

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

**In the Matter of**

**Implementation of the Pay Telephone  
Reclassification and Compensation  
Provisions of the Telecommunications  
Act of 1996**

**CC Docket No. 96-128**

**COMMENTS OF SPRINT CORPORATION  
ON PETITIONS FOR CLARIFICATION  
OR RECONSIDERATION**

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Pursuant to the Commission's Public Notice<sup>1</sup> and section 1.429 of the Commission's Rules (47 C.F.R. § 1.429), Sprint Corporation<sup>2</sup> respectfully submits these comments in response to the petitions for clarification and/or reconsideration filed by the RBOC Payphone Coalition, the American Public Communications Council, Inc. ("APCC"), and AT&T.<sup>3</sup>

**I. INTRODUCTION AND SUMMARY**

The D.C. Circuit vacated the 2nd and 3rd Recon Orders, and their associated rules, for the Commission's "utter failure" to comply with the Administrative Procedure Act

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<sup>1</sup> A corrected public notice was released January 7, 2004, and appeared in the Federal Register on January 26, 2004 (69 Fed. Reg. 3585).

<sup>2</sup> Sprint makes this submission on behalf of its business units that include a substantial payer of payphone compensation and a recipient of such compensation for tens of thousands of payphones nationwide.

<sup>3</sup> Sprint also filed a petition for reconsideration, asking that the language of section 64.1310(a)(3) of the new rules be changed to allow a corporate officer to provide the required certification, rather than limiting this role to a carrier's chief financial officer.

(“APA”).<sup>4</sup> The court did not address Sprint’s challenge to the merits of the vacated payphone compensation rules. It did not need to.

On remand, the Report & Order<sup>5</sup> acknowledged that the old rules were based on assumptions that have proven false. The Commission again passed over the most rational and efficient per-call compensation system – the caller-pays approach – and instead, regrettably, retained a non-market-based, “carrier pays” scheme. Properly, however, it rejected the “first-switch” approach that was the chief flaw of the vacated rules. Under the new rules, *every switch-based carrier* must track, report, and compensate payphone service providers (“PSPs”) for *its own coinless calls*.<sup>6</sup> For calls handed off to switch-based resellers (“SBRs”), the SBR is the “primary economic beneficiary,” the only carrier that can track the call to completion, and thus the party responsible for tracking, reporting, and compensating calls to payphone service providers (“PSPs”). Report & Order at ¶¶ 28-29. The Commission conceded that making the first-switch carriers (“FS-IXCs”) the “collection agents” for PSPs in the vacated rules was a mistake. *Id.* at ¶ 20.

The Report & Order took extraordinary steps to address PSPs’ concerns that a “last switch” rule could lead to underpayment by SBRs. The new rules incorporate unprecedented

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<sup>4</sup> Implementation of the Pay Telephone Reclassification and Compensation Provisions for the Telecommunications Act of 1996, Second Order on Reconsideration, 16 FCC Rcd 8098 (2001) (“2<sup>nd</sup> Recon Order”); Third Order on Reconsideration, 16 FCC Rcd 20922 (2001) (“3<sup>rd</sup> Recon Order”), both rev’d & vacated by Sprint Corp. v. FCC, 315 F.3d 369, 377 (D.C. Cir. 2003). The vacated rules were codified at 47 C.F.R. §§ 64.1300, 64.1310.

<sup>5</sup> The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Report and Order, FCC 03-235 (rel. Oct. 3, 2003) (“Report & Order”).

<sup>6</sup> The Report and Order re-adopted the vacated rules purely as a temporary measure, to comply with mandatory OMB procedures and to allow time for carriers to implement the new rules.

new requirements for all switch-based carriers. They include expanded reporting for all completed calls; independent audits of tracking, reporting and payment systems; officer certification of compensation data; access on reasonable request to call detail records; extended record retention requirements; and detailed FS-IXC reports on calls routed to SBRs. Report & Order, App. C, 47 C.F.R. §§ 64.1300, 64.1310, 64.1320 (Final Rules). Beyond these protections and informational tools for PSPs, the Report & Order also signaled heightened enforcement.<sup>7</sup>

The RBOC Coalition and APCC nevertheless ask that the Commission return to the vacated rules, either directly or indirectly.<sup>8</sup> Readopting those hastily and unlawfully adopted rules, however, is sure to bring about another reversal. They were tainted not merely by APA noncompliance. They unlawfully shifted to FS-IXCs the tracking, reporting, and compensation obligations of SBRs, and the collection and bad debt costs of PSPs. Moreover, the vacated rules were more than just unfair and unlawful. By any reasonable assessment, the record shows they worked very, very poorly.

The RBOC Coalition and APCC petitions also seek to render the new rules irrelevant -- and their extensive new reporting, audit, and certification requirements largely pointless -- by asking the Commission to “clarify,” or perhaps reconsider, the rules to ensure that FS-IXCs remain *guarantors* to PSPs for any SBR that may allegedly fail to comply with the

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<sup>7</sup> *Id.* at ¶ 44. The Commission noted that forfeitures can reach “up to \$120,000 for a single non-payment and up to \$1.2 million for a continuing violation.” In appropriate cases, carrier license authority can be “revoked,” and “the company’s principals” can be barred from the telecom industry.

<sup>8</sup> RBOC Payphone Coalition’s Petition for Reconsideration and Clarification; Petition of the American Public Communications Council for Clarification or Partial Reconsideration (both filed Dec. 8, 2003).

new rules. For the same reasons, the Commission should deny these requests, and instead reiterate that FS-IXCs are not responsible for the obligations of SBRs.

Separately, APCC also asks for a half dozen other changes to the new rules, to impose even greater burdens on carriers. Each of them is unnecessary and blatantly excessive, given the protections and information provided in the new rules' extraordinary (and already very expensive) new reporting, audit, and certification requirements. Some of APCC's requests – for example, its demands for reporting of *noncompleted* calls and even of the duration and time of unanswered calls – are downright infeasible. None can be cost-justified. Its demand for call duration information would require sweeping changes to carrier systems that could never be cost-justified in this era of declining long distance revenues, much less for the miniscule fraction of calls that are payphone-originated. The Commission should reject APCC's demands in their entirety.

The Commission should grant AT&T's petition.<sup>9</sup> It should add AT&T's suggested clarifying language to section 64.1310(a)(4)(i), to prevent misuse by PSPs. A lack of precision in Commission and Bureau language has too often fostered litigation and disputes, especially claims by over-reaching PSPs against FS-IXCs.<sup>10</sup> For similar reasons, the Commission should confirm that, where an SBR does not pay PSPs directly, it may satisfy its obligations by having an FS-IXC act as a conduit for its compensation if based on 100% of FS-IXC answer supervision.

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<sup>9</sup> AT&T Petition for Clarification or, in the Alternative, Reconsideration (filed Dec. 8, 2003).

<sup>10</sup> See, e.g., Petition for Reconsideration and/or Clarification of Sprint, Flying J, Inc. and TON Services, Inc. Petition for Expedited Declaratory Ruling Regarding a Primary Jurisdiction Referral from the U.S. Dist. Ct. for the Dist. of Utah, Northern Div., CCB/CPD No. 00-04 (filed June 9, 2003).

## II. BACKGROUND

The Report & Order introduces a dose of realism into the Commission's payphone compensation rules. The new rules are certainly imperfect, because they impose the many costs and inefficiencies inherent in a "carrier-pays" rule, but they do not, at least, compel FS-IXCs to track calls they cannot track and unlawfully assume costs that belong to SBRs and PSPs.

In 1996, in its first order implementing section 276 of the Communications Act of 1934, as amended (47 U.S.C. § 276), the Commission had found that facilities-based carriers that complete calls are "the primary economic beneficiary" of a coinless call and should be responsible for tracking calls to completion and compensating PSPs.<sup>11</sup> On clarification, the Commission added that SBRs have the capability to track payphone-originated calls and are facilities-based carriers within the meaning of the initial rule.<sup>12</sup> Like all other facilities-based carriers, SBRs were thus obligated to compensate PSPs for the coinless payphone calls that they completed.

In 2001, the Commission abruptly abandoned those rules and imposed new ones, shifting to FS-IXCs all obligations for tracking, reporting, and paying for coinless SBR calls, and adding new and burdensome (and under the circumstances, pointless) reporting requirements. 2d Recon Order at ¶ 16; Report & Order at ¶¶ 14-15. In making those changes, the Commission did not commence a rulemaking, did not provide notice, and did

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<sup>11</sup> Implementation of the Pay Telephone Reclassification and Compensation Provisions for the Telecommunications Act of 1996, Report & Order, 11 FCC Rcd 20541 at ¶ 83 (1996) (subsequent history omitted) ("1<sup>st</sup> Payphone Order"); Report & Order at ¶ 6.

<sup>12</sup> Implementation of the Pay Telephone Reclassification and Compensation Provisions for the Telecommunications Act of 1996, Order on Reconsideration, 11 FCC Rcd 21233 at ¶ 92 (1996) (subsequent history omitted) ("1<sup>st</sup> Recon Order"); Report & Order at ¶ 8.

not solicit or consider comments. Nor did the Commission open an inquiry to investigate either the claims of PSPs that it contended justified the policy change, or the impact, reasonableness, or feasibility of imposing these requirements on FS-IXCs. When FS-IXCs sought reconsideration and clarification that they could rely on answer supervision given their inability – contrary to the claims of the order – to track SBR calls to completion, the Commission denied those requests. 3d Recon Order at ¶ 13.

On January 21, 2003, in an appeal brought by Sprint, AT&T and MCI, the D.C. Circuit vacated and remanded the 2<sup>nd</sup> and 3<sup>rd</sup> Recon Orders for the Commission's "utter failure" to meet the fundamental requirements of the Administrative Procedure Act.<sup>13</sup> Because it granted the IXCs' petition on these grounds, the court found it unnecessary to address the merits of the IXCs' further challenge to the arbitrary and capricious character of the unlawfully issued rules. Its decision nevertheless acknowledged that the Commission had unjustifiably "assume[d], for example, that the IXCs are in a superior position to track calls," without soliciting – much less considering – appropriate evidence.<sup>14</sup> Likewise, "the Commission 'has offered no persuasive evidence that possible objections to its final rule[s] have been given consideration.'" Id. In other words, the court recognized that not only had the Commission failed to follow proper procedures, but it had foisted its policy on the industry without "adequately consider[ing]" its likely "shortcomings and burdens." Id.

To the Commission's credit, the Report & Order attempts to address those faults. After a proper rulemaking, the Commission acknowledged that the vacated rules rested on false assumptions. These included that only FS-IXCs "had the capability to track payphone

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<sup>13</sup> Sprint v. FCC, 315 F.3d at 377; Report & Order at ¶ 15. By further court order dated April 21, 2003, the *vacatur* became effective September 30, 2003.

<sup>14</sup> 315 F.3d at 377.

calls to completion,” when in fact they “do not have the technology to track SBR directed calls,” and that FS-IXCs had “bargaining power to negotiate contracts with SBRs whereby the SBRs would track calls switched to their platforms to completion and provide this call completion data to the interexchange carrier” to ensure calls were compensated based on completion. Report & Order at ¶¶ 14, 20. The Report & Order concluded, “we now find that only the SBRs have the ability to track accurately payphone calls completed on their platforms because only SBRs possess all of the relevant call completion data.” Id. at ¶ 20. The Commission also found that the first-switch pays approach was neither “fair” to FS-IXCs nor “the most effective way to ensure that PSPs were ‘fairly compensated,’ given the fact that ... the [FS-IXCs] are not the primary economic beneficiaries of PSP services.” Id. at ¶¶ 21, 24.

The Report & Order therefore “adopt[s] new rules that squarely place liability on the primary economic beneficiary of the PSP services, i.e., that carrier from whose switch a payphone call is completed.” Id. at ¶ 24. To address PSP allegations that SBRs had undercompensated them under the original rules, the new rules (1) impose extensive new reporting, audit, and certification requirements on all switch-based carriers, and (2) provide identification and reporting by FS-IXCs for calls handed off to SBRs. These new rules “will result in better tracking of calls and more accurate amounts of compensation being paid.” Report & Order at ¶ 24.

**III. THE COMMISSION SHOULD DENY THE PETITIONS FOR CLARIFICATION OR RECONSIDERATION BY APCC AND THE RBOC COALITION.**

**A. The Commission should deny the RBOC Coalition's request to reimpose the vacated rules.**

The RBOC Coalition, like other PSPs, resisted any change in the vacated rules despite their obvious unfairness and infeasibility. That is hardly surprising, since “the *Second Order on Reconsideration* attempted to resolve [alleged collection] problems by making the interexchange carriers the collection agents for the PSPs.” Report & Order at ¶ 20. The Coalition wants a return to those unfair, unworkable, and illegal rules.

The Coalition suggests (at ¶ 5) the Commission take comfort in the fact that the D.C. Circuit vacated the rules “on procedural grounds.” The court did not address the merits, because the rules already had been vacated – and with unusually stern language – for other compelling legal reasons. The record established on remand makes it only clearer that the vacated rules cannot withstand legal challenge on the merits.

The Coalition asserts (at ¶ 2) the Commission’s “justifications” for the new rules “are without merit,” because FS-IXCs “were expected to build the cost of paying such compensation into the rates they charged their customers.” This claim has no support in the record, and it ignores that, because FS-IXCs cannot track SBR calls to completion, they were compelled to overcompensate PSPs and “not always adequately reimbursed by the SBRs for their payments to PSPs.”<sup>15</sup> The Coalition also ignores the D.C. Circuit’s direction in Illinois

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<sup>15</sup> Report & Order at ¶ 21. See also id. at ¶ 20 (“the interexchange carriers have not been able to implement a means of tracking calls to completion, either through a technical solution or via contract”), ¶ 30 (“imposing upon interexchange carriers the financial and administrative burdens associated with compensating PSPs under the rules adopted in the *Second Order on Reconsideration* is not a viable long-term arrangement”).

that one carrier cannot lawfully be made to pay the obligations of another, and certainly not on the grounds of administrative convenience.<sup>16</sup> And in any event, PSPs have long had unrealistic expectations for call completion and have exaggerated the magnitude of SBR nonpayment problem.<sup>17</sup>

Ironically, the Coalition argues (at ¶¶ 6, 7) that the new rules should be rejected because they are “massively inefficient” for all parties and “ineffective” at ensuring PSPs are “fully compensated for each and every completed call.” The new rules are certainly very expensive and hugely inefficient – certainly for IXCs. Admittedly, not every compensable payphone call will be compensated under the new rules. PSPs have no statutory right to guaranteed recovery. These shortcomings, however, are inevitable in any carrier-pays system.

A caller-pays approach would avoid all of these problems. It avoids nearly all of the costs associated with tracking, reporting, processing, billing, and collecting payphone compensation that a carrier-pays system entails. It eliminates bad debt and collection costs for PSPs. It also avoids all of the market distortions and the many regulatory problems inherent in an artificial, non-market, government-dictated compensation rate not directly paid by payphone users. The caller-pays approach remains the most rational and efficient way to implement section 276, not least because – as with local calls – it links the price for the service to the calling party’s choice of when, where, and whether to make a call. It is the only means of providing accurate market signals to consumers and to promote a realistic,

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<sup>16</sup> Illinois Public Telecommunications Association v. FCC, 117 F.3d 555, 565 (D.C. Cir. 1997), clarified on reh'g, 123 F.3d 693 (D.C. Cir. 1997), cert. denied sub nom. Virginia State Corp. Comm'n v. FCC, 523 U.S. 1046 (1998) (“Illinois”).

<sup>17</sup> See Comments of Sprint Corporation (filed June 23, 2003) at 6-8; Reply Comments of Sprint Corporation (filed July 3, 2003) at 12-15.

sustainable deployment of payphones by PSPs. If the Coalition is concerned about efficiency and effectiveness, then it should join Sprint and other PSPs that have endorsed that approach, rather than continue to advocate rules that cannot withstand judicial review.<sup>18</sup>

**B. The Commission should deny the RBOC Coalition's and APCC's requests to make FS-IXCs guarantors if an SBR fails to comply with audit and verification requirements.**

The RBOC Coalition (at 16) and APCC (at 1) ask the Commission to “clarify” (or, alternatively, reconsider) that liability for compensating PSPs for SBR calls “defaults” to FS-IXCs in any instance where an SBR allegedly fails to comply, or to comply fully, with the audit and verification requirements. These petitions betray a breathtaking refusal to accept reality. By “clarification,” they seek nothing less than evisceration of the new rules.

The whole purpose of the new rules – and of the costly added requirements they impose on all switch-based carriers – is to return to each switch-based carrier responsibility for its own payphone calls. The Report & Order (at ¶ 24) states clearly that “we adopt *new rules that squarely place liability on the primary economic beneficiary of the PSP services, i.e., that carrier from whose switch a payphone call is completed.*” It contrasted this approach to the vacated rules, which “mak[e] the interexchange carriers the *collection agents* for the PSPs.” *Id.* at ¶ 20. In placing responsibility on each switch-based carrier for its own calls – and in recognizing the “*completing carrier*” is the “primary economic beneficiary” of that payphone call – the new rules are consistent with the Commission’s original rules. They provided that “[i]t is the responsibility of each carrier to whom a compensable call from a payphone is routed to track, or arrange for the tracking of, each such call so that it may

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<sup>18</sup> See Sprint Comments at 19-25; Sprint Reply Comments at 17-18.

accurately compute the compensation required.”<sup>19</sup> The 1<sup>st</sup> Recon Order explained that this indeed meant every carrier – including resellers – bore its own responsibility “if the carrier maintains its own switching capability.”<sup>20</sup>

For SBR calls, what distinguishes the new from the original rules are the latter’s heightened reporting requirements to resolve the “lack of information” available to PSPs for SBR calls.<sup>21</sup> They “strengthen the compensation regime” by expanding reporting requirements throughout the call path. *Id.* at ¶¶ 36, 51-54. But the new rules do far more besides. They require audits of all carriers’ tracking, reporting, and compensation systems. *Id.* at ¶¶ 38-43. They require quarterly officer certification by all switch-based carriers, and promise heightened enforcement action against any violators. *Id.* at ¶ 44. None of these characteristics would make any sense if “default” liability for SBR calls somehow remained on FS-IXCs.

The Commission should likewise reject APCC’s request (at 11, 17) that the “audit be a true pre-condition of payment” or that responsibility for an SBR’s payment revert to the FS-IXC, to “maintain continuity of payment,” in the event an “SBR fails to maintain its tracking and payment system.” The Report & Order does not incorporate any FS-IXC “default” liability for SBR obligations. Its focus, properly, is on the relationship between each “*completing carrier*” and the PSP; it expressly “requir[es] the SBR on whose platform

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<sup>19</sup> Formerly codified at 47 C.F.R. § 64.1310 (Oct. 7, 1996).

<sup>20</sup> See Implementation of the Pay Telephone Reclassification and Compensation Provisions for the Telecommunications Act of 1996, *Report & Order*, 11 FCC Rcd 20541 at ¶ 83 (1996) (subsequent history omitted) (“1st Payphone Order”); *Order on Reconsideration*, 11 FCC Rcd 21233 at ¶ 92 (1996) (subsequent history omitted) (“1st Recon Order”).

<sup>21</sup> Report & Order at ¶ 16 (quoting Implementation of the Pay Telephone Reclassification and Compensation Provisions for the Telecommunications Act of 1996, *Further Notice of Proposed Rulemaking*, 18 FCC Rcd 11003 at ¶ 13 (2003)), ¶ 24.

the coinless payphone call terminates to implement a call tracking system and pay the PSP directly.” Report & Order at ¶ 36. The audit and certification of carrier systems are “a precondition to tendering [direct] payment” by any carrier to the PSP. *Id.* at App C., § 64.1320(a). Otherwise, the carrier – whether FS-IXC or SBR – must negotiate some other arrangements directly *with the PSP*.<sup>22</sup>

APCC volunteers (at 1) that the new rules appear to be “based largely on a proposal by MCI,” which did not necessarily remove the 2<sup>nd</sup> Recon Order’s default liability for SBR calls from the FS-IXC. Again, the Report & Order clearly did not incorporate that feature and, indeed, would have been unlawful if it had. APCC’s opinion (at 3) that the approach “appears viable” is mistaken -- and irrelevant. Moreover, MCI’s proposal was not endorsed by industry, precisely because it assumed that the Commission would insist upon improperly retaining the chief unlawful feature of the vacated rules: making an FS-IXC responsible for the obligations of other carriers for purposes of administrative convenience.

APCC (at 13-17) pretends that the vacated rules – or what it calls “a default to intermediate carrier rule” – are consistent with section 276 and case law. They are not. First, both petitioners misread section 276. They contend the statute’s “most important objective is to ensure that PSPs are fairly compensated for *every* completed call.” APCC at 17. Thus, they believe it matters little if, as a practical matter, one carrier is being forced to pay another’s costs, or if the rule creates “overcompensation” for noncompleted calls. RBOC

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<sup>22</sup> FS-IXCs may elect to offer SBRs a payphone compensation service, by which the FS-IXC would make payments for the SBR to PSPs for all calls successfully handed off by the FS-IXC to the SBR’s switch. The new rules do not make such an arrangement automatic, nor make the FS-IXC a guarantor of payment. The arrangement would be contractual solely between the FS-IXC and the SBR, and would be conditioned on PSPs’ acceptance of these arrangements with the SBR. AT&T has petitioned for clarification or reconsideration to facilitate these arrangements. See section IV(B), infra.

Coalition at 13-14. They point to the costs and frustrations of collection actions against SBRs, and the occasional exiting of small carriers from the market. APCC at 6-11; RBOC Coalition at 8-10. Collection and bad debt, however, are among the ordinary costs of doing business, and although the Commission may be sensitive to these costs, for all parties, section 276 does not give PSPs a statutory right to be exempt from them.<sup>23</sup> Sprint also notes that FCC complaints are relatively inexpensive, as are small claims cases.<sup>24</sup> APCC also points to the difficulties IXCs have had in securing call completion data from SBRs, but it ignores that the problem arises from the incompatibility of different carriers' systems and the tight timeframes in which carriers must process call records to ensure prompt end-user billing.

Nothing in section 276 guarantees 100% collection for PSPs, and the Commission has acknowledged that "fair compensation" requires "fairness to both sides." 5<sup>th</sup> Recon Order<sup>25</sup> at ¶ 82. See also Report & Order at ¶ 25 (section 276 envisions "a plan that is fair to all parties"). Indeed, section 276 does not require that compensation for access code and subscriber 8XX calls be paid by *carriers*, as opposed to the calling party.<sup>26</sup> Regardless, the new rules do not disregard PSPs' concerns about collection. The new audit, certification, and

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<sup>23</sup> Such overreaching is not new to these petitioners. In remand proceedings governing the true-up of compensation for past periods, PSPs argued that the WorldCom bankruptcy justified denying other IXCs credit for Intermediate Period overpayments made pursuant to and unlawful and vacated.

<sup>24</sup> Bringing small claims actions is if anything too easy. Under the vacated rules, Sprint has faced too many unjustified claims by PSPs based on exaggerated expectations of call completion rates. In this record, other FS-IXCs noted similar "nuisance" claims.

<sup>25</sup> Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Fifth Order on Reconsideration and Order on Remand, 17 FCC Rcd 21274 (2002) (5<sup>th</sup> Recon Order").

<sup>26</sup> See Comments of Sprint Corporation (filed June 23, 2003) at 19-25; Reply Comments of Sprint Corporation (filed July 3, 2003) at 17-18.

reporting requirements “will result in better tracking of calls and more accurate amounts of compensation being paid.” Id. at ¶ 24.

The Coalition and APCC both ignore the most relevant and commanding precedent. The Report & Order noted that, in Illinois, the D.C. Circuit vacated and remanded payphone compensation rules, holding that a carrier cannot lawfully be compelled to assume another carrier’s obligations, and certainly not on grounds of “administrative convenience.”<sup>27</sup> The D.C. Circuit’s ruling in APCC shows this prohibition applies equally to the shifting of PSPs’ collection costs and bad debt to FS-IXCs, and “found that the PSPs had remedies to recover this debt from the delinquent carriers.”<sup>28</sup> And in the 5<sup>th</sup> Recon Order (at ¶ 82), the Commission itself concluded that it is neither “equitable” nor “lawful” under section 276, to “require one company to bear another company’s expenses.” Report & Order at ¶ 31 & nn.83-84. Granting the RBOC Coalition or APCC petitions would simply bring about another reversal.

When they suggest the new rules can be “clarified” to make an FS-IXC responsible by “default” for an SBR’s obligations, the RBOC Coalition and APCC petitions actually mischaracterize the new rules. Accordingly, the Commission should not merely deny their petitions, but instead reiterate that an FS-IXC is not responsible for the payphone compensation obligations of an SBR in the event it allegedly fails to comply with the new rules.

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<sup>27</sup> Report & Order at ¶ 31, citing Illinois, 117 F.3d at 565.

<sup>28</sup> Report & Order at ¶ 32, citing American Pub. Comms. Council v. FCC, 215 F.3d 51, 55-56 (D.C. Circuit 2000) (“APCC”).

**C. The Commission should deny APCC's additional requests for clarification.**

**1. Records and reporting requirements.**

The new rules incorporate new reporting, audit, certification, and record-keeping requirements for switch-based carriers to “ensure a better flow of compensation and information to the PSPs.” Report & Order at ¶ 24. The magnitude of these new obligations is extraordinary; even the RBOC Coalition implies they are unduly expensive. These requirements still are not enough to satisfy APCC.

APCC's further demands are excessive and unreasonable. First, it demands (at 19) that the minimum record retention period for “verification data” be extended by 50%. The new rules require that call detail records be held a minimum of “eighteen months after the close of the quarter.” Report & Order at App C, § 64.1320(g). APCC demands 27 months. Under long-standing payphone compensation rules, however, claims must be submitted within 18 months after the end of a quarter.<sup>29</sup> The new rules reasonably mirror that requirement. The long distance industry, apart from the RBOCs, faces declining revenues, financial losses, and acute cost sensitivity. The costs of maintaining payphone call records are not insignificant, and casually lengthening the period will significantly increase them while providing minimal offsetting benefit to PSPs. The new rules already provide an independent audit of each carrier's tracking, reporting, and payment systems; officer certification of data; and detailed reporting. PSPs should be fully satisfied that now, for the first time, they have access to call detail records on reasonable request and assurance they will be retained during the entire 18-month claim window.

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<sup>29</sup> 47 C.F.R. § 64.1310(c); Report & Order at ¶ 45. The 18-month requirement was established in the 1<sup>st</sup> Payphone Order in 1996. See App E, Rules Amended (Deferred).

Second, APCC demands (at 21) that section 64.1310(a)(4)(ii) be amended to require “that Completing Carriers must record call detail and report call volumes for calls that were attempted but not completed, as well as for completed calls.” This is both unnecessary – since by definition noncompleted calls are not compensable -- and technically infeasible. As a general matter, carriers do not record call detail for noncompleted call attempts, because they are not billable. APCC’s request would require a complete redesign of carrier data systems -- all to capture a tiny fraction of calls that are coinless, payphone-originated, noncompleted calls. Even if such data were available, it would doubtless be counterproductive. Completion rates vary, but most calls industry-wide are noncompleted. APCC’s request would *vastly* multiply the tracking, reporting, and record-keeping burdens associated with payphone compensation for virtually no benefit. And again, with the very substantial audit, certification, and reporting requirements in the new rules, this is unjustifiable.

Third, APCC demands (at 21) that “call duration data must be reported,” and “the end time as well as the beginning time for the call,” especially for “‘uncompleted’ calls.” This, too, is unnecessary and utterly unreasonable. As noted above, carriers’ systems do not record call times or durations for noncompleted, nonbillable calls and cannot be feasibly redesigned for this purpose. Even for completed calls, tracking and reporting call duration and times for payphone compensation purposes would greatly inflate the costs of tracking and reporting, while providing at best minimal benefit for PSPs. Call duration is not a reliable indicator for

call completion.<sup>30</sup> A caller using a prepaid calling card platform may need a minute or more just to listen to all voice prompts, dial, and receive a ring-tone. In addition, where calls are handled by more than one carrier, recorded call times are never exactly alike. Different networks are on different clocks, manage call set-up slightly differently, and connect at slightly different times in the call path. The inability of carriers' computer records to *exactly* match call times is among the reasons FS-IXCs and SBRs cannot reconcile call data, as the Commission intended by the 3<sup>rd</sup> Recon Order. Thus, call duration or call time would not even allow any reliable comparisons between FS-IXC and SBR reports. APCC's sole justification for this demand is that "[t]he duration of [*uncompleted*] calls provides an important indication of possible systemic error in tracking *completed* calls." APCC at 21 (emphasis added). With systems audited by independent accountants, with data certified by company officers, and with extensive reporting data already available to PSPs, there would be minimal risk of significant "systemic error."

Fourth, APCC demands (at 22) a "uniform reporting format" from all carriers. The new rules require data "in computer readable format" (Report & Order at App C, § 64.1310(a)(4)), but they properly leave to PSPs the task of reviewing or reprocessing any data, if they choose, to verify the audited, certified payments they receive. It is neither appropriate nor necessary for the Commission to dictate the format that a carrier provide, so long as it is reasonable or consistent with industry norms. If PSPs find reviewing or processing carrier reports inconvenient, they can work with industry associations or use

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<sup>30</sup> Indeed, PSPs' continued reliance on unrealistically short call duration surrogates has been a continual source of unfounded claims of undercompensation by PSPs – what APCC describes as a "major focus of compensation disputes." APCC at 21.

outside vendors, just as carriers must often do with their own data.<sup>31</sup> APCC's request is just yet another attempt to shift costs onto other parties.

## 2. Redefining a "completed call"

APCC's next outlandish demand is that the Commission amend the new rules to "explicitly define when calls are 'completed' to carriers." APCC at 22. Calls are not completed to *carriers*, however, but to *called parties*. The Commission has specifically defined a completed call as one "that is answered by the called party."<sup>32</sup> There is no need for a "new" definition. APCC's request merely adds complexity where it is unneeded, another instance of its overreaching to make noncompleted calls compensable in a different, and irrational, way. It thus would contend that a prepaid calling card user's call is compensable when he receives a message that his account is depleted before disconnecting him. It would contend that an operator services or credit card call is "completed" even when the calling party checks the rate and opts to abandon the call rather than incur the charges. APCC insists such calls are "completed" because "the 'called party' is the carrier itself." APCC at 23. Carriers should, and do, compensate PSPs when a carrier's own 8XX number is serving the same purpose as any other business's number. The record contains no evidence that they are not. But APCC's grasping attempt to turn noncompleted platform calls into compensable calls should be squarely rejected.

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<sup>31</sup> In fact, like most other carriers, Sprint turns to an outside vendor to assist with the tasks of processing payphone compensation data. The functions of such data processors are also covered within the scope of new audit requirements.

<sup>32</sup> Report & Order at ¶ 25 & n.69. See also 1st Payphone Order at ¶ 63; 1<sup>st</sup> Recon Order at ¶ 14; Implementation of the Pay Telephone Reclassification and Compensation Provisions for the Telecommunications Act of 1996, Memorandum Opinion and Order, 13 FCC Rcd 10893 at ¶ 36 (1998) ("Per-Phone Waiver Order").

**3. LEC payment obligations**

APCC also asks (at 23) the Commission “to clarify the payment obligations of LECs.” It contends that “[s]ome LECs only compensate PSPs through bill credits, which only apply to their own local service subscribers,” and thus APCC *assumes* that they might not be “compensating PSPs if a PSP is not served by the LEC as LEC but the PSP nonetheless originates calls handled by the LEC as IXC.” *Id.*

The clarification is unnecessary. A local exchange carrier that acts as an IXC handling an intrastate access code or intrastate long distance subscriber 8XX call from a payphone is clearly responsible, as a switch-based completing carrier, to comply with the tracking, reporting, and compensation requirements of the new rules. Thus, for example, Sprint’s Local Telecommunications Division companies already compensate PSPs for the small number of such calls they carry, whether local or toll. Other LECs do the same. Some small LECs, however, do not handle long distance calling originated outside of their own service territories. APCC’s concern about some LECs’ use of bill credits for payphone compensation are resolved by the new reporting requirements. They apply to LECs as completing carriers for local and interexchange calls. They provide PSPs with full quarterly reporting of payphone-originated call volumes, by ANI and number dialed. Report & Order at App C, §64.1310(a). LECs will also be required to audit the reliability of their systems and to certify their data, just like other switch-based carriers.

**IV. THE COMMISSION SHOULD GRANT CLARIFICATION OR, IF NECESSARY, RECONSIDERATION AS REQUESTED BY AT&T.**

**A. The Commission should correct section 64.1310(a)(4)(i) to make clear that a carrier's tracking and compensation reports need include only calls that it itself completes.**

Sprint supports AT&T's request (at 2-4) that the Commission clarify that the new rules do not require a carrier to include in its quarterly reports to PSPs the dialed numbers, by payphone ANI, of calls completed by downstream carriers or SBRs. The minor change in the language of section 64.1310(a)(4)(i), recommended by AT&T, is appropriate and should be uncontroversial.

The Report & Order determined that the obligation to compensate PSPs appropriately rests on the switch-based carrier that is the "primary economic beneficiary" of the PSP services, which is the carrier from whose switch a payphone call is completed and that has the ability to track to completion. Report & Order ¶¶ 27-33. The rules therefore place "liability" on each switch-based carrier for the calls it completes, unless it negotiates other arrangements with the PSPs.

The wording of section 64.1310(a)(4)(i), however, could be misinterpreted -- or misrepresented -- as requiring "completing carriers" to include in their quarterly compensation reports to PSPs *all* calls dialed from payphones, including those completed by other carriers. As AT&T explained (at 3), certainly "this is not what the Commission intended." The rules define 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." Report & Order at App C, § 64.1300(a). A completing

carrier, by definition, thus completes only its own calls. Its quarterly reports would include only its own completed calls, and would not tally calls that are “not completed by the Completing Carrier, but rather forwarded to another carrier, such as a SBR, for completion.” AT&T at 2-3.

Understood in context, it is clear the Commission did not intend those SBR calls included in a completing carrier’s reports. The new rules provide separately for detailed reporting by “Intermediate Carriers” of the volume of calls handed off to other carriers. Report & Order, App. C, § 64.1310(c).<sup>33</sup> It would plainly make no sense for SBR calls to be included within the FS-IXC’s data reported under section 64.1310(a)(4)(i), when section 64.1310(c) requires SBR call information to be reported separately. The PSP industry has repeatedly sought to exploit any pretense of ambiguity as rationales for making FS-IXCs liable for payphone compensation for SBRs’ calls. The Commission can minimize such disputes and litigation by being precise in the language of its rules. Section 64.1310(a)(4)(i)

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<sup>33</sup> These reporting requirements include:

- (1) A list of all the facilities-based long distance carriers to which the Intermediate Carrier switched toll-free and access code calls;
- (2) For each facilities-based long distance carrier identified in paragraph (b)(1), a list of the toll-free and access code numbers that all local exchange carriers have delivered to the Intermediate Carrier and that the Intermediate Carrier switched to the identified facilities-based long distance carrier;
- (3) The volume of calls for each number identified in paragraph (c)(2) that the Intermediate Carrier has received from each of that payphone service provider’s payphones, identified by their ANIs, and switched to each facilities-based long distance carrier identified in paragraph (b)(1); and
- (4) The name, address and telephone number and other identifying information of the person or persons for each facilities-based long distance carrier identified in paragraph (b)(1) who serves as the Intermediate Carrier’s contact at each identified facilities-based long distance carrier.

can be easily amended to more clearly reflect the Commission's intention, by adding the language recommended by AT&T:

(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."

**B. The Commission should clarify or, if necessary, reconsider the requirements of paragraph 48 in the Report & Order.**

Sprint also supports AT&T's request that the Commission clarify or reconsider paragraph 48 of the Report & Order on other contractual compensation arrangements that SBRs may enter with PSPs.<sup>34</sup> AT&T at 4-6.

Sprint's current contracts with SBRs reflect the requirements imposed on FS-IXCs by the 2<sup>nd</sup> and 3<sup>rd</sup> Recon Orders, and temporarily reimposed by the Report & Order's Interim Rules. These contract provisions necessarily will be replaced by new provisions that reflect the Report & Order's new requirements.

Sprint recognizes that some SBRs may wish to fulfill their obligations to PSPs by contracting with an FS-IXC to act as a "conduit" (AT&T at 4-5 n.3) for payphone compensation. In some cases, an SBR may not be ready to comply with all of the new requirements on the anticipated April 1, 2004 effective date. In others, an SBR may

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<sup>34</sup> Paragraph 48 provides:

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.

conclude it is more cost-effective to contract with an FS-IXC to manage its reporting and payments. Like AT&T, Sprint intends to offer SBRs a market-priced service whereby Sprint will act as a conduit for their payments to PSPs based on Sprint's network answer supervision. Thus, under these contractual arrangements, those SBRs that do not report and compensate directly to PSPs under the new rules would have an option of compensating PSPs through an FS-IXC, but calculated at 100% of calls delivered to the SBR's switch rather than just on calls completed by the SBR.<sup>35</sup>

The Report & Order, however, could be read to prohibit SBRs from entering into such arrangements unless every affected PSP contractually and expressly agrees, and by the effective date. AT&T rightly points out, "[s]uch 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." AT&T at 5. An SBR cannot know in advance from which payphone it will receive calls, and no carrier has the practical ability to selectively block calls from particular payphones. It would be unduly burdensome, and unrealistic, to require express consent to such arrangements from all PSPs. Some PSPs could even refuse their consent in hopes of undermining the new rules.

PSPs are more than "fairly compensated" for all SBR completed calls from their payphones if an SBR arranges for an FS-IXC to pass through its payphone compensation based on 100% of calls successfully delivered to the SBR. Moreover, such arrangements

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<sup>35</sup> By basing compensation on FS-IXC answer supervision, such SBRs would compensate PSPs for many noncompleted calls. However, those arrangements would reduce alleged undercompensation of PSPs and ensure that noncompliant SBRs do not enjoy an unfair cost advantage over competing carriers that do incur the many costs of tracking, reporting, and payment systems; audits; certifications; and record-keeping.

“necessarily include access to sufficient information” for the PSP to verify the accuracy of compensation received from the FS-IXC on behalf of the SBR. The new rules require the FS-IXC to provide detailed reporting on calls routed to the SBR, so there can be no concern that an SBR is underpaying its obligations by entering such arrangements with an audited, certified FS-IXC. Such arrangements would not guarantee payment if an SBR fails to pay its bills to an FS-IXC -- FS-IXCs would not agree to guarantee payments when their own bills are also unpaid – but it nevertheless reduces substantially the costs of collection and the risks of nonpayment for PSPs.

Accordingly, the Commission should grant AT&T’s request and clarify that the requirement of PSP concurrence is not required when an SBR contracts with an FS-IXC to serve as a conduit for its payphone compensation, when based on 100% of calls successfully connected to the SBR’s switch. If the Commission believes AT&T’s request cannot be accommodated through clarification, then it should grant AT&T’s alternate request for reconsideration and eliminate the requirement of PSP concurrence in such circumstances.

## V. CONCLUSION

The new rules are not perfect. They reflect the costs, inefficiencies, and market distortions that are inevitable with a carrier-pays system. They also reflect, however, some of the lessons learned from industry experience with the unlawful and unworkable rules that the D.C. Circuit vacated.

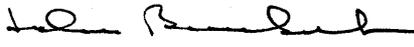
The Commission thus should deny the RBOC Coalition’s and APCC’s attempts to return directly or indirectly to those flawed and unlawful rules. It should also reject APCC’s

alternative demands for unnecessary, blatantly excessive, and infeasible additions to the new rules.

The Commission should grant AT&T's request to add language to section 64.1310(a)(4)(i) to clarify that a completing carrier's report identifies only the calls that it completes. It should also grant AT&T's request to confirm that where an SBR does not pay PSPs directly as an audited and certifying carrier (or through some other direct agreement with PSPs), it may fulfill its obligations by contracting with an FS-IXC to act as conduit for its payments, when based on 100% of first-switch answer supervision.

Respectfully submitted,

SPRINT CORPORATION

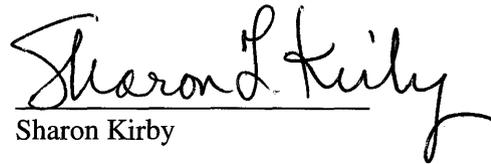
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments of Sprint Corporation in CC Docket No. 96-128 was sent by electronic mail or U.S. First Class Mail, postage prepaid, on this 10th day of February 2004 to the parties listed below.

  
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