

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

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

COMMENTS OF WORLDCOM, INC.

June 23, 2003

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EXECUTIVE SUMMARY

In this Further Notice of Proposed Rulemaking (“FNPRM”) the Commission tentatively concludes that the rules governing compensation for non-coin calls failed to fairly compensate payphone service providers (“PSPs”). MCI urges the Commission to reconsider the causes of this failure and its subsequent remedy. When it first addressed the shortfall of payphone compensation in its *Second Reconsideration Order*, the Commission shifted the payphone compensation liability of switch-based resellers (“SBRs”) to their first switch interexchange carriers (“FS-IXCs”). It adopted this remedy on the basis of three conclusions: 1) the previous rules were unclear whether FS-IXCs or SBRs were responsible for SBR compensation; 2) underlying carriers did not transmit payphone coding digits to SBRs to enable them to track completed payphone calls, and 3) FS-IXCs could leverage the power of their contractual relation to obtain accurate and timely call completion data from their SBRs, which would mitigate their inability to receive automatic answer supervision messages from the SBR called parties. Each of these conclusions was unsupported.

The original rules, as clarified in the First Reconsideration Order, were originally very clear that SBRs were responsible for compensating PSPs. These switch-based resellers were required to proactively seek out PSPs and compensate them for completed payphone calls. They were also required to have an independent third party verify their payphone compensation systems to ensure they had developed the capability of accurately tracking, reporting, and compensating completed payphone calls. Confusion about payphone compensation responsibility did not arise until the Common Carrier Bureau addressed the obligation of a FS-IXC to aid PSPs to collect compensation from SBRs. In its *Per-Call Waiver Order*, the Bureau required FS-IXCs to aid PSPs by identifying the SBR associated with a toll-free number

provided by the PSP. Unfortunately, the language the Bureau used to describe this obligation gave the impression to SBRs intent on avoiding compensation responsibility that they were not responsible for payphone compensation unless they identified themselves as such to their FS-IXC. It took four years and two Commission Orders to clarify that its rules always meant that the SBR was responsible for payphone compensation.

Similarly, no party documented that FS-IXCs failed to pass the originating automatic number identification (ANI) necessary to allow an SBR to compensate PSPs. One party who first raised this charge simply stated that it *could* happen if the FS-IXC failed to order Flex ANI, but offered no evidence that a single FS-IXC had failed to do so. Another party also argued that an SBR needed to order a trunking connection capable of passing payphone coding digits, but also offered no evidence that a single SBR had connected to an underlying carrier via a connection that failed to pass payphone coding digits. The Commission wrongly relied on unsubstantiated and speculative claims as one of the major justifications of its decision to make FS-IXCs responsible for the payphone compensation obligations of their SBRs.

The Commission's theory that FS-IXC's control of an essential input, wholesale long distance service, gives them the leverage over their SBR customers, and allows them to require SBRs to provide accurate and timely call completion data, has also turned out to be unsupported speculation. While, long distance transmission service is an essential input to the SBR's business, no FS-IXC has bottleneck control of this input. Only bottleneck control, where a provider is the sole, or nearly sole, supplier of an input, would confer the power to require SBRs to undertake investments of this magnitude. Because there are many wholesale long distance providers, no FS-IXC is able to insist that their SBRs undertake the very substantial investment that would be needed to be able to ensure they could provide accurate and timely payphone

compensation payments and reports. (For example, MCI's investment totaled multiple tens of millions of dollars). Because the wholesale market is competitive, MCI's contracts are only month-to-month. FS-IXCs do not have the market power to bind SBRs into long-term contracts, under which enforcement of costly, reliable, tracking systems might be possible. If MCI attempted to enforce a payphone compensation-related contract provision, such as requiring an SBR to have a third party verify the accuracy of their payphone tracking systems, it would not wait for us to deny service as the Commission proposes, it would voluntarily leave and obtain service from another provider. If any party in the FS-IXC/SBR relation has bottleneck control over an essential facility, it is the SBR, who controls access to switch data. This is information the FS-IXC must have in order to comply with the Commission's new rules, and there is only one provider who controls it – the SBR.

MCI maintained at the time the existing rules were adopted, and can document now, that the primary cause of the compensation shortfall is the failure of most of the SBRs to invest in facilities and develop procedures to accurately match payphone identifiers with switch records and then transfer matched records into formats that can be used to meet their payphone compensation obligations. After 18 months of compensating on behalf of its SBRs, MCI finds that only 12% of its SBR customers consistently provide call completion data in a usable format and in sufficient time to be incorporated with other billing and compensation data. The remainder have either opted to compensate PSPs for all calls routed to their platforms rather than incur the cost associated with accurate payphone tracking and reporting systems, or have asserted they will provide payphone tracking information but have consistently failed to do so in an accurate and timely fashion. The rules the Commission adopts as a result of this FNPRM

must address this fundamental problem in a manner that imposes the minimal cost and risk on all parties.

Simply shifting the compensation obligation of SBRs to FS-IXCs will do little to improve the long run ability of PSPs to be fairly compensated from SBRs who fail to develop adequate call tracking capabilities. The Commission's leveraging theory presumes FS-IXCs will terminate SBRs who fail to make the investments needed to provide reliable, timely call completion data. But no FS-IXC can afford to risk losing 88% percent of its customers, even temporarily. There are large numbers of SBRs who do not have reliable compensation systems in place, and large amounts of payphone compensation associated with them -- over 15 million dollars each year for MCI. Since the existing rules require some payment to be made, MCI compensates PSPs for all calls sent to these SBRs and then adjusts future PSP payments as call completion data is supplied. PSPs collection efforts have been focused most intensely on the bankruptcies of WorldCom and Global Crossing, and the true-up of Interim and Intermediate Period compensation. Consequently, MCI expects disputes involving implementation of the new rules to substantially increase in the near future. We expect that these disputes will impose significant collection costs on us and uncertainty on all parties.

The Commission has tried two methods of inducing SBRs to invest in systems capable of accurately tracking, reporting and compensating payphone service providers. It has tried requiring them to implement such systems, having an independent third party verify the accuracy of their compensation system, and reporting the outcome to the Commission. It has also tried requiring FS-IXCs to impose these investment costs on SBRs through their alleged power of contract. Neither method has worked. MCI believes that the cost of implementing reliable tracking and compensation systems is too expensive given the scale of many smaller SBR

operations. By the same token, many larger SBRs have incurred substantial expense implementing reliable tracking and compensation systems, and it is inefficient to require them to incur these expenses and then require FS-IXCs to incur additional expenses combining SBR data with their own data.

When an independent, third party verifies an SBR's payphone tracking system is capable of providing accurate and timely payments and reports, it should be allowed to compensate PSPs without the intermediation of an FS-IXC. It should be allowed to do this either directly, or through a clearinghouse. Once an SBR qualifies to directly compensate PSPs, it should notify its wholesale carriers, so that each FS-IXC may begin tracking calls routed to each toll free number leased to this SBR from each payphone ANI. FS-IXCs should be required to report this information to each PSP every quarter so that PSPs may evaluate the accuracy of the compensation payments they will receive directly from qualifying SBRs.

SBRs who have not had an independent third party verify they have a reliable payphone compensation system should not be allowed to directly compensate PSPs. For the same reason, it would not make sense to allow them to provide call completion data to FS-IXCs who would then compensate PSPs on their behalf. The Commission should therefore determine that if an independent third party has not verified an SBR has a reliable payphone compensation system, the FS-IXC may surcharge them for all calls routed to their platform. By basing surcharges on an SBR's choice not to invest in expensive call tracking systems, the Commission will ensure this level of surcharges is reasonable. Nearly one-half of MCI's SBR customers have voluntarily chosen to be surcharged in this fashion. Because an SBR has chosen not to make costly investments that would otherwise be required under the Commission's rules, this rule would in

effect allow SBRs to use the cost savings from otherwise required investment to offset the additional cost of being surcharged for all calls routed to their platform.

These rules would establish a rational compensation regime. SBRs who are able to reliably track and compensate PSPs will be able to do so directly, thereby eliminating an unnecessary data processing step by FS-IXCs. FS-IXCs will provide the level of reporting PSPs need to verify the accuracy of compensation payments made by qualifying SBRs. These rules would recognize that many SBRs would never be able to recoup their costs if they invested in reliable tracking systems, and that no rule or short-term contract can countermand basic economics. These rules retain an FS-IXC administrative role for these mostly smaller SBRs who comprise one-half of SBRs, and establish a payment mechanism which will minimize disputes between FS-IXCs and PSPs. MCI believes these rules would more effectively ensure full and fair compensation for PSPs, while minimizing disputes and administrative expenses for all parties. MCI urges the Commission to adopt its recommendations.

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COMMENTS OF WORLDCOM, INC.

WorldCom, Inc., on behalf of MCI WorldCom Communications, Inc. (“MCI”), hereby submits its comments to the Further Notice of Proposed Rulemaking published in the Federal Register on June 2, 2003.

I. THE COMMISSION MUST CONSIDER THE EVIDENCE PRESENTED IN THIS PROCEEDING WITH AN OPEN MIND

In defense of the rules adopted in the *Second Order on Reconsideration*¹, the Commission argued that Sprint and other parties had not been prejudiced by its failure to follow the notice and comment requirements of the Administrative Procedures Act (APA) before

modifying its payphone compensation rules. The Court disagreed and identified at least two harms suffered by Sprint and others. The Court stated that adopting a rule change rather than a clarification prejudiced the Commission against reconsidering its rule compared to reconsidering a clarification. The Court also found that parties would have been able to better provide evidence demonstrating the shortcomings of the Commission's assumptions and conclusions if proper notice and comment procedures had been followed. In essence, the Court found the Commission had restricted discussion and then became prematurely locked into defending its rules.²

MCI therefore finds remarkable the Commission's tentative conclusions proffered in this Further Notice of Proposed Rulemaking (*FNPRM*). The Commission first states that "...no party challenged our conclusion that a major source of the [compensation] shortfall [to payphone service providers] resulted from the ...fact that the PSP compensation framework as it existed prior to the Second Order on Reconsideration left PSPs in the position of being dependent on switch-based resellers to identify themselves voluntarily as responsible for paying dial around compensation...."³ Yet, WorldCom and Sprint consistently maintained that the Commission did not condition the payment obligations of switch-based resellers on their having notified PSPs or the first switch interexchange carrier ("FS-IXC") of their willingness to incur payment or

¹ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Second Order on Reconsideration (*Second Reconsideration Order*) 16 FCC Rcd 8098 (2001).

² Sprint Corp. v. FCC, 315 F.3d 369 (D.C. Cir. 2003) (*Sprint*) at 13.

³ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, RBOC/GTE/SNET Payphone Coalition Petition for Clarification (*FNPRM*), CC Docket No. 96-128, NSD File No. L-9-34, &13.

tracking responsibility.⁴ As will be elaborated below, unartful language by the Commission staff and willful misinterpretations by PSPs and SBRs of this language were among the primary causes of the failures of the former compensation regime, a problem that should have been remedied by the Commission reasserting the original meaning of the *First Reconsideration Order*⁵. Had the Commission enforced the clear requirements elaborated in its *First Reconsideration Order*, as requested by MCI, many, although not all, of the confusion and disputes would have been eliminated.⁶

The Commission also states that while parties challenged its remedy, no one challenged its conclusion that its previous orders did not ensure that PSPs received compensation for each and every coinless payphone call. The FNPRM goes on to draw the conclusion from this statement that it would not be appropriate to return to the previous system.⁷ The Commission's statement that it will not return to the previous *system*, suggests that it has prejudged the issue of whether first switch-based IXCs will be responsible for the payphone compensation of their switch-based reseller customers. While MCI agrees that it would not be appropriate to return to

⁴ Comments of MCI WorldCom, at 2, May 17, 1999; ("The Commission did not condition the payment obligations of switch-based resellers on their willingness to track calls, or on their having notified the underlying wholesaler of their willingness to track calls.") Comments of Sprint, at 2, May 17, 1999 ("...it is the possession of switching capability that constitutes the dividing line between carriers that are responsible for tracking calls and compensating PSPS, and those that are not required to do so.") Reconsideration Comments of WorldCom October 9, 2001, ("Under the former rules...a reseller with a switch...would be responsible for payphone compensation").

⁵ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Order on Reconsideration, (*First Reconsideration Order*), CC Docket No. 96-128, 11 FCC Rcd 21233 (1996).

⁶ Ex Parte Letter from Karen Johnson to Magalie Roman Salas, CC Docket No. 96-128, May 5, 2000.

⁷ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Further Notice of Proposed Rulemaking, (*FNPRM*), CC Docket No. 96-128, NSD File No. L-99-34, rel. May 28, 2003 & 13.

the previous system as it came to be understood and implemented, there are a number of remedies that will ensure PSPs fair compensation short of saddling FS-IXCs with another party's payphone compensation liability.

In these comments, MCI will offer new evidence and discussion regarding the causes of compensation problems in the first payphone compensation regime, hereinafter referred to as "original rules," and its experience with problems in the Commission's second payphone compensation regime, hereinafter referred to as "existing rules or current rules." MCI will draw from these discussions to offer new policies for payphone compensation which will result in a more equitable and efficient realization of the Congressional requirement to "establish a per-call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed ... call using their payphone...."⁸ MCI urges the Commission to openly and honestly consider the discussion, evidence, and options presented by all parties commenting on this *FNPRM*.

II. CORRECTING THE "CARRIER PAYS" SYSTEM REQUIRES PROPER IDENTIFICATION OF THE REASONS PSPS WERE NOT FAIRLY COMPENSATED UNDER THE ORIGINAL RULES

A. The Unwillingness And/Or Inability Of Many SBRs To Compensate PSPs Was The Initial Cause Of PSP Undercompensation

In both the *Second Reconsideration Order* and now in this *FNPRM*, the Commission identified the practice of FS-IXCs and SBRs independently determining that they were not responsible for compensating PSPs as a primary reason PSPs were not being fully compensated.

⁹ The Commission believes that it had created a system where compensation responsibility was

⁸ U.S.C. 47 § 276(B)(1)(A).

⁹ *Second Reconsideration Order*, & 14, *FNPRM*, &13.

unclear. But this conclusion is revisionist history. The responsibility of every reseller who maintained a switch to compensate PSPs was initially very clear.

In its *First Payphone Order*, the Commission concluded that the “primary economic beneficiary of payphone calls should compensate the PSPs.”¹⁰ On reconsideration, the Commission clarified that, in the case of calls that an FS-IXC hands off to an SBR, it is the SBR who is the primary economic beneficiary of the call.¹¹ Accordingly, the Commission stated that:

If a carrier does not maintain its own switching capability, then, as set forth in the Report and Order and consistent with our clarification here, the underlying carrier remains obligated to pay compensation to the PSP in lieu of its customer that does not maintain a switching capability.¹²

In other words, the Commission determined that whether or not the IXC was required to pay compensation to a PSP for a call handed off to a reseller depended exclusively on whether the reseller maintained its own switching capability. Thus, the *First Reconsideration Order*, unconditionally, and very clearly, made resellers who maintained a switching capability responsible for compensating PSPs. These switch-based resellers were required to proactively seek out PSPs and compensate them according to the compensation procedures established in the access code call compensation proceeding, just as FS-IXCs were required to do.¹³

Unfortunately, many SBRs did not comply with these requirements, and because PSPs did not know the identity of the SBRs associated with any FS-IXC, they were unable to

¹⁰ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Report and Order, (*First Payphone Order*) CC Docket No. 96-128, 11 FCC Rcd 20541 (1996), ¶¶ 83, 97.

¹¹ *First Reconsideration Order*, ¶ 92.

¹² *Id.*

¹³ *First Payphone Order*, ¶ 110.

determine the source or magnitude of the shortfall. As will be discussed below when describing MCI's experience with the current rules, now that MCI has requested call completion data from its SBRs, it is evident that many SBRs never invested in the facilities, nor did they develop procedures, to accurately match payphone identifiers (either from ANI lists, or coding digits or both) with switch records and then transfer them into formats that could be used to meet their payphone compensation responsibilities. Only 12% of MCI's SBRs consistently provide call completion data in a usable format and in sufficient time to incorporate with billing and other compensation data. The Commission probably did not fully understand the expense associated with developing payphone compensation tracking systems. MCI spent tens of millions of dollars establishing its system. Smaller SBRs undoubtedly felt they could not justify similar expense, and therefore avoided compensating PSPs altogether.

One wonders though, why did PSPs never ask the Commission to request SBRs to turn over the verification of their tracking functions which the First Payphone Order required them to perform? Had the Commission made these requests, delinquent SBRs would either have developed tracking capabilities and would have been in a position to compensate PSPs, or some other compensation methodology would have been developed for SBRs who found it too expensive to develop tracking capabilities.

B. The Per-Call Waiver Order Supported SBRs Intent On Avoiding Compensation Responsibility

Consequently, in 1998, the Common Carrier Bureau addressed the obligation of an IXC to assist PSPs in their efforts to collect compensation from SBRs.¹⁴ Specifically, the Bureau

¹⁴ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Memorandum Opinion. & Order, 13 FCC Rcd 10893 (1998) (*Per-Call Waiver Order*), ¶ 38. Note -- *MCI Comments June 23, 2003*

responded to a request by APCC that it clarify an IXC's obligation "to disclose information about switch-based resellers who provide 800 number service resold from the first switch IXC so that PSPs can identify who they should bill for payphone compensation."¹⁵ The Bureau first noted that "[a]s clarified in the *Order on Reconsideration*, switch-based resellers are responsible for paying per-call compensation."¹⁶ The Bureau then stated that

When switch-based IXCs providing 800 service have determined that they are not required to pay compensation on particular 800 number calls because their switch-based resale customers have identified themselves as responsible for paying the compensation, the switch-based carriers must cooperate with PSPs seeking to bill for resold services. Thus a switch-based carrier must indicate, on request by the billing PSP, whether it is paying per-call compensation for a particular 800 number. If it is not, then it must identify the switch-based reseller responsible for paying payphone compensation for that particular number.¹⁷

Although, it is beyond dispute that the *Per-Call Waiver Order* had nothing to do with who was responsible to pay compensation; as the Bureau itself explicitly stated, that question continued to be governed by the unequivocal switch-based rule set forth in the *First Reconsideration Order*; this passage gave the impression that the first switch IXC was responsible for payphone compensation unless the SBR identified itself as being responsible. Consequently, some SBRs intent on avoiding payment to PSPs, would simply tell PSPs they

the drafters of the *Second Reconsideration Order* incorrectly refer to the *Per-Call Waiver Order* as the Coding Digit Waiver Order. See fn 3 of the *Per-Call Waiver Order* which identifies the Coding Digit Waiver Order as having been released on March 3, 1998. This *FNPRM* makes the same mistake.

¹⁵ *Id.* (emphasis added).

¹⁶ *Id.*

¹⁷ *Id.*

were not responsible for compensation since they had not identified themselves to their first switch IXC.

PSPs began to sing the same tune, for they preferred to have the FS-IXC to be the default party liable for payphone compensation. Using this confusing passage as the basis of their claim, Bell Atlantic's Payphone Group filed complaints against MCI and Frontier to compensate it for calls they handed off to their SBRs. Bell Atlantic argued that this passage in the *Per-Call Waiver Order* meant the first switch IXC was relieved of compensation responsibility only if a reseller identified itself to the PSP.¹⁸ The Commission rejected this interpretation and reiterated that if a FS-IXC transfers a call to an SBR, its only payphone compensation responsibility with regard to that SBR is to identify the reseller.¹⁹

The ability of this unartful language from the *Per-call Waiver Order* to undermine the clarity of responsibilities established in the *First Reconsideration Order* should not be underestimated. Adopting a variation of the unclear language incorporated into the Frontier Decision, Verizon filed another enforcement action against MCI, claiming that the *Per-Call Waiver Order* required the first facilities carrier to compensate the PSP unless the reseller identified itself to the FS-IXC as being responsible for compensation.²⁰ Once again the Commission had to clarify that once an FS-IXC hands calls off to an SBR, the FS-IXC's only

¹⁸ Bell Atlantic-Delaware-New Jersey, Inc. et. al. v Frontier Communications Services, Memorandum Opinion and Order, 16 FCC Rcd 8112 (2001) (*Frontier Decision*), &10.

¹⁹ *Id.*, &15.

²⁰ Bell Atlantic-Delaware, Inc., et. al., Complainants, v. MCI Telecommunications Corp., File No. E-98-49, Memorandum Opinion and Order, rel. August 14, 2002, &8.

responsibility is to identify the FBR to the PSP.²¹ The confusion continues still. The Commission seems to have repeated this confusion in its recent *Flying J Decision*,²² and in the instant *FNPRM*.²³ Much of the confusion about payphone compensation responsibilities could have been avoided if the Commission had more accurately drafted the language specifying FS-IXC's identification responsibilities in the *Per-Call Waiver Order*, and then enforced those requirements.

C. Contract Confusion Contributed To PSP Undercompensation

There were other reasons compensation responsibilities were unclear though and expected PSP compensation did not materialize. Many resellers purchased both originating-only service and originating/terminating service from the FS-IXC. Many MCI resellers purchased both products. Subscriber 800 number calls associated with the first product, originating-only service, would terminate on a reseller's switch or platform, would be reoriginated and then terminated by that reseller or another IXC. MCI treated payphone calls to these numbers as calls to SBRs, did not surcharge them, and expected the reseller to compensate PSPs for calls to these toll free numbers. In contrast, calls associated with the second product, originating/terminating service, would terminate on MCI's network. MCI treated payphone calls to these numbers as calls to switchless resellers, surcharged for them, and compensated PSPs for completed payphone calls to these numbers. Many of our resellers who purchased both products viewed

²¹ *Id.*, &10.

²² *Flying J, Inc., and TON Services, Inc., Petition for Expedited Declaratory Ruling Regarding a Primary Jurisdiction Referral From the United States District Court for the District of Utah, Northern Division, CCB/CPD No. 00-04, Memorandum Opinion and Order, rel. May 9, 2003, &9.*

²³ *FNPRM*, &13.

themselves as switchless resellers when approached by PSPs for compensation (usually after we identified them as an SBR). Whenever this occurred, we showed PSPs the toll free numbers for which we did surcharge and those for which we did not, so the PSP could pursue collections from those toll free numbers for which we did not surcharge, and which were therefore numbers associated with originating-only (SBR) service. MCI eventually separated the billing for each type of service into fully separate accounts and improved contract language to make clear that one account was for a switch-based service and the other account was for a pure reseller service.

D. Insufficient Reporting Information Also Contributed To PSP Compensation Shortfall

The *Per-Call Waiver Order* clarified that FS-IXCs were required to identify the SBR responsible for paying payphone compensation associated with a particular 800 number provided to them by a PSP.²⁴ MCI complied with the requirement as it was stated in the Order. It would wait until a PSP requested information about a reseller associated with specific toll-free numbers and then provide the identity of that reseller. In retrospect, this was an inefficient method of supplying information to PSPs under conditions where many SBRs were avoiding compensation responsibility. Piecemeal information about SBR identities of the sort required by the Commission would have been appropriate if only several SBRs were not compensating PSPs. A more appropriate policy response when undercompensation was more widespread, would have required underlying carriers to supply PSPs the identities and toll free numbers associated with all of their SBR customers.

²⁴ *Per Call Waiver Order*, &38.

PSPs with smart phones would know the toll-free numbers called from their phones, the first carrier to whom calls made to those numbers were routed, and the total volume of calls routed to that first switch IXC. PSPs would also know the number of calls associated with compensation payments received from any SBR. This amount of information was insufficient to help a PSP determine whether an SBR payment was reasonable. For example, suppose the average completion rate for the industry is 70%. And suppose a PSP sent 100 calls to FS-IXC “A” and FS-IXC “A” routed 50 calls to SBR “B.” And suppose FS-IXC “A” compensated 35 calls and SBR “B” paid on 10 calls. The PSP sees an average completion of 60%, but since it doesn’t know how many calls were routed to SBR B it doesn’t know whether “A” or “B” is falling below the average completion rate for the industry. In this regard, the original rules did not contain sufficient FS-IXC reporting requirements.

E. Failure Of SBRs To Receive Originating ANI Played No Role In SBR Undercompensation of PSPs

Aside from contending that the voluntary identification problem was responsible for shortfalls in compensation, the Commission also identified the failure of FS-IXCs to pass originating automatic number identification (ANI) to SBRs as an important reason why SBRs were unable to track payphone-identified calls to completion, and therefore the reason the Commission shifted payphone compensation liability to the FS-IXC.²⁵ This assertion was never substantiated. In fact, the RBOC Payphone Coalition, who first raised this charge simply stated that it *could* happen if the FS-IXC failed to order Flex ANI.²⁶ It offered no evidence that a single

²⁵ *Second Reconsideration Order*, &16, *FNPRM*, &25.

²⁶ Reply Comments of the RBOC/GTE Payphone Coalition on its Petition for Clarification, CC Docket No. 96-128, File No. NSD-L-99-34, June 1, 1999, at 9.

FS-IXC had failed to do so. MCI has done so, as has every other FS-IXC, as they have all been paying per-call compensation. APCC made a similar, unsubstantiated, presumption. It argued that in order for an SBR to be able to receive payphone coding digits from the underlying carrier, it would need to connect via a primary rate ISDN trunk.²⁷ Yet APCC offered no evidence that a single SBR had connected to an underlying carrier via a connection that failed to pass payphone coding digits. On Reply, MCI documented that it tested its connections to its SBRs and confirmed that those connections passed payphone coding digits.²⁸ On the basis of two completely unsubstantiated suppositions that coding digits might not be passed to SBRs, the Commission concluded that SBRs were less able to track their own payphone calls than FS-IXCs were able to track those very same calls. The Commission therefore relied on completely unsubstantiated and speculative claims as one of the major justifications of its decision to make underlying carriers liable for the payphone compensation obligations of their SBRs. However, the Commission may not rely on this reason as a justification for making underlying carriers liable for the payphone compensation obligations of their SBRs in this *FNPRM*.

III. THE CARRIER WITH THE SWITCH THAT RECEIVES ANSWER SUPERVISION FROM THE CALLED PARTY IS THE ONLY CARRIER WITH THE ABILITY TO TRACK PAYPHONE CALLS

A. Underlying Carriers Do Not Have The Ability To Automatically Determine Whether Payphone Calls Passed To SBRs Are Completed

The record also shows that FS-IXCs do not have the ability to automatically determine whether payphone calls passed to SBRs are completed. CommuniGroup asserted that it must be

²⁷ APCC Comments on the RBOC/GTE Payphone Coalition Petition for Clarification, CC Docket No. 96-128, File No. NSD-L-99-34, May 17, 1999, at 6.

²⁸ MCI Reply Comments on the RBOC/GTE Payphone Coalition Petition for Clarification, CC Docket No. 96-128, File No. NSD-L-99-34, June 1, 1999, at 6.

the case that underlying carriers receive answer supervision messages from the called party, even when the call is re-originated at the SBR platform, because the underlying carrier applies usage-based charges for transmission services provided to the SBR while the call is in process, and terminates usage-based charges when the call is completed.²⁹ As MCI explained in its Reply comments though, underlying carriers receive answer supervision messages from the SBR platform, bill on the basis of messages from this platform, but do not receive answer supervision messages signaling call completion from the called party.³⁰ It is possible for numerous calls to be placed from a platform, some of which would be completed and some of which would be incomplete, but as long as the caller was “on the platform,” it would appear to the underlying carrier as a single session and the SBR would be billed for those minutes. As MCI explained though, it would not even be known to the underlying carrier whether a session involved one compensable payphone call if the time was spent solely replenishing the value of the caller’s prepaid card.³¹

B. The Commission Should Not Require Additional Switch Modifications For Payphone Compensation Purposes

The Commission has already required LECs to upgrade their switches in order to make a carrier pays system possible. It originally expected LECs would accomplish this task in one year. Five years later ten percent of payphones still do not transmit coding digits. The Commission should not embark on a course requiring another major switch modification in order

²⁹ Opposition of CommuniGroup of K.C., Inc., et. al, CC Docket No. 96-128, October 9, 2001, at 7-9.

³⁰ Reply Comments of WorldCom, Inc, Petitions for Declaratory Ruling and/or Clarification of the Payphone Compensation Second Order on Reconsideration, CC Docket No. 96-128, NSD File No. L-99-34, October 9, 2001, at 4.

³¹ The Commission is remiss in not identifying MCI’s rebuttal in the *FNPRM*.

to justify transferring compensation liability to FS-IXCs. Assuming it were even possible, new switch standards would need to be developed so switch manufacturers could build to a common standard. Then all switches would need to be modified. The process could take years and would be inordinately expensive. It would be less expensive for SBRs and more likely to be implemented, if the Commission were to enforce its requirement for SBRs to develop processes to track and report completed payphone traffic, something they were supposed to have accomplished by the beginning of 1998.

It is therefore indisputable that the carrier who maintains and controls the switch that receives answer supervision from the called party is best able to track completed payphone calls. Of course, it is essential for SBRs to invest the time and resources to be able to accurately track completed payphone calls. Many smaller SBRs have simply failed to implement this long-standing requirement. When SBRs have failed to take the steps necessary to be able to quickly and accurately supply call completion data, simply shifting the SBR compensation liability to the FS-IXC will not improve tracking or compensation, for as will be explained in the section below discussing MCI's experience with the Commission's *Second Reconsideration Rules*, FS-IXCs do not have the market or contractual power to require their SBR customers to implement improved tracking capabilities.

C. It Is More Efficient For the Carrier Who Controls The Switch That Receives Answer Supervision From The Called Party To Compensate And Report To PSPs

The Commission's current rules established a very inefficient reporting regime. Under these rules, FS-IXCs must expend resources tracking and compiling payphone calls that complete on their own networks. Each SBR is also required to expend resources tracking and compiling payphone calls that complete on their networks. Then the underlying carrier must

obtain the data from each SBR and aggregate this data with its own call completion data. This adds an extra data processing step for each SBR, which adds unnecessary cost. These costs are not incidental. Moreover, PSPs would have access to more detailed information if they were to receive the call completion data directly from each SBR with direct SBR compensation, rather than having it combined with the call completion data of the underlying carrier as the current rules allow.

IV. THE CURRENT RULES HAVE NOT ESTABLISHED A STABLE PAYPHONE COMPENSATION SYSTEM

A. Introduction

The Commission's justification for shifting the payphone compensation liability of SBRs to their underlying carriers rested on four assumptions: 1) the previous rules were unclear whether FS-IXCs or SBRs were responsible for SBR compensation; 2) underlying carriers often did not transmit payphone coding digits to SBRs to enable them to track completed payphone calls, 3) insufficient information about SBR identity and the volume of calls sent to SBRs made it impossible for PSPs to locate SBRs and then evaluate the legitimacy of SBR payments, and 4) FS-IXCs could leverage the power of their contractual relation to obtain accurate and timely call completion data from their SBRs, which would mitigate their inability to receive automatic answer supervision messages from the SBR called parties.

Previous sections showed that: 1) the Commission could have easily clarified payment responsibilities among SBRs and IXCs by reaffirming the language in its *First Reconsideration Order* and disavowing the confusing language in its *Per-Call Waiver Order*; 2) there was no substance to claims that FS-IXCs were responsible in any way for SBRs inability to track completed payphone calls, and that simply enforcing its rule requiring carriers, including SBRs,

to undergo have a third party verify the accuracy of their payphone compensation tracking systems, would have identified the true source of SBR technical problems as their failure to implement accurate payphone tracking systems; 3) the original requirement for IXC's to identify SBRs was of almost no help to PSPs, but that detailed reporting on SBR identity, and calls sent to SBRs, coupled with enforcement of the requirement to obtain an independent verification of one's payphone compensation system, would have solved the compensation shortfall without having to shift SBR payment liability to FS-IXCs. This section will show that most SBRs do not have payphone compensation systems in place to accurately track and report completed payphone calls in a timely fashion, and that FS-IXCs do not have the market power to require them to develop these systems.

B. The *Second Reconsideration Order* Relied On An Erroneous Theory Of Contracting Leverage To Paper Over Lacunae in the New Rules

The record in this proceeding prior to the *Sprint* remand indisputably demonstrated that FS-IXCs did not automatically receive answer supervision messages from the called parties once a call routed to an SBR was re-originated from the SBR platform. The record also suggested that many SBRs did not have procedures in place to make timely and accurate call completion data available to PSPs. FS-IXCs argued that if they were made responsible for SBR payphone compensation, they too would not receive accurate call completion data, or perhaps not receive any data from many SBRs. They predicted the result would be a continuation of former disputes between PSPs and SBRs, only with the FS-IXC now potentially liable for the SBR's payment. FS-IXCs were especially in a quandary over how to compensate on behalf of an SBR when the SBR failed to provide them any call completion data. Something needed to be paid, but when an SBR failed to provide timely accurate call completion data, there would be no basis for making a reasoned payment.

The prospect of potentially large unfunded liabilities to PSPs prompted FS-IXCs to manage this liability risk. MCI implemented a policy of surcharging SBRs on the basis of answer supervision information received from the SBR's platform, in effect surcharging an SBR for all calls sent to its platform.³² AT&T asked the Commission to clarify that if an SBR failed to provide accurate and timely call completion data, the FS-IXC may use the only information at its disposal, the answer supervision it receives from the SBR platform, to compensate PSPs.³³

³² Comments Of WorldCom, Inc., Petitions For Declaratory Ruling And/Or Clarification Of The Payphone Compensation Second Order On Reconsideration, October 9, 2001 at 4.

³³ AT&T Reply to Petitions for Declaratory Ruling, Reconsideration, and/or Clarification, CC Docket No. 96-128, NSD File No. L-99-34, October 22, 2001, at 4

The Commission rejected MCI's proposal,³⁴ but appeared to misunderstand AT&T's proposal and did not directly respond to it.³⁵ The Commission refused to recognize any problems with SBR provision of call completion data, saying that automatic call tracking was not needed in order to accurately compensate PSPs for traffic routed to SBRs. FS-IXCs, it said, would be able to use their contractual relation with SBRs to arrange for SBRs to provide them call completion data.³⁶ The Commission later elaborated on this theory of contractual relations in its brief in response to Sprint and MCI's Petition for Review of the Second and Third Reconsideration Orders.³⁷

The Commission argued not only that FS-IXCs' contractual and business relation with SBRs gave them access to information about calls sent to SBRs and current contact information not available to PSPs, but also gave them leverage that would enable them to require SBRs to do all the things the Commission's initial rules required, such as providing accurate, timely, call completion data, and having third parties verify the accuracy of their tracking procedures.³⁸ The source of this leverage power over SBRs was FS-IXCs provision of an essential, bottleneck, input to SBRs, *viz.* wholesale long distance transmission service. For example the Commission stated:

³⁴ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Report and Order, Third Order on Reconsideration and Order on Clarification, (*Third Reconsideration Order*) CC Docket No. 96-128, 16 FCC Rcd 20922, &7.

³⁵ *Third Reconsideration Order*, &8

³⁶ *Second Reconsideration Order*, &16. *Third Reconsideration Order*, &10.

³⁷ Brief for Respondents, Sprint Corporation, et. al., v. Federal Communications Commission, ("Respondent Brief") Case No. 01-1266, December 5, 2002.

³⁸ Respondent Brief at 27, 30.

“...because the IXC provides the input central to the SBR’s entire business, the IXC holds considerable leverage over the SBR....

that same leverage enables the IXC to obtain reimbursement from the SBR...

...It makes no difference that the IXC itself cannot directly track an SBR call, because the IXC can require the SBR to provide the requisite data (in the requisite format) as a condition of service contained in the resale contract...

IXCs can insist as a condition of service that SBRs provide not only complete data but also any necessary indicators of its reliability...

IXC [can] suspend service if the SBR fails to comply with its contractual obligation to provide the data, thereby depriving the SBR of an input necessary to its business.”³⁹

C. FS-IXCs Do Not Own Or Control A Bottleneck Input

MCI concedes that the contractual, business relation between FS-IXCs and SBRs, gives FS-IXCs access to some information that is unavailable to PSPs. This includes the identity of the SBRs, current contact information, knowledge of the toll-free numbers leased by SBRs, and knowledge of traffic routed to each of these toll free numbers. PSPs would need this information in order to collect their compensation from SBRs, and evaluate the accuracy of SBR compensation payments. But a business relationship does not necessarily confer bottleneck control of an essential input as the Commission presumes. While long distance transmission service is an essential input to the SBR’s business, no FS-IXC has bottleneck control. Bottleneck control, where a provider controls not just an essential input, but is the sole provider of this input, does confer the power to dictate and enforce contract terms.

The wholesale long distance market is comprised of the market for wholesale switched services and non-switched, dedicated services. There are many of providers, ranging from large

³⁹ *Id.*, at 27-31.

established carriers such as MCI, AT&T, and Sprint, mid-sized carriers such as Qwest, Verizon, IDT, VarTec, and Williams, and smaller, newer entrants such as Grande Communications, a utility company providing wholesale long distance service in Texas, and IP-based wholesale long distance service providers such as ITXC.⁴⁰ Resellers have the choice of many carriers and may easily switch among them.

Larger carriers are coming under increasing competitive pressure. Wholesale, switched services are expected to decline on average about 2.5% per year over the next 4 years, and wholesale private line services are expected to increase around 6% per year over the next 4 years.⁴¹ Thus, while industry revenues are modestly increasing, this is not the case for the larger carriers. They are facing increasing competition from smaller carriers. Atlantic-ACM estimates that wholesale, switched revenues for the largest carriers will decline by 5.2% per year and non-switched wholesale revenues will increase by only 4.9%, resulting in a zero growth in revenues. In contrast, the smallest carriers, those with revenues between \$0 and \$100 million per year are estimated to see increases in switched wholesale revenues of 2.3% per year and non-switched of 21% per year.⁴² The Commission's recent Statistics of the Long Distance Telecommunications Industry Report confirms the increased number of firms, increasing competition, and increasing market share of smaller firms in wholesale long distance markets. The Commission reports that the HHI index, a measure of industry concentration, declined for wholesale switched services

⁴⁰ Grande Rounds Up Fiber On Trial To Tier-1 Markets , Telephony, March 17, 2003; Cisco Adds IP Multiservice Products, Network World, December 9, 2002.

⁴¹ U.S. Long Distance Market, Sizing and Share Analysis, 2002-2007, Atlantic-ACM, 2002, pp. 177, 184.

⁴² *Id.*, pp 178-182, 184-195.

from 1218 in 2000 to 1015 in 2001, and the index for wholesale non-switched services declined from 3469 in 2000 to 2403 in 2001.⁴³

One consequence of this increasingly competitive market is that carriers bend over backwards to attract and retain customers. MCI's contracts are month-to-month, so an SBR would be able to easily obtain service from another carrier if MCI attempted to require an SBR to obtain an independent verification of the accuracy of its payphone tracking systems. If any party in the FS-IXC/SBR relation has bottleneck control over an essential facility, it is the SBR, who controls access to switch data. This is information the FS-IXC must have in order to comply with the Commission's new rules, but there is only one provider who controls it – the SBR. There are many mid-sized carriers and smaller, new entrants, to whom SBRs may go for service if they were to be turned away by larger wholesale providers, and who would not pose as attractive collection targets to PSPs in the event they did not provide accurate compensation on behalf of their SBR customers.⁴⁴

Another factor limiting the leveraging power of FS-IXCs is the small share of payphone compensation surcharges compared to a SBR's total long distance bill. No FS-IXC would be willing to risk losing 98% of its revenues from a customer over a dispute involving 2% of its bill, especially in the current market characterized by overcapacity. Similarly, account representatives will not screen new customers on the basis of whether they have provided

⁴³ Statistics of the Long Distance Telecommunications Industry, May 14, 2003, Table 9.

⁴⁴ The Commission has inadvertently given new entrants and smaller wholesale companies an unfair competitive advantage as a result of its decision to modify its per-phone compensation methodology in its Fourth and Fifth Reconsideration Orders. The Orders permanently fix a carrier's share of per-phone compensation according to their allocated share in 2001. Thus, larger carriers will be subsidizing the growth of smaller carriers by being saddled with a portion of their per-phone compensation payments. The subsidy places larger carriers at a substantial cost disadvantage because margins are already extremely thin without this disadvantage.

accurate and timely payphone call completion data to other FS-IXCs before establishing an account for an SBR. SBRs will therefore be able to easily switch to another wholesale provider even if they have left a previous FS-IXC who was foolish enough to terminate service for late provision of call completion data.

D. MCI Has Been Unable To Enforce The Data Provisions The Commission Expects Are Needed For A Successful Compensation Regime

The Commission has argued that FS-IXCs have the leveraging power to require SBRs to require independent verification of the accuracy and reliability of their payphone compensation systems. Under the original rules, these were tasks SBRs were legally required to perform. Yet, legal compulsion was insufficient to make them happen. Now the Commission has taken away the legal compulsion of SBRs to perform these tasks, which have been deemed essential for the operation of a payphone compensation system capable of fairly compensating PSPs for completed payphone calls, but expects the leveraging power of FS-IXCs will accomplish what legal compulsion was unable previously to accomplish. MCI's experience attempting to implement the new rules bears witness to the less than satisfactory result that has been achieved, to put it mildly.

Immediately after the Commission released its *Third Reconsideration Order*, MCI began to renegotiate its wholesale contracts in order to comply with the new requirements. MCI expected those SBRs who had been directly compensating PSPs in the past would have payphone tracking systems in place, and expected to be able to receive accurate call completion data from them. An initial problem was how to surcharge SBRs for completed payphone calls. MCI's billing systems automatically insert payphone compensation surcharges based on answer supervision data into billing records which are the basis for invoicing customers. These

surcharges are subsequently aggregated into monthly payphone compensation surcharges. Our billing systems were designed with our pure reseller customers in mind.⁴⁵ But this system would report surcharges for all calls sent to an SBR's platform, which the Commission would have disallowed in its *Third Reconsideration Order* had these surcharges been subsequently billed.

We offered our customers two choices. The first option allowed them to treat the weekly surcharge reports as information only, provided they supplied us with incomplete call data by the 20th of the month. This would allow us to manually deduct from the surcharges contained in our billing system an amount equal to incomplete payphone calls. We initially required SBRs to provide us data on incomplete calls. This data format would have allowed SBR data to be more efficiently integrated with our billing system than if we had received positive call completion data, and we also believed it would reduce fraud.⁴⁶ MCI's "leveraging power" was insufficient to implement this feature of its contracts. SBRs simply threatened to terminate service, and go elsewhere. For the reasons discussed above, we had no choice but to allow SBRs to provide call records of either completed or incomplete calls. For the same reasons, MCI was unable to require an SBR to have the accuracy of its call completion data verified.

MCI has also unable to require its SBR customers to supply call completion data by the 20th of the month, as specified in its contracts. Even though our contract states that SBRs who miss this deadline may be terminated, or will be surcharged for all calls sent to their platforms, deadlines are routinely missed. SBRs threaten they will terminate their contracts and go elsewhere if we don't allow them to submit data past our deadline. Consequently, when data is

⁴⁵ Under the original rules, SBR toll free numbers were simply flagged to report "0" payphone compensation surcharges.

supplied late, an accurate compensation amount cannot be paid. We have no choice but to pay PSPs for all calls sent to SBR platforms and then make adjustments to SBR surcharges and PSP payments in future quarters as completed call data is provided. MCI calculates that 39% of its SBR customers who claim to have accurate tracking systems in place routinely fail to provide the data on time, in a useable format, or generally fail to pass our validation procedures.

We also have been unable to force SBRs who never invested in payphone tracking mechanisms to invest in those systems. Instead, we have given them the option of being surcharged on the basis of the answer supervision messages MCI receives from their platform, i.e. surcharging them for all calls we send to them, as appeared in their billing reports. Nearly half (49%) of our SBR customers have agreed to this arrangement. Since these SBRs had the option of providing call completion data, MCI presumed that SBRs choosing this option did not have systems in place capable of accurately tracking payphone calls, and they found it more economical to be surcharged for all payphone calls sent to their platform than to invest in the systems needed to supply us with call completion data. MCI also reasoned that this practice would not run afoul of the *Third Reconsideration Order*, which we read as prohibiting only the practice of unilaterally surcharging SBRs for calls sent to their platforms, but allowing SBRs to have a choice between investing in call tracking systems and being surcharged for all payphone calls sent to their platforms.

⁴⁶ It would be more difficult to modify switch records showing incomplete calls than complete calls.

E. The New Rules Do Not Reasonably Address The Inability Of the Vast Majority of SBRs To Provide Accurate Data On a Timely Basis

MCI expects that PSPs will tell the Commission the new rules have increased the amount of payphone compensation they have received. However, the Commission should not rely on these statements to retain the current rules as they were crafted. As shown above, 88% of MCI's SBRs either do not have call tracking systems in place, or have systems in place that fail to consistently provide call accurate completion data in a timely manner. While 49% of our SBRs have agreed to be surcharged for all calls sent to their platforms rather than invest in call tracking technologies, this practice is not clearly allowed in the current rules. And as discussed above, MCI has paid PSPs for all calls sent to 39% of SBR platforms when they have submitted data late or in error, and so adjustments will be made in the future. To date, PSP's reimbursement attention has been focused on the complexities associated with calculating claims for the WorldCom and Global Crossing bankruptcies and the true-up of Interim and Intermediate Period compensation payments. Now that those events are mostly accounted for, they will scrutinize payments made under the current rules with more focused attention, and initiate an increasing number of disputes.

Under the requirements of the new rules, two scenarios can play out if an FS-IXC does not receive call completion data from its SBR customers on time to make a quarterly payment. First, it can terminate the SBR if it fails to provide data on time. Second, it may pay PSPs for all calls sent to SBRs, make adjustments as data is made available, and then absorb the costs and uncertainty of an increasing number of disputes.

1. Terminating SBRs will deny FS-IXCs cost recovery and will not serve the goal of ensuring fair compensation to PSPs

IF FS-IXCs take the Commission's advice and terminate SBRs who fail to provide call completion data on time to make a quarterly compensation payment, it would have no choice but to pay the PSP for all calls sent to SBR platforms, since it would have no reasoned basis for paying any lesser amount. The FS-IXC would not only be unable to recover the compensation payment made for the SBRs, it would lose long distance revenues associated with their accounts. The current rules allow FS-IXCs to recover the costs of administering payphone compensation, but the industry is simply too competitive for costs of this magnitude to be recovered from remaining customers. SBRs would be able to find another carrier who would not insist on it having a reliable call tracking systems in place. These SBRs would eventually gravitate to the carriers from whom PSPs would have the most difficult time collecting disputed payments.

2. Retaining SBRs will increase disputes

If SBRs fail to provide data one quarter, they might provide it late in subsequent quarters. If FS-IXCs adjust future compensation payments to reflect the actual call completion data of these tardy SBRs, they invite ongoing disputes with PSPs over this practice. The numbers of SBRs who do not have reliable compensation systems in place and the amounts of compensation associated with them are large, over 15 million dollars each year. We expect to see a substantial increase in disputes in the future. We expect that these disputes will impose significant collection costs on us, in terms of legal fees, staff time, and credits given to SBRs not accepted by PSPs. Recovering the cost of increasing disputes and settlements through surcharges, as allowed under the existing rules, will cause a growing gap between surcharges and compensation payments, and increasing SBR resistance. If SBRs obtain service from carriers who are not as

attractive collection targets as the largest FS-IXCs, disputes and the gap may not materialize, but PSP compensation will suffer. If alternate carriers do serve as attractive collection targets, the whole IXC industry will be faced with an inability to be compensated for the responsibility of administering compensation on behalf of SBRs.

V. IT WOULD BE UNREASONABLE TO MAKE FS-IXCS RESPONSIBLE FOR THE PAYPHONE COMPENSATION OF THEIR SBRs, EXCEPT UNDER LIMITED CIRCUMSTANCES

A. SBRs Who Successfully Verify They Have Reliable Payphone Compensation Systems Must Be Allowed To Directly Compensate PSPs

The current rules are unreasonable because they do not address one of the root reasons for the compensation shortfalls of the original rules, the failure of most SBRs to implement systems capable of delivering accurate and timely call completion data. The current rules merely shift the impact of this shortcoming from PSPs to FS-IXCs. The Commission's original rules required every facilities-based carrier to have an independent third party verify they had reliable payphone compensation tracking systems in place. Had this requirement (along with additional reporting by underlying carriers) been implemented, nearly all of the compensation shortfalls associated with the original rules would not have materialized. Consequently, there is no reason why an SBR whose compensation system is verified as reliable should not be allowed to directly compensate PSPs (or allow a clearinghouse to do so) within one quarter after submitting the independent report into CC Docket No. 96-128, along with their contact information, and notifying their wholesale carriers they have qualified to directly compensate PSPs.

This notification will allow the SBR's FS-IXCs to begin tracking calls routed to each toll free number leased to this SBR from each payphone ANI which will be excluded from compensation. Underlying carriers should be required to provide a report with this tracking

information to each PSP receiving a compensation payment from the qualifying SBR at the time of the next quarterly compensation payment.⁴⁷

The data reports will ensure that PSPs will be able to compare the number of calls sent to each of an SBR's toll free numbers from each of their payphones to the payments received from the SBR for each toll free number to each of the PSP's payphones. This will allow the PSP to determine whether compensation payments appear reasonable on their face, or whether they will need to request additional information.

B. FS-IXCs Must Be Allowed To Surcharge SBRs Who Have Not Been Verified To Have Compensation Systems Capable of Providing Accurate Data In A Timely Fashion

SBRs who have not been verified to be able to provide reliable data in a timely fashion should not be allowed to directly compensate PSPs. For the same reason, it would not make sense to allow them to provide call completion data to underlying carriers who would then compensate PSPs on their behalf. The Commission should therefore determine that if an SBR has not been so "qualified," it will be presumed that it has decided it is less expensive to be surcharged for all calls routed to its platform than to undertake the expense of developing and maintaining accurate payphone compensation tracking systems. This conclusion is supported by MCI's experience implementing the current rules. A substantial number (49%) of MCI's SBR customers have voluntarily agreed to be surcharged for all calls routed to them rather than provide call completion data. These are generally our smallest customers -- they account for 14% of our SBR compensation payments. Most of these customers will never find it economical to invest in payphone compensation tracking systems.

⁴⁷ Tracking information provided to PSPs would be subject to the Commission's CPNI rules.

An additional substantial number (39%) of MCI's SBR customers have chosen to provide call completion data, but do not provide accurate data on a timely basis. They are responsible for imposing significant additional, potentially unreimbursable costs on MCI. Surcharging them for all calls routed to them should also be permitted in order to encourage them to either spend the money needed to provide accurate call completion data (in which case they should be allowed to directly compensate PSPs), or determine that it is more economical to be surcharged for all calls routed to their platform than to undertake the investments needed to provide and maintain accurate call completion data.

The Commission will be ensuring a reasonable level of surcharges by giving SBRs this choice. SBRs will compare the discounted cost of the investment and compensation administration expense against the discounted cost of the difference between surcharges based on calls sent to their platforms and calls completed to called parties. Since data tracking has always been a requirement, the Commission would effectively be applying the cost savings from waiving this requirement, to offset the difference between surcharges based on calls sent to SBR platforms and calls completed to called parties. This arrangement therefore, does not overcharge SBRs and is a just and reasonable compensation mechanism.

VI. A "CALLER PAYS" SYSTEM IS THE MOST EFFICIENT MEANS TO IMPLEMENT CONGRESSIONAL PAYPHONE REQUIREMENTS

A. Any Carrier Pays System Is Fraught With Confusion And Uncertainty

In its *First Payphone Order*, the Commission rightly stated that "...fair compensation can be ensured best when the PSP can track the calls made from the payphone on a call-by-call basis and be assured efficient payment for those calls; when the market can set a fair rate for the call; and when the caller has the information necessary to make an informed choice as to whether to

make the call and incur the compensation charge.”⁴⁸ “Carrier Pays” systems, whether or not the first switch interexchange carrier (“FS-IXC”) pays on behalf of switch-based resellers (“SBRs”), do not meet these criteria as well as a “Caller Pays” system.

1. Tracking Is Expensive And Complicated In A Carrier Pays System

An accurate Carrier Pays system requires carriers to be able to track completed payphone calls. The Commission therefore required local exchange companies (LECs) to provide the capability known as Flex ANI, for calls made from payphones to generate payphone-specific coding digits.⁴⁹ The Commission expected that all payphones would generate these digits by October 7, 1997. Yet, the LECs failed to implement the software changes necessary for a Carrier Pays system to work properly by that date. Then followed three extensions⁵⁰ until the Bureau determined that Flex ANI must be implemented no later than December 31, 1998.⁵¹ Even after granting three waivers, the Commission never enforced the requirement for Flex ANI to be in place. Consequently, today, four and a half years after the deadline for the tracking ability needed for a Carrier Pays system to most efficiently work, 10 percent of payphones still do not have this ability, and fully 20 percent of MCI’s payphone compensation is paid on a per-phone basis.

⁴⁸ *First Payphone Order*, & 20.

⁴⁹ *Id.*, &98.

⁵⁰ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Order, CC Docket No. 96-128, 12 FCC Rcd 16387 (Com. Car. Bur 1997); Memorandum Opinion and Order, 13 FCC Rcd 4998 (Com. Car. Bur. 1998); Memorandum Opinion and Order, 13 FCC Rcd 11210 (Com. Car. Bur. 1998); Order, 14 FCC Rcd 836, (Com. Car. Bur. 1998).

⁵¹ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Order, CC Docket No. 96-128, 14 FCC Rcd 836, (Com. Car. Bur. 1998)

Carrier-based tracking has also been complicated by a host of other factors. When LECs modify their switches, Flex ANI software may cease functioning. Payphones that were transmitting coding digits often no longer do so. FS-IXCs would initially consider these payphones as having transmitted zero payphone calls, since they had been transmitting per-call data in previous months. Substantial matching of payphone service provider (PSP) and interexchange carrier (IXC) traffic records would be involved in the resolution of this type of problem. Even if Flex ANI had been fully and immediately implemented, tracking calls to completion would still have entailed significant effort and imposed significant costs on all carriers. LECs were required to modify all of their switches. IXCs spent tens of millions of dollars developing systems to separate payphone-encoded traffic from all of their traffic, store it, and then process it into a form capable of compensating more than 4000 PSPs for calls made from each of more than 1.6 million payphones.

Ownership changes have also complicated tracking and compensation. IXCs have built up data bases of payphone ANIs matched to specific payphone owners. When PSPs sell their payphones, ownership identities need to be updated. The development of area code splits and overlays has also complicated carrier-based tracking systems. Overlays and area code splits can cause a mismatch between the identification of a payphone ANI in the beginning of a compensation quarter compared to the end of the compensation quarter, which in turn requires complicated efforts to resolve these mismatches.

2. Information Is Poorly Conveyed To Decision Makers In A Carrier Pays System

In order for fair market rates for a payphone call to be established, it is necessary for the party paying for a call to know the price being offered for the call, so they may determine

whether the benefit of the call is greater than its price. The interaction of many suppliers offering different prices, with many purchasers, each with their own valuation of the benefit of a payphone call will eventually establish a price that expresses a fair market price.

The Commission has noted that a Carrier Pays system fails to convey price information to the paying party, the IXC's customers, since existing switches are not programmed to convey pricing information from individual payphones, and IXCs have not deployed the systems needed to accept only calls from payphones conveying acceptable price levels.⁵² Consequently, until and unless LECs modify existing switches to transmit payphone pricing information and IXCs deploy software necessary to block payphone calls by a price level specific to the individual, instantaneous, preferences of each of their customers receiving payphone calls, (a practical impossibility), a Carrier Pays system will not yield fair market rates for payphone reimbursement.

In addition a carrier pays system is unable to consistently relay information to the calling party, who is an important "cost causer." While a calling card provider is able to eventually supply information about the price of a payphone call to the calling party via surcharges, subscriber 800 customers are unable to surcharge customers who access their services from payphones. The majority of dial around callers are therefore shielded from any information about the price of the call they are making. Market rates cannot be established in these circumstances.

⁵² Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Third Report and Order and Order on Remand, (*Third Payphone Order*), Docket No. 96-128, 14 FCC Rcd 2545 (1999), &41.

B. Caller Pays Yields Fair Market Rates With Minimal Implementation Cost

The inefficiencies associated with Carrier Pays systems are only discussed above at a broad level of abstraction. Earlier, MCI discussed the inefficiencies associated with the two versions of Carrier Pays the Commission has implemented to date. Both of these discussions make clear that a Caller Pays system is administratively and economically more efficient than Carrier Pays.

In a Caller Pays system, the person who pays for a call has immediate, instantaneous, knowledge of the price of a call. The price may differ by time and location, and if the value a person places on making a call away from home at a particular moment, in a particular place, is greater than the price of making a call, the person will make a call. If payphone owners set the price of using their payphone higher than needed to earn a normal return given the public's preference of the value of making a call away from home, they will lower price to induce greater call volumes. Conversely, if they set the price below a level where, given the public's preferences, they can earn a normal return, payphone owners will increase the price. A caller pays system therefore allows a fair market rate to be established, because the price of a call is immediately available to the party paying for the call and the results of the paying party's decisions are directly and immediately conveyed to the payphone owners.

The Commission has rejected a "Caller Pays" system for several reasons. The Commission first maintained that the combination of depositing coins for the payphone unit, coupled with the use of other billing methods for the access code or subscriber 800 call, would confuse and burden transient users.⁵³ The Commission also noted that the Telephone Operator

⁵³ *First Payphone Order*, &86.

Consumer Services Improvement Act (TOCSIA) prohibited it from prescribing advance compensation for calls routed to providers of non-presubscribed operator services providers.⁵⁴

While it is true that there would be adjustment costs associated with using coins and calling cards for example, these costs are dwarfed by the costs IXCs, LECs, and PSPs have incurred implementing, administering and disputing either of the carrier pays systems the Commission has adopted. Neither does TOCSIA bar a fee for the use of the payphone as customer premise equipment (CPE). CPE is distinct from the transmission of the call. As such, a coin payment would not be an advance payment for calls routed to non-presubscribed operator services. These calls would continue to be paid for after call completion by being billed to third parties, calling cards, or the party leasing a subscriber 800 number.

MCI urges the Commission to reconsider a Caller Pays system. It would introduce certainty into the payphone compensation industry. It would eliminate disputes among PSPs and IXCs. It would eliminate the need for tracking and reporting. And it would allow for the immediate establishment of fair market rates.

VII. CONCLUSION

MCI urges the Commission to adopt the positions advocated herein.

Sincerely,

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⁵⁴ *First Payphone Order*, &85.

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Statement of Verification

I have read the foregoing and, to the best of my knowledge, information and belief, there is good ground to support it, and it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct.

Executed on June 23, 2003

Larry Fenster

Larry Fenster

Service List

I hereby certify that on June 23, 2003 a copy of these Comments was delivered to the following parties:

ECFS

Qualex International
qualexint@aol.com

L. Elizabeth Bryant

L. Elizabeth Bryant

* Hand Delivered