Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

REPLY COMMENTS OF SPRINT CORPORATION

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TABLE OF CONTENTS

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I. INTRODUCTION AND SUMMARY

Among the comments filed on January 7, 2003, three interexchange carriers ("IXCs")[1] joined Sprint Corporation ("Sprint") in opposing the Notice of Proposed Rulemaking's ("NPRM") tentative conclusion that it re-use the "marginal payphone" methodology and increase the payphone compensation rate as sought by the Petitioners.[2]

The IXCs agree that increasing the rate would do nothing to meet the goals Congress set in 1996 in section 276 of the Act (47 U.S.C. § 276(b)), would be contrary to the public interest, and would only accelerate the decline of the payphone industry. They show that the Petitioners' cost studies are flawed and improperly manipulate the methodology to inflate their results. AT&T and WorldCom also show that even if one

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[1] AT&T Corp., Global Crossing North America, Inc., and WorldCom, Inc. Together with Sprint, they are the four largest non-RBOC long distance carriers in America. The International Prepaid Communications Association ("IPCA") also filed comments opposing the marginal payphone methodology and an increase in the compensation rate.

[2] The NPRM (FCC 03-265) was released October 31, 2003. The petitions were filed by the American Public Communications Council, Inc. ("APCC") and the RBOC Payphone Coalition, which includes BellSouth Public Communications, Inc., SBC Communications, Inc. and the Verizon telephone companies.

assumed the *Third Report and Order*[3] methodology should be retained and the rate adjusted, only a very modest increase could be justified. The IXCs further agree with Sprint that the Commission should rethink its approach to payphone compensation. That includes seriously considering the benefits and efficiencies of the caller-pays alternative.

The Petitioners repeated the arguments outlined in their petitions, which presume that every payphone warrants a per-call subsidy, to be paid by carriers. Three smaller associations likewise joined the Petitioners in endorsing ever-rising payphone compensation rates.[4] Focusing on short-term revenues, the payphone service providers ("PSPs") ignore that the public does not need the number of payphones currently deployed, and that the current payphone compensation system is ultimately unsustainable.

II. THE COMMISSION SHOULD DECLINE TO INCREASE THE PAYPHONE COMPENSATION RATE.

A. An increased payphone compensate rate is unwarranted and contrary to the public interest and the stated goals of Congress.

The Petitioners' comments, like the Petitioners, do not show that an increase in the compensation rate is justified. They show only that a vastly higher rate would allow unprofitable payphones to cover their costs. Entirely absent from the record is any "evidence that the level of payphone deployment is inadequate to meet consumer demand." AT&T at 4. And although the Petitioners and their PSP allies all cite a

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[3] Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, *Third Report and Order and Order on Reconsideration of the Second Report and Order*, FCC 99-7 (rel. Feb. 4, 199) (subsequent history omitted) ("*Third Report and Order*").

[4] They include the Florida Public Telecommunications Association, the Illinois Public Telecommunications Association, and the San Diego Payphone Owners Association.

"reduce[d] ... availability of payphones" (Illinois Association at 9), in reality "[t]here is no evidence that the decline in the numbers of payphones since 1998 has prevented a single person from making a payphone call." WorldCom at 2. This fact matters, because Congress enacted section 276 to "benefit the general public," not the payphone industry. 47 U.S.C. § 276(a)(1).

APCC baldly asserts that "applying the methodology in the *Third Payphone Order* will encourage an appropriate level of payphone deployment." APCC at 8. APCC does not explain how the methodology – with or without the Petitioners' unfair doctoring[5] – could foster an "appropriate" number of payphones. The Petitioners' notion is that the current level of deployment is the appropriate one, and that any significant reduction in the number of payphones should be avoided.

The Petitioners' assumption is a false one. They contend that the volume of payphone calls at unprofitable payphones (if not at marginal ones) has continued to fall. That decline, however, only shows that the current level of payphone deployment is still above what the public needs. That is not surprising, because the current regime insulates PSPs from market demand signals. The methodology – and the pendency of this rulemaking proceeding – have discouraged PSPs from rationalizing under-performing payphones, so that "marginal payphones" that the public does not want or need cannibalize the traffic of other payphones that could be profitable.

In turn, that will necessitate additional increases in rates, time and time again. The RBOC Coalition's Petition noted that a further increase would be necessary in a year or two. RBOC Coalition at 6. The Illinois Association (at 8-9) already insists that the

[5] See Section III(A), infra.

rate should be increased well beyond the Petitioners' already inflated $0.48.5 or $0.49 cent proposal to $0.612 per call. The Illinois Association also calls for a further increase every years, perhaps 12.25%, to offset continued payphone declines. This shows the inherent weakness of the marginal payphone methodology in an environment of declining need for payphones. The Illinois Association's adjustment would generate a payphone compensation rate of $1.09 in just five years' time. And since prepaid cards are sold through distributors and retailers at discounts of fifty percent or more, that would yield payphone surcharges of more than $2.18 per call, levied on the very class of long distance customer that otherwise might be most inclined to utilize payphones. Increasing the costs of payphone calling is certainly contrary to the interest of consumers, and will only accelerate the decline in payphone usage. AT&T at 7; IPCA at 3-4.

The Petitioners, and their few allies, simply ignore this statutory directive. Moreover, Congress also directed the Commission to "promote competition among payphone service providers." 47 U.S.C. § 276(a)(1). An increase in the compensation rate can only undermine this objective. The Petitioners, and their few commenting PSP allies, simply ignore this statutory directive.

APCC (at 5) claims that "payphones are valuable to everyone." Clearly, however, not every payphone – much less every marginal payphone – serves a public interest role capable of justifying a universal subsidy. WorldCom notes that the Joint Board on Universal Service recognized that a non-targeted approach "would merely represent a windfall to the payphone industry" (WorldCom at 7), while doing nothing to ensure that payphones are available where APCC (at 5) claims they are most needed: for "those who cannot afford either a wireless phone or a home phone," and those in rural areas "where cellular phone service simply isn't available."[6] Using the current methodology to increase the payphone compensation rate would direct the great majority of the subsidy to higher-volume payphones that do not need such support, while providing no guarantee that any payphone with particular public value will remain in place.[7]

If the public interest justifies subsidizing some payphones "in locations where there would otherwise not be a payphone," then as WorldCom explains the appropriate strategy is to call on states to expand public interest payphone programs to "ensure that such public interest payphones are supported fairly and equitably." 47 U.S.C. § 276(b)(2); WorldCom at 8. Indeed, South Carolina has just commenced a proceeding to assess whether and how to fashion a public interest payphone program, joining at least a dozen other states that have formal or informal programs already in place.[8]

B. The payphone industry needs to face market reality.

Sprint agrees with Global Crossing that "APCC and the BOCs ignore basic economics by wholly failing to take into account demand responses to the proposed rate

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[6] APCC (at 5 & n.3) cites the *Sixth Interim Report* of the West Virginia Public Service Commission's Payphone Task Force as highlighting the importance of payphones to rural residents. The Task Force, however, concluded only that the commission should continue to monitor payphone deployment and, if when and where circumstances warrant it, to "consider institution of a public interest payphone program as part of an overall state telecommunications universal service fund" which could "consider subsidization of public interest payphones *in particular locations*." *Sixth Interim Report* at 5 available at *http://www.cad.state.wv.us/03pp%20Survey.htm*) (emphasis added).

[7] APCC suggests that "[v]ictims of domestic violence or child abuse ... must rely on payphones," and that many "social service organizations have expressed their support for ready access to payphones." APCC at 4. Public interest support, however, does not translate into a higher rate for all payphone calling. Indeed, the National Network to End Domestic Violence opposed the Petitions (NNEDV Reply, filed Nov. 14, 2002).

[8] See Public Service Commission of South Carolina, Notice: Proceeding to Address Public Interest Payphones, Docket No. 2003-258-C (Jan. 12, 2004).

increases." Global Crossing at 2. Discouraging the payphone industry from reaching a level reflective of actual demand will only continue to suppress call volumes further. Naturally, "[t]he demand for payphone services is sensitive to price and therefore an increase in the dial around compensation rate will further depress consumer demand" (AT&T at 7), as consumers make fewer payphone calls and more subscriber 8XX customers block payphone-originated calls. Id. at 10-11. The Petitioners are simply pursuing a strategy "of maximizing short-term revenues" even if that continues to foster a payphone industry "death spiral" of higher rates and declining utilization. Global Crossing at 8.

The Petitioners blithely assert that their requested doubling of the payphone compensation rate would not significantly reduce payphone calling. APCC at 10; RBOC Coalition at 8. The effect would be to substantially increase the cost of payphone calling – especially for prepaid card users – at a time when key alternatives (residential and business long distance and wireless calling) have been falling. Sprint at 4-5; WorldCom at 9-10. The fact that occasional charges for some forms of calling can be higher still or that IXCs may find it necessary to increase the surcharges on payphone calls (APCC at 10-11), does not change this reality.[9]

The San Diego Association tells the Commission that long distance carriers should not "pass through to consumers the entire increase in the dial-around rate," but instead "should attempt to pass on only so much of the increased compensation to payphone owners as the market will bear." San Diego Ass'n at 3, 4. This implies a level

[9] AT&T points out that its calling card revenues dropped more than 40% between 1998 and 1999, when it increased the average per-minute charge for the service by 40%. AT&T at 9.

of profitability and market power that independent IXCs obviously do not have. The long distance industry is facing a rapid decline in revenues. The Commission may note that many IXCs have filed for bankruptcy, including WorldCom, Global Crossing, Cable & Wireless, and Williams, to name a few of the largest.[10]

Clearly, the San Diego Association (at 4) is mistaken in assuming that "IXCs' margin on dial-around calls is probably very high" and that "even if they had to absorb all of a \$0.23 per call or more increase in the dial-around compensation rate, such calls almost certainly would remain profitable."[11] High-value calls are a very small fraction of IXC calls; most compensable payphone calls are subscriber 8XX calls which have very low rates and exceedingly thin margins. IXCs would have no choice but to pass through the growing costs of payphone compensation to consumers and subscriber 8XX customers.

C. The "marginal payphone" methodology should be retired.

Global Crossing emphasizes that "blind adherence to a methodology that has plainly not worked in practice would constitute irrational decision-making." Global Crossing at 6. IXCs are not the only ones who recognize that the methodology works poorly. Both Petitioners find it necessary to substantially "modify" it to achieve their

[10] To make matters worse, the independent IXCs are rapidly losing long distance market share to the RBOCs, who are using their dominance of the local exchange market to win unbundled customers, and whose affiliates currently own the vast majority of the nation's payphones. Sprint at 4 & n.9.

[11] The San Diego Association points to a handful of sample calls made in 2001 and 2002 that generated charges of \$2.20 to \$11.52 per call. San Diego claims these charges are "reasonably representative of all interexchange carriers' charges" for payphone calls. In fact, such charges are clearly not typical. Id. at 3. If they were, however, payphone usage would be even more seriously affected.

desired results, and the PSP associations voice frustration with the carrier-pays regime. Illinois Association at 15-17.

The RBOC Coalition, in fact, inadvertently underscores the inherent, and irrational, circularity of the "marginal payphone" methodology. See Sprint at 10. In attempting to justify one way that its cost studies deviate from those relied on in the *Third Report and Order*, the RBOC Coalition admits that it had to materially "modify" the methodology – at least to reach the desired result -- because "whether a payphone is marginal depends on the rate of compensation paid for all of the calls made from the payphone." RBOC Coalition at 4. Given that payphone calls are declining, "whether a marginal payphone will remain marginal depends on whether and by how much the per-call compensation rate is increased." Id. at 4. The RBOC Coalition did not reflect on the import of this circularity, however.

WorldCom's comments highlight another fault in the methodology. "The Commission chose its cost model on its belief that states had already determined the number of payphones needed to satisfy the public's need for transient calling." WorldCom at 3. But one cannot assume (as the petitioners do) that the current deployment of payphones is appropriate and should be frozen in time, any more than the Commission could fairly assume that the number deployed in 1998 remains appropriate today.[12] Instead, "[t]argeted subsidies to support needed, but unprofitable, payphones is the appropriate policy mechanism to ensure the widespread deployment of payphones in the face of competition from wireless providers." WorldCom at 8. If the Commission concludes that "market forces will not ensure the widespread deployment of payphones,"

[12] APCC argues that "[i]t may be appropriate to return to the 1999 level of payphone deployment." APCC at 8 n.6.

then it should call on states to adopt or expand public interest payphone programs, and should invite interested parties to petition if a "state is not providing for payphones in accordance with Section 276(b)(2)." Id., quoting the *First Report and Order* ¶ 286.[13]

APCC (at 11) claims that the current "compensation scheme contains built-in safeguards against excessive and counter-productive rate increases." It argues that the Commission's prescribed rate "is not a 'floor,'" because "PSPs and IXCs are free to agree on a different rate." Id. It further argues that the IXCs may "implement call blocking to encourage PSPs to agree to reduce the dial-around compensation rate, if they conclude that the rate could or does depress demand for their payphone-originated services." Id. The reality, of course, is that PSPs have no incentive to agree to any other amount, because IXCs are captive buyers. Selective call blocking on any meaningful scale is technologically infeasible. It would require an IXC industry expenditure measured in nine figures – all to address a small fraction of long distance calls that are payphone originated and at a time when long distance revenues are sharply declining. Sprint at 4. The Commission's assumptions "that targeted call blocking ultimately will play a significant role" and that its regime therefore imposes only a "default" rate, subject to replacement with a negotiated market price (e.g., *Third Report and Order* ¶¶13, 16), has been proven plainly false.

[13] Implementation of the Pay Telephone Reclassification and Compensation Provisions fo the Telecommunications Act of 1996, *Report and Order*, FCC 96-388 (rel. Sept. 20, 1996) (subsequent history omitted). While the RBOC Coalition assumes that "[t]here is no dispute that the pre-call compensation rate must be set with the goal of ensuring that PSPs are able to recover all of the costs of providing payphone service," so as to prevent "the removal of payphones" (RBOC Coalition at 7), adopting even an inflated rate does nothing to ensure that payphones that warrant public support remain in place. Instead, it directs its subsidy to the majority of payphones that do not warrant it.

III. THE PETITIONERS' COST STUDIES AND THE COMMISSION'S INPUTS BOTH YIELD INFLATED RESULTS.

A. The Petitioners' cost studies are flawed and misleading.

APCC claims that it "faithfully follows the Commission's methodology in the *Third Payphone Order*," yet it found it necessary to "improve[] upon" it with a variety of self-serving changes. APCC at 15. What the RBOC Coalition (at 1) calls "minor methodological change" also has vastly more than minor impact. For that reason, "[t]he Commission should reject the proposals by the RBOC Coalition and APCC because they are based upon improper analyses," as well as "unreliable data." AT&T at 11.

1. The Petitioners' call volume data are unreliable.

The IXCs show, as previous commenters also showed, that the Petitioners' call volume data is based on unreliable, biased, and unrepresentative surveys. AT&T at 12, 16; Sprint at 12. AT&T (at 12) further explains that "[t]he call volume estimates proposed by APCC and the RBOC Coalition are not based upon the methodology reflected in the *Third Report and Order*." Most seriously, they deliberately fail to "exclude call volume data from locations that did not fully recover their costs." WorldCom at 17. By adopting volumes from payphones that are *unprofitable*, rather than *marginal*, the Petitioners have seriously skewed the results.[14] APCC also biased the data by including only those calls it deemed "paid," which further distorted its results.

If the Commission does not abandon the "marginal payphone" methodology altogether, it should nevertheless reject or at least correct the Petitioners' volume data.

[14] *Third Report and Order* ¶ 139. The Commission had further emphasized that its methodology was "not designed to make every payphone profitable," and those "with sufficiently low call volumes or sufficiently high costs will not be profitable." Id. at ¶ 79.

At the very least, the Commission should "make adjustments to correct for downward bias in call volume estimates provided at marginal locations." WorldCom at 17.

2. The Petitioners' cost data are unreliable.

The IXCs also show that the Petitioners' cost data "are inflated" and fabricated using an analysis "inconsistent with the Commission's prior order." AT&T at 19. Their estimates ignore how the payphone services market has changed, and how payphone costs have declined. Their addition of costs for "bad debt," collection, litigation costs, and "carrier identification costs" are directly contrary to the *Third Report and Order*, as well as the *Fifth Recon Order*,[15] in which the Commission recognized "that section 276 does not permit one company to bear another company's expense." WorldCom at 16.

The Petitioners' costs are grossly overstated in other ways, too. The RBOC Coalition estimate "includes functions that are performed by IXCs but are not necessary functions for PSPs," and APCC's supposed "survey did not direct responders to exclude such costs from sales, general, and administrative costs." Id. at 16. Furthermore, as Sprint explained, Petitioners' cost studies rely not on current costs, but on surrogate costs from 1998 for Davel Corporation, which Davel's public financial reporting shows are now substantially higher than current costs. Sprint at 15.

[15] Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, *Fifth Order on Reconsideration and Order on Remand*, FCC 02-292 (rel. Oct. 23, 2002) (subsequent history omitted) at ¶ 83, citing Illinois, 117 F.3d 555.

B. A "top-down" or adjusted analysis shows no significant change in rate is warranted.

As AT&T explains (at 23), the Commission has previously used a "top-down" analysis of payphone costs to assess the reasonableness of a "bottom up" pricing determination. *Third Report and Order* ¶¶ 192-193. AT&T shows that such an analysis here confirms that the Petitioners' proposed rate increases are unsupportable. Even if one assumed that the payphone compensation rate should be revisited, a top/down analysis based on the RBOC Coalition data would yield a per-call rate of just $0.25 using marginal call volumes – little different from the current $0.24 per-call rate. Id. at 25.

Separately, an analysis by WorldCom confirms that, with appropriate adjustments to the RBOC Coalition and APCC data, the existing rate "would be sufficient to fully recover the costs of a payphone at an average location." WorldCom at 19. Even without adjusting for the impact of increased coin-calling rates, just "$.33 per call would be sufficient to fully cover the costs of a payphone at a marginal location." Id. at 20.

Sprint believes that no increase is warranted, particularly when based in part on the Petitioners' corrupted cost studies. AT&T's and WorldCom's separate analyses, however, both show if any increase were to be entertained, it could not begin to approach the Petitioners' proposed $0.48.5 and $0.49 per-call rates. They would "represent a windfall to the payphone industry." WorldCom at 7.

C. The Commission's "inputs" overstate payphone costs.

APCC insists that "[t]he Commission cannot consider revenues and costs of additional PSP services" in assessing the issue of payphone compensation and its methodology. APCC at 26. The RBOC Coalition, in contrast, concedes that "incidental revenue, including station advertising," should properly be included. RBOC Coalition at 13.

The IXCs also point out that the Commission's assumptions about payphone equipment, installation, and service costs are too high and certainly out-of-date. The *Third Report and Order* methodology, as it stands, does not reflect the marked decline in payphone costs, and it overstates depreciation. WorldCom at 11-14; AT&T at 19-20; Sprint at 17. The Commission would also have to adjust for reductions in payphone line costs, as well as availability of public and private subsidies. Moreover, given the ready supply of high-quality second-hand and refurbished payphone equipment, it makes no sense to estimate capital costs based on new equipment. AT&T at 19 & Heymann Decl. ¶ 23; WorldCom at 11-12; Sprint at 17. APCC argues that new equipment prices reflect the availability of competing remanufactured equipment. Even if so, however, since a marginal payphone is, by definition, one for which every penny of costs matters, it is improper to assume that a rational PSP would use only new equipment at such installations.[16]

Sprint also agrees with AT&T and WorldCom in opposing the Petitioners' improper attempts to add allowances for collection costs, "carrier identification costs," litigation costs, and bad debt. The Petitioners argue that bad debt should be added to payphone costs, and that "[t]he Commission previously declined to include [it] in its cost calculations" only because it had "insufficient information." RBOC Coalition at 11-12. The lack of reliable information, however, "was not the only or even the principal reason

[16] Even new equipment is available less expensively than the figures utilized by the Petitioners. AT&T at 20 & Heymann Decl. ¶ 25 (discussing lower costs of AT&T's 12,000 military payphones); WorldCom at 12.

that the Commission rejected this cost component." AT&T at 21. The Commission concluded bad debt could not be reasonably estimated, in part because it could not "know the percentage of uncollected per-call compensation that is due to billing errors of the PSPs, as opposed to unscrupulous carriers,": and because "PSPs that ultimately recover their uncollectibles from delinquent carriers would then double-recover." *Third Report & Order* ¶ 162. The D.C. Circuit affirmed this conclusion, noting, "The plight of the allegedly uncompensated payphone service provider does not equate to that of a merchant pursuing deadbeat customers in the marketplace." APCC v. FCC, 215 F.3d 51, 56 (D.C. Cir. 2000).

Thus, as AT&T explains (at 21-22), the Petitioners' assertions that PSPs now have "more reliable data" does not address the Commission's concerns, nor its finding that historical data are not "an accurate guide for future levels of bad debt," *Third Report & Order* ¶ 162, especially since "factors affecting that data may change in the future." APCC, 215 F.2d at 56. Including an allowance for had debt would also "require one company to bear another one's expenses," which the Commission has acknowledged would be "unfair and inequitable and would violate the principle established in the *Illinois* case." *Fifth Recon Order* ¶ 83, citing Illinois Pub. Telecomm. Ass'n v. FCC, 117 F.3d 555 (D.C. Cir. 1997), clarified on reh'g, 123 F.3d 693 (1997), cert. denied sub nom. Virginia State Corp. Comm'n v. FCC, 523 U.S. 1046 (1998).[17]

[17] In the most recent payphone order, the Commission reiterated that "section 276 does not permit" requiring "certain companies to pay compensation owed by other delinquent carriers." Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, *Report and Order*, FCC 03-235 (rel. Oct. 3, 2003) ("*Paytel Order*") at ¶ 31.

APCC's comments list supposed collection actions it has filed against resellers that it contends have failed to pay all they owe. APCC at Att. 1. PSP complaints, however, are based on grossly inflated assumptions about call completion rates.[18] In others cases, as Sprint also knows from experience, PSPs also seek to hold first-switch carriers responsible for downstream resellers for time periods when no Commission regulation imposed such liability. Regardless, the Commission has already rejected APCC's and the RBOC Coalition's arguments for collection costs, recognizing that "the collection costs of dial around compensation are fairly represented by the [SG&A] portion of joint and common costs," which the D.C. Circuit also affirmed. APCC, 215 F.3d at 57. Collection costs, identification costs, and litigation costs must all be rejected, too, because the Commission has already adopted separate measures – at significant costs to carriers, Sprint might add – to "enable a PSP to identify SBRs that are not compensating it and to challenge the payments in instances where the PSP may believe that the data provided by other facilities-based long distance carriers is out of proportion to the data provided by the final SBR in the call path." *Paytel Order* ¶ 52.

Sprint also agrees with WorldCom that, if it insists in perpetuating this misguided methodology and increasing any compensation rate, the Commission should also "reduce the default compensation rate by the extent to which coin revenues exceed the rate sufficient to recover costs plus a normal return." WorldCom at 17. The default rate is supposed to yield a rate that permits a PSP to recover its costs plus a normal rate of

[18] The Illinois Association (at 15) argues that the Commission should allow PSPs to "presume" that 99% of "toll-free calls" are completed and compensable, and that any "access code call" of 45 seconds duration are completed. Both assumptions are entirely divorced from industry reality. See section IV(C), infra.

return, and nothing more. Where coin revenues exceed the per call cost, "PSPs would be over-recovering." Id. at 18.

IV. THE COMMISSION SHOULD ADOPT A "CALLER PAYS" SYSTEM.

A. A caller-pays system is the most rational and efficient per-call compensation approach.

The PSPs do not dispute that the caller-pays approach is likely "the basis for the purest market-based approach." NPRM at ¶ 32, quoting *Third Report and Order* ¶ 115. Instead, they focus on other arguments.

The RBOC Coalition (at 2) claims that, requiring payphone users to have coins "would likely anger consumers who have come to depend on the ability to make toll free and access code calls from payphones without any advance payment." APCC (at 15) argues that "forcing callers to use coins" would only depress calling volumes further, despite the fact that the large majority of payphone calls are already coin-based and market-priced.

PSPs, however, can remove this inconvenience, as many already have, by introducing credit card readers or providing other arrangements to compete for the caller. Sprint at 21. The limited inconvenience to callers is outweighed by the public benefits of the lower costs, renewed "competition among payphone service providers,"[19] and the more rational and sustainable level of payphone deployment that a caller-pays approach would bring about. As the NPRM noted (at ¶ 33), the convenience of true coinless calling may come at a very high – and ever rising -- price. The Petitioners and their PSP allies also overlook the "consumer anger" that will inevitably arise when ever-rising

[19] 47 U.S.C. § 276(a)(1).

payphone compensation rates drive surcharges above $1 and $2 per call. See IPCA at 4. And while APCC implies that a market-based system could lead to removal of payphones where the public needs them, the current system provides no assurance whatsoever that a payphone is deployed where the public interest may justify one. Sprint at 11.

The Illinois Association resents that under the Commission's rules PSPs cannot charge higher prices to IXCs for callers' use of their payphones. It protests that "payphone service providers are deprived of the freedom to fully respond to the market, thereby depriving them of the leverage needed to negotiate fair compensation from interexchange carriers for the provision of dial-around calls." Illinois Association at 9. What the Illinois Association overlooks, however, is that the current regime entirely frustrates market signals. IXCs are not the party that uses the payphone, and they have no practical freedom to block customers from using payphones.[20] The caller-pays approach, in contrast, links the price for the service to the calling party's choice of when, where, and whether to use a payphone. The calling party determines whether the convenience of using a particular payphone is worth the cost to rent that particular phone.

Illinois also questions the sensibility of a system the requires "the payor to determine[] the amount to bill itself for the calls it is required to compensate the payphone service providers." Illinois Association at 13. "The payor has the natural incentive to ensure that it does not charge itself for any calls that are not completed," and "no counter balancing incentive to correct any problems in the identification of each completed call or in ensuring payment thereof." Id. The fact that PSPs still distrust the

[20] To the extent that subscriber 8XX customers refuse to accept payphone-originated calls, it reduces traffic for both the PSP and the IXC. See Reply Comments of by the Enterprise Networking Technology Users Association at 1 (filed Nov 14, 2002).

Commission's system – even with the additional reporting, audit, and certification requirements newly imposed by the Commission in the *Paytel Order* -- highlights another benefit of the caller pays approach. In addition to avoiding all these substantial administrative costs and complexities, by letting the market govern the payphone industry, the years of disputes and litigation that have poisoned the payphone industry would come to an end. Sprint at 20. At the same time, "let[ting] the marketplace work" would spur "competition and innovation" and "new technologies" in the payphone industry. IPCA at 4.

B. A caller-pays approach is within the Commission's legal authority and not contrary to Congressional intent.

The RBOC Coalition repeats the PSPs' prior assertions that Congress has "prohibited the use of advance payment systems," notwithstanding the "policy benefits" that a caller-pays approach may involve. RBOC Coalition at 9. APCC also argues, very briefly, that "the statutory language and legislative history indicate Congress's disapproval of a caller-pays methodology." APCC at 14, citing *Third Payphone Order* ¶ 115. The caller-pays approach, however, is well within the Commission's authority here.

The Petitioners contend that section 226(e)(2) bars the Commission from adopting a caller-pays approach. But this "predecessor compensation provision" (APCC at 14) was plainly superseded by section 276. And while APCC contends that "[n]othing in section 276 indicates any reconsideration by Congress of its disapproval of caller-pays compensation for dial-around calls" (id. at 14), section 226(e)(2) does not disallow a caller-pays approach in this context, and section 276 did not limit the Commission to a carrier-pays system.[21] Sprint at 24-25.

The legislative history does not preclude the Commission from adopting a caller-pays plan. The only history applicable to this issue is a very short discussion in the 1990 Senate Report on TOCSIA.[22] The Petitioners overlook that the principal reasons given for section 226(e)(2) have all been rendered inapplicable. Sprint at 25. The Senate Report said the provision was needed to protect independent PSPs from unfair competition by LEC payphones, but LEC payphones are no longer subsidized. The Senate Report also showed concern that caller-paid compensation would conflict with the states' rate-setting authority, but the Commission has since preempted at state rate setting. *First Report and Order*. The Senate Report noted the potential inconvenience of consumers needing coins to make access calls, but coin-callers face that inconvenience all the time, and PSPs can mitigate the inconvenience. Moreover, section 226(e)(2) was applicable only to independent PSPs – then and now a minority of the total – which hardly suggests that Congress intended it to tie the Commission's hands in implementing section 276.

The Commission has previously acknowledged the need to reconsider the caller-pays approach, based on developments in the industry and any advanced in selective call blocking technology. If the Commission is to provide a sustainable payphone compensation system, compliant with the goals of section 276(b)(1)(A), then it should

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[21] See Sprint at 23 (explaining that section 276 does not mandate a carrier-pays regime).

[22] S. Rep. 101-439, 101st Cong., 2d Sess. At 20 (1990) (Senate Committee on Commerce, Science, and Transportation Report on the Telephone Operator Consumer Services Improvement Act).

adopt a caller-pays approach, combined with an expansion of state public interest payphone programs under section 276(b)(2).

C. Complaints about the carrier-pays system merely underscore the wisdom of the caller-pays approach.

The Illinois Association's comments argue for a radical overhaul of payphone compensation rules, including (1) reimposing a first-switch carrier pays rule, (2) requiring local exchange carriers to report call detail records for every call, and (3) providing ostensible "marketplace incentives" to ease collection by PSPs. These include (a) using "LEC and/or PSP call detail records [to] determine whether a call is completed," (b) assuming every 8YY number is "toll free" unless the PSP is otherwise notified, (c) assuming 99% of toll-free calls are "completed" and compensable, and (d) using a 45-second call duration to determine whether an access code call is completed.

The Illinois Association's argument here is an untimely petition for reconsideration of an order outside the scope of this NPRM proceeding, and may not be properly entertained by the Commission here. Sprint need not address its arguments in detail. It is sufficient to say that, following the D.C. Circuit's vacatur of the *Second Recon Order*,[23] the Commission abandoned the first-switch system, acknowledging that it had been based on false assumptions. *PayTel Order* at ¶ 20. The Illinois Association's other "presumptions" obviously would lead to overcompensation of PSPs -- and would be unlawful for violating the D.C. Circuit's direction that one carrier may not be compelled

[23] Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, *Second Order on Reconsideration*, FCC 01-109 (rel. Apr. 5, 2001), vacated and remanded, Sprint v. FCC, 315 F.3d 369 (D.C. Cir. 2003) ("*Second Recon Order*").

to pay the costs of another, particularly for "administrative convenience." *Paytel Order* at ¶ 31, citing Illinois, 117 F.3d at 566.

The fact that the Illinois Association finds such inherent faults in the current, artificial carrier pays rule (indeed, even under the vacated first-switch rule, Illinois Association at 12-13) simply underscores the good sense of abandoning the inefficient, cumbersome, and dispute-prone carrier-pays system for a more rational, efficient, and sustainable caller-pays approach.

V. CONCLUSION

The comments in response to the NPRM show that the current methodology is not sustainable. No increase in compensation is warranted, and modifying the methodology to double the compensation rate, as sought by PSPs, would not serve the public interest or fulfill the goals of section 276. Instead, the Commission should reconsider the legality, efficiency, and benefits of the market-based, caller-pays approach, combined with expanded public interest payphone programs under section 276(b)(2).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Reply Comments of Sprint Corporation in WC Docket No. 03-225 and RM No. 10568 were sent by electronic mail or first class mail on this 22nd day of January, 2004, as noted below.

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