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

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

COMMENTS OF GLOBAL CROSSING NORTH AMERICA, INC.

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Summary

1. The Commission should adopt a compensation system that bases the compensation obligation either on a timing surrogate or on call attempts, with an appropriately discounted per-attempt compensation rate. In this manner, the Commission will eliminate the greatest impediment confronting the development of a system that will actually work.

2. Whatever underlying system that the Commission adopts, it also needs to clarify or modify its rules in several respects: (a) by making clear that underlying carriers are not the guarantors of the obligations of facilities-based resellers that utilize their wholesale services; (b) adopting a uniform set of reporting requirements that apply to underlying carriers and facilities-based resellers alike; and (c) clarifying that the data collected and reported by carriers – the entities with the obligation to track and pay compensation – is to be accorded conclusive weight, absent evidence of fraud or other misconduct, in determining whether a carrier has complied with its compensation obligation.

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COMMENTS OF GLOBAL CROSSING
NORTH AMERICA, INC.

Introduction

Global Crossing North America, Inc. ("Global Crossing") submits these comments in response to the Commission's *Further Notice*[1] in the above-docketed proceeding. In the *Further Notice,* the Commission is attempting, once again, to craft a per-call compensation system that has a chance of working. The Commission, however, appears to be leaning toward re-adopting the rules promulgated in the *Second Reconsideration Order*[2] that the D.C. Circuit vacated.[3] This approach would be a mistake. Rather, the Commission should craft a set of rules that takes into account economic and commercial reality, particularly, the complexity of tracking payphone-originated calls to completion in a multiple-carrier environment.

Toward this end, the Commission should adopt a compensation system that bases the compensation obligation either on a timing surrogate or on call attempts, with an

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1 *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996,* CC Dkt. 96-128, Further Notice of Proposed Rulemaking, FCC 03-119 (released May 28, 2003) ("Further Notice").

2 *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Dkt 96-128, Second Order on Reconsideration, 16 FCC Rcd. 8098 (2001) ("Second Reconsideration Order").

3 *Sprint Corp. v. FCC*, 315 F.3d 369 (D.C. Cir. 2003), *issuance of mandate stayed,* No. 01-1266, *slip op.* (D.C. Cir. April 1, 2003).

appropriately discounted per-attempt compensation rate. In this manner, the Commission will eliminate the greatest impediment confronting the development of a system that will actually work.

Whatever underlying system that the Commission adopts, it also needs to clarify or modify its rules in several respects: (a) by making clear that underlying carriers are not the guarantors of the obligations of facilities-based resellers ("FBRs") that utilize their wholesale services; (b) adopting a uniform set of reporting requirements that apply to underlying carriers and FBRs alike; and (c) by clarifying that the data collected and reported by carriers – the entities with the obligation to track and pay compensation – is to be accorded conclusive weight, absent evidence of fraud or other misconduct, in determining whether a carrier has complied with its compensation obligation.

Discussion

I. THE COMMISSION SHOULD BASE COMPENSATION EITHER ON A TIMING SURROGATE OR ON THE BASIS OF CALL ATTEMPTS WITH AN APPROPRIATELY DISCOUNTED PER-ATTEMPT RATE.

The basic issue that the Commission needs to confront is the complexity of tracking a payphone-originated call to completion in a multiple-carrier environment. By eliminating disputes regarding whether particular calls have actually been completed to the called party, the Commission will eliminate the major source of controversy over whether payphone service providers ("PSPs") are actually receiving the compensation mandated by statute.

A. The Inability To Track Calls To Completion Is the Major Cause of Disputes Regarding Whether Carriers Have Complied with Their Compensation Obligations.

Under both of the regimes tried by the Commission to date, the compensation obligation is only triggered when a payphone-originated call is answered by the called party.[4] The major problem with this approach is that, in a multiple-carrier environment, there is no single entity that can track a call from origination to completion. The Commission has recognized this fact. With respect to PSPs and exchange carriers, the Commission has concluded:

> The notable exception in this information flow is the PSP. Call completion and billing information is not automatically passed to the PSP, because the PSP's payphone is on the "line" side of the LEC switch and cannot receive call routing information generated on the trunk side by the LEC. It is also important to note that the LEC does not track the routing of the call once the LEC delivers the call to the underlying facilities-based IXC.[5]

With respect to FBRs, the Commission has observed:

> Switch-based resellers contend that they are unable to determine where a call originated. These resellers state that they are unable to receive ANI information, which identifies whether a call originated from a payphone.[6]

Finally, with respect to underlying carriers, the Commission noted:

> On the other hand, IXCs state that they do not have the technology to determine whether a call is answered by the called party or whether the calling party is making multiple calls with a calling card without hanging up between calls. The IXCs state that once they transfer a call to a switch-based reseller and receive answer

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4 *See Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996,* CC Dkt 96-127, Report and Order, 11 FCC Rcd. 20541, ¶ 63 (1996) ("Report and Order"); *id.,* Third Order on Reconsideration and Order on Clarification, 16 FCC Rcd. 20922, ¶ 7 (2001) ("Third Reconsideration Order").

5 *Further Notice,* ¶ 23.

6 *Id.,* ¶ 27.

> supervision from the switch-based reseller for that call, the IXCs do not receive answer supervision for calls (such as calling card calls or pre-paid phone card calls) that are re-originated on the switch-based reseller's platform. Thus, the IXCs state that [they] are unable to track on a per-call basis whether a call has been answered by the called party.[7]

Thus, as the Commission itself has acknowledged, there is no single party that is capable of tracking a call from origination to completion. This fact has led to enormous disputes among PSPs, underlying carriers and FBRs as to whether carriers have, in fact, complied with their compensation obligations.

The Commission's two solutions to date – both of which rely upon the call being answered by the called party to trigger the compensation obligation – have not worked satisfactorily. According to the Commission, its initial system of requiring each carrier – with the exception of switchless resellers – to be responsible for the tracking and payment of per-call compensation resulted in PSPs being unable to identify the carrier responsible for paying compensation on a particular call.[8]

The second regime – which assigned responsibility to underlying carriers – is not only of questionable legality under section 276, but has problems of its own. The system provides limited or no visibility between PSPs and FBRs. It also requires complex data handling, formatting, coordination and timing procedures between underlying carriers and FBRs. This has resulted in payment anomalies when the process does not work almost perfectly. For example, Global Crossing has, at times, been required to compensate PSPs in one quarter on a per-attempt basis with respect to calls handled by one or more of its FBRs, because the FBR did not process its data in a timely or correct

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[7] *Id.,* ¶ 28.

[8] *Further Notice,* ¶ 9; *Second Reconsideration Order,* ¶ 8.

manner, only to reverse such overpayment in a subsequent quarter. These types of occurrences – which are virtually inevitable in this system – inject additional uncertainty and controversy into an already complex system.

Any system, moreover, which relies upon the called party actually answering the phone cannot correct a related, but significant anomaly, namely, the wildly optimistic expectations of PSPs with respect to call completion ratios. The PSPs appear to believe -- based upon data that they collect themselves and that the purchase from exchange carriers -- that they are being significantly undercompensated, because compensation payments do not match their expectations of the percentage of calls that have actually been answered by the called party. It appears to matter little to the PSPs whether the data supplied by carriers -- as required by the Commission -- shows that the compensation paid is correct based upon actual call-completion experience. In Global Crossing's case, for example, it has been involved in litigation with PSPs, where the PSPs seek compensation that is two, three and sometimes as much as four times the amount Global Crossing's records show is due and that has actually been paid, based upon actual call completion data.

The PSPs appear to base this contention upon call attempt records – probably with one or more surrogates – where the payphone has received "answer supervision." Particularly in the case of toll-free calling card or prepaid card calls, the "answer supervision" is generated by the calling card platform. This, of course, says nothing about whether a particular call was, in fact, answered by the called party.[9] Neither the switch of the underlying carrier *nor the payphone* is capable of detecting this second

[9] *See supra* at 3-4.

answer supervision – the only indication that a call has actually been completed. Despite the Commission's acknowledgment that PSPs cannot track calls to completion, PSPs baldly assert in litigation, for example, that they are "able to determine, with a high degree of accuracy, the number of compensable coinless calls made from each of [their] payphones and routed to Global Crossing as the first facilities-based interexchange carrier."[10]

So long as the Commission adheres to the existing fundamental methodology, these controversies will persist and the relative certainty necessary to ensure a system that it at least marginally acceptable to most industry participants will continue to elude the Commission.

B. The Commission Should Adopt a System Based Upon Timing Surrogates or Upon Call Attempts with an Appropriately Discounted Per-Attempt Rate.

Most industry participants can track call attempts and can probably track call duration, as well. Most payphones apparently are equipped to do so or the PSPs could not even begin credibly to claim that they can track calls.[11] Both underlying carriers and FBRs need this information to bill their respective customers. The adoption of either

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[10] *Metrophones Telecommunications, Inc. v. Global Crossing Telecommunications, Inc.*, No. C03-0694, Complaint, ¶ 16 (W.D. Wash., filed March 17, 2003).

This statement is wrong both to the extent that it asserts that the PSP is able to track calls to completion and to the extent it is intended to assert that Global Crossing owes compensation on all calls routed to it from payphones. Either way, this particular piece of litigation, which is hardly unique, highlights the controversy endemic to utilizing a compensation methodology that no single party can individually track.

[11] Indeed, in documents produced to Global Crossing in litigation initiated by PSPs, the PSPs' records typically show: date and time of call, payphone ANI, toll-free number dialed, destination number dialed, call duration, and sometimes, carrier identification code (which does not necessarily distinguish the underlying carrier from the FBR).

method would at least provide PSPs, underlying carriers and FBRs a common frame of reference in terms of data utilized to determine what compensation payments are due.

Moreover, either system can be utilized regardless of whether the Commission assigns the payment obligation, in the first instance, to all facilities-based carriers or to underlying carriers. The universe of data remains the same, leaving the much less complex task of associating particular carriers with particular access codes or toll-free numbers.

1. Timing Surrogates

The timing surrogate method is designed to determine when a call has been "completed" based upon the amount of time elapsed between inception of a call and its termination. The concept of timing surrogates is not new to the Commission.[12] This approach has its conceptual merits. However, for it to work, the Commission would need to establish a specific surrogate or a series of surrogates depending upon call type and, possibly, call destination. To the extent that the Commission believes that this approach is worth considering, the Commission should request that the parties supplement the record with factual data that would allow the Commission to select an appropriate surrogate or surrogates.

2. Call Attempts

A compensation methodology based upon call attempts would also attempt to replicate the results of a system based upon actual call completion. Again, the methodology would utilize, as a starting point, a set of data common to all industry

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[12] *See, e.g., Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996,* CC Dkt. 96-128, Petition for Reconsideration and Clarification of Global Crossing at 3-8 (May 29, 2001); *Ameritech Operating Companies, Tariff F.C.C. No. 2, Transmittal No. 953,* Response to Petition To Reject at 7 (April 1, 1996).

participants. It would then take into account the fact that not all calls are completed by developing an appropriate, discounted per-attempt rate.

Although this methodology also has its attractions, the current state of the record would not permit the Commission to establish the appropriate per-attempt rate. If the Commission wishes to pursue this approach, it should ask the parties to supplement the record with data that would permit the Commission to select the appropriate per-attempt default rate.

II. WHATEVER SYSTEM THE COMMISSION ADOPTS, IT SHOULD MODIFY OR CLARIFY ITS TRACKING AND REPORTING RULES.

Whether the Commission attempts to re-adopt the current system or adopts some other alternative, it should clarify or modify its rules in three respects: (a) clarifying that underlying carriers are not guarantors of the obligations of FBRs; (b) establishing uniform data reporting obligations that apply to underlying carriers and FBRs alike; and (c) clarifying that the data of carriers upon which compensation payments are based are entitled, absent fraud or other misconduct, to conclusive significance.

A. The Commission Should Clarify That Underlying Carriers Are Not Guarantors of the Obligations of FBRs.

Under the rules promulgated in the *Second Reconsideration Order,* underlying carriers have the obligations both to track and to pay compensation for compensable calls handed off to them by the originating exchange carriers.[13] Certain PSPs appear to believe that this regime makes the underlying carriers ultimately responsible for compensable calls actually handled by their FBRs. This is certainly one plausible interpretation of the

[13] 47 C.F.R. §§ 64.1300(a), 64.1310(a).

existing rules, as written. However, it is not the only interpretation and it is an interpretation that is legally questionable. Should the Commission elect to retain this system, the Commission should clarify that the role of the underlying carriers is to act solely as payment agents, but that the payment obligation itself runs from individual FBRs to individual PSPs.

First, the Commission's principal rationale for assigning responsibility to track and pay compensation to carriers is that, in the Commission's view, carriers are the primary economic beneficiaries of payphone calls.[14] That rationale, however, only makes sense if applied to the *retail* carrier, that is, the carrier which derives revenues from end-users for payphone calls. Underlying carriers – which provide wholesale services to FBRs – are in no different a position than exchange carriers, which derive access revenues from payphone calls. Yet, the Commission has never intimated that exchange carriers are the primary economic beneficiaries of such calls and has, therefore, never assigned tracking and payment responsibilities to them. There is no principled basis for the Commission to treat underlying carriers differently.

Second, the Commission has already concluded that carriers are not responsible for each other's obligations. It rejected a proposal advanced by PSPs to make other carriers responsible for the pre-petition obligations of those carriers that have sought bankruptcy protection. The Commission concluded that the obligation to pay compensation runs from individual carriers to individual PSPs.[15] Making underlying

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[14] *Report and Order,* 11 FCC Rcd. at ¶ 83.

[15] *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996,* CC Dkt. 96-128, Fifth Order on Reconsideration and Order on Remand, 17 FCC Rcd. 21274, ¶ 87 (2002) ("we agree with the IXCs that reconsidering the refund because of recent bankruptcies would unfairly shift the burden of paying outstanding Interim Period per-phone compensation to IXCs that paid an unlawful Intermediate Period per-call rate.

carriers guarantors of the obligations of FBRs that utilize their services would be inconsistent with this conclusion.

Third, assigning such responsibility would also be inconsistent with the D.C. Circuit's holding in *Illinois Public Telecommunications Ass'n v. FCC.*[16] There, the Court vacated the Commission's decision to require only those carriers with interstate toll revenues in excess of $100 million annually to pay compensation for the interim period. The Court concluded, in part, that such a regime impermissibly saddled one group of carriers with financial obligations that were not attributable to their operations.[17] Attempting to make underlying carriers guarantors of the obligations of FBRs would achieve the same proscribed result.

To the extent that the Commission assigns to underlying carriers the obligation to act as payment agents for those FBRs that utilize their services, the Commission must also make clear that the underlying payment obligation falls upon FBRs and, in the event of nonpayment, the dispute is between FBRs and PSPs, to which underlying carriers are strangers.

B. The Commission Should Impose Uniform Data Reporting Requirements on Both Underlying Carriers and FBRs.

The Commission's current rules require underlying carriers to report to PSPs certain call detail with respect to calls on which they pay payphone compensation. This

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That outcome would be unfair and inequitable and would violate the principles established in the *Illinois* case.").

16 117 F.3d 555 (D.C. Cir. 1997), *cert. denied,* 523 U.S. 1046 (1998).

17 117 F.3d at 565; *see also Illinois Public Telecommunications Ass'n v. FCC,* 123 F.3d 693, 694 (D.C. Cir. 1997); *Fifth Reconsideration Order,* 17 FCC Rcd. at ¶ 82 ("That outcome is neither equitable nor, in light of the holding in *Illinois,* that we may not require one company to bear another company's expenses, lawful. Section 276 requires us to ensure that per-call compensation is fair, which implies fairness to both sides.").

data includes payphone ANI and toll-free number dialed on calls on which compensation is paid.[18] The Commission did not promulgate any specific requirements for FBRs to report on their payphone traffic, deeming that subject a matter of contract negotiations between underlying carriers and FBRs. The Commission should alter this aspect of its current reporting requirements and impose upon FBRs the same reporting obligations it imposes upon underlying carriers.[19] This approach would ensure that all data on which compensation payments are based is consistent and would solve the coordination problems described above.[20] It would also permit underlying carriers, to the extent that they retain the obligation to report on behalf of their FBRs, to report data to PSPs sorted by carrier, thus providing visibility from PSPs to FBRs.

C. If the Commission Continues To Assign Reporting Responsibilities to Carriers, It Should Clarify That, Absent Fraud or Other Misconduct, Carrier Reports Are Entitled to Conclusive Weight in Determining the Amount of Compensation Due.

Assigning the burden of tracking and reporting on payphone compensation upon carriers should carry with it the concomitant benefit of having those reports entitled to conclusive significance in determining the amount of compensation due. The Commission assigned the responsibility in the manner it did based upon its conclusion that carriers were in the best position to track payphone calls accurately. Based upon this assumption and this assignment of responsibility, the Commission should clarify that

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[18] 47 C.F.R. § 64. 1310(a).

The Commission declined to require carriers to report data on calls that were not completed and hence not compensable. *See Third Reconsideration Order,* ¶¶ 3, 9.

[19] Obviously, whatever reporting requirements the Commission chooses to adopt should be consonant with the underlying compensation obligation.

[20] *See supra* at 4-5.

conclusive weight should be assigned to such reports, absent indications of fraud or other misconduct.

Today, PSPs are claiming, based upon their own records, that they are being undercompensated and, often, dramatically. As Global Crossing described above, these claims are significantly inflated, because they are based upon records that are, and that the Commission has deemed, inherently untrustworthy.[21] Permitting PSPs to claim additional compensation (either through litigation or through the completely unwarranted practice of "invoicing" carriers) based solely upon their own records ultimately defeats the purpose of assigning such responsibility to carriers. It fails to accord any weight to such reports and fails to bring any certainty to the process. In fact, it merely invites litigation, not to mention fraud, by PSPs that have already received compensation. The Commission should clarify that such practices are impermissible.[22]

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[21] *See supra* at 5-6.

[22] Global Crossing agrees that PSPs should have limited rights to audit the data submitted by carriers. That, however, should be the PSPs exclusive remedy for claims of undercompensation.

Conclusion

For the foregoing reasons, the Commission should act upon the proposals contained in the *Further Notice* in the manner suggested herein.

Respectfully submitted,

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June 23, 2003

Certificate of Service

I hereby certify that, on this 23rd day of June, 2003, the foregoing Comments of Global Crossing North America, Inc. were served by first-class mail, postage prepaid upon the persons on the attached list.

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