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September 26, 2003

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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: **EX PARTE**

Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128

Dear Ms. Dortch:

On September 26, 2003, Cheryl A. Tritt and the undersigned, representing OCMC, Inc. ("OCMC"), met with Matthew Brill, Senior Legal Advisor to Commissioner Abernathy, to discuss issues raised in recent ex parte statements filed by other parties in the above-referenced docket. Ann C. Bernard, General Counsel of OCMC, also participated in the discussion by telephone. In particular, the OCMC representatives expressed their concerns as to burdensome requirements for switch-based resellers ("SBRs") proposed by certain interexchange carriers ("IXCs"). These proposals not only would hamper SBRs' efforts to compete with the much larger IXCs for operator service business but also would impose excessive costs on SBRs that inevitably would be passed on to low income payphone users.

The OCMC representatives explained that payphone service providers' ("PSPs") interests could be fully protected under either an "SBR pays" system, under which an entity certifying that it is an SBR would have sole payphone compensation responsibility for any calls routed to it by an IXC, or an "IXC pays" system, under which the IXC would retain responsibility for payphone compensation for such calls. PSPs would be fully protected under an SBR pays system as long as IXCs were required to send PSPs data as to all calls they route to SBRs and SBRs were required to provide PSPs with call detail information as to all calls they complete. No further reporting or third-party verification requirements are necessary.

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If SBRs are given a choice as to which payment methodology would apply to them, they should not be forced to undergo MCI's intrusive, expensive third-party audit and certification scheme in order to choose an SBR pays approach. The OCMC representatives emphasized the detrimental impact that MCI's audit proposal would have on the operator services market. The elaborate, excessively regulatory procedure described by MCI would impose tremendous costs on small service providers, such as OCMC, which has fewer than 70 non-operator employees. Not only would this burdensome requirement, which MCI does not propose for IXCs, distort competition between the large IXCs and their smaller competitors, the SBRs, but such a large expense also would have to be recovered in SBRs' end user rates, which are borne disproportionately by lower income customers lacking cell phones.

OCMC agrees with the ex parte statements of IDT Corporation ("IDT")¹ and the "Joint SBRs"² that SBRs should not be singled out for such unique audit requirements, particularly in advance of an actual dispute raised by a PSP as to an SBR's reporting and compensation payments. As the Joint SBRs suggest, it would be fairer and more reasonable to conduct third-party verification only if and when a good-faith dispute arises, and the cost of such verification should be borne by the "losing" party.³ At most, SBRs choosing an SBR pays system should be subject to a one-time audit, with subsequent audits only in the event of a good-faith dispute.

If the Commission believes that PSPs would need additional assurance under an SBR pays system that they are receiving the correct payphone compensation on calls routed to SBRs, Qwest's annual certification proposal offers a far more cost effective check on SBR reporting accuracy than MCI's burdensome third-party audit proposal. As Qwest points out in its recent ex parte statement, its annual certification proposal would eliminate SBRs' supposed incentives to under-report call completion data to PSPs.⁴

If the Commission decides to readopt an "IXC pays" system, whether as an alternative to an SBR pays system or otherwise, it should do so in the manner set forth

¹ Letter from Carl Wolf Billek, IDT Corporation, to Marlene Dortch, Secretary, FCC (Sept. 12, 2003) at 1-2.

² Letter from James H. Lister, Counsel to the Joint SBRs, to Marlene Dortch, Secretary, FCC (Sept. 12, 2003).

³ *Id.* at 3-4.

⁴ Letter from Cronan O'Connell, Qwest, to Marlene Dortch, Secretary, FCC (Sept. 10, 2003) at attachment.

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in the *Second Reconsideration Order*⁵ and *Third Reconsideration Order*,⁶ with no further conditions or obligations placed on SBRs that would enable IXCs to make unreasonable demands on SBRs that are capable of tracking calls routed to them. The Commission should make it clear that, under an IXC pays system, IXCs are expected to cooperate with such SBRs in reconciling their data as to calls that the IXCs route to SBRs.⁷

OCMC also opposes Sprint's proposal that an SBR having direct payment arrangements with one PSP should be required to have such arrangements with all PSPs and the IXCs' proposals that SBRs be required to notify IXCs of all of their direct payment arrangements with PSPs. Sprint's "all-or-nothing" proposal is designed to restrict SBRs' direct payment arrangements with PSPs and, as such, conflicts with the principle stated in the *Third Reconsideration Order* that "[a]ny practice by an entity that restricts the ability of SBRs to enter into such agreements runs counter to the letter of" the *Second Reconsideration Order*.⁸ Similarly, SBRs should not have to disclose their direct payment arrangements with PSPs to IXCs because many PSPs with whom SBRs have such arrangements are also their customers. SBRs should not have to disclose what amounts to their customer lists to their larger competitors, the IXCs.⁹

⁵ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Second Order on Reconsideration, 16 FCC Rcd 8098 (2001) ("*Second Reconsideration Order*"), remanded sub nom., *Sprint Corp. v. FCC*, 315 F.3d 369 (D.C. Cir. 2003).

⁶ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Third Order on Reconsideration and Order on Clarification, 16 FCC Rcd 20922 (2001) ("*Third Reconsideration Order*").

⁷ Qwest's proposal that carriers post on the Internet a current list of all of the 800 numbers they serve would simply duplicate the information that must be provided under the *Second Reconsideration Order* and, by making such information publicly available, would be far more intrusive than necessary to protect PSPs' and IXCs' legitimate interests.

⁸ *Third Reconsideration Order*, 16 FCC Rcd at 20926.

⁹ IXCs would not otherwise be aware that an SBR has a direct payment arrangement with a PSP simply because calls originating at the PSPs' payphones are ultimately routed to the SBR. A PSP typically has no connection with the agent controlling the 800 number or other toll-free access code that is served by the SBR. The agent controlling the access code typically has a contract with the SBR under which calls dialed with that code are routed to the SBR. The PSP whose payphone happens to be used to make such an access code call has nothing to do with the ultimate routing of such a call to the SBR. The PSP's relationship with the SBR typically concerns other matters unrelated to the routing of the calls at issue in this proceeding.

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The attached outline also was distributed at the meeting. Please call the undersigned with any questions as to these matters. Pursuant to Section 1.1206(b)(2) of the Commission's rules, this ex parte statement is being filed electronically via the Commission's Electronic Comment Filing System for inclusion in the public record of the above-referenced proceeding.

Yours truly,

/s/ Frank W. Krogh
Frank W. Krogh

cc: Matthew Brill

OCMC's POSITION AND RESPONSE TO OTHER PARTIES' PAYPHONE COMPENSATION PROPOSALS

- OCMC's primary concern is IXC proposals to impose unique, highly regulatory, costly requirements on SBRs that would hamper their efforts to compete with the much larger IXCs and that would generate excessive costs for SBRs, which would be passed on to largely low income payphone users.
- MCI's request that SBRs be subject to audits should be rejected; would unduly burden small carriers like OCMC and make it more difficult for them to compete with large IXCs, which would not be subject to proposed audit requirement.
 - Fairer and more reasonable to conduct third-party verification process if and when a PSP raises good faith dispute with a carrier as to payphone compensation, with the cost borne by "losing" party.
 - Audit proposal not a "default" procedure; there will always be a few PSPs with whom an SBR does not have direct payment arrangements.
 - Instead of burdensome, expensive audits, Qwest's annual certification proposal would offer more than sufficient assurance to PSPs by removing any SBR incentive to under-report payphone calls.
- Best solution is to make SBRs responsible for payment of compensation for all calls routed to them by IXCs; an "SBR pays" system would relieve IXCs of unwanted middleman role. PSPs fully protected if they get data from IXCs as to all calls routed to SBRs and call detail information from SBRs as to all completed calls.
- OCMC has no objection to readoption of an "IXC pays" system, under which IXCs are responsible for payment of compensation for calls they route to SBRs, as long as the conditions in the *Third Reconsideration Order* are also readopted and no additional onerous conditions are imposed on SBRs.
 - Under an IXC pays system, the only information an IXC would need from an SBR to which it routes calls is an identification of the calls for which the IXC does not have to pay compensation. If SBRs also provide data on all completed calls to PSPs, all parties fully protected.
 - Sprint's request that any SBR that has a direct payment arrangement with one PSP have such arrangements with all PSPs is an unwarranted interference with SBR/PSP direct payment arrangements and should be rejected again.
 - IXCs' requests that SBRs report their agreements with PSPs to IXCs should be rejected. SBRs should never have to report agreements with PSPs, who are their customers, to IXCs, who are their competitors.
 - Qwest's proposal to post all 800 numbers served by each carrier would be unnecessarily burdensome and intrusive.