

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

**REPLY COMMENTS
OF SPRINT CORPORATION**

John E. Benedict
H. Richard Juhnke
Suite 400
401 Ninth Street, NW
Washington, DC 20004
202-585-1910

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I. INTRODUCTION AND SUMMARY

Among all the comments filed in response to the Commission's Further Notice,¹ the majority agree that the Commission should not attempt to re-impose the rules that the D.C. Circuit has already once vacated. They show that the Commission's principal rationale – that the first-switch interexchange carrier ("FS-IXC") is in the best position to track switch-based reseller ("SBR") calls – was and is mistaken, and that the rules are unfair, inefficient, and bound to be reversed.

FS-IXCs explain that all their attempts to "work with" SBRs on call completion data have been frustrating and unworkable. SBRs cite the inefficiencies, disputes, and overcompensation of PSPs that the rules make unavoidable, and all of them resent

¹ FCC 03-119 (released May 28, 2003). Comments were filed on June 23, 2003.

FS-IXCs' attempts to manage what is now clearly shown to be an unworkable middleman role.

Most PSPs, understandably, like the new rules, because the Commission shifted costs of collection and SBR bad debt from PSPs to FS-IXCs and created conditions that make overcompensation inevitable. However, the only actual assessments provided by PSPs are those of the RBOC Coalition and Sprint. Sprint's payphone operations are nationally based and should be representative of the industry as a whole. Sprint's experience as a PSP under the new rules shows that the increase in payphone compensation under this regime has been only modest. This demonstrates that the Commission's underlying assumption about serious underpayment problems has been mistaken.

Taken together, the comments provide a record establishing that the rules are failing to meet Section 276's direction of providing fair compensation for coinless payphone calls.

II. THE PROPOSED RULES ARE UNLAWFUL AND BASED ON FLAWED ASSUMPTIONS.

AT&T (at 14) points out that the 2nd Recon Order² "rests on an assumption about IXCs' ability to track calls to completion that has been *proven* to be erroneous, for both technical and economic reasons." AT&T at 14 (emphasis added). No party disputes this.

² Implementation of the Pay Telephone Reclassification and Compensation Provisions for the Telecommunications Act of 1996, Second Order on Reconsideration, 16 FCC Rcd. 8098 (2001), vacated and remanded sub nom. Sprint v. FCC, 315 F.3d 369 (D.C. Cir. 2003) ("2nd Recon Order").

Even the PSPs acknowledge that FS-IXCs cannot track calls to completion when a call is handed off to an SBR. Nor do any commenting parties really dispute that it is technologically and economically infeasible to develop new systems to enable such tracking. Yet the proposed rules continue to require FS-IXCs to track calls they cannot track and report data they cannot verify. Sprint agrees with the other IXCs, and with Qwest (at 11), that they cannot be expected to guarantee the accuracy of other carriers' data.

Although APCC and the RBOC Coalition emphasize the reduction of their business costs and the convenience in pursuing a small group of carriers as a major rationale for the vacated rules, several parties point out that shifting responsibility for SBR calls to FS-IXCs violates the D.C. Circuit's direction in Illinois.³ The D.C. Circuit made clear that Commission may not lawfully "saddle[] one group of carriers with financial obligations" of another, and certainly not on grounds of "administrative convenience." Global Crossing at 10. See also AT&T at 14; Sprint at 5. That prohibition applies equally to the shifting of PSPs' costs of collection and bad debt to FS-IXCs. AT&T at 17-18. See also American Pub. Comms. Council v. FCC, 215 F.3d 51, 55-56 (D.C. Cir. 2000). In the 5th Recon Order (at ¶ 82),⁴ the Commission itself

³ Illinois Pub. Telecomms. Ass'n v. FCC, 117 F.3d 555, 565 (D.C. Cir. 1997), cert. denied, 523 U.S. 1046 (1998).

⁴ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Fifth Order on Reconsideration and Order on Remand, 17 FCC Rcd 21274 (2002) ("5th Recon Order").

acknowledged that it is neither “equitable” nor “lawful” under Section 276, to “require one company to bear another company’s expenses.” See Global Crossing at 10 n.17; AT&T at 18.

III. THE RULES IMPOSE AN UNREASONABLE BURDEN ON FS-IXCs.

Shifting the burden of SBR calls to FS-IXCs has indeed been unfair. Each of the IXCs cited serious costs and burdens associated with this flawed regime, which have a real impact on their businesses. See AT&T at 7-8 & Parisi Decl. at ¶¶ 9-20; WorldCom at 17-19; Qwest at 6-7; Sprint at 10-13; WiTel at 2-4. Beyond incurring substantial costs to attempt to develop and operate processes to comply with the 2nd and 3rd Recon Orders’⁵ requirements, these carriers together have lost – and continue to lose – millions in amounts necessarily paid out to PSPs but unrecoverable. This is hardly “fairness to both sides.” Global Crossing at 10 n.17, quoting 5th Recon Order at ¶ 82.

The Commission did not purport to base the shifting of tracking, reporting and payment obligations on an express desire to shift costs from SBRs and PSPs to FS-IXCs, but that is precisely what it has done. AT&T at 18; Sprint at 8-10, 23-25; Global Crossing at 8-9. Instead, the Commission rationalized the vacated rules on the assumption that IXCs could recover their costs from SBRs, who as the “principal economic beneficiaries” of these calls should bear their burden. As FS-IXCs point out, however, neither the vacated rules nor the notice give FS-IXCs the tools necessary to

⁵ Implementation of the Pay Telephone Reclassification and Compensation Provisions for the Telecommunications Act of 1996, Third Order on Reconsideration, 16 FCC Rcd 20922 (2001), vacated and remanded sub nom. Sprint v. FCC, 315 F.3d 369 (D.C. Cir. 2003) (“3rd Recon Order”).

recover costs. Indeed, SBRs contend that FS-IXCs' ability to recover costs should be restricted further (Telstar at 10) or prohibited altogether (IDT at 24-25).

IV. A "CONTRACT RELATIONSHIP" WITH SBRs DOES NOT ENABLE FS-IXCs TO OVERCOME THE PROBLEMS INHERENT IN THE RULES.

The comments also show that the Commission was wrong to assume that a contractual relationship between FS-IXCs and SBRs can resolve the problems that the rules inevitably would create. All of the FS-IXCs, including Qwest, explain that they simply do not have power sufficient to compel SBR cooperation and have not been able to coerce effective cooperation. See WorldCom at 17-24; Qwest at 6-9; AT&T at 7-8; Sprint at 14-16. FS-IXCs have a legal obligation to offer services for resale. SBRs can and do move traffic freely among underlying carriers. Disconnecting SBRs over nonpayment of payphone surcharges is a drastic, disruptive, expensive, and dangerous step that invites litigation, and magnified disputes. APCC (at iii) argues that PSPs are "unwilling sellers" of their services to SBRs. Yet when it comes to SBRs' payphone-originated calls, the Commission's rules make FS-IXCs both unwilling buyers and unwilling sellers.

The FS-IXCs' experience has been made worse by the Commission's failure to expressly empower FS-IXCs to require cooperation or even to surcharge based on answer supervision (or any other basis) in the event an SBR refuses to cooperate. Instead, the 3rd Recon Order was interpreted by SBRs to deny FS-IXCs the right to use answer supervision in the event no data is provided (contrary to the interpretation of FS-IXCs, see WorldCom at 24-25), to require a standardized format or deadline for data

submission, to recover any costs of administration, or even to surcharge to recover payphone compensation payments at all. Sprint at 12. Even now, Telstar suggests, “one could argue that *the IXC should pay the SBR* for fulfilling the tracking requirements that the IXC has been mandated to perform” by the 2nd Recon Order. Telstar at 6 (emphasis added). WilTel, itself both an FS-IXC and a major SBR, views the “middleman” role as unworkable. WilTel at 4.

V. EFFORTS TO SUBSTITUTE SBR CALL COMPLETION DATA HAVE PROVEN UNWORKABLE AND OVERCOMPENSATE PSPs.

The industry’s experience confirms that the Commission was mistaken when it assumed that FS-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.” AT&T at 15, quoting 3rd Recon Order at ¶ 10.

FS-IXCs all explain that the processes have worked very poorly. Qwest at 6-9; WilTel at 4; AT&T at 16-17, WorldCom at 17-19, Global Crossing at 4-6, Sprint at 10-13. All report that these processes have been costly to develop, implement, and run, and FS-IXCs have “paid many millions of dollars in *out-of-pocket* payphone compensation payments on behalf of resellers.” Qwest at 9. Qwest, like Sprint, noted that most of its SBRs find it uneconomic to provide call completion data, and therefore it is compelled to pay based on call attempts – with the result that “overpayments [to PSPs] are substantial and ongoing” (Qwest at 8) and SBRs are surcharged for noncompleted calls. Even among those SBRs with large traffic volumes, the processes have proven utterly

unworkable. AT&T at 7-8. SBRs often submit data that is faulty, too late to process, or unreliable.⁶ WorldCom reports that 88% of its SBRs are unable to provide accurate completion data in a timely manner. WorldCom at 25.

The comments show these problems are inherent in the rules, because carriers have different and incompatible data systems and cannot “match” records. The Commission’s assumption that FS-IXCs can integrate SBR data into their own has proven a false one. FS-IXCs handle literally billions of calls. AT&T at 16 & Parisi Decl. at 10-19. It is technologically and economically infeasible to re-invent carriers’ systems for the purpose of catering to the tiny fraction of calls that are payphone originated, coinless calls. AT&T at 16, WorldCom at 14-15; Sprint at 14.

All FS-IXCs report excessive costs, repeated disputes with SBRs and, as a result, serious nonpayment problems. And since most FS-IXCs currently surcharge at only 26 cents per call (vs. 24 cents paid to PSPs), nonpayment problems represent not lost revenue but unrecovered *costs*. SBRs agree that the current rules have “harmed greatly” the relationship between FS-IXCs and SBRs. IDT at 19. It is unreasonable to assume that the situation between these carriers will improve, so long as the Commission forcibly inserts the FS-IXC into the relationship between PSPs and SBRs.

⁶ Qwest cited one reseller’s data showing a 3% call completion rate. Qwest at 8 n.13. ASCENT, however, asks the Commission to order FS-IXCs to “require that first IXCs *honor* switch-based carrier call completion records and guarantee” not to bill for noncompleted calls. ASCENT at 5.

SBRs also voice frustration with these processes. IDT resents paying an additional 2 cents or more per call, even though FS-IXC experience shows that surcharges scarcely begin to cover their costs of assuming tracking, reporting, and payment obligations of SBRs.⁷ Telstar (at 10) complains about FS-IXCs' need for compliance with data processing deadlines, and the imposition of so-called "fines" (in the form of reliance on answer supervision) on those SBRs that fail to provide data or provide it too late to use. FS-IXCs' deadlines are not arbitrary; these are the same deadlines FS-IXCs apply to themselves in order to process payphone compensation on a timely basis; indeed, the data is processed together. Data processing for Sprint's entire network cannot be delayed because of an SBR's error, and re-processing late-submitted data is too expensive for either Sprint or any SBR to justify.

SBRs also object to FS-IXCs' reluctance to make offsetting adjustments in payphone compensation already processed. This has certainly generated many disputes. If the Commission insists upon re-imposing the vacated rules, to avoid further litigation by PSPs on this issue, it should confirm that FS-IXCs have the right to make adjustments to payphone compensation payments in subsequent periods in the event of overpayments or errors.

Telstar also alleges that FS-IXCs are raising surcharges on their SBRs, and claims that MCI, AT&T and Sprint have sent letters advising them of increases attributable to costs associated with payphone compensation payments under the 5th Recon Order true-

⁷ Telstar (at 6) derides even this 2 cent charge as "overbilling by IXCs in the form of handling fees." IDT (at 9) describes this same 2 cent charge as a "8% increase" and "abuse" by IXCs.

up process. Telstar at 6-7 & n.14. Telstar does not have its facts straight. Sprint cannot speak for other carriers, but for its part, Sprint has taken no steps to increase payphone surcharges on SBRs from its current 26 cents per call. However, Sprint reserves that right, and in the future Sprint could find it necessary to raise surcharges if the Commission re-imposes the vacated rules, given the significant costs generated by this system.

VI. LITIGATION AND DISPUTES REMAIN EXCESSIVE.

The RBOC Coalition claims that there has been “not a single new claim” for SBR nonpayment brought by PSPs. Sprint questions this assertion. Sprint currently faces as much PSP litigation as ever. Indeed, far from reducing litigation, PSPs seized on language in the 2nd Recon Order to expand claims even for periods long past.⁸ Sprint shares WilTel’s frustrations with the extraordinary number of “harassment” lawsuits brought by PSPs, and Sprint supports WilTel’s call for express preemption of any state-law claims associated with payphone compensation obligations. WilTel at 8-10.⁹

⁸ See Brief for Petitioners Sprint Corp., AT&T Corp., and WorldCom, Inc., Sprint Corp. v. FCC, D.C. Cir. No. 01-1266 at 49-56 (Final Brief filed June 7, 2002); Sprint’s Reply in Flying J 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 at 3-6 (filed June 26, 2003).

⁹ Sprint also supports WilTel’s request that PSPs be prohibited from “invoicing” FS-IXCs for payphone compensation (absent agreement), including claims purportedly based on carrier identification codes. WilTel at 7-9. See also Global Crossing at 6 n.11.

From the FS-IXCs' perspective, the suggestion that these rules will significantly reduce disputes with PSPs seems dubious. Instead, it concentrates those disputes on FS-IXCs who cannot track SBR calls yet are responsible for the accuracy of SBR data. That may explain why APCC asks for *expanded* reporting requirements for FS-IXCs, including CDR detail on a PSP-by-PSP and SBR-by-SBR basis. APCC at 24-25. Given the immense quantities of data involved, this would *vastly* increase the costs of payphone reporting, yet would add little real value for PSPs. Indeed, APCC had previously agreed that existing reporting requirements were excessive and could be scaled back.

At the same time, the rules have generated an entire new field of disputes between FS-IXCs and SBRs, made worse by the Commission's failure to give FS-IXCs the rights they need to manage the "middleman" role.

VII. THE RULES HAVE MADE DIRECT ARRANGEMENTS AND CLEARINGHOUSE SYSTEMS IMPOSSIBLE.

The PSPs say little about direct arrangements with SBRs, though APCC acknowledges it is unaware of any direct arrangements. The rules make direct arrangements or clearinghouse arrangements impossible, because FS-IXCs are forced to absorb business costs that should be shouldered by PSPs, and because the rules make overcompensation for SBR calls unavoidable. AT&T (at 16-17) agrees that the Commission cannot justify a policy where the acknowledged "ideal" arrangement is utterly frustrated by the rule. Clearinghouse arrangements are also made impossible, which prevents the industry from realizing their potential efficiencies for tracking of payphone calls.

Telstar, IDT, and OCMC ask the Commission to reiterate that FS-IXCs cannot prohibit direct arrangements. Telstar at 11; IDT at 38; OCMC at 10. If the Commission insists on re-imposing the vacated rules, however, it must allow FS-IXCs to require that SBRs that enter into direct arrangements do so with *all* PSPs. There are simply too many PSPs, too many payphone ANIs, and too many SBRs to require FS-IXCs to keep track of such arrangements unless the SBR has direct payment agreements with *all* PSPs. None of the parties refute this.

VIII. THE FS-IXC MUST NOT BE A GUARANTOR FOR PSPs.

WorldCom, AT&T, Global Crossing and Sprint all agree that if the Commission is to re-impose the vacated rules, it should at least remove the burden of SBR bad debt from FS-IXCs. It is unlawful to shift these obligations to FS-IXCs. See AT&T at 18; Global Crossing at 8-9; Sprint at 5. However, Communigroup (at 9-10) adds insult to this injury. It asks the Commission to order FS-IXCs to hold payphone compensation surcharge funds "in trust," issue periodic reports on the moneys held, and provide detailed accountings upon request by PSPs or SBRs. Ostensibly, this would protect PSPs from FS-IXC bankruptcy and justify Communigroup's accompanying request for a ruling that SBRs cannot be held responsible for payphone compensation under any circumstances.

This is facially unreasonable. The Commission should instead require each carrier to pay its own obligations. Existing payment clearinghouses, which most SBRs utilized under the old rules and continue to use for their own first-switch traffic, can fulfill this role.

Separately, IDT (at 6) contends that – based on language from the Bureau’s Coding Digit Waiver Order¹⁰ – that the original rules required FS-IXCs to track, report, and pay on behalf of an SBR unless it specifically accepted responsibility – in effect making FS-IXCs payment guarantors. This is a misstatement of the original payphone rules. The orders establishing the original rules do not even use the term “first switch” IXC, and a Bureau order cannot substantively modify a rule.¹¹

IX. UNDERPAYMENT PROBLEMS WITH THE OLD RULES HAVE BEEN EXAGGERATED.

Most PSPs naturally are happy with a regime that shifts their costs to FS-IXCs, makes larger carriers guarantors of payment and data of smaller ones, and assures over-compensation. The RBOC Coalition and APCC value in particular the saving of collection costs and the “practical administrative” convenience of putting all costs and obligations on a handful of FS-IXCs. RBOC Coalition at 2; APCC at Cooper Decl.

¹⁰ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Memorandum Opinion & Order, 13 FCC Rcd 10893 (1998) (“Coding Digit Waiver Order”) (subsequent history omitted).

¹¹ See Sprint’s Reply in Flying J 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 at 3-6 (filed June 26, 2003). See also Bell Atlantic-Delaware, Inc. v. MCI Telecommunications Corp., Memorandum Opinion & Order, 17 FCC Rcd 15918 (2002).

¶¶ 9-11¹² The comments, however, show that the Commission has been misled about the seriousness of the supposed non-payment problem. The PSPs and the Commission have exaggerated the magnitude of the problem.

The RBOC Coalition says that one of its PSPs reported compensation receipts rose by “13.7% for the two quarters” after the rules change. RBOC Coalition at McDowell Decl. ¶ 17. The other RBOC PSPs presumably saw even smaller changes. Sprint explained that its national payphone operations saw only a very modest increase in payphone compensation receipts.¹³ Sprint at 7. Certainly an increase of only 13.7% or less, and the even more modest results experienced by Sprint’s payphone operations, show that PSPs have seriously exaggerated the magnitude of the problem. After all, these modest increases include payment by FS-IXCs of compensation for SBRs that have filed for bankruptcy or gone out of business, as well as the overcompensation for noncompleted calls that the rules make unavoidable. Bad debt due to SBR bankruptcy or business failure in this current industry downturn is approximately 10%, and FS-IXCs report that they are compelled to report and pay compensation on most SBRs’ calls based on their own network answer supervision.

¹² The RBOC Coalition goes so far as suggest that the burden of proof is on FS-IXCs and SBRs to *prove* that the rules vacated by the court and proposed to be re-imposed by the Commission should not be adopted, so as to “justify the inevitable expense and disruption to the industry” that “any alternative arrangement” would involve. RBOC Coalition at 2. Of course, the Commission must realize that it is the agency’s obligation to justify any rule it proposes. The burden of proof is on the agency, not an aggrieved party, to demonstrate why the rule is reasonable, and a poorly thought-out, unlawfully adopted policy cannot be justified by default.

¹³ All had adjusted their assessments to remove the impact of WorldCom and Global Crossing bankruptcies.

APCC manufactures crude “estimates” (APCC at Jaeger Decl. ¶ 33) to bolster its assumption that payphone compensation from SBRs was grossly underreported by SBRs. Its two examples are unclear, highly speculative and contrary to the experience described by the RBOC Coalition and Sprint, who together account for the vast majority of the nation’s payphones. APCC’s estimates also ignore the significant overcompensation effects of eliminating bad debt and noncompleted platform calls.

APCC also provides a self-serving assessment by one of its PSPs of its payphone compensation experience. APCC at Cooper Decl. ¶ 8. But to estimate compensation owed, he used a call duration surrogate of only 40 seconds, which is grossly unrealistic for SBR calls and has helped fuel the “wildly optimistic [compensation] expectations of PSPs.”¹⁴ Platforms, such as for calling cards, account for the majority of SBR payphone-originated calls, and typical call set-up times are typically much longer. A calling card user listening to the prompts and entering PIN digits needs 55-65 seconds, and dialing and connecting to the called party’s number may add 30 seconds or more. The Commission cannot rely on APCC’s speculative examples and anecdotal accounts, particularly when it is so obviously at variance with other PSPs’ experience. If APCC really cared about accurate data, it could have asked the Commission to undertake its own inquiry but has never done so.

¹⁴ Global Crossing at 5. Global Crossing adds that, in litigation, PSPs routinely “seek compensation that is two, three, and sometimes as much as four times the amount Global Crossing’s records show is due and that has already been paid based on actual call completion data.”

Sprint agrees with Global Crossing (at 5) that PSPs have had unrealistic expectations about SBR dial-around compensation. Like WorldCom (at 4-9), Sprint believes the bulk of the problem could be attributed to many small SBRs, including doubtless some bad-apple SBRs that deliberately shirked their obligations under the old rules. FS-IXCs have never had an interest in helping their SBR competitors avoid their payphone compensation obligations.¹⁵ The extent of the problem, however, has certainly been overstated and has never justified the burdens so unfairly imposed on FS-IXCs. The Commission should focus on improving enforcement, rather than on shifting costs and creating new problems for carriers, like Sprint, that have approached payphone compensation responsibly.

X. PARTIES' SUGGESTIONS FOR ALTERNATIVES SHOW THE RULES ARE FLAWED.

A. Making SBRs Responsible for Their Own Obligations, or Relying on FS-IXC Answer Supervision.

Most commenting parties believe the Commission should return to the original rules by which every switch-based carrier was responsible for its own payphone tracking, reporting, and compensation obligations.

Telstar and IDT believe no changes are necessary to the original rules, and that they provide the best approach to payphone compensation issues. In this regard, Qwest, WilTel, and Sprint show that any shortcomings of the original rules can be addressed by remedying what the Commission recognized as the source of the presumed problem for

¹⁵ The parties filing comments make no allegations of serious underpayment by FS-IXCs, apart from the bankruptcies of WorldCom and Global Crossing.

PSPs: insufficient information. Qwest, WilTel, and Sprint propose that the Commission should focus on providing PSPs with reporting of calls handed off to SBRs. By providing quarterly reports, in electronic format, of those calls for which the FS-IXC received answer supervision from the SBR's switch, together with contact information for the SBR, the PSP has sufficient means to address collection issues.¹⁶ Sprint at 21-23. The provision of this information would eliminate the key problems identified by the Commission, and would return the industry to a regime that, unlike the proposed rules, will withstand judicial review.

AT&T, WorldCom, and WilTel suggest various adjustments to the original rules. AT&T (at 9-14) suggests that SBRs be allowed to track, report, and pay for calls directly to PSPs. AT&T is willing to assume the role of conduit of information and compensation, for SBRs that contractually agree, so long as it is expressly permitted to base compensation and surcharges on the certainty and reliability of answer supervision on its network, just as it does for switchless resellers. Sprint would endorse this approach

¹⁶ Bulletins makes unsubstantiated allegations about the cooperation of FS-IXCs in general, and Sprint in particular, about information provided to assist in its past collection efforts against SBRs. Bulletins at 4-5. For example, it claims that information given under the original rules was unreliable, such as reports from Sprint that had SBR listings varying from quarter to quarter. Sprint has confidence in the accuracy of its reports, and notes that SBRs can and do shift their traffic readily from quarter to quarter. In Sprint's experience, Bulletins has been unduly interested in promoting specious claims against carriers, of the type to which WilTel and Global Crossing refer. WilTel at 8-10; Global Crossing at 5.

provided that the FS-IXC is free to choose whether to offer this service, may set its terms and a market rate,¹⁷ and is not compelled to act as financial guarantor to PSPs.

WorldCom (at 27-29) recommends allowing an SBR to demonstrate, such as through a third party auditor, that it has systems capable of accurately and reliably tracking and reporting coinless calls. Those that fail meet this standard, or that elect not to report and pay directly, would be processed through FS-IXCs based on answer supervision. Sprint believes the Commission could just as readily, and perhaps more reasonably, require SBRs to report and pay directly and be subject to audit to ensure compliance. Those that fail to have a reasonable measure of accuracy in their reports could be subject to appropriate penalties before the Commission.

WilTel (at 5) proposes a simpler approach. It recommends that all IXCs, including SBRs, should track, report, and pay for their own calls based on whether the call was billable. If a call was billable, it would be deemed compensable. This rule would have the advantage of simplicity, and compliance could be verified by independent audit.

B. The "Caller-Pays" Approach

Asking the Commission to have "an open mind," WorldCom joins Sprint in endorsing the efficiency, simplicity, and fairness of a "caller pays" system. WorldCom at 1, 30-34. Ultimately, this is unquestionably the most straightforward and economically

¹⁷ APCC (at 28) remarks that IXCs should have "flexibility to choose how to satisfy" the payment obligation, and "[r]esellers have the ability to shop in the marketplace for a different IXC is dissatisfied with the charges and practices of its current suppliers."

rational approach to the entire issue. It is the only true market-based approach, and would eliminate the distortions, inefficiencies, and disputes that have poisoned the payphone field. Sprint at 19-21.

C. Timing Surrogates

Global Crossing (at 7) repeats its previous endorsement of a timing surrogate. For most carriers, however, a duration surrogate is unduly cumbersome. It would be unreasonably costly to implement and could open an entire new avenue of disputes. It would also necessitate a separate rulemaking to determine the appropriate Commission-dictated surrogate. However, if the Commission were to insist on FS-IXCs reporting on behalf of SBRs (notwithstanding the legal and policy shortcomings of such an approach), it would be less objectionable if the Commission permitted FS-IXCs to choose for themselves how to manage the process. Sprint at 23. For some carriers, that might include use of a timing surrogate.

APCC (at Cooper Decl. ¶ 8) uses the timing surrogate approach to fashion its estimates of compensation. Its endorsement of duration measures highlights one of the flaws of that approach. APCC suggests a duration of only 40 seconds, which is unduly short (see Section IX, supra) and would lead to overcompensation, especially among the majority of SBR calls that are handed off to platforms.

D. Completion Factors

WilTel (at 10-11) suggests a “long term” approach, by which each carrier would report and pay for its own calls, but utilizing a significantly lower per-call compensation rate applied to all call attempts. This would eliminate the need to track calls to completion and would simplify, WilTel believes, reporting and compensation procedures. Sprint believes the approach would be unwieldy. It would also necessitate a separate rulemaking to establish both the per-attempt compensation rate and the percentage factor.

APCC (at 28-30) proposes requiring FS-IXCs to report and pay for SBR calls, but based on a call completion factor applied to calls for which the FS-IXC receives answer supervision. It suggests that the FS-IXC’s own call completion rate be applied to the SBR, whether network wide or on a market-by-market or geographic basis. The Commission can be assured that this would create an entire new realm of SBR disputes and is surely unworkable given the manner in which SBRs move their traffic among carriers, each of which would have different completion rates. FS-IXCs also view call completion rates – particularly on a market-specific basis – as confidential business information that is wholly inappropriate for disclosure to competitors. It is also worth noting that major carriers often have significantly higher call completion rates than SBRs claim to have, which, if true, means this approach would overcompensate PSPs.

Sprint believes, again, that each carrier should track, report, and pay for its own calls. If the Commission insists on making FS-IXCs assume the obligations of SBRs, it should allow them to set their own terms and conditions for the service, including a market rate.

XI. CONCLUSION

The Commission should approach this issue carefully and not merely re-impose rules the D.C. Circuit has already vacated. The comments submitted show that the current rules are unworkable, unfair, inefficient, and bound to be reversed. Sprint believes the time has come to recognize the many advantages of a "caller pays" plan. If the Commission remains unwilling to consider "caller-pays," it should not place FS-IXCs in the middle between PSPs and SBRs.

Respectfully submitted,

SPRINT CORPORATION

By 

John E. Benedict
H. Richard Juhnke
Suite 400
401 Ninth Street, NW
Washington, DC 20004
202-585-1910

July 3, 2003

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Comments of Sprint Corporation in CC Docket No. 96-128 and NSD File No. L-99-34 was sent by electronic mail or First Class U.S. Mail, postage prepaid, on this 3rd day of July 2003 to the parties listed below.


Sharon Kirby

ECFS

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

VIA E-MAIL

Jeffrey Carlisle
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Michelle Carey
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Tamara Preiss
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Qualex International
Portals II
445 12th Street, SW, Rm. CY-B402
Washington, DC 20554

VIA FIRST CLASS U.S. MAIL

Leonard J. Cali
Lawrence J. Lafaro
Stephen C. Garavito
Teresa Marrero
AT&T Corp. Room A229
900 Route 202/206 North
Bedminster, New Jersey 07921

David L. Lawson
Paul J. Zidlicky
Joseph R. Palmore
Sidley Austin Brown & Wood LLP
1501 K Street, NW
Washington, DC 20005
Counsel for AT&T Corp.

Michael J. Shortley, III
Global Crossing Telecommunications Inc.
1080 Pittsford-Victor Road
Pittsford, New York 14534

Howard Segermark, Executive Director
International Prepaid Communications
Association
904 Massachusetts Avenue, NE
Washington, DC 20002

Hope Halpern, Esq.
Director of Regulatory Affairs
Telstar International, Inc.
One North Broadway
White Plains, NY 10601

Larry Fenster
MCI
1133 19th Street, NW
Washington, DC 20036

Albert H. Kramer
Robert F. Aldrich
Gregory D. Kwan
American Public Communications Council
2101 L Street, NW
Washington, DC 20037-1526

James U. Troup
James H. Lister
McGuire Woods, LLP
Suite 1200
1050 Connecticut Avenue, NW
Washington, DC 20036
*Counsel for CommuniGroup of
K.C., Inc., et al.*

Stan Stoll
Blackburn & Stoll
77th West 200 South, Suite 400
Salt Lake City, UT 84101
Counsel for Transtel Communications, Inc.

Paul Brooks
Dial Around Manager, Bulletins
1422 E. Katella Avenue
Anaheim, CA 92805

Kathleen Greenan Ramsey
Danielle C. Burt
Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW, Suite 300
Washington, DC 20007
*Counsel for ASCENT, Focal
Communications Corp. and US LEC*

Adam L. Kupetsky
Director of Regulatory Affairs
WiTel Communications, LLC
One Technology Center, MD 15H
Tulsa, OK 74103

Michael K. Kellogg
Aaron M. Panner
Kellogg, Huber, Hansen, Todd & Evans,
PLLC
1615 M Street, NW, Suite 400
Washington, DC 20036
Counsel for the RBOC Payphone Coalition

Carl Wolf Billek
IDT Corporation
520 Broad Street
Newark, New Jersey 07102-3111

Sharon J. Devine
Aimee C. Jimenez
Suite 950
607 14th Street, NW
Washington, DC 20005
*Counsel for Qwest Communications
International Inc.*

Cheryl A. Tritt
Frank W. Krogh
Morrison & Foerster LLP
2000 Pennsylvania Avenue, NW
Washington, DC 20007
Counsel for OCMC, Inc.