

Establishing An Equitable And Conflict Minimizing Payphone Compensation Regime

Presentation to the FCC

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Four Beliefs Motivated The Commission To Adopt Its Current Compensation Rules

- Its rules did not clearly establish the obligation of SBRs to compensate PSPs.
- SBRs avoided payments by not identifying themselves as being responsible for compensating PSPs.
- SBRs were not always able to track calls to completion.
- PSPs were not obtaining sufficiently detailed information to identify and collect payments from SBRs.

(Net result was undercompensation of PSPs and continual industry conflict and confusion).



The Commission Fashioned Its Current Rules To Correct These Deficiencies

- Made FS-IXCs responsible for paying on behalf of SBRs.
 - Asserted FS-IXCs could use their economic leverage to receive accurate, timely call completion data from SBRs even though they could not determine whether a call routed to an SBR was completed.
 - And prohibited FS-IXCs from surcharging SBRs on the basis of their own answer supervision messages.
- Required FS-IXCs to report completed calls by dial-around number for each payphone ANI.
- Encouraged PSPs to continue existing direct payment relations with SBRs.

Current Rules Have Three Fatal Flaws

- FS-IXCs do not have the economic leverage to receive accurate, timely, call completion data from SBRs.
- The inability to surcharge and compensate on the basis of answer supervision has created uncertainty and confusion.
- PSPs do not believe SBR tracking systems are reliable.

Lack Of Leverage And Restrictions On FS-IXC Ability To Surcharge And Compensate Using Answer Supervision Has Created A System Rife With Confusion And Uncertainty

- MCI's contracts require SBRs to provide call completion data by the 20th of each month
 - MCI's monthly billing systems bill on the basis of answer supervision.
 - MCI credits SBRs who provide call completion data for “over-invoicing.”
- MCI has been unable to enforce this contract provision
 - 39% routinely miss data supply timetables needed to make timely payments, yet a payment must be made.
 - MCI pays PSPs for all calls sent to these SBRs.
 - Unable to surcharge for all calls sent (Per 3rd Recon Order and SBR market strength).
 - Economically impossible to terminate this whole group of SBRs as suggested by the Commission.
 - If SBRs provide data late, MCI will subsequently adjust PSP compensation.



PSPs Do Not Believe Current SBR Payments Are Reliable

- PSPs refused to retain any direct payment relations with SBRs, even though the Commission continues to believe that the carrier able to track the call to completion is ideally suited to pay PSPs.
- PSPs have requested FS-IXCs provide more detailed reporting data in order to pursue alleged underpayments by FS-IXCs on behalf of SBRs.
- PSPs strongly dispute adjusted payments.

Current Rules Wrongly Place SBR Liability On FS-IXCs

- Commission can not require one sector of payphone industry to pay for another, when the other sector receives the economic benefit. *Illinois Pub. Telecom. Ass'n v FCC*, 117 F.3d 555, 565 (D.C. Cir. 1997)
- Commission has cited *Illinois* in its 5th Reconsideration Order when it rejected making one class of IXC responsible for the Interim Period compensation of another. *Fifth Order on Reconsideration and Order on Remand*, 17 FCC Rcd 21274, ¶ 83)
- Commission has never used “administrative efficiency” to shift an unknowable, and therefore unrecoverable, liability from one class to another.
 - With pure resellers, FS-IXCs could surcharge and compensate precisely since they controlled call completion data.
 - FS-IXCs do not control SBR call completion data, and are unable to properly surcharge and compensate if they do not receive call completion data.
 - Shift from end user to net revenue-based contributions shifted LEC USF responsibilities to IXCs, but IXCs could calculate contribution exactly.



Last Switch Pays Regime Can Fully Compensate PSPs And Reduce Conflicts

- Allow SBRs to directly compensate PSPs once an independent accounting firm attests to the reliability of its payphone compensation, tracking and reporting systems.
 - Will ensure reliability of SBR per-call data for the first time.
 - Will limit direct compensation (and PSP risk) to larger, more stable, SBRs.
 - Will reduce need for PSPs to ensure data accuracy of remaining SBRs.
 - Eliminates tight data delivery schedules at the heart of current disputes.
 - Allows SBRs to benefit from substantial investments already made to develop tracking systems.
 - Eliminates double-handling of SBR call completion data.



Last Switch Pays Regime Can Fully Compensate PSPs And Reduce Conflicts

- Require qualifying SBRs to make verification report available to PSPs on confidential basis.
- Require SBRs to annually file with FCC the name, address, telephone, fax number, and email, of person responsible for payphone compensation.
 - Solves SBR “identification” problems.
- Require SBRs to notify FS-IXC which dial-around numbers are being served by their switches
 - Allows FS-IXC to stop surcharging SBRs for completed payphone calls to those numbers.



Last Switch Pays Regime Can Fully Compensate PSPs And Reduce Conflicts

- Require FS-IXCs to provide PSPs with data on calls sent to dial-around numbers being served by SBR switches
 - Allows PSPs to determine average completion rates for SBR calls and quickly prioritize inquiries.
- Give SBRs choice of investing in reliable systems or adopting only other method of ensuring full compensation to PSPs
 - If SBRs per call data is not reliable, FS-IXCs answer supervision data is next best.
 - Choice will be rational. SBR will weigh cost of reliable system against cost of using FS-IXC data.
 - Ensures full compensation for PSPs.
 - Provides incentives for “borderline” SBRs to develop reliable compensation systems.
 - Eliminates SBR reporting and need for PSPs to scrutinize SBR data for half of SBRs.



If SBR-PSP Contracting Is Utilized, Establish Compensation Based On FS-IXC Answer Supervision As A Safe Harbour

- Will allow SBRs to rely on FS-IXCs without having to gain prior approval from every PSP.
- Will allow many existing contracts to continue without change.

Certain APCC Proposals Impose Unnecessary Burdens

- TOD data is not needed to identify possible undercompensation.
 - Comparing calls sent by FS-IXC to calls compensated by SBRs will allow PSPs to identify SBRs who may be undercompensating.
 - TOD data would significantly increase data storage requirements
- Neither PSPs, nor FCC, need data on number of calls on which IXCs surcharge.
- Requiring accounting firms to test the accuracy of SBRs call processing and billing systems would be prohibitively expensive.
 - Utilize same verification parameters as First Report and Order
 - Attestation rather than full audit.
 - SBR, not accounting firm, responsible for errors.
- SBR failures should result in penalties, not shifting liability to FSIXCs

Commission Should Reject Attempts To Make FS-IXCs Liable For SBR Failures

- APCC proposes making FS-IXCs liable for compensation if:
 - SBRs submit annual certifications late.
 - SBR notifies the Commission it is no longer able to pay compensation.
- Would allow SBRs to opt out of compensation responsibility
- Would reproduce the failures of the first compensation regime.