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

In the Matter of	)	
	)	**WC Docket No. 03-225**
Request To Update Default Compensation	)	**RM No. 10568**
Rate for Dial-Around Calls from Payphones	)	

REPLY COMMENTS OF GLOBAL CROSSING NORTH AMERICA, INC.

Global Crossing North America, Inc. ("Global Crossing") hereby submits this reply to the comments received on the Commission's Notice[1] in the above-docketed proceeding. The proponents of a massive increase in the default rate fail to present even a colorable case in support of the request. The proponents – principally the RBOC Coalition and APCC – commit three fundamental errors: (1) they ignore the express language of section 276; (2) they ignore demand elasticity; and (3) they ignore the cross-elastic effects between payphone and wireless services.[2] These failures doom any reasoned attempt to increase the default compensation rate.

First, the proponents ignore the unambiguous language of section 276. Both the RBOC Coalition and APCC equate section 276 with a requirement that the Commission guarantee the deployment of a specific number of payphones, preferably more rather than

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1 *Request To Update Default Compensation Rate for Dial-Around Calls from Payphones,* WC Dkt. 03-225, Notice of Proposed Rulemaking, FCC 03-265 (Oct. 31, 2003) ("Notice").

2 In addition, the proponents utterly fail to follow the methodology established by the Commission in establishing the default compensation rate initially. AT&T, MCI and Sprint have already conclusively demonstrated this point. Global Crossing will not burden the record with further comment on this subject.

Sprint has also demonstrated that the Commission should reconsider and adopt a "caller-pays" system of per-call compensation. Adoption of such a system would eliminate the irrationality and enormous waste of the parties' time and resources – not to mention those of the Commission and the courts – endemic to the existing system. Global Crossing fully supports Sprint's proposal in this regard.

less.[3] Section 276, however, contains no such provisions. Section 276(b)(1) encourages the Commission to "promote the widespread deployment of payphone services *to the benefit of the general public.*"[4]

On its face, the beneficiaries of section 276 are members of the general public, *not* payphone service providers ("PSPs"). As the PSPs must concede, the public has already spoken about the level of payphone deployment. Simply put, the general pubic neither needs nor wants the existing number of payphones. The fact that PSPs are forced to reduce the number of payphones deployed is *not* evidence that the existing default rate is too law; rather, it is convincing evidence that the existing level of payphone deployment is too high. Any attempt by the Commission to establish a default rate to stabilize the level of payphone deployment – which is exactly what the RBOC Coalition and APCC are requesting – cannot be reconciled with the unambiguous language of section 276.

For its part , APCC raises the spectre that, absent an increase in the default rate, its members will be forced to abandon payphone service to underprivileged areas.[5] This allegation is both irrelevant and baseless. To the extent that payphones are economically unsupportable in certain areas, section 276(b)(2) of the Act authorizes the Commission to

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3 RBOC Coalition Comments at 5; APCC Comments at 6-8, 9.

4 47 U.S.C. § 276(b)(1) (emphasis added).

The RBOC Coalition and APCC consistently ignore that last phrase of the statutory language.

5 APCC Comments at 3-6.

APCC also extols the benefits of payphone service. *Id.* The pubic, however, has adjudged the value of payphone services. If payphones were as valuable as APCC believe, presumably usage would be such that payphone deployment would not be declining.

address the issue of public interest payphones.[6] APCC is simply raising a red herring in this regard.

Moreover, it is difficult to see what raising the default rate for dial-around calls ahs to do with providing payphone service in disadvantaged areas. To the extent that such payphones are truly necessary, it is highly likely that they are used overwhelmingly for *local coin* calls. Raising the dial-around rate will do nothing for the profitability of such payphones.

Second, the RBOC Coalition and APCC consistently ignore the demand elasticity effects of raising the default compensation rate. Global Crossing has previously demonstrated that the demand for payphone service is in the elastic range of the demand curve.[7] Global Crossing demonstrated this fact on the basis of *the proponents' own data.* Based upon that data, Global Crossing demonstrated that an increase in the default compensation rate will cause total revenues from payphones ultimately to fall.[8] Therefore, an increase in the default compensation rate *cannot*, as a matter of simple economics, achieve the intended result of supporting payphone operations.[9]

The RBOC Coalition and APCC ignore this analysis and proffer a series of non-answers instead. The RBOC Coalition and APCC assert that the Commission should not attempt to estimate relative elasticity of demand for different payphone services, but

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6 47 U.S.C. § 276(b)(2).

7 Global Crossing Comments at 3-6; *see also* Global Crossing Comments in Response to Petitions for Rulemaking at 3-6.

8 Global Crossing Comments at 4-6.

9 Of course, there will be a lag period before the demand effects are fully felt. During this interim period of time, PSPs may see a revenue increase. Longer term, such an increase is not sustainable and is, hence, self-defeating. *See id.* at 8.

should ensure that each service bears its proportionate share of overhead costs.[10] This argument is a *non-sequitur.* It says nothing about the overall elasticity of demand for payphone service and ignores the evidence in the record to the effect that the demand for payphone service is in the elastic range of the demand curve.[11] The only thing that an increase in the dial-around compensation rate will accomplish is to reduce total revenues form payphones, thereby forcing local coin calling, all else being equal, to bear a greater share of payphone overheads.

APCC asserts that the Commission can only evaluate the demand for calls from payphones based upon the total cost to the end user of a payphone call.[12] This is true if the element unique to payphone calls could not otherwise be isolated. The data supplied by APCC cures this problem. Moreover, the data supplied by AT&T[13] cures this alleged problem as well.

APCC finally asserts in this vein that its members are constitutionally entitled to a return on their investment in payphone equipment.[14] Even if payphone service were rate-regulated in the traditional utility sense (which it plainly is not), APCC's members would only be entitled to a return on investment used and useful for utility service.[15] No principle of just compensation entitles APCC's members to a return on investment no matter how imprudently incurred

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10 RBOC Coalition Comments at 6-7; APCC Comments at 9-10.

11 *See* Global Crossing Comments at 3-6.

12 APCC Comments at 10-11.

13 AT&T Comments at 8-11.

14 APCC Comments at 12-13.

15 *See, e.g., Illinois Bell Tel. Co. v. FCC,* 988 F.2d 1254 (D.C. Cir. 1993).

or no matter than such investment is not in fact used and useful. As evidenced by the retirement rate of payphones, APCC cannot meet the used and useful test.

Third, both the RBOC Coalition and APCC engage in obfuscation about the cross-elasticity of demand between payphone and wireless services. On the one hand, both blame the increasing popularity of wireless services for the decline in demand for payphone services.[16] In this respect, the PSPs are undoubtedly correct. Yet, both distance themselves from this conclusion in asserting that the Commission should not take this effect into account.[17]

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16 RBOC Coalition Petition for Rulemaking at 1; APCC Petition for Rulemaking at 7.

17 RBOC Coalition Comments at 7; APCC Comments at 13-14

In this respect, they appear to be arguing that payphone service and wireless service are actually complements. The PSPs, however, cannot have it both ways. A good cannot simultaneously be a substitute for and a complement with another service. *See generally* W. Nicholson, *Microeconomic Theory: Basic Principles and Extensions* at 83-84 (Dryden Press 1972)

Consistent with this theme, APCC asserts that customers use wireless service more for its convenience than its price. APCC Comments at 14. Of itself, this speaks volumes of the relative convenience and attractiveness of payphone services. Moreover, convenience cannot simply be divorced from the price of substitute goods. Were the price of payphone services substantially lower, there is little doubt that the public would find payphone services far more "convenient" than they do today.

The PSPs have failed to make a case for an increase in the default compensation rate for dial-around calls. The Commission should reject the request and close this proceeding.

Respectfully submitted,

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Certificate of Service

I hereby certify that, on this 22nd day of January, 2004, copies of the foregoing Comments of Global Crossing North America, Inc. were served by first-class mail, postage prepaid, upon:

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