

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

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

COMMENTS OF AT&T CORP.

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TABLE OF CONTENTS

	Page
TABLE OF CONTENTS.....	i
INTRODUCTION AND SUMMARY.....	1
BACKGROUND.....	5
ARGUMENT.....	8
I. THE COMMISSION SHOULD ALLOW IXC _s AND SBR _s TO ENTER AGREEMENTS THAT MINIMIZE ADMINISTRATIVE COSTS AND, ABSENT SUCH AGREEMENT, REQUIRE SBR _s TO COMPENSATE AND PROVIDE CALL TRACKING INFORMATION TO PSPs.....	8
A. With the Agreement of SBRs, IXCs Should Be Permitted to Presume That Calls Delivered to Switch-Based Resellers Are Completed Calls.....	9
B. Absent Such Private Agreement, IXCs and SBRs Should Be Required to Provide PSPs With Information Necessary For the PSP to Collect Directly From the SBR.....	11
II. AT&T'S PROPOSAL IS SUPERIOR TO THE RULES ADOPTED IN THE <i>SECOND ORDER ON RECONSIDERATION</i> , WHICH ARE UNWORKABLE AND, IN ANY EVENT, UNLAWFUL.....	14
A. The <i>Second Order on Reconsideration</i> Places a Burden on IXCs That Is Impossible to Meet.....	14
B. The Rules Adopted in the <i>Second Order on Reconsideration</i> Cannot Be Reconciled With The Act Because They Ignore That the Principal Economic Beneficiary of a Payphone Call – Here the SBR – Should Pay For It.....	17
CONCLUSION.....	20

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COMMENTS OF AT&T CORP.

Pursuant to 47 C.F.R. § 1.415, AT&T Corp. (“AT&T”) submits these comments and the attached declaration of Diane Parisi (Attachment A, hereto) in response to the Commission’s *Further Notice of Proposed Rulemaking* (“*Further Notice*”).¹

INTRODUCTION AND SUMMARY

AT&T supports the Commission’s efforts to adopt regulatory procedures that would minimize administrative costs, would be fair to interexchange carriers (“IXCs”) and would ensure that payphone service providers (“PSPs”) obtain fair compensation for payphone calls completed to switch-based resellers (“SBRs”). The *Further Notice* seeks comment regarding whether the Commission should “amend [its] rules . . . to clarify which facilities-based

¹ See *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996; RBOC/GTE/SNET Payphone Coalition Petition for Clarification*, CC Docket No. 96-128, NSD File No. L-99-34, *Further Notice of Proposed Rulemaking* (rel. May 28, 2003).

carrier, either the IXC or the switch-based reseller, is responsible for tracking coinless payphone calls and compensating PSPs for those calls.” *Further Notice*, ¶ 3. The Commission also seeks comment regarding whether “the rules adopted in the *Second Order on Reconsideration* or other new rules are necessary to satisfy [47 U.S.C. § 276’s] requirement that we ensure fair per-call compensation to PSPs for completed coinless payphone calls.” *Further Notice*, ¶ 3.

Contrary to the approach adopted in the Commission’s *Second* and *Third Orders on Reconsideration*,² AT&T submits that the appropriate means for satisfying the requirements of Section 276 is not by foisting regulatory obligations that properly should be shouldered by SBRs onto IXCs, or by mandating that IXCs comply with tracking and reporting procedures that can and properly should be borne by SBRs. Unlike IXCs, SBRs have the technical ability to comply with call tracking responsibilities, and, as the Commission has explained, SBRs should be responsible for compensating PSPs for these calls because they derive the primary economic benefit from them. The Commission’s most-recent approach has proved unworkable in practice, is unfair to IXCs, and, in all events cannot be reconciled with the requirements of the Act as interpreted by the D.C. Circuit and by the Commission.

Based upon AT&T’s experiences, the proper resolution of these issues requires a flexible solution that combines private agreements supplemented with mandatory regulations for

² *In re Implementation of the Pay Telephone Reclassification & Compensation Provisions of the Telecommunications Act of 1996; RBOC/GTE/SNET Payphone Coalition Petition for Clarification; Bulletins Petition for Clarification; WorldCom, Inc. Petition for Declaratory Ruling and Petition for Reconsideration; AT&T Petition for Clarification and/or Reconsideration; Global Crossing Telecommunications, Inc. Petition for Reconsideration and Clarification*, Third Order on Reconsideration & Order on Clarification, 16 FCC Rcd. 20922 (2001) (“*Third Order on Reconsideration*”); *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996; RBOC/GTE/SNET Payphone Coalition Petition for Clarification*, Second Order on Reconsideration, 16 FCC Rcd. 8098 (2001) (“*Second Order on Reconsideration*”).

instances where voluntary efforts fail. First, the Commission should confirm the lawfulness of private agreements through which SBRs will agree to treat payphone calls delivered by IXCs to the SBRs' platforms as completed calls for which PSPs would be entitled to compensation in accordance with the Commission's regulations. Under these agreements, IXCs would act as conduits for the payment on behalf of the SBRs of the compensation due to PSPs. Such private agreements would avoid unnecessary costs associated with determining whether a coinless payphone call delivered by an IXC to an SBR's platform is completed to the ultimate called customer. Specifically, the administrative call tracking costs could be avoided in circumstances where the SBR concludes that the costs of performing this determination are not cost effective. For their part, PSPs previously endorsed such an approach as a means of ensuring adequate compensation and avoiding unnecessary costs. *See infra*. Part I.A.

Second, when such agreements cannot be reached, the Commission should require IXCs and SBRs to provide necessary call data for their respective portion of the call that would allow PSPs to identify which SBR is responsible for compensating the PSP for payphone calls delivered by an IXC. This information may be provided through a clearinghouse. The approach would permit PSPs to obtain full and fair compensation for completed calls from the appropriate SBR. These mandatory reporting requirements differ from prior regulations because they would require IXCs to provide PSPs with information that lifts the veil of anonymity from responsible SBRs and thereby directly addresses the contention that PSPs lacked the necessary information to identify the SBRs responsible for compensation. Armed with that information, PSPs will be best situated to ensure that SBRs comply with their mandatory obligations to pay PSPs for completed calls under the FCC's regulations. *See infra*. Part I.B.

Adoption of AT&T's approach would avoid the multiple practical and legal problems that have arisen as a result of the Commission's *Second* and *Third Orders on Reconsideration*. Specifically, those Orders have proved unworkable and have imposed obligations on IXCs that are impossible to satisfy and that have imposed additional layers of administrative burdens that result in costs that are entirely unnecessary. These procedures are unworkable because they require IXCs to provide call tracking and call completion information to PSPs that, as a technical matter, the IXCs simply do not have. As a result, IXCs are unfairly deputized to act as the agent of PSPs to obtain this information from SBRs, which have no regulatory obligation to comply. Not only must IXCs obtain information from SBRs (and vouch for its accuracy), they also must act as guarantors of payments to PSPs for obligations that properly should be borne by SBRs. In practice, IXCs such as AT&T have been required to bear unnecessary and costly administrative burdens and, in the end, to overcompensate PSPs to meet the requirements of the *Second Order on Reconsideration*. *See infra*. Part II.A.

Not surprisingly, the scheme adopted in the *Second Order on Reconsideration* cannot be reconciled with the Commission or the D.C. Circuit's interpretations of Section 276 of the Act. First, the Commission cannot transfer the payphone compensation or call tracking obligations of one set of carriers onto another set in furtherance of purported administrative convenience. As the Commission recently has noted, such an approach is neither fair nor lawful under governing precedent. Moreover, if PSPs are armed with information provided in the first instance by IXCs, they can readily identify the SBRs that owe them compensation and call tracking information. Any effort by SBRs to refuse to comply with their regulatory obligations may be remedied through enforcement of those obligations under the Commission's established processes. *See infra*. Part II.B.

BACKGROUND

The Commission's *Further Notice* arises from the D.C. Circuit's recent decision vacating the Commission's *Second Order on Reconsideration*. See *Sprint Corp. v. FCC*, 315 F.3d 369 (D.C. Cir. 2003). A brief discussion of (1) the Commission's regulatory scheme and (2) AT&T's experiences under that scheme, is necessary to put these issues into proper context.

1. ***The Commission's Regulatory Scheme.*** Section 276 of the Act provides, in pertinent part, that the Commission, through regulations, should "establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone." 47 U.S.C. § 276(b)(1)(A). Recognizing that "the primary economic beneficiary of a call should pay the requisite compensation to the PSP," the Commission explained in its *Order on Reconsideration*, that "a carrier is required to pay compensation and provide per-call tracking for calls originated by payphones if the carrier maintains its own switching capability, regardless if the switching equipment is owned or leased by the carrier." *Id.* ¶ 92.³

In response to complaints by PSPs, the Commission, in its *Second Order on Reconsideration*, sought to revise these rules to ensure that PSPs would obtain adequate compensation for calls completed to SBRs. The Commission noted that "PSPs have not received full compensation for calls that involve switch-based resellers," *Second Order*, ¶ 10, and believed that "the failure in the compensation regime results from insufficient information about the reseller being made available to the PSP," *id.* ¶ 15. The Commission was concerned because

³ *Implementation of the Pay Telephone Reclassification & Compensation Provisions of the Telecommunications Act of 1996*, Order on Reconsideration & Order on Clarification, 11 FCC Rcd. 21233 (1996) ("*Order on Reconsideration*").

the existing regime left SBRs “in the position of having to identify themselves voluntarily to the IXC as the party liable for paying compensation to PSPs, and that resellers have had little incentive to do so.” *Id.* The Commission also required IXCs – rather than SBRs – to compensate PSPs and “to track or arrange for tracking of all compensable calls made to its reseller customers.” *Id.* ¶ 16. In doing so, the Commission recognized that it was imposing additional regulatory obligations on IXCs, but stated only that IXCs “may recover from their reseller customers the expense of payphones per-call compensation and the cost of tracking compensable calls by negotiating terms in future contract provisions.” *Id.* ¶ 18.

Subsequently, in its *Third Order on Reconsideration*, the Commission rejected AT&T’s petition seeking clarification that the practice of “paying compensation to PSPs for all calls that complete to a SBR’s platform is consistent with the Commission’s payphone compensation requirements.” *Id.* ¶ 8. The Commission believed that adoption of such an approach would obviate “the requirement to track or arrange for tracking of coinless payphone calls.” *Id.* Even though IXCs demonstrated that it was “technically infeasible to track a call to completion once it is routed to a SBR’s platform,” the Commission insisted that IXCs could still arrange for tracking by “work[ing] with SBRs to review and reconcile call data records (CDRs) to track calls.” *Id.* ¶ 10.

2. *AT&T’s Experience With Payphone Compensation for Calls Delivered to SBRs.* Prior to the Commission’s implementation of the *Second and Third Orders on Reconsideration*, AT&T directly paid PSPs on behalf of those SBRs that had agreed to pay AT&T’s payphone use charge for every payphone-originated toll-free call that AT&T delivered to the SBR. *See* Declaration of Diane Parisi ¶ 6 (Attachment A). AT&T’s contracts with SBRs permitted AT&T to function as a conduit on behalf of SBRs. In all, about 40 percent of the

SBRs agreed to this arrangement. *Id.* ¶ 7. For these calls, AT&T tracked, reported and paid compensation directly to PSPs. *Id.* ¶ 6.

Conversely, the SBRs that did not want to pay AT&T for all payphone calls that AT&T delivered to them were responsible for compensating PSPs directly. With regard to these SBRs, AT&T was not obligated to and did not provide PSPs with any data relating to the calls that it routed to these SBRs (other than the identity of the SBRs). These SBRs remained obligated to provide PSPs with call compensation for coinless payphone calls completed by them. *Id.* ¶ 7.

The *Second* and *Third Orders on Reconsideration* changed all this. In AT&T's experience, implementation of the obligations reflected in the *Second* and *Third Orders on Reconsideration* has proven unworkable, has imposed unnecessary burdens on IXC's and SBRs, and has imposed unfair obligations on IXC's. *See Parisi Decl.* ¶¶ 9-20. The imposition of call tracking obligations on IXC's for calls delivered to SBRs remains technically infeasible and therefore IXC's such as AT&T cannot independently determine whether such a call is "completed" and subject to the compensation obligations of the Commission's *Second Order on Reconsideration*. *Parisi Decl.* ¶ 9.

IXC's such as AT&T have been required to attempt to obtain these data from SBRs and to attempt to reconcile that data with their own call detail records ("CDRs"). Accordingly, to meet their regulatory obligations, IXC's such as AT&T have attempted to persuade SBRs to provide them with the necessary data. IXC's are thus responsible to provide accurate reports derived not only from data generated by their own systems, but also from data of third parties that they do not control. Contrary to the Commission's assumptions, reconciling

these data has proved to be a laborious and burdensome process because the CDRs of IXC's and SBRs are generated by separate switching and software systems and therefore do not match against one another. Indeed, eighteen months after the Commission's obligations have gone into effect, AT&T is still negotiating with most of the SBRs with which it does business to develop a method for reconciling AT&T's data with that of the SBRs. *Id.* ¶¶ 9-20. Because AT&T generally receives no confirmation that calls sent to SBRs were not completed, AT&T has been forced to pay PSPs for all of the coinless payphone calls that it delivers to SBRs, even though a significant percentage of those calls are never completed. As a result, since late 2001, AT&T has overcompensated PSPs. *Id.* at ¶ 18.

ARGUMENT

I. THE COMMISSION SHOULD ALLOW IXCs AND SBRs TO ENTER AGREEMENTS THAT MINIMIZE ADMINISTRATIVE COSTS AND, ABSENT SUCH AGREEMENT, REQUIRE SBRs TO COMPENSATE AND PROVIDE CALL TRACKING INFORMATION TO PSPs.

The Commission should eliminate the problems that have plagued efforts to implement the *Second* and *Third Orders* by adopting an approach that eliminates unnecessary administrative burdens and expenses and ensures that PSPs have the means to obtain compensation from SBRs for payphone calls that IXCs deliver to SBRs.

First, with the agreement of an SBR, an IXC should be permitted to treat all payphone calls it delivers to that SBR's platform as completed calls for which compensation is due to the PSP. Those agreements also would provide that the IXC would act as the conduit for the payment of the SBR's obligations for all calls that are delivered to the SBR's platform. Such agreements would be attractive to SBRs that complete the overwhelming majority of these calls to the ultimate called party, or that conclude that the costs associated with determining whether

such calls have been completed outweigh the benefits of a marginal reduction in payphone compensation costs. *See infra* Part I.A.

Second, where an SBR does not voluntarily agree to such an approach, the SBR should be obligated to pay the PSPs for only completed calls. To facilitate that process, (1) IXCs should be obligated to inform the PSP – directly, or indirectly through an appropriate payphone clearinghouse – of the identity of the SBR to which the IXC has delivered calls (along with the total number of calls that have been delivered to the SBR), and (2) SBRs should be required to provide sufficient information to allow the PSP to determine the number of calls that actually were completed. Armed with this information, the PSP could collect directly from the SBRs. *See infra* Part I.B.

A. With the Agreement of SBRs, IXCs Should Be Permitted to Presume That Calls Delivered to Switch-Based Resellers Are Completed Calls.

The first part of AT&T's proposal is straightforward. With an SBR's consent, IXCs should be permitted to act as a conduit for payment of compensation to PSPs for all calls that the IXC delivers to that SBR's platform, regardless of how many of those calls ultimately were "completed" by the SBR. *See* Parisi Decl. ¶ 22. In connection with this voluntary approach, IXCs should be required to provide PSPs with the aggregate number of calls placed from each payphone to each SBR on a quarterly basis. *See id.* Such an approach would (i) ensure adequate compensation (indeed, more than adequate compensation) to PSPs, (ii) safeguard the interests of SBRs by permitting them to opt out, and (iii) allow all parties to avoid unnecessary administrative costs.

First, and most obviously, allowing IXCs to treat all calls routed to SBR platforms as completed would ensure adequate compensation for PSPs. In fact, the American Public

Communications Council (“APCC”) has supported such an approach in the past. As the APCC told the Commission after the *Second Order on Reconsideration*, “allowing carriers to treat calls completed to resellers as compensable will permit a substantially simplified compensation system, with reduced carrier costs and a more accurate count of compensable calls.” *Comments of the American Public Communications Council on Pts. for Recons./Clarification*, CC Docket No. 96-128, at 2 (filed Oct. 9, 2001).

At the same time, SBRs’ interests would be fully protected because they would have the right to opt out of this system. In other words, if an SBR – for example, one with a relatively lower call completion rate – believed that it would be more economical for it to track calls to completion, provide the required documentation, and pay for only completed calls, then that SBR would retain the right to do so. In AT&T’s experience, prior to the *Second Order on Reconsideration*, roughly 40 percent of AT&T’s SBRs chose to have AT&T pay on their behalf for all calls routed to them, while roughly 60 percent opted out. *See Parisi Decl.* ¶ 7. This experience demonstrates that SBRs are fully capable of determining whether such an approach is in their economic interest and acting accordingly. As a result, the only SBRs that would pay for uncompleted calls would be those with a business reason for doing so.

Allowing such private agreements is perfectly consistent with the Commission’s analysis of the underlying statutory scheme. As the Commission has made clear, Section 276 of the Act permits private contractual arrangements on compensation such as that proposed by AT&T. Specifically, the Commission has held that PSPs and SBRs may privately negotiate their own compensation arrangements that differ from the Commission’s rules. *See, e.g., Second Order on Reconsideration* ¶ 19 (“private contractual arrangements” trump payphone compensation rules); *id.* ¶ 2 (“encourag[ing] . . . private contractual arrangements”). There is no

reason that IXCs and SBRs should not have this same right to contract privately when their arrangement is acceptable to PSPs. Indeed, that is especially the case where, as here, the PSPs already have stated that they favor such an approach.

More specifically, there should be no barrier to a private agreement that minimizes reporting and tracking obligations by presuming that reimbursement is required for calls even without confirmation whether they have been, in fact, completed. To the contrary, in the *Third Order on Reconsideration*, the Commission expressly rejected a request that it “limit” the ability of private parties to enter into private arrangements and allow only “contractual arrangements . . . with respect to compensable calls.” *Id.* ¶ 11. The Commission explained, in the context of agreements with PSPs, that “the payphone compensation rules were not intended to nullify any current or future private contractual arrangements.” *Id.* To the contrary, the Commission has repeatedly “encouraged” IXCs and SBRs to establish such private contractual arrangements. *Id.*

B. Absent Such Private Agreement, IXCs and SBRs Should Be Required to Provide PSPs With Information Necessary For the PSP to Collect Directly From the SBR.

The second part of AT&T’s proposal addresses those SBRs that do not agree to have the IXC act as a conduit to make payments on their behalf to the PSP. For this group, IXCs should be required to provide the PSPs with the call routing information necessary to identify the relevant SBR to whom the IXC delivered the call, but the SBR – and not the IXC – should be required to provide the PSP with call completion data and compensation for all completed calls. *See Parisi Decl.* ¶ 23. This approach addresses the Commission’s concern that PSPs may lack information regarding the identity of the SBR responsible for PSP compensation. Armed with this information, the PSP can collect payments directly from the SBR and thereby ensure that the

principal economic beneficiary of the payphone call will be responsible to pay for it. Under this approach, the unnecessary middleman between the appropriate payor and payee – the IXC – would be eliminated.

AT&T's approach also would reduce administrative costs through simplified reporting requirements. For example, the *Second Order on Reconsideration* required IXCs to “send back to each [PSP] . . . a [quarterly] statement in computer readable format indicating the toll-free and access code numbers that the LEC has delivered to the carrier, and the volume of calls for each toll-free and access number each carrier has received from each of that [PSP's] payphones.” 47 C.F.R. § 64.1310(a). The streamlined information AT&T proposes IXCs and SBRs be required to provide is all that is necessary to permit PSPs to collect the money they are owed by SBRs. *See Parisi Decl.* ¶ 23.

Moreover, the Commission has repeatedly recognized that the “primary economic beneficiary of payphone calls should bear the cost of the call.” *Second Order on Reconsideration* ¶ 18. The Commission has also said that “ideally” the primary economic beneficiary, *i.e.*, the SBR in the case of payphone calls delivered to them, should make its “payments directly to the PSP” without any intermediaries. *Third Order on Reconsideration* ¶ 11. Indeed, the Commission has recognized that direct payments by SBRs for such calls reflect the most-efficient system and thus has “encourage[d] SBRs to come forward as the responsible party” and pay PSPs directly without involvement of an IXC. *Id.* ¶ 12.

In the *Second Order on Reconsideration*, however, the Commission believed it necessary to settle for something less than its “idea[l]” regulatory approach and instead foist the SBRs' payment obligations onto IXCs because of “the difficulty [PSPs had encountered] in

determining which entity is responsible for compensating the PSP” for calls delivered to SBRs. *Id.* ¶ 1. That is, according to the Commission, “the failure in the compensation regime results from insufficient information about the reseller being made available to the PSP.” *Id.* ¶ 15. That information vacuum was understandable because IXCs were under no obligation to provide information to PSPs with regard to calls for which SBRs were responsible. As a result, during this period, AT&T did not provide PSPs with tracking data for calls it routed to SBRs that were obligated to pay the PSP directly. *See Parisi Decl.* ¶ 7.

Of course, as the Commission has explained, SBRs often were invisible to PSPs and were generally not making themselves known to the PSPs whose calls they handled. *See Second Order on Reconsideration* ¶ 15. As a result, the PSPs complained that they lacked information regarding which SBRs owed them compensation, and therefore they could not require that those SBRs comply voluntarily with their regulatory obligations and could not seek to enforce those obligations in proceedings before the Commission.

AT&T’s proposal would allow PSPs to obtain compensation directly from SBRs by providing to PSPs the data that would fill the information vacuum that previously frustrated such efforts. IXCs would be required to identify the SBR to whom they route a PSP’s call, and SBRs would, in turn, be required to provide call completion data. *See Parisi Decl.* ¶ 23. In this way, PSPs would have the information necessary to “determin[e] which entity is responsible for compensating the PSP.” *Second Order on Reconsideration* ¶ 1. Moreover, this system would allow the Commission to adopt its “ideal” solution of having the PSP collect payment for completed calls directly from the SBR, the entity that derives the primary economic benefit from such calls.

With regard to enforcement of these obligations, the D.C. Circuit has made clear that “the failure to pay the required compensation is a violation of FCC rules for which the carrier is subject to damages as well as fines and penalties.” *American Pub. Comm. Council v. FCC*, 215 F.3d 51, 56 (D.C. Cir. 2000) (“*APCC*”). As a result, a PSP armed with information provided by IXC’s regarding which SBRs are responsible for providing compensation to the PSP can enforce those rights through the Commission’s established mechanisms. Or, as the D.C. Circuit has explained, “[t]he plight of the allegedly uncompensated payphone service provider does not equate to that of a merchant pursuing deadbeat customers in the marketplace”; rather, “for any harm that may be done to the PSPs, they are not left without a remedy.” *Id.*

II. AT&T’S PROPOSAL IS SUPERIOR TO THE RULES ADOPTED IN THE SECOND ORDER ON RECONSIDERATION, WHICH ARE UNWORKABLE AND, IN ANY EVENT, UNLAWFUL.

The Commission should reject the rules adopted in the *Second Order on Reconsideration*, which have proved unworkable and unfair in practice. *See infra* Part II.A. Additionally, the approach embodied by the *Second Order* is arbitrary and capricious because it shifts one party’s payment responsibilities onto another without any legally sufficient reason. *See infra* Part II.B.

A. The *Second Order on Reconsideration* Places a Burden on IXC’s That Is Impossible to Meet.

The *Second Order on Reconsideration* rests on an assumption about IXC’s ability to track calls to completion that has proven to be erroneous, for both technical and economic reasons. As a technical matter, it is impossible for AT&T to track calls after they have been delivered to the SBRs’ platforms, and thus AT&T cannot independently determine whether a call delivered to an SBR is completed to the called party. As a result, it is impossible for AT&T

independently to provide the call tracking and reporting data required by the *Second Report on Reconsideration*. Parisi Decl. ¶ 12.

Instead, AT&T must rely upon SBRs to obtain the data that AT&T is obligated to provide under the *Second Order on Reconsideration*. Because AT&T, with few exceptions, has been unable to collect adequate call completion data from SBRs to calculate remittances to PSPs, it has had no choice but to overcompensate PSPs by paying them for every call delivered to SBRs, without regard to whether those calls were actually completed. *See* Parisi Decl. ¶ 17. AT&T bears this unfair financial burden even though SBRs are the entities that derive the principal economic benefit from the completion of such calls. If, or when, AT&T actually receives the necessary call completion data from the SBRs, AT&T would have to engage in a lengthy and complicated “true up” process to recover the overpayments that it has made to PSPs (assuming such PSPs are still in business). *See id.* This complicated and expensive process would be unnecessary under AT&T’s proposal, since IXCs would no longer be required to perform the clearinghouse function the *Second Order on Reconsideration* inappropriately imposed on them.

As noted above, the fundamental problem with the *Second Order on Reconsideration*’s approach is that IXCs do not have the technical ability to track a payphone call to completion once the IXC has handed off the call to an SBR. *See* Parisi Decl. ¶ 12. Indeed, the Commission did not dispute the uncontradicted evidence on this point in the *Third Order on Reconsideration*. *Id.* ¶ 10. The Commission hoped, however, that IXCs would be able to “work with SBRs to review and reconcile call data records (CDRs) to track calls” and therefore pay PSPs for only those calls that are compensable. *Id.*

The Commission's hope has not been borne out by subsequent experience under the *Second* and *Third Orders on Reconsideration*. To the contrary, AT&T has been unable to complete call tracking agreements with most of its SBR customers. *See Parisi Decl.* ¶ 19. As explained by the attached declaration of Diane Parisi, a principal difficulty has been technical. In particular, even where AT&T receives them, the CDRs provided by SBRs – which include information such as the originating ANI, the duration of the call, the terminating phone number, and the FLEX-ANI digits – frequently do not match AT&T's information. *See id.* ¶ 10. To cite just one example, the clocks in AT&T's and the SBR's network switches often are not precisely synchronized, resulting in slight differences in the time recorded for when a call is routed from AT&T to the SBR. This time lag makes it impossible for AT&T's computers to match up the two legs of the call. *See id.* ¶ 11. AT&T encounters additional difficulties when the SBR routes a dial-around call to another SBR. The first SBR may not have call completion information, so AT&T often must seek it from the downstream carrier. Of course, additional steps in the chain compound the time lag problem that hinders AT&T's ability to reconcile competing data. *See id.* ¶ 15.

Given these myriad difficulties, AT&T has had no choice but to overcompensate PSPs for calls delivered to the majority of SBRs to comply with the mandates of the *Second Order on Reconsideration*. Because it has proven impossible (both technically and practically) to collect timely, usable call completion data from these SBRs, AT&T's practice has been to pay PSPs for *all* calls delivered to those SBR platforms, not just for compensable completed calls. *See Parisi Decl.* ¶ 18. Given the volume of calls handled by AT&T and relayed to SBRs, these overpayments are substantial and ongoing. Only if, or when, usable call completion data becomes available from SBRs, can AT&T seek laboriously to reconcile that data with AT&T's

records, determine which calls were not completed, and then seek to recover overpayments through a “true up” process. *Id.* Until that time, AT&T will continue to bear the significant risk of never recovering its overpayments. Indeed, in cases where the PSP is no longer in business, AT&T may be left without any remedy for its overpayment. *Id.* ¶ 18.

AT&T’s experience demonstrates that, contrary to the Commission’s assumption in the *Second* and *Third Orders on Reconsideration*, it has proved unworkable to place SBRs’ payment and tracking obligations on IXCs. Accordingly, the Commission should impose payment responsibility on SBRs where it has recognized it “ideally” belongs. *Third Order on Reconsideration* ¶ 11. As discussed above, the PSPs’ concerns about inadequate information can be remedied directly – by requiring IXCs and SBRs each to provide the information that is within their control, respectively.

B. The Rules Adopted in the *Second Order on Reconsideration* Cannot Be Reconciled With The Act Because They Ignore That the Principal Economic Beneficiary of a Payphone Call – Here the SBR – Should Pay for It.

In addition to proving to be factually unsupported and unworkable, the rules adopted in the *Second Order on Reconsideration* cannot be reconciled with the requirements of the Act. Prior decisions of the D.C. Circuit and the Commission make clear that the Commission cannot require one sector of the payphone industry to pay for calls when another sector receives their economic benefit, even if transferring this economic burden would, in the Commission’s view, be administratively convenient. *See Illinois Pub. Telecom. Ass’n v. FCC*, 117 F.3d 555, 565 (D.C. Cir. 1997). Additionally, the Court has held that PSPs that are unable to collect money owed them by other firms must use administrative remedies to seek payment, rather than attempt to shift the cost of non-payment onto IXCs. *See APCC*, 215 F.3d at 55-56.

The D.C. Circuit has clearly held that administrative convenience is an insufficient basis for shifting payment responsibilities under the Act. In *Illinois Pub. Telecom. Ass'n*, the Court rejected as arbitrary and capricious the Commission's interim rule, which required that only large IXCs (those with more than \$100 million in yearly revenues) compensate PSPs for coinless calls. See 117 F.3d at 565. By not requiring small IXCs to pay for calls from which they derived economic benefit, the interim rule effectively required large IXCs to pay for those calls on the small IXCs' behalf. Although the Commission sought to justify the interim rule by arguing it would be administratively simpler to require only large IXCs to compensate PSPs, the Court held that "[a]dministrative convenience cannot possibly justify an interim plan that exempts all but large IXCs from paying for the costs of services received." *Id.*

Relying upon that decision, the Commission itself has acknowledged that it would be unlawful to require one carrier to shoulder obligations that properly should be borne by another. Specifically, the Commission explained that Section 276, as construed by the D.C. Circuit, does not permit the Commission to "require one company to bear another one's expenses."⁴ In doing so, the Commission rejected efforts to "shift the burden of paying outstanding . . . per-phone compensation" from one set of carriers to another, concluding that such an approach would be "unfair and inequitable and would violate the principle in the *Illinois* case." *Fifth Order on Reconsideration* ¶ 83; see also *id.* ¶ 82 (ruling that D.C. Circuit has held that requiring one carrier to bear burdens of another "is neither equitable nor . . . lawful").

⁴ *In re Implementation of the Pay Telephone Reclassification & Compensation Provisions of the Telecommunications Act of 1996*, Fifth Order on Reconsideration & Order on Remand, 17 FCC Rcd. 21274, ¶ 82 (2002) ("*Fifth Order*") (citing *Illinois Pub. Telecomm. Ass'n v. FCC*, 117 F.3d 555 (D.C. Cir. 1997)).

The D.C. Circuit likewise has held that the appropriate course for a PSP experiencing difficulty collecting payments is to pursue remedies directly against the delinquent payor, not to impose those costs on IXCs. In *APCC*, the Court rejected PSPs' attempt to increase the price IXCs pay for coinless calls to account for the PSPs' professed inability to collect "bad debt." *See* 215 F.3d at 55-56. The key to the Court's analysis was the "nature of the debt involved." *Id.* at 56. As previously noted, the Court explained that "[t]he plight of the allegedly uncompensated payphone service provider does not equate to that of a merchant pursuing deadbeat customers in the marketplace." *Id.* This is so because "[f]ailure to pay the required compensation is a violation of FCC rules for which the carrier is subject to damages as well as fines and penalties." *Id.* (citing 47 U.S.C. §§ 206-08, 501-03). As a result, PSPs "are not left without remedy" for non-payment, and they should use those remedies rather than simply shift the collection problem to someone else. *Id.*

When judged against these principles, it is clear that the rules adopted in the *Second Order on Reconsideration* are arbitrary and capricious. The Commission repeatedly has concluded that the primary economic beneficiary for payphone calls completed by SBRs are the SBRs. Even if it were more administratively convenient for IXCs to collect call completion information and payment from SBRs than for PSPs to do so – and it is not, *see supra* Part II.A. – that would not justify making IXCs pay for and track calls for which SBRs are the principal economic beneficiaries. *See Illinois Pub. Telecom. Ass'n*, 117 F.3d at 565. Rather than shifting collection responsibilities to IXCs, the Commission should order the SBRs to make these payments and provide the necessary disclosures, and then encourage the PSPs to pursue available administrative remedies if the SBRs fail to comply. *See APCC*, 215 F.3d at 56.

CONCLUSION

For these reasons, AT&T respectfully submits that the Commission should permit voluntary agreements whereby all calls delivered to SBR platforms are treated as compensable calls and for which IXC's will act as the conduit for SBR compensation payments to PSPs. Absent such agreements, the Commission should confirm that SBRs are responsible for providing compensation and call tracking data to PSPs for calls completed on their networks, and that IXC's are responsible for providing PSPs with information that will allow PSPs to identify the SBRs that are responsible for providing such compensation and call tracking data.

Respectfully submitted,

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Counsel for AT&T Corp.

Dated: June 23, 2003

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of June, 2003, I caused true and correct copies of the forgoing Comments of AT&T Corp. to be served on all parties by mailing, postage prepaid to their addresses listed on the attached service list.

Dated: June 23, 2003
Washington, D.C.

/s/ Peter M. Andros

Peter M. Andros

SERVICE LIST

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⁵ Filed electronically via ECFS

Attachment A
Declaration of Diane Parisi

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

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

DECLARATION OF DIANE PARISI

1. My name is Diane Parisi. My business address is 55 Corporate Drive, Room 34C36, Bridgewater, NJ 08807. I am employed by AT&T Corp. as the Product Manager/Toll Free Service - AT&T Network Connection Service (“ANC”) in its Service Provider Markets segment dedicated to wholesale customers. ANC is a carrier identification code based, or CIC-based wholesale voice service provided on a carrier-to-carrier basis. My product management responsibilities include managing and overseeing the ANC Toll Free Service, including issues related to payphone compensation.

2. I have been in the Service Provider Markets toll free segment for the last 4 years. During that time, I have had ANC Toll Free Service Product Management responsibility. Before joining the Service Provider Markets segment, I spent 9 years in the AT&T retail sales channel and held various technical sales positions in Growth Markets, Middle and Global Markets.

I. PURPOSE AND SUMMARY OF DECLARATION

3. The purpose of this declaration is to describe the administrative and operational difficulties AT&T has experienced in implementing the Commission's existing rule requiring that Interexchange Carriers ("IXCs") directly compensate payphone service providers ("PSPs") for each completed toll free call from a payphone, particularly with respect to calls routed by AT&T to switched-based resellers ("SBRs") for completion.

4. This declaration also details the compensation process AT&T had in place with respect to payphone calls delivered to SBRs during the period from October 7, 1997 (when per call compensation was first applicable) until late 2001 (when the regulatory obligation to pay payphone compensation switched from the SBR to the IXC).

5. Finally, this declaration proposes a dial-around compensation method that would equitably split the call tracking, reporting, and payment responsibilities between the IXCs and the SBRs, while avoiding the situations the Commission has found can result in shortfalls in PSP compensation when payphone calls are delivered from an IXC to an SBR.

II. DIRECT COMPENSATION TO PAYPHONE SERVICE PROVIDERS BY IXCs CAN BE SIMPLE AND EASY TO ADMINISTER AND CAN ASSURE THAT PSPs ARE COMPENSATED FOR COMPLETED CALLS.

6. During the period when the Commission required that SBRs directly compensate PSPs for all completed toll-free calls made from payphones, AT&T directly paid PSPs on behalf of many of its SBRs that purchased ANC Toll Free Service, based on contractual arrangements with the SBRs. These SBRs agreed to pay AT&T's payphone use charge on every payphone-originated toll free call that AT&T delivered to

the SBR. AT&T tracked each such toll-free call to the SBR platform, provided quarterly reports and compensation through an industry clearinghouse, and billed the payphone use charges to the SBR on a monthly basis. AT&T did not function as a guarantor of payments on behalf of SBRs. Rather, AT&T's contracts with SBRs merely permitted AT&T to function as a conduit for payments on behalf of SBRs.

7. SBRs that did not wish to pay AT&T's payphone use charge for all payphone-originated toll free calls that AT&T delivered to the SBR platform could choose to compensate PSPs directly. In fact, more than sixty percent of AT&T's SBR customers of ANC Toll Free Service elected to pay PSPs directly. AT&T excluded these SBRs entirely from its payphone compensation process – AT&T neither billed payphone use charges to these customers, nor tracked, reported or paid PSP compensation on calls delivered to those customers. AT&T did provide to PSPs the names of the SBR customers that elected to comply directly with their payphone compensation obligations.

8. AT&T's process was a binary one. AT&T either tracked and paid compensation on 100 percent of the calls delivered to an SBR (and the SBR agreed to pay on 100 percent of the calls delivered to it), or AT&T tracked and paid compensation on none of the calls (and left it to the SBR to pay the PSPs directly). AT&T successfully followed this approach to payphone compensation during the time that the compensation obligations were imposed directly on SBRs.

III. THE COMMISSION'S COMPENSATION MECHANISM IS COSTLY, BURDENSOME AND VIRTUALLY IMPOSSIBLE TO IMPLEMENT.

9. Since late 2001, the obligation to track, report, and pay PSP compensation on payphone-originated toll-free calls has been entirely on IXCs, even for calls that are delivered to SBRs for completion. As a result, the IXC is now required to determine whether a call it has delivered to an SBR is actually completed by the SBR. This requirement has proven to be extremely difficult to implement, because AT&T does not know whether a call delivered to an SBR is actually completed.

10. For example, AT&T has attempted to compare its call detail records ("CDRs") to the CDRs of the reseller to determine completed calls. CDRs contain information such as the originating ANI (Flex-ANI), the duration of the call, the toll-free number, and the terminating routing number (the internal routing number assigned to AT&T's SBR). However, the SBR's CDR information often does not match AT&T's CDR information for the same phone call.

11. For example, the clocks in AT&T's and the SBR's network switches often are not synchronized – a difference of just a few seconds results in a mismatch of information for the first leg of the call – from the payphone to the SBR's 800 platform – and the SBR's CDR information on the second leg of the call – from the 800 platform to termination. Switches often are programmed differently to record call origination and call termination times. As a result, AT&T's computers would not recognize the two legs of these calls as part of the same call.

12. Furthermore, AT&T lacks the ability to track calls once they are delivered to the SBR. This is particularly problematic with respect to applications such as prepaid

cards, where a significant number of the toll free calls AT&T delivers to an SBR may not be completed by the SBR to the called party.

13. A prepaid card end user generally makes a call by dialing a toll free number to access a prepaid card platform, entering information in response to platform prompts (such as prepaid card number) to obtain authorization to place a call, and then entering the number being called. From the perspective of the prepaid card provider, the end-to-end call generally consists of three components: (1) the first leg of the call (a toll free call from the end user to the platform), (2) processing of the call within the platform, and (3) the final leg of the call (an outbound call from the platform to the called party).

14. In many cases, AT&T provides the first leg of the call (the toll free access to the platform) and delivers the call to the prepaid card platform. The prepaid card provider then processes the call, and either launches a final leg of the call (because the end user has entered all the necessary information to complete the call) or ends the call without launching the final leg (e.g., because the prepaid card number entered by the end user is depleted or invalid).¹ Even when the final leg of a call is launched, the call may not complete (e.g., the dialed number may be busy or not in service, or the call may ring with no answer). Typically, the final leg of the call (if there is one) is not carried on the AT&T network.

15. In such an arrangement, whether there is a completed end-to-end call or not, AT&T will record each toll free call that it delivers to the prepaid card platform as a completed call and will bill its customer the appropriate usage charge for that call.

AT&T's call recording system captures when that toll free call begins, and when it ends

¹ The prepaid card provider may be AT&T's SBR customer, or it may be a downstream customer of AT&T's SBR customer.

(just as it does for any other toll free call), and creates a CDR for the call. AT&T's call recording system has no way of discerning (1) that the call is only the first leg of a call or (2) whether the final leg of the call is launched and answered (i.e., whether the end-to-end call is completed). This problem is compounded when more than one SBR is involved because the first SBR, AT&T's customer, likely does not have call completion data. In these instances, AT&T must negotiate with its SBR customer to seek call completion from the downstream carrier.

16. As I understand the Commission's current payphone compensation rules, when AT&T is the first facilities-based IXC to which a compensable toll free call is delivered by the LEC, AT&T is required to:

- track (or arrange for the tracking of) each completed payphone-originated toll-free call, so that it may accurately compute the required PSP compensation;
- provide quarterly reports by toll-free number of the total number of completed toll free calls from each payphone number;
- pay the PSP compensation for each such completed call.

17. As described above, AT&T is unable to track directly the completion of a toll-free call delivered to a prepaid card platform (or similar two-leg calling platform). Even minor discrepancies between CDRs generated by AT&T's call recording system and those generated by the SBR's call recording system – such as minor differences in the time a call starts and/or ends – can result in a CDR mismatch, making it impossible for either party to work with the CDRs generated by the other.

18. The Commission's requirements that IXCs be responsible for payments to PSPs has forced AT&T to attempt to arrange for such call tracking with its SBR customers so that AT&T could accurately compute the required PSP compensation. In most cases, however, despite more than 1-1/2 years of intensive efforts, AT&T still has

neither the ability to track call completion by itself nor has it arranged with SBRs to perform such tracking. Nevertheless, AT&T has continued to report and pay compensation to PSPs on 100% of the calls it delivers to SBRs. If and when AT&T receives call completion data from an SBR, AT&T will attempt to perform a true-up adjustment as appropriate. AT&T may be unable to true-up, however, in instances where the PSP has declared bankruptcy.

19. In a few cases, AT&T has been partially successful in reaching a call tracking arrangement with its SBRs. In those instances, AT&T provides to the SBR the CDRs for the payphone-originated toll-free calls that AT&T has delivered to the SBR, and the SBR marks the CDRs for calls that were not completed and sends the marked CDRs back to AT&T. Often 50 percent or more of the delivered calls are identified as not completed.

20. AT&T then removes the CDRs of the not completed calls from the data set used to compile the payphone compensation reports and process PSP compensation. The CDRs that are not flagged by the SBR as “not completed” remain in the data set, and are reported by AT&T as part of its aggregate data. These arrangements, which have taken approximately 1-1/2 years to complete, apply only to a fraction of AT&T’s SBR customers. Even in these instances, there remain unresolved issues regarding the period before these arrangements were established. Moreover, the accuracy of the call-completion data is entirely dependent on the SBRs, but the information AT&T reports to the PSPs does not distinguish between information calculated by AT&T and information provided by SBRs.

IV. AT&T PROPOSES A LESS BURDENSOME METHOD FOR ENSURING COMPENSATION TO PSPs.

21. AT&T believes that it is possible to implement a fair, reasonable and less burdensome system under which IXCs and SBRs would share the responsibilities for tracking, reporting, and paying compensation on payphone originated-toll free calls that IXCs deliver to SBRs for completion.

22. Under AT&T's proposal, absent an agreement with an IXC, SBRs would be required to track, report and pay compensation directly to PSPs for all *completed* calls and notify IXCs accordingly. The SBR may opt out of this requirement by voluntarily agreeing to permit IXCs to pay PSPs for all calls delivered to the SBR. Under this option, the SBR must agree to pay IXCs for 100% of the calls delivered to the SBR by AT&T, and AT&T would be required to provide PSPs, on a quarterly basis, with the aggregate number of calls delivered from each payphone to each of toll-free customer (including these SBR customers) and would pay the PSPs for all delivered calls. These calls would be treated the exactly same as any other compensable payphone call carried by the IXC for retail customers, except that IXCs would have a right to recourse for bad debt in the event of non-payment by the SBR. In sum, AT&T proposes that an SBR can choose to pay PSPs directly for completed calls, as required by the Commission, or can agree to have an IXC compensate PSPs for 100% of all calls delivered to the SBR, and pay IXCs for all calls delivered to it by an IXC.

23. For those SBRs that choose to pay PSPs directly, IXCs would be required to provide special informational reports to the PSPs (directly or through an industry clearinghouse) with respect to the calls that the IXC delivers to those SBRs. The informational reports provided by the IXCs would include (a) the number of calls

delivered organized by toll-free number and payphone ANI, and (b) the name of the SBRs that do not wish to have IXCs submit compensation to PSPs on the SBRs' behalf. Under this arrangement, SBRs would be required to provide the necessary call tracking and call completion information to the PSPs. This proposal would ensure that the PSPs have the names of the SBRs who are responsible for tracking, reporting, and paying compensation on the completed calls that were delivered by the IXCs, and the number of calls delivered to each of them from each payphone. These data were not previously provided by AT&T in the past and would permit PSPs to identify, and where necessary, take action against SBRs that owe them payphone compensation.

24. AT&T's proposal combines the best aspects of the two different regulatory approaches that the Commission has applied since the inception of per call compensation, and further strengthens them by providing enhanced reporting requirements. AT&T's proposal provides tangible benefits to PSPs, SBRs and IXCs.

25. *Benefits to PSPs:* From the perspective of PSPs, AT&T's proposal provides significant benefits. Where an SBR chooses to treat all calls delivered by the IXC as completed, the PSP unquestionably benefits by receiving adequate compensation for completed calls. Moreover, where the SBR chooses to compensate PSPs directly, PSPs receive essential information (from both the IXC and SBR) that allows PSPs to ensure that the responsible SBR provides adequate compensation. Not only will the PSP know which SBRs are responsible, but they also will be able to calculate the call completion rate for each SBR by dividing the number of completed calls reported by the SBR on a given toll free number by the total delivered calls reported by the IXC. If the PSP concludes that the call completion rate seems unreasonably low, the PSP can seek an

explanation directly from the SBR. The PSPs can rely on the regulatory requirements of reporting and payment to compel compliance by the appropriate party. Under the current regulations, the IXC is required to provide accurate reports, but the accuracy of those reports is entirely dependent on information provided by a third party (e.g., the SBR/prepaid card provider). AT&T's proposal addresses that problem by ensuring that the SBR – i.e., the party with direct knowledge of whether a call has been completed – has the regulatory obligation to report that information to the PSPs.

26. *Benefits to SBRs:* From the SBRs' perspective, AT&T's proposal also offers important benefits. First, this proposal enables them to determine whether it is economically more efficient (a) to pay payphone charges to the IXC on 100% of the calls delivered to them by IXCs and thereby avoid the additional expense of tracking and reporting, or (b) to pay payphone compensation to the PSPs (directly or through an industry clearinghouse) only on *completed* calls but incur the additional expense of tracking and reporting. If the SBR agrees to treat all calls delivered by IXCs as completed, its tracking and reporting requirements will be certain and relatively simple (as per the applicable regulation), rather than varying and potentially complex (and subject to separate negotiation with each underlying IXC).

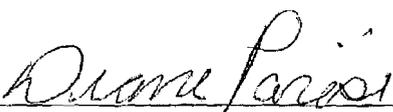
27. *Benefits to IXCs:* From the perspective of IXCs, AT&T's proposal also has significant benefits. First, where the SBR chooses to treat all calls delivered by an IXC as a completed call, AT&T's proposal reduces administrative costs, since reporting on all calls recognized by the IXC as completed – *i.e.* all calls delivered to the SBR – is relatively simple, and does not require integration and analysis of third-party data. Further, where the SBR chooses to compensate PSPs directly, the IXC would not be

responsible for the accuracy of call completion information provided by SBRs.

Moreover, the proposal removes the IXC from any dispute about the actual number of calls that are delivered to an SBR that actually were completed to the called party. Such call completion disputes instead would be handled between the two parties in interest (the PSP and the SBR). Finally, the IXC would not be made guarantor of payment for calls on which a third party (the SBR) is the primary economic beneficiary.

The foregoing statements are true to the best of my knowledge,
information and belief.

Executed on June 23, 2300

A handwritten signature in cursive script, reading "Diane Parisi", is written over a horizontal line.

Diane Parisi