Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 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 NSD File No. L-99-34
Petitions for Reconsideration and Clarification Filed by RBOC Payphone Coalition, American Public Communications Council, AT&T Corp., & Sprint Corp.	)	

REPLY COMMENTS OF AT&T CORP.
AND REPLY IN OPPOSITION TO
RBOC AND APCC PETITIONS FOR RECONSIDERATION

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Pursuant to 47 C.F.R. § 1.429(g), AT&T Corp. ("AT&T") submits these reply comments in support of its petition for clarification and/or reconsideration, and in opposition to the clarification and reconsideration petitions filed by the RBOC Payphone Coalition and the American Public Communications Council ("APCC").[1]

INTRODUCTION AND SUMMARY

As AT&T demonstrated in its comments, the *Report and Order* properly requires switch-based resellers ("SBRs") (1) to compensate payphone service providers ("PSPs") for payphone calls that SBRs complete and (2) to provide the information necessary to ensure compliance with their payment obligations. In doing so, the Commission properly rejected a

[1] Report and Order, *Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128 (Oct. 3, 2003) ("*Report and Order*").

system whereby these obligations instead would be foisted upon interexchange carriers ("IXCs") that handed off these calls to SBRs. This decision clearly was dictated by D.C. Circuit and Commission precedent holding that under Section 276, 47 U.S.C. § 276, the obligation for paying and tracking calls should fall on the party that receives the primary economic benefit from such calls and has the ability to track them to their completion.[2]

The comments filed by other parties reinforce each of these points, and also demonstrate the appropriateness of AT&T's request for clarification or, in the alternative, reconsideration. First, the comments demonstrate that the Commission should clarify that the reporting requirement reflected in Section 64.1310(a)(4)(i) of its new rules applies only when the "Completing Carrier" completes the call itself. Without such a clarification, PSPs will attempt to invoke this rule to impose an unnecessary and burdensome requirement on Completing Carriers to provide information on non-compensable uncompleted calls. Second, the comments establish that the Commission should make clear that no formal PSP consent is required when a SBR agrees to have an IXC act as a conduit for SBR payments to the PSP for *all* calls (not just completed ones) that an IXC delivers to a SBR.

The Comments also demonstrate that the RBOC Payphone Coalition's Petition for Reconsideration and Clarification should be rejected because it seeks nothing less than a return to the discredited regulatory regime the Commission has just abandoned as legally and factually unsupportable. As the comments show, the RBOCs' view that the Commission once again should make IXCs pay for calls that principally benefit SBRs is fundamentally at odds with precedent from the D.C. Circuit prohibiting the Commission from transferring carrier liability on

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[2] *See Illinois Pub. Telecomms. Ass'n* v. *FCC*, 117 F.3d 555, 565 (D.C. Cir. 1997); Fifth Order on Reconsideration & Order on Remand, *Implementation of the Pay Tel. Reclassification & Compensation Provisions of the Telecomms. Act of 1996*, 17 FCC Rcd. 21274, ¶ 82 (2002).

grounds of administrative convenience. *See Illinois Pub. Telecomms. Ass'n*, 117 F.3d at 565. In addition, the RBOCs' position runs headlong against the Commission's factual findings that SBRs are the only parties that have the ability to track such calls to completion and that, absent a regulatory obligation imposed directly on SBRs, IXCs lack sufficient leverage to require SBRs to provide such information in a useable form.

The comments likewise demonstrate the fallacy of APCC's Petition for Clarification or Partial Reconsideration, whose purportedly modest proposal would wholly undermine the Commission's new rules. Specifically, APCC suggests that the Commission has adopted (or should adopt) rules that would relieve SBRs of their payment obligations if they fail to comply with the Commission's audit requirements. As the comments show, not only would this proposal conflict with the Commission's explicit decision to make SBRs liable for calls from which they derive the principal economic benefit, but it also would create perverse incentives for SBRs (and all other carriers) to disregard the audit requirement because, according to APCC, all compensation obligations on carriers are predicated upon completion of this audit requirement.

ARGUMENT

I. THE COMMISSION SHOULD MAKE CLEAR THE REPORTING REQUIREMENTS THAT APPLY TO COMPLETING CARRIERS AND THAT AGREEMENTS TO COMPENSATE PSPS FOR ALL CALLS DELIVERED TO SBRS DO NOT REQUIRE FURTHER AGREEMENT OF PSPS.

The comments demonstrate that the Commission should preserve the clear demarcation between the reporting obligations of Completing Carriers and Intermediate Carriers by making explicit that the requirements in Section 64.1310(a)(4)(i) apply only when the

Completing Carrier actually *completes* a call.[3] APCC's objections to this proposal are nothing more than another attempt to impose unnecessary reporting obligations on IXCs related to *uncompleted* calls for which they are entitled to no compensation under Section 276. In addition, the Commission should make clear that SBRs do not have to seek formal PSP consent to private agreements between the SBR and IXC under which the IXC will compensate the PSP for all calls delivered to the SBR. Contrary to the suggestion by the RBOCs and APCC, such private arrangements would maximize payments to PSPs and would not involve a shifting of ultimate liability for calls delivered to SBRs back to IXCs.

A. Section 64.1310(a)(4)(i) Should Be Modified To Clarify That Completing Carriers Are Obligated To Report Only On Calls That IXCs Complete.

APCC and the RBOCs agree with AT&T that IXCs that do no more than transfer calls from PSPs to SBRs should not be required to fulfill the "Completing Carrier" reporting requirements of Section 64.1310(a)(4)(i) for those calls, since they will already be filing "Intermediate Carrier" reports for them. As APCC says, "[a]s long as the carrier makes clear what kinds of calls are included in which report, it is not necessary to file duplicative information in both reports." APCC Comments at 6. Likewise, the RBOCs concur that "[i]n circumstances where Carrier A does not complete a call but instead hands the call off to a switched-based reseller for completion, then as to that specific call Carrier A is not the 'Completing Carrier' but is instead an 'Intermediate Carrier' as defined in 47 C.F.R. § 64.1310(b)." RBOC Comments at 2; *accord* Sprint Comments at 20-21 ("A completing carrier, by definition, . . . completes only its own calls.").

[3] AT&T's opening comments mistakenly referred to this provision as Section 64.1310(a)(4)(**A**), which is how the Commission designated this provision originally before releasing an Errata on October 23, 2003, which modified the label to this section to read 64.1310(a)(4)(i).

Both APCC and the RBOCs, however, take issue with AT&T's proposal to clarify this point by modifying Section 64.1310(a)(4)(i) so that it requires completing carriers to provide 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." APCC objects to this proposed addition on the ground that it would "eliminate [Completing Carriers'] tracking and reporting obligations as to *uncompleted* calls." APCC Comments at 7 (emphasis added); *see also* RBOC Comments at 2. There are no such obligations, however, as demonstrated by the fact that APCC elsewhere asks for a modification of the *Report and Order* to impose them. *See* APCC Petition at 20.

To be sure, IXCs are required, in their role as Intermediate Carriers, to identify all calls handed off to SBRs, whether or not they ultimately are completed. *See Report and Order*, App. C, § 64.1310(c).[4] AT&T, Sprint, and MCI demonstrated in their comments, however, that *Completing* Carriers should not have to provide PSPs with information on uncompleted calls. As Sprint points out, since compensation under Section 276 is based on "*completed*" calls, not uncompleted ones, there is no reason to provide information on irrelevant, non-compensable calls. *See* Sprint Comments at 16. Moreover, "the very substantial audit, certification, and reporting requirements" are sufficient to address PSPs' purported concern that Completing Carriers will not report all completed calls. *Id.*; *accord* MCI Comments at 17-18.

Balanced against the negligible benefit of this information is the substantial cost entailed in collecting information regarding calls that are not completed by a carrier. As Sprint notes, carriers do not generally record call record details of uncompleted calls since they are not

[4] In fact, when an IXC transfers a call to a SBR, it does not even know whether the call is ultimately completed, which is one of the reasons the Commission placed tracking obligations on SBRs, the entities who complete such calls. *See Report and Order* ¶ 35.

compensable. *See* Sprint Comments at 16; *see also* MCI Comments at 17 ("MCI's payphone compensation system only tracks calls which receive answer supervision messages."). APCC's request would therefore "require a complete redesign of carrier data systems." Sprint Comments at 16. APCC has failed to demonstrate that there is any justification for imposing such substantial costs, given the substantial safeguards already present for PSPs in the revised rules.[5]

B. The Commission Should Make Clear That SBRs Need Not Seek The Approval Of All PSPs Before Agreeing To Have IXCs Compensate PSPs Based Upon All Calls Delivered To SBRs.

As AT&T demonstrated in its petition and comments, the Commission should clarify that when a SBR agrees to permit an IXC to pay PSPs for *all* calls – completed and uncompleted – transferred from the IXC to the SBR's switch, such an arrangement is permissible even without the PSPs' formal consent. As Sprint notes, "[i]t would be unduly burdensome, and unrealistic, to require express consent to such arrangements from all PSPs." Sprint Comments at 23.

In their comments, the RBOCs seek to modify AT&T's proposal in a way that would undermine the benefits of the *Report and Order* and make such agreements between IXCs and SBRs far less appropriate. Specifically, the RBOCs ask the Commission to "mak[e] clear that, where an IXC undertakes to pay compensation on behalf of its reseller customers, the IXC is directly responsible for . . . payment of compensation to the PSP and liable for any failure to comply with the Commission's rule." RBOC Comments at 3; *see also* APCC Comments at 3. Since the *Report and Order* makes SBRs, not IXCs, liable for these calls transferred to SBRs, the

[5] Likewise, APCC's request that the Commission amend its rules to require carriers to provide call duration data "would greatly inflate the costs of tracking and reporting, while providing at best minimal benefit to PSPs," given the already-extensive reporting, audit, and certification

RBOCs' proposed rule would create an enormous disincentive for any IXC to enter into such arrangements. This would be contrary to the Commission's policy of encouraging private compensation arrangements, s*ee Report and Order* ¶ 23, and should be rejected.

For its part, APCC unsurprisingly does not object "to a ruling that an [IXC] may make payment on 100% of the calls delivered to a SBR's platform" since "such an approach is likely to increase PSPs' compensation revenue." APCC Comments at 2-3. Nonetheless, APCC complains that AT&T's proposal would deprive it of information from SBRs derived from the new audit and certification requirements. *Id.* at 5. This objection ignores the fact that under such agreements, the SBR would agree to use the IXC as a conduit for payment on *all* payphone calls, including uncompleted calls that would otherwise not be compensable. The PSP would be able to confirm the accuracy of IXC payments by reference to the information provided by the IXC pursuant to the disclosure rules applicable to it as an Intermediate Carrier. *See* Sprint Comments at 24 (discussing reporting duties of Intermediate Carriers); *see also Report and Order*, App. C § 64.1310(c). If a SBR that entered into such an arrangement refused to pay the PSP, the PSP could pursue it for compensation on *all* calls reported to it by the Intermediate Carrier. There would therefore be no reason for the PSP to want or need call completion information from the SBR or the audit and certifications that go along with it because the SBR would be obligated to pay PSPs based on the calls delivered to it by Intermediate Carriers.

This particular objection by APCC is an example of its wanting to have its cake and eat it too. APCC wants the benefit of the *Report and Order*'s new audit and reporting requirements for SBRs, in addition to insisting on the old rule making the IXC the guarantor of SBR payment obligations. There is no reason to impose unnecessary requirements such as those

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requirements. Sprint Comments at 16.

proposed by APCC, especially when to do so would interfere with the very private arrangements the Commission has sought to encourage.

II. THE RBOC PETITION FOR RECONSIDERATION SHOULD BE REJECTED BECAUSE IT IS CONTRARY TO SETTLED LAW AND THE RECORD DEVELOPED BY THE COMMISSION.

As Sprint shows, the RBOCs' view that the Commission should return to its discredited regulatory regime and once again make IXCs pay for calls that principally benefit SBRs is fundamentally at odds with precedent from the D.C. Circuit. As Sprint notes, that Court has squarely held that "one carrier cannot lawfully be made to pay the obligations of another, and certainly not on grounds of administrative convenience." Sprint Comments at 9 (citing *Illinois Pub. Telecomms. Ass'n*, 117 F.3d at 565); *see also id.* at 3 ("Readopting those hastily and unlawfully adopted rules . . . is sure to bring about another reversal."). Moreover, the Commission's placement of call-tracking responsibility on SBRs makes common sense, since they are the only parties that have the ability to track such calls to completion. *See* MCI Comments at 4; Sprint Comments at 6-7. Moreover, the Commission properly concluded that, absent a regulatory obligation imposed directly on SBRs, IXCs lack sufficient leverage to require SBRs to provide such information in a convenient form. *See* MCI Comments at 4; Sprint Comments at 6-7.

The PSPs predicate their opposition to the new compensation regime on their mistaken assertion that it is the same as one that the Commission has already rejected. *See, e.g.*, APCC Petition at 5-6. The PSPs claim that they will encounter the same difficulties collecting information from SBRs that PSPs encountered at a time when there were no reporting requirements imposed upon Intermediate Carriers. This argument ignores the extensive reporting, audit, and certification requirements the Commission adopted to address these very concerns about non-payment. *See* MCI Comments at 5-6; Sprint Comments at 2-3, 11; *see also*

id. at 3 (Commission "also signaled heightened enforcement"). As APCC admits, "the whole purpose of the audit and certification requirements is to ensure that those SBRs that become liable for payment will take their payment responsibilities seriously and will be involved in the process to the extent necessary to be able to certify that their compensation payments are accurate." APCC Comments at 5.[6] These stringent new requirements will directly address PSPs' concerns about non-payment and open non-compliance by SBRs and will serve as a powerful tool to prevent SBRs from attempting to avoid their compensation obligations. *See* MCI Comments at 7.

III. APCC'S PETITION SHOULD BE REJECTED BECAUSE IT IS A TRANSPARENT EFFORT TO REQUIRE IXCS TO ACT AS GUARANTORS FOR THE OBLIGATIONS OF SBRS.

APCC, under the guise of "clarification," suggests that the Commission has adopted (or should adopt) rules that would relieve SBRs of their payment obligations if they fail to comply with the Commission's audit requirements. This proposal is contrary to the "whole purpose of the new rules," which is "to return to each switch-based carrier responsibility for its own payphone calls." Sprint Comments at 10. APCC's purported "'clarification' . . . seek[s] nothing less than evisceration of the new rules" because it would again place IXCs in the position of guarantors of payments by SBRs. *Id.* As MCI demonstrates, such a perverse rule should also be rejected because it would reward SBRs that unilaterally choose to defy the Commission's rules by transferring payment obligations onto IXCs. *See* MCI Comments at 16.

[6] Although the PSPs complain that they may incur collection costs in enforcing SBRs' liability, "[c]ollection and bad debt . . . 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." Sprint Comments at 13.

In addition, MCI demonstrates the absurd consequences of APCC's textual argument. APCC relies on the phrase, "[a]s a precondition to tendering payment pursuant to section 64.1310(a)" in the new rule requiring Completing Carriers to undergo a system audit, *Report and Order*, App. C, § 64.1320(a), and contends that a SBR's failure to meet this "precondition" means that its payment responsibilities are shifted to the IXC. As MCI points out, the audit requirement that is the "precondition" here applies to *all* Completing Carriers, not just SBRs. Under APCC's logic, therefore, "*all* Completing Carriers could purposely decline to undergo system attestations and PSPs would not be due any compensation," whether a call was transferred to a SBR or not. MCI Comments at 15 (emphasis added).

In truth, what APCC seeks is to re-establish IXCs as the guarantor of payments that can and should be made by the SBRs that complete such calls and are the primary economic beneficiaries of them. *See* AT&T Comments at 12-13. The Commission should reject APCC's misreading of these new regulations.

CONCLUSION

For these reasons, AT&T respectfully requests that the Commission grant its Petition for Clarification or, in the Alternative, Reconsideration, and deny the Petitions filed by the RBOC Payphone Coalition and APCC.

Respectfully submitted,

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Dated: February 20, 2004

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of February, 2004, I caused true and correct copies of the forgoing Reply Comments of AT&T Corp. to be served on all parties by mailing, postage prepaid to their addresses listed on the attached service list.

Dated: February 20, 2004
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/s/ Yetunde E. Afolabi
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