”² Based on this determination, the Commission adopted rules that *inter alia*, require the first facilities based IXC to which a LEC routes a completed coinless call to (1) compensate the PSP for completed calls, (2) track or arrange for tracking a call originating from payphones to determine whether the call is completed and therefore compensable, and (3) provide PSPs with a statement of the number of completed coinless calls it receives from each of that PSP’s payphones.³

On a petition for review, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) remanded the *Second Order on Reconsideration*. The court did not address the merits of the Commission’s decision, but instead vacated the order on procedural grounds.⁴ The court however, stayed its mandate and its vacatur of the *Second Order on Reconsideration* through September 30, 2003.⁵ The Commission then issued the instant *Further Notice* requesting comment on whether it should amend its rules, as it did in the *Second Order on Reconsideration* to clarify which facilities-based carrier, (either the IXC or the switch-based reseller), is responsible for tracking

² *Second Order on Reconsideration*, 16 FCC Rcd at 8103, para. 8.

³ *Id.*, at para 21, App. B (setting forth amended rules)

⁴ The court vacated the *Second Order on Reconsideration* based on its finding that the Commission failed to issue a Notice of Proposed Rulemaking, published in the Federal Register prior to adoption of the new Rules as required by the Administrative Procedures Act (APA). See *Sprint v. FCC*, No. 01-1266, slip. Op. (Apr. 1, 2003) (*Sprint II*)

coinless payphone calls and compensating PSPs for those calls.⁶ In sum, the Commission invited comment on, “*whether the rules adopted in the Second Order on Reconsideration or other new rules are necessary to satisfy section 276’s requirement that we ensure fair per call compensation for completed coinless payphone calls.*”⁷

The Joint Commenters urge the Commission to rescind the rules adopted in the *Second Order on Reconsideration* because the rules have not achieved their stated goals. PSPs repeatedly complained that they continue to receive inadequate compensation from PSPs. The rules are also unnecessary, given the FCC’s other means already in place for assuring fair PSP compensation. Moreover, the rules have produced significant administrative burdens and costs on IXCs and SBRs alike, and have created opportunity for abuse by IXCs which hold SBRs hostage to unfair and unjust practices, and impose additional unnecessary and unjustified costs and burdens on SBRs.

Although the rules adopted in the *Second Order on Reconsideration* have failed to achieve their intended purpose, the Commission already has the tools that it needs to ensure that the requirements of Section 276 are met. Indeed, the Commission’s earlier orders which placed an affirmative duty on SBRs to pay payphone compensation, coupled with the Commission’s rulings that IXCs must identify SBRs to PSPs so that PSPs can collect compensation from SBRs achieves Congresses goals of assuring that payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone...⁸ Accordingly, the Joint Commenters

⁵ *Id.*

⁶ Further Notice of Proposed Rulemaking, In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act, CC Docket No. 96-128 (rel. March 28, 2003) para. 3. (*Further Notice*)

⁷ *Further Notice*, para. 3. (emphasis added)

⁸ 47 U.S.C. 276(b)(1)(A)

urge the Commission to abandon the rules adopted in the *Second Order on Reconsideration* and instead returning to a system for payphone compensation where SBRs compensate PSPs either directly or via a clearinghouse arrangement. The Joint Commenters have provided proposed rules that achieve this purpose as Appendix A, attached hereto.

DISCUSSION

I. THE RULES ADOPTED IN THE SECOND ORDER ON RECONSIDERATION ARE UNWEILDY AND ADMISTRATIVELY BURDENSOME, CREATE UNNECCESARY AND UNJUSTIFIED ECONOMIC COSTS, AND DO NOT ACCOMPLISH THEIR INTENDED GOALS OF ACHIEVING FAIR COMPENSATION

A. IXCs Are Taking Advantage Of The Commission's Existing Compensation Rules

In order to determine whether the rules adopted in the *Second Order on Reconsideration* should continue to be implemented, the Commission first requested comment on whether PSPs are receiving fair compensation when a switch-based reseller (SBR) is involved in the routing of a payphone originated call.⁹ According to the rules adopted in the *Second Order on Reconsideration*, IXCs are required to track completed calls and then pay PSP compensation regardless of whether the call is handled by the IXC or by one of its switch-based reseller customers. Because IXCs are unable to actually track a call from its origination to completion when a switch-based reseller is involved, SBRs provide both the call tracking information to the IXCs and payments for completed calls which the IXCs are then expected to provide to PSPs, usually via a billing clearinghouse, at the time payphone compensation is due to be paid.

⁹ *Further Notice*, para. 16

Whether or not PSPs actually receive fair compensation today is an open question. Certainly PSPs continue to argue that they do not, given the bankruptcies of the some of the large IXCs.¹⁰ The Joint Commenters *do know* however, that the as a result of the *Second Order on Reconsideration*, placing IXCs in the middle of the relationship between PSPs and SBRs is fraught with problems for all parties involved. Although the Commission believed that the IXC “is reasonably certain to have access to the information necessary for per call tracking,”¹¹ IXCs still cannot track completed calls and rely exclusively on data provided by the SBR to demonstrate whether a call is ultimately completed. IXCs’ involvement in the process provides no benefits, and only adds complexity and additional costs.

In general, the process works like this: IXCs bill SBRs monthly for all calls made from payphones to the SBR’s 800 number. The SBR then presents data to the IXC that demonstrates what calls were completed, and provides payment for the completed calls. The IXC then provides a credit on the SBR account for the calls that were not completed, modifying the next month’s bill to reflect the overbilling from the month before. The IXC then provides the SBR data to a clearinghouse, along with payment, and relies on the clearinghouse to pay the PSPs.

There are many problems with this approach. First, it makes for an overall messy billing and reconciliation process between the IXC and SBR. Because the original IXC bill always includes all calls from payphones delivered to the SBR switch (and not just completed, compensable calls) IXC bills are always by their nature incorrect, and SBRs and IXCs must go through a time consuming process to reconcile and correct the charges

¹⁰ See Comments of APCC, *In the Matter of Verizon’s Petition for Emergency Declaratory and Other Relief*, WC Docket No. 2-202.

on the bill to remove IXC overbilling. Moreover, IXCs have varying requirements for the data transfer, including varying systems over which the IXCs choose to receive the data and various formats for processing the data. These requirements force SBRs to incur significant costs related to purchasing equipment and man hours spent formatting the data as requested by their multiple IXC vendors.

Second, SBRs are consistently overbilled by IXCs in the form of “handling fees”. In the *Second Order on Reconsideration*, the FCC found that “in addition to the expense of per –call compensation, IXCs could recover the cost of tracking compensable calls by negotiating reimbursement terms in future contract provisions.”¹² Although it is the SBR who continues to actually track completed payphone calls, IXCs have taken advantage of the language in the Commission’s Order to require resellers to pay additional handling charges on top of the default compensation rate of .024. These “handling fees” can amount to thousands of dollars per month in added costs to SBRs, even though it is the SBR who continues to track the call to completion.¹³ Even more onerous is the fact that the IXCs have recently informed their SBR customers that they are planning to double the compensation rate paid by SBRs in the form of per-call compensation, although no such mandated increase has been authorized by the Commission. Apparently this new rate hike is intended to gain revenue to offset the liability for interim compensation resulting from the Commission’s *Fifth Order on Reconsideration* in this proceeding.¹⁴

¹¹ *Second Order on Reconsideration*, para. 16.

¹² *Second Order on Reconsideration*, para. 18, citing First Payphone Order, 11 CC Rcd at 20591.

¹³ Indeed, one could argue that the IXC should pay the SBR for fulfilling the tracking requirements that the IXC has been mandated to perform as a result of the Second Order on Reconsideration.

¹⁴ In a recent memo to one of IPCA’s members, MCI explained the rationale for the new rate hike as follows:

In addition IXCs require SBRs to pay PSP compensation far in advance of the required payment periods. Under the existing rules, payphone providers receive PSP compensation quarterly, in arrears. The default compensation rate includes a factor for interest given the lag in the time period in which payment is provided to the PSP. IXCs however, require SBRs to pay PSP compensation monthly, allowing IXCs to hold on to SBR payments for to six months in advance of that payments due date. Accordingly, IXCs are forcing SBRs to provide them with what amounts to an interest-free loan at the SBRs expense.

B. SBRs Are Best Suited To Track Completed Coinless Calls Made From Payphones.

In the *Further Notice*, the Commission asks, “which facilities based carrier most reasonably should be required to track and report each completed coinless payphone call.?”¹⁵ The answer is clearly the SBR where the IXC hands off the call to an SBR. Although the Commission’s *Second Order on Reconsideration* requires “the first underlying facilities-based interexchange carrier to whom the LEC directly delivers the call to track or arrange for tracking of all compensable calls made to its reseller

The 5th order established retroactive liability back to 1997 for IXCs (including MCI) to pay the Payphone Service Providers (PSPs) for calls from payphones that do not pass information digits identifying the calls as originating from a payphone..... we concluded that we had no means of backbilling for payphone calls that we cannot identify, so our only option was to recover the incremental liability going forward on the payphone calls that we can identify. Our cost recovery calculations across the company resulted in the need to raise the surcharge to \$.43 which all segments are doing except prepaid (which is already higher)...The FCC does not require MCI to recover the incremental surcharge, but I don't see how any IXC could absorb this substantial cost increase and maintain positive margins on the services affected.”

AT&T and Sprint have sent similar letters to their reseller customers.

¹⁵ *Further Notice*, para. 21.

customers,”¹⁶ none of the routing methods have changed since the adoption of the *Second Order on Reconsideration*. As such, the SBR remains only carrier in the call path that is able to identify whether a call originates from a payphone (via info digits) where it originates and terminates (via ANI information), and whether it is completed and therefore compensable (via answer supervision). Prior to the *Second Order on Reconsideration*, the SBR was required to track calls from payphones, and remit payment to the PSP, usually via a clearinghouse. In the wake of the *Second Order on Reconsideration*, the SBR still tracks the call, but then provides that tracking information to the IXC. The IXC then bills the SBR based on the SBR’s own call completion data, and remits that payment to a clearinghouse which then pays the PSP. Accordingly, nothing in the process has really changed since before implementation of the *Second Order on Reconsideration*—the IXC does not actually track the call’s completion and indeed, cannot do so. As such, the only change since in the process since implementation of the *Second Order on Reconsideration* is that the IXC is forced into the middle of the relationship between the PSP and SBR. The IXC’s position in this relationship, however, adds no particular additional benefit, only additional costs and complexities as discussed above. Given that the SBR is the only carrier in the call path that is able to actually track the call, the SBR is the party best suited to track completed calls made from payphones.

C. SBRs Are Best Situated To Compensate PSPS For Completed Coinless Calls Made From Payphones.

As discussed above, SBRs are the only carriers in the call path that are able to track completed coinless calls from payphones. IXCs have not developed any new abilities to

¹⁶ *Second Order on Reconsideration*, para. 16.

track completed calls that are handed off from IXCs to SBR customers. Similarly, IXCs have not developed any new means for billing SBRs. Instead, IXCs rely on SBRs to provide them with call detail that demonstrates what calls were completed to the end user. Similarly, the IXCs involvement does not add any particular benefit regarding the payment aspect of the process. Prior to implementation of the Second Order on Reconsideration, SBRs paid PSP compensation quarterly, in arrears to PSPs, usually employing one of the national billing clearinghouses to actually make the final payment. Today, IXCs take SBR payments and hand those payments over to the clearinghouses who distribute the payments to the PSPs. Since the IXC adds nothing to the equation in regard to tracking or payment, there is really no legitimate reason for the IXC to remain in the middle of the relationship between the SBR and PSP. Indeed, the IXCs presence in the relationship only creates an additional layer of complexity and added costs as discussed above.

II. THE MOST EFFECTIVE MEANS TO ASSURE FAIR COMPENSATION OF PSPs IS TO REQUIRE SBRs TO COMPENSATE PSPs DIRECTLY OR VIA A CLEARINGHOUSE.

As discussed above, when a call is passed from an IXC to an SBR, only the SBR can determine whether the call was actually completed to a third party. Accordingly, the SBR is the carrier who has access to the most information for call tracking. In its *Second Order on Reconsideration*, the Commission erroneously found that the first underlying facilities-based IXC to which the LEC directly delivers a coinless call was best situated to provide call routing information to the PSPs and reimburse the PSPs for completed

coinless calls.¹⁷ But, as explained above, IXCs still are unable to track whether a call actually completes. Accordingly, IXCs must rely on the SBR's ability to track calls, and then, based on information provided by the SBR, compensate the PSP. This process is inefficient, because it unnecessarily places the IXC between the PSP and the SBR, imposing economic waste in the form of unnecessary time spent on reconciliation and handing of data. In addition, IXCs do not have a uniform system for handling the transfer of data, so SBRs must spend considerable time and expense adapting their data to the system used by each underlying IXC with whom they do business. As discussed *supra*, IXCs impose additional non cost -based fees on SBRs above and beyond the mandatory .24 per call compensation fee, and also usually require the payment of dial-around compensation on a per-month basis -- long before compensation is actually due – *or paid by* the IXC to the PSPs.¹⁸ Finally, IXCs usually compensate PSPs via a clearinghouse, just as SBRs did prior to the *Second Order on Reconsideration*. It would be both economically and administratively more efficient to remove the IXC from the process, and require SBRs to compensate PSPs directly (or via a clearinghouse) for any owed dial-around compensation.

Prior to implementation of the *Second Order on Reconsideration*, SBRs had an affirmative duty to pay PSPs for coinless calls made from payphones to the SBR customer.¹⁹ PSPs claimed, however that they were unable to identify SBRs who owed them compensation because IXCs would not identify to the PSP the responsible reseller

¹⁷ *Second Order on Reconsideration*, 16 FCC Rcd at 8103 para. 8.

¹⁸ IXCs also levy exorbitant late fees on SBR customers if they fail to provide data within the artificially short time frame required by the IXC or in the exact format required by the IXC. In some cases, IXCs have threatened to charge SBRs for all calls sent to the SBR switch if the SBR failed to provide the data one day late – even though payment may not be due to the PSP for an additional five months.

from whom to collect PSP compensation.²⁰ The Commission remedied this in its *Bell Atlantic-Frontier Order*, in which it clarified that the IXCs have an affirmative duty to assist PSPs in determining to whom specific 800 numbers are assigned, and thus identifying SBRs who owe that PSP compensation for calls made from their payphones.²¹

The effectiveness of the Commission's ruling in the *Bell Atlantic-Frontier Order*, has never been tested, however, because on the same day that the Commission released the *Bell Atlantic-Frontier Order* the Commission also released its *Second Order on Reconsideration*, transferring the responsibility to compensate PSPs from the SBR to their IXC providers. The Joint Commenters believe that placing an affirmative duty on SBRs to pay PSPs directly for completed dial-around calls made from their payphones, coupled with the Commission's ruling in the *Bell Atlantic-Frontier Order* which placed an affirmative duty on IXCs to help PSPs identify resellers who make calls from their payphones is the most efficient, and effective process for ensuring that PSPs receive fair compensation from resellers of IXC services. The Joint Commenters have proposed amendments to the existing payphone rules that would codify these affirmative requirements and have provided the proposed rules attached hereto as Appendix A.

III. THE COMMISSION SHOULD NOT REVISIT COMPENSATION PROPOSALS THAT IT, IN PRIOR ORDERS, FOUND TO BE INCONSISTENT WITH SECTION 276 SUCH AS A "SET-USE FEE" SYSTEM, A "PROXY CALL COMPLETION METHODOLOGY, OR AN IXC HAND-OFF PROPOSAL

¹⁹ The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Order on Reconsideration, CC Docket No. 96-128, 11 FCC Rcd 21233 (1996) (*Order on Reconsideration*).

²⁰ See *Second Order on Reconsideration*, para 8.

The Commission should not revisit implementation of proxy compensation proposals such as the so-called “set use fee,” a “proxy call completion methodology,” or the “IXC Handoff” models proposed at various times by various parties to this proceeding. The extensive record in this case as well as repeated Commission findings demonstrate clearly that each of these proposals violate section 276 of the Act, are inconsistent with well-settled Commission Orders providing that only completed calls are compensable, and violate sections 201 and 202 of the Act requiring that rates and charges of common carriers to be just and reasonable and non-discriminatory.

A The Set-Use Fee Proposal Violates the Act and the Commission’s Long Standing Principles that PSPs Should Be Compensated For Completed Calls.

Under a set-use fee proposal, the facilities-based carrier would pay the PSP a set-use fee every time a caller initiated a payphone call regardless of whether that call was completed to the end user.²² As the Commission has previously found, a set-use fee proposal violates the plain language of Section 276 of the Act by requiring carriers to compensate PSPs for incomplete calls. To ensure continued viable and effective competition in the provision of payphone services, Section 276 of the Act, as amended, required the Commission to restructure the payphone industry by *inter alia*, changing the manner in which PSPs were compensated for payphone calls.²³ While Section 276 expanded a PSPs right to compensation, this right is not limitless or unconditional.

²¹ In re *Bell Atlantic-Delaware Inc., et. al., v. Frontier Communications Services, Inc., et. al.*, Bell Atlantic-Delaware, Inc. v. MCI Telecommunications Corp., File No. E-98-48, File No. E-98-49 Memorandum Opinion and Order, 16 FCC Rcd 8112 (2001) (*Bell Atlantic-Frontier Order*)

²² See Further Notice of Proposed Rulemaking, para 20, fnt. 46.

²³ Prior to enactment of Section 276 of the Act, private payphone owners were compensated on a per-payphone basis as a result of the Telephone Operator Consumer Services Improvement Act

Rather, Congress mandated a specific basis for compensation (a completed call).

Pursuant to Section 276, Congress mandated that PSPs receive compensation for “each and every *completed* intrastate and interstate call,” made from a payphone.²⁴

Accordingly, a PSP is not entitled to compensation unless a call is completed from its phone. The definition of what constitutes a completed call is well settled, and no party to this proceeding has provided any legal basis or principled reason for changing it. In the *First Payphone Order*, the Commission defined a completed call as, “...a call that is answered by the called party.”²⁵ The finding that a completed call is one that reaches the called party reflects the Commission’s long-held position that it is inequitable to require carriers to pay PSP compensation for calls for which they generate no revenue. In its *First Report and Order on Operator Service Provider Compensation* in CC Docket No. 91-35, the Commission found that:

Uncompleted calls should not be compensable as a general rule. It would not be equitable to require OSPs to compensate payphone owners for calls that generated no revenue for the OSPs. In addition, purposeful uncompleted calls could be used improperly as a way to increase compensation.²⁶

In the *First Payphone Order*, the Commission further expounded that because calling card calls are perceived by customers as one call, “where an 800 calling card call is routed through an IXC’s platform, it should not be viewed as two distinct calls--one to the

(“TOCSIA”) of 1990. *See also*, Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, *Second Report and Order*, 7 FCC Rcd. 3251 (1992)

²⁴ 47 U.S.C. § 276(b)(1)(A). Emphasis added.

²⁵ The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, *Report and Order*, Docket No. 96-128, 11 FCC Rcd 20,541 (1996) (*First Payphone Order*), ¶ 63.

²⁶ In the Matter of Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, CC Docket No. 91-35, *Report and Order and Further Notice of Proposed Rule Making*, 6 FCC Rcd. 4736 ¶ 37. (rel. August 9, 1991).

platform and one to the called party.”²⁷ This position is consistent with that of the United States Court of Appeals for the District of Columbia Circuit, which recognized the one-call nature of a calling card call, from the caller’s point of view.²⁸ Indeed, as MCI explained in an earlier phase of this proceeding, assessing PSP compensation for uncompleted calls is unacceptable because, “carriers do not bill consumers for such ‘uncompleted’ calls and, it is clear from the Act, Congress did not intend this Commission to prescribe compensation for such calls.”²⁹ Similarly, LDDS WorldCom urged the Commission to make clear that:

An access code call involving 800 accesses is complete only when the called station answers. For the purposes of per call compensation, the Commission should further order that an access code call is not completed unless the call is billable by the carrier serving the caller. For example, assume a carrier subscribes to an LDDS WorldCom 800 number for the purposes of ingress to its own network. Under this arrangement, the 800 call routed over the LDDS WorldCom network to another carrier’s switch should not be viewed as a subscriber 800 call, and no ‘completed call’ should be found to have occurred under this serving arrangement unless the caller reaches another station.³⁰

Accordingly, a set-use fee system would conflict with the Act the well-settled principle that carriers should not be charged for calls that do not reach the called party. Moreover, the a set-use fee proposal would result in many resellers being forced to bear millions of dollars in excess costs that they will not be able to recover from customers.

²⁷ *First Payphone Order*, ¶63

²⁸ *Id.*, ¶61. (Citations omitted) In that decision, the Circuit Court found that, “the caller perceives (and intends) the call as a single call, the ultimate destination of which is not the provider but a third party.”

²⁹ *Id.*

³⁰ Comments of WorldCom, Inc., *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, filed July 1, 1996, pp. 9-10.

Carriers still do not charge end users for uncompleted calls, and both Federal law and several states have regulations that make doing so unlawful.³¹

B. The IXC Hand-Off Proposal Violates Section 202(A) Of The Act Because It Discriminates Against Resellers In Favor Of IXCs Who Compete Directly With Resellers In The 800 Access Market.

The Commission should reaffirm its rejection of what it calls the “IXCs’ Hand-off proposal as a proxy method for assessing PSP compensation. Under this proposal, resellers would be responsible for paying PSP compensation each time a call is handed off to the SBR switch regardless of whether that call is completed to the end user.³² As is the case with the set-use fee, the IXC hand-off proposal runs afoul of the Act and well-settled commission law and policy because it would require resellers to compensate PSPs for incomplete calls. In addition, the IXC hand-off proposal discriminates against resellers in favor of IXCs who compete directly with resellers in the 800-access marketplace, thus violating Section 202 of the Act. The Commission has rejected the IXCs’ Handoff proposal and once again reaffirmed its definition of a completed call as a call completed to the called party:

WorldCom has requested that the Commission define a completed dial-around payphone call as one that is completed on the underlying carrier’s network, or one that is handed off to an SBR.....Many commenters oppose WorldCom’s request, asserting that such a change would be inconsistent with the Act and the Commission’s policies, and that compensation for uncompleted calls as well as completed calls would result in unearned

³¹ 47 U.S.C. § 226(b)(F)(G), entitled the Telephone Operator Consumer Services Improvement Act, or “TOCSIA,” prohibit carriers for charging for unanswered telephone calls. Similarly, Texas has promulgated rules prohibiting collection of PSP compensation for intrastate uncompleted calls. Texas P.U.C. §26.344(d)(1)(G).

³² See *Further Notice*, para. 20, fnt. 48.

revenue for PSPs and would create a competitive disadvantage for SBRs paying such compensation. We agree that WorldCom's proposed redefinition of completed calls is inconsistent with the Act, which requires the Commission to ensure that PSPs are 'fairly compensated for each and every *completed* intrastate and interstate call using their payphones. Moreover, WorldCom's proposed redefinition runs contrary to our longstanding definition of 'completed' calls to mean calls completed to the called party. We therefore deny WorldCom's request.³³

As the Commission noted then, many Commenters vigorously opposed the IXCs' Hand-off Proposal because not only does the Hand-Off Proposal violate section 276 of the Act by forcing SBRs to compensate PSPs for uncompleted calls, it also unfairly discriminates against resellers who directly compete with IXCs in the dial around, calling card and 800 access services markets by foisting costs on resellers that IXCs do not have to bear.

Under the IXCs' Hand-off proposal, resellers would incur PSP compensation costs for *each call attempt* while IXCs would continue to pay PSP compensation only for completed calls. The result is to greatly increase resellers' costs while allowing IXCs to undercut reseller prices for the same services. Such discrimination is blatantly illegal.

Section 202(a) of the Act states:

It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.³⁴

The IXCs' Handoff proposal is a patent violation of this Section of the Act because it unfairly and unreasonably burdens resellers to the benefit of their IXC

³³ *Third Order on Reconsideration and Order on Clarification*, 16 FCC Rcd. At 20925-26, paras. 7-8. (citations and footnotes omitted)

competitors. If the IXCs' Handoff proposal is approved, resellers will be put at an unfair competitive disadvantage because they will be forced to compensate PSPs for uncompleted calls while IXCs are not similarly burdened. This discrimination is unfair, because it disproportionately harms resellers vis-à-vis IXCs both of whom provide 800 access and dial around services to consumers, and is unnecessary because there are less destructive ways to ensure that the goals of Section 276 of the Act are met. In Telstar's case, the IXCs' Handoff proposal would cause Telstar's PSP compensation costs to increase over 300% per year. These costs could not be absorbed by resellers and would have to be passed on to customers either by increased rates, or increased per call surcharges. IXCs on the other hand would not face these same costs, and would therefore be able to unfairly undercut resellers' prices for their competing services.³⁵ There can be no doubt that this discrimination clearly violates Section 202(a) of the Act.

The discriminatory and anti-competitive effect of the IXCs' Handoff proposal is compounded by IXCs who also offer payphone service. If the IXCs' Handoff proposal is accepted, those IXCS can charge resellers for uncompleted calls and then turn around and book those revenues as profits to their payphone business units – greatly increasing their payphone revenues at the resellers expense, and in violation of Section 276 of the Act which allows them to receive compensation for calls made from their payphones only for completed calls.

³⁴ 47 U.S.C. §202(a).

³⁵ Notably, the largest providers of prepaid service include Qwest and WorldCom. (See excerpt from the Pelorus Group Report, provided hereto as Attachment A). AT&T also provides prepaid calling card and other 800 access services.

C. The Commission should Not Adopt a Mandatory Proxy Call Completion Methodology for Determining Completed Calls

There is no need for the adoption of a mandatory proxy call completion methodology for determining completed calls and the commission should not adopt one. No proxy is necessary because SBRs can accurately determine whether a call is completed to the called party and can provide that information to SBRs either via a clearinghouse, its IXC provider, or directly. In addition it would be impossible to develop a “one size fits all” proxy methodology given the wildly varying characteristics of dial around providers and their customer bases. While proxies may be acceptable in some static segments of the telecommunications market, they are inappropriate in the dynamic and hyper-competitive dial-around marketplace. Call completion ratios are inappropriate as proxy call completion methods because call completion factors vary dramatically depending on the demographics served by a particular debit card provider. This fact was borne out in data provided by IPCA in its November 13 2001 *ex parte* submission to the Commission in this proceeding. Accordingly, no proxy call completion factor could accurately represent any meaningful substitute for actual call completions numbers. Further, dial-around is one of the most competitive markets in the telecommunications services sector. In that sector, margins are razor thin, and whether a product is profitable or not can depend on one-tenth of a cent on a particular route. Accordingly, dial around providers must respond quickly to changes in the marketplace, both on a wholesale and retail level, which will change the demographics of the customers that they serve. Accordingly, even if a proxy were possible, it is likely that the

proxy would not be accurate for any meaningful period of time, given to the rapid changes in the marketplace, and therefore require consistent updating, at least on a quarterly level. Such constant revisiting of the proxy ratio would be not only burdensome and costly for both the Commission and individual carriers, but is unnecessary given the fact that resellers can and do determine *actual* call completion via records that they obtain directly from their switch during the normal course of their business. This data, coupled with the affirmative duty to pay PSPs as required in the *First Order on Reconsideration*, and the affirmative duty of IXC's to help PSPs identify SBRs as articulated in the *Bell Atlantic-Frontier Order* should assure that PSPs receive fair compensation as required by the Act.

CONCLUSION

For all these reasons, the Commission should (a) adopt the proposed rules submitted in Appendix A of these comments permitting resellers to remit payphone compensation to PSPs directly or via clearinghouses, and (b) reject the rules adopted in the *Second Order on Reconsideration*, (c) reject all proxy methodologies as a method of determining compensable coinless calls.

Respectfully submitted,

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