

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

In the Matter of)	
)	
The Pay Telephone Reclassification and)	CC Docket No. 96-128
Compensation Provisions of the)	
Telecommunications Act of 1996)	

**AT&T PETITION FOR CLARIFICATION
OR, IN THE ALTERNATIVE, RECONSIDERATION**

Pursuant to Section 1.429 of the Commission’s Rules, 47 C.F.R. §1.429, AT&T Corp. (“AT&T”) requests that the Commission clarify, or in the alternative reconsider, certain portions of its *Report and Order*¹ in this docket in which it adopted new payphone compensation rules that place responsibility on telecommunication carriers to compensate payphone service providers (“PSPs”) for payphone-originated calls that are completed on that carrier’s network. As shown below, in two respects, the Commission’s decision should be clarified or, in the alternative, reconsidered to avoid clearly unintended consequences that would needlessly impose significant burdens on AT&T and other similarly situated interexchange carriers (“IXCs”) who complete payphone calls and compensate PSPs on their behalf or on behalf of others.

¹ *In the Matter of The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Report and Order, FCC 03-235, released October 3, 2003 (“*Report and Order*”). A summary of the *Report and Order* was published in the Federal Register on November 6, 2003. See 68 Fed. Reg. 62751.

ARGUMENT

A. The Commission Should Correct Section 64.1310(a)(4)(i) Of Its Rules To Accurately Reflect A Completing Carrier's Obligation To Track And Compensate PSPs For Only Payphone Calls That It Completes.

The *Report & Order* is intended to resolve issues relating to the obligations of IXCs and Switch-Based Resellers (“SBRs”) with regard to payments to PSPs for completed payphone calls. The Commission found that the obligation for compensating PSPs should fall squarely on the shoulders of the carrier that is the primary economic beneficiary of the payphone call and the entity that has the most accurate call completion data. *Report & Order* ¶¶ 27-33; *see also id.* Appendix C (setting forth rules). Nevertheless, certain language of Section 64.1310 (as amended) could be interpreted in a manner that conflicts with that intention.

The requirement in question appears in Section 64.1310(a)(4)(i) (as amended) and states as follows:

“(a) Unless the payphone service provider agrees to other compensation arrangements, each Completing Carrier identified in section 64.1300(a) shall compensate the payphone service provider as follows:

* * *

(4) At the conclusion of each quarter, the Completing Carrier shall submit to the payphone service provider, in computer readable format, a report on that quarter that includes:
(i) A list of the toll-free and access numbers dialed from each of that payphone service provider’s payphones and the ANI for each payphone.”

This requirement could be interpreted to impose unintended obligations on a carrier, such as AT&T, that receives calls from payphones as a Completing Carrier. As presently drafted, Section 64.1310(a)(4)(i) could be read to expand a Completing Carrier’s reporting responsibilities to include all toll-free and access code numbers dialed from a

PSP's payphone, including numbers that are not completed by the Completing Carrier, but rather forwarded to another carrier, such as a SBR, for completion.

Clearly this is not what the Commission intended. The Commission defined a Completing Carrier as "a long distance carrier or switch-based long distance reseller that completes a coinless access code or subscriber toll-free payphone call or a local exchange carrier that completes a local, coinless access code or subscriber toll-free payphone call."² Consequently, a Completing Carrier, by definition, only completes its own calls. Therefore, the procedures set forth in Section 64.1310(a)(4)(i), and read in the context of the entire *Report and Order*, should be read to require a Completing Carrier to track only "completed calls" and not all calls that it handles even if it does not complete them.

Accordingly, to eliminate any confusion, and accurately reflect the Commission's intention, AT&T respectfully requests that Section 64.1310(a)(4)(i) be revised to include the following qualifying language (in bold):

"(a) Unless the payphone service provider agrees to other compensation arrangements, each Completing Carrier identified in section 64.1300(a) shall compensate the payphone service provider as follows:

* * *

(4) At the conclusion of each quarter, the Completing Carrier shall submit to the payphone service provider, in computer readable format, a report on that quarter that includes:

(i) A list of the toll-free and access numbers dialed **and completed by the Completing Carrier** from each of that payphone service provider's payphones and the ANI for each payphone."

² Appendix C – Final Rules §64.1300(a) (as amended).

Such revision of Section 64.1310(a)(4)(i) would more accurately reflect a Completing Carrier's obligation to track and compensate PSPs for only payphone calls that it completes.

B. The Commission Should Clarify Or In The Alternative Reconsider The Requirements Set Forth In Paragraph 48 of its *Report and Order*.

AT&T also requests that the Commission clarify or, in the alternative, reconsider Paragraph 48 of its *Report and Order*, which reads in relevant part:

“We further conclude that SBRs and PSPs may negotiate other mechanisms for payment other than those set forth in our rules. Specifically, we find that the SBR may enter into any other compensation arrangement voluntarily agreed to by the relevant parties . . . Accordingly, we permit SBRs to rely upon any current or future contractual arrangements they may have with interexchange carriers or PSPs *provided that the PSP concurs.*” (emphasis added.)

In situations where a SBR enters into a contractual arrangement with the IXC and the IXC agrees to pay on behalf of the SBR, a PSP typically has been compensated on 100% of all delivered calls, not just completed calls. Where a SBR agrees with the IXC that the IXC should pay PSPs on 100% of delivered calls, such an arrangement should be sufficient to ensure that PSPs are “fairly compensated” for all SBR completed calls made from their payphones, and accordingly should obviate any need to obtain the concurrence of the PSP. Indeed, the PSPs have previously been compensated on this basis,³ and it would be unreasonable for the PSP to withhold consent

³ In *In the Matter of The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Second Order on Reconsideration, 16 FCC Rcd 8098 (2002) (“*Second Order on Reconsideration*”), the Commission adopted rules requiring the first facilities-based IXC to which a LEC routes a compensable coinless payphone call to compensate the PSP even if the IXC did not complete the call. The *Second Order on Reconsideration* effectively made IXCs
(footnote continued on the following page)

to be paid on 100% of all routed calls delivered by the first facilities-based IXC. Further, such compensation arrangements would necessarily include access to sufficient information to verify the accuracy of the compensation received.⁴

Moreover, it would be overly burdensome to obtain the concurrence of each and every PSP. Presently, there are well over 5,500 PSPs.⁵ Because the SBR will not know from which payphone a call will originate, if the PSP concurrence requirement were read to cover such SBR-IXC arrangements, a SBR that wishes to enter into this type of contractual arrangement would first be required to obtain the concurrence of every PSP. Such a reading of the Commission's requirement would have the unintended result of preventing parties from entering into such arrangements because of the inability to obtain the concurrence or the inability to represent that the concurrence was obtained from each and every one of more than 5,500 PSPs.

Although AT&T recognizes that this PSP concurrence requirement is primarily a SBR problem, the availability of SBR-IXC arrangements that result in payment to PSPs on 100% of delivered calls could minimize administrative burdens for all parties, including IXCs. Moreover, such arrangements are reasonable and consistent

guarantors for SBRs' payphone liabilities to the PSPs. The *Report and Order* has eliminated this obligation. Consequently, any IXC who agrees to accept the tracking and reporting payment requirements on behalf of a SBR would act as its conduit, not its guarantor.

⁴ See §64.1310 (as amended).

⁵ According to records at the National Payphone Clearinghouse (NPC), it currently has 5,526 Active Accounts in its database. This includes individual PSPs as well as PSPs under different aggregators. Because not everyone uses NPC as a clearinghouse, the number of PSPs is much larger.

with the objectives of the Commission's *Report and Order* and of the concerns of the various parties who have prompted the Commission to adopt these rules.

Therefore, AT&T respectfully requests that the Commission clarify that the requirement set forth in Paragraph 48 of its *Report and Order* does not require the concurrence of the PSP when the contractual arrangement between the IXC and the SBR provides for compensation to the PSP on 100% of all routed delivered calls originated from its payphones. Alternatively, AT&T respectfully submits that the Commission should reconsider and eliminate this requirement when such SBR-IXC arrangements are involved.

CONCLUSION

For the foregoing reasons, the Commission should clarify or, in the alternative, reconsider its *Report and Order* as described above.

Respectfully submitted,

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