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April 27, 2004

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EX PARTE OR LATE FIL

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

APR 27 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Notice of Ex Parte Communication
In the Matter of The Pay Telephone Reclassification and
Compensation Provisions of the Telecommunications Act of 1996
CC Docket No. 96-128

Dear Ms. Dortch

In response to a request from the Commission's staff, AT&T Corp. submits the following Declaration of Michael Guerra to provide additional information regarding certain issues raised by APCC in its Petition for Clarification/Partial Reconsideration filed on December 8, 2003 in this docket.

Sincerely,

/s/

Martha Lewis Marcus

Enclosure

cc: William Dever, Deputy Chief, Competition Policy Division,
Wireline Competition Bureau, william.dever@fcc.gov
Jeffrey Carlisle, Senior Deputy Bureau Chief
Wireline Competition Bureau, jeffrey.carlisle@fcc.gov
Michelle Carey, Division Chief, Competition Policy Division,
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

APR 27 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

DECLARATION OF MICHAEL GUERRA

1. My name is Michael Guerra. I am the Product Manager in AT&T's Toll-Free Division supporting the Long Distance Domestic Voice business unit. My responsibilities and much of my focus is directed to AT&T's Toll-Free business and Payphone Compensation.

2. This declaration is being provided to address certain issues raised by APCC in its Petition for Clarification/Partial Reconsideration of the Commission's *Report and Order*¹ in this docket. In the *Report and Order*, the Commission adopted new payphone compensation rules that place responsibility on telecommunication carriers to compensate payphone service providers ("PSPs") for payphone-originated calls that are completed on that carrier's network.

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

3. The Commission's *Report and Order* adopted new rules, which, when effective, will provide PSPs with additional critical information for tracking calls, including comprehensive data regarding the total number of payphone calls delivered by Intermediate Carriers and the total number of calls completed by Completing Carriers.

4. The PSPs will have many resources at their disposal to assist them in confirming that they are being properly compensated for all compensable completed calls. When the new rules go into effect, AT&T will be required to submit to an annual audit conducted by a third-party independent auditor, provide officer certification and put in place extensive new tracking and reporting mechanisms to ensure that its call tracking systems accurately track coinless access code or subscriber toll-free payphone calls that are completed by AT&T.

5. I have been working with AT&T's auditors since the middle of January 2004 to ensure that AT&T complies with the Commission's new audit requirements. In that capacity, I have assisted the auditors in identifying and testing the key assertions that are being implemented into AT&T's call-tracking systems. These assertions will test the following: 1) the system accurately tracks payphone calls completed on AT&T's system to completion; 2) AT&T personnel have been assigned responsibility for tracking, compensating, and resolving disputes concerning payphone completed calls; 3) effective data monitoring procedures have been put in place; 4) changes to software, personnel or the network will not adversely affect payphone call tracking ability; 5) the business rules employed by the systems identify compensable calls; 6) payphone call data are incorporated into the required reports including the reports generated by AT&T and the National Payphone Clearinghouse ("NPC") on behalf of AT&T; 7) procedures and controls are implemented to resolve disputes; 8) procedures are in place to ensure the

accuracy of payphone compensation; and 9) business rules that identify compensable calls are in place. Thus, the purpose of the audit is to ensure that the PSPs are receiving reliable information from AT&T.

6. AT&T will spend between \$500,000 and \$1 million on an annual basis to perform the payphone compensation audit. Along with the direct expense associated with the audit, AT&T also will dedicate two managers to oversee the audit over a four- to six-month period.

7. In addition to the audit, the Commission's rules also require additional reporting measures for interexchange carriers ("IXCs") and other carriers in the call path. These measures will provide PSPs with further assurances that the data provided are correct and reliable. The PSPs will be provided with critical pass-through information from the Intermediate Carriers, in the form of quarterly reports. This information is intended to show all calls delivered to the Switched Based Reseller's ("SBR") platform (regardless of whether the calls were completed or not completed). These data may be used by the PSPs to determine the number of calls that were not eligible for payphone compensation. In order to identify the non-compensable calls, the PSPs would simply look at what was identified as payable by the SBR as a Completing Carrier and then reference the Intermediate Report provided by the Intermediate Carrier to provide them with the full picture of the calls that were delivered to each SBR.

8. The PSPs will also receive several reports from the NPC, on behalf of AT&T. These reports include data about the Completing Carrier Report as well as the Intermediate Report described above. The information identified in these reports will assist the PSPs in identifying necessary carrier identification information through the entire call path. This

critical information includes identification of the Completing Carrier's From Carrier Identification Code ("CIC"), (which identifies the carrier from whom the call originated and would most likely be the IXC's CIC), the identity of the SBR, the payphone ANI, and the toll-free or access code to the terminating platform.

9. In addition, the NPC has created a more detailed level of data in its SBR identification field to allow the PSPs to specifically identify the SBR via their own CIC. The CIC is the field used by PSPs to link the From CIC to the Intermediate Carrier's Intermediate Reports associated with the SBR's CIC. The PSP would use the CIC embedded in the SBR Identifier Field as the critical link.

10. APCC has requested that the Commission require carriers to provide PSPs with additional information, including data reporting on uncompleted calls and call duration in order to verify that Completing Carriers are paying on all completed calls. AT&T views this as unnecessary and redundant because, as described above, the PSPs are already being provided with information from which they can identify these data. Requiring carriers such as AT&T to provide even more data is unnecessary because the main purpose of the audit is to ensure AT&T's accuracy of identifying and processing completed calls for payphone compensation. As noted, AT&T will incur costs of \$1 million per year or more to test and verify the audit requirements. Second, the comprehensive information regarding completed calls that AT&T already is obligated to provide PSPs (and which must be accompanied by a sworn statement of accuracy) is more than sufficient to ensure compliance with a Completing Carrier's payment obligation. Third, under the Commission's new rules, the PSPs will be provided with quarterly reports from Intermediate Carriers that will provide information on all calls delivered to the

SBR's platform, including uncompleted calls, and from which the PSPs will be able to generate their own reports for uncompleted calls.

11. In addition, there is no reason to require Completing Carriers to provide records to PSPs on call duration. This information is irrelevant since payphone compensation does not vary with the length of a completed call, but only turns on whether the call has been completed. Nevertheless, as explained below, in the event of a legitimate payment issue, AT&T will make time and date stamp information available on an as needed basis to assist in resolving a dispute.

12. Any possible benefit from requiring Completing Carriers to provide additional information regarding uncompleted calls and call duration would be more than outweighed by the administrative burden it would entail and the costs that would be incurred by AT&T. In order for AT&T to be able to generate a special report to the PSPs for all incomplete calls, AT&T would need to modify its internal systems to have the data flow through to the NPC and the PSP. AT&T has estimated this one time development expense to be upwards of \$4 million. In addition, requiring AT&T to provide this additional data would dramatically increase both AT&T's and PSPs' storage and file transfer expenses. AT&T has estimated that this would increase the size of the processing files, PSP reports, and history storage requirements by two-to-three times the current sizes. AT&T estimates that this requirement for additional data could cost AT&T almost \$1million per year for additional storage both internally and with the NPC.

13. AT&T has worked with the industry (and in particular with APCC) to develop a dispute process for normal quarterly payments. AT&T posts its dispute process on the NPC website to ensure that the PSPs know how to engage AT&T and to make sure all data are

initially submitted to expedite the time to resolve the dispute. (A copy of AT&T's Dispute Resolution Process is attached to this declaration as "Exhibit A.") The NPC website is located at the following URL: <https://www.npc.cc/home.asp>. AT&T's view is that the more knowledgeable a PSP is about the dispute process, including what information AT&T requires to properly address the dispute, the more expeditiously AT&T can address the dispute.

14. If a PSP has a legitimate dispute regarding a particular claim quarter, the PSP is requested to contact one of two AT&T managers, whose job responsibility is to address and work payphone compensation disputes. These managers have access to a system that is able to view all calls and related data carried on the AT&T network. If a PSP has a dispute, it is required to send an email to AT&T with information including (but not limited to) 1) the current PSP ID, 2) the identity of the PSP's aggregator, if applicable, 3) the dispute claim quarter, 4) the reason for the dispute, 5) the ANIs in dispute, 6) the per call compensation, 7) the surrogate compensation, 8) non-equal access compensation, 9) incorrect ANI count, and 10) whether there was a purchase and sale of a pay station.

15. Once AT&T receives an email regarding a dispute, AT&T uses reasonable commercial efforts to respond as quickly as possible. AT&T makes every effort to reach out to the PSP that submits the dispute and reviews the issue to provide the PSP with additional information to address the dispute. This may include, but is not limited to, call type, time of call, call duration, if the call was completed or not, and the termination phone number.

16. Since publication of the Commission's *Report and Order* AT&T has notified its AT&T Network Connection Toll Free Switched Based Reseller Customers ("ANC SBRs") on no less than three (3) separate occasions of the options that are available to them for

compensating PSPs and their obligations under the new rules. Copies of these notifications are attached to this declaration as “Exhibits B through D.”

17. On December 17, 2003, a notice was sent to the ANC SBRs (“Exhibit B”), as required by their contractual agreement with AT&T. Its purpose was to notify the ANC SBRs of the Commission’s *Report and Order* which, when effective, would change the party responsible for payphone compensation from the first underlying facilities-based interexchange carrier to the SBR who completes the call. The notification also allowed the ANC SBRs, as a Completing Carrier, to choose between two options in order to fulfill their payphone compensation to the PSPs. ANC SBRs were given the choice to either pay payphone compensation directly to the PSPs or direct AT&T to pay the PSPs, on their behalf on 100% of all delivered calls to their platform.

18. On February 23, 2004, a second notification was sent to the ANC SBRs (“Exhibit C”) to provide more detailed information about the options being made available to the ANC SBR customers. This second notification was sent with a deadline of March 10, 2003 to give AT&T ample opportunity to coordinate with the AT&T account team, make the necessary contract changes to their commercial agreements and ramp up its internal and external systems in anticipation of an April 1, 2004 effective date for implementation of the Commission’s *Report and Order*

19. On March 23, 2004, a third notification letter was sent to the ANC SBRs (“Exhibit D”) when it became apparent that the effective date of the Commission’s new rules would be delayed until at least July 1, 2004. This effectively gave the ANC SBRs an additional

month to communicate their choice of options to AT&T while still providing AT&T ample time to ramp up their systems in order to be compliant by the July 1, 2004 effective date.

20. Pursuant to the Commission's *Report and Order*, paragraph 48 requires the concurrence of the PSP in situations where the SBR opted to enter into a contractual arrangement with the IXC wherein the IXC agrees to pay on behalf on the SBR. Typically in these situations, AT&T pays the PSPs on behalf of the SBR for 100% of the calls delivered by AT&T to the SBR. Because compensation is being paid on 100% of calls delivered to the SBR, there would be no need to obtain the concurrence of the PSP to this beneficial arrangement. Indeed, AT&T has sought reconsideration of this issue. Nevertheless, AT&T intends to post a letter on the NPC website notifying the PSPs that certain SBRs have agreed to have AT&T pay on their behalf on 100% of the delivered payphone calls. This should serve as adequate notice to the PSPs and permit them time to object in the event they do not wish to be compensated in this way.

21. In conclusion, AT&T has spent a great deal of time and expense to ensure that it complies with the Commission's new rules in order to make sure that PSPs are properly compensated for coinless access code or subscriber toll-free payphone calls that are completed by their payphones. Moreover, AT&T will continue to work with the PSPs to adequately address and resolve any legitimate payment disputes that may arise once the rules are implemented. The industry should give the Commission's new rules a chance to work before imposing any additional reporting requirements on carriers for which the economic burden will far outweigh any possible benefit to the PSPs.

I, Michael Guerra, declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.

_____

Michael Guerra

Executed on April 27, 2004

EXHIBIT A



AT&T Dispute resolution process

I. INTRODUCTION

This document will outline the way AT&T would like you to handle any possible disputes, questions and concerns that you, as a PSP, may have. Your concerns can be addressed to Norma Rossomando, who will be assisted by Lisa Benensky. Norma is located at 1 AT&T Way, Room 2A131D, Bedminster, NJ 07921 and can be reached on normat@ems.att.com. Lisa Benensky is also at 1 AT&T Way and can be reached on ebenensky@ems.att.com.

II. HOW TO PROCEED -

If you disagree with any of the Payphone Compensation Quarterly calculations, AT&T will need the following information included in your dispute:

- A Current PSP ID
- B Are you an aggregator? If not please refer your dispute to your aggregator and they will handle it for you.
- C If you are not an aggregator have you signed a Power of Attorney with anyone?
- D Claim quarter
- E ANIs disputed
- F Reasons for the dispute should be put in one of the categories listed below:
 - 1 Surrogate payments – In the FCC FIFTH ORDER ON RECONSIDERATION AND ORDER ON REMAND Appendices there is a surrogate rate specified for each period
 - 2 Per call compensation
 - 3 Non-equal access surrogate rate
 - 4 Interest computation
 - 5 Incorrect ANI count
 - 6 ANI not receiving enough compensation
 - 7 Purchase and sale of payphone companies
 - 8 Request to minimize the economic effect on your company
 - 9 Miscellaneous
- G To support your dispute AT&T is requesting an Excel or Word file attached to provide documentation for your claims
- H While ANIs is in dispute and no settlement has been reached interest may start/continue to accrue

III. AT&T's RESPONSE TIME

AT&T will use reasonable commercial efforts to respond to your disputes as quickly as possible. Response time to your dispute will depend on the number of ANIs in question, the time periods involved and the complexity of the questions.

EXHIBIT B



Date: December 17, 2003

To: AT&T Network Connection - Toll Free Customer

The FCC has issued a new Payphone Order (Docket No 96-128) ("Payphone Order") changing the payphone compensation rules for how Payphone Service Providers (PSPs) will receive compensation for payphone calls for Switch Based Resellers (SBRs). When effective, this order will change the party responsible for payphone compensation from (A) the first underlying facilities-based interexchange carrier whom the local exchange carrier (LEC) directly delivers such calls (B) to the Switched Base Reseller. Under the Payphone Order, this change could take effect as early as April 1, 2004.

In order to comply with this order, AT&T has two options for the AT&T Network Connection Toll Free Switched Based Reseller (SBR) Customer:

1. The first option is for the SBR to pay payphone compensation as stated in the Payphone Order directly to the PSPs. In order to comply, AT&T will need for your company to provide an accurate list of all AT&T Network Connection Toll Free Numbers so that AT&T can accurately block payphone compensation charges on these Toll Free Numbers effective April 1st. The list should be in an Excel spreadsheet. AT&T will be providing future communications regarding timelines and Methods and Procedures.
2. The second option will only be available for SBRs who have gained concurrence from the PSPs per the order. Under this option, AT&T will pay the PSPs on 100% of all delivered payphone compensation calls to the SBRs platform. If you are interested in this option, please contact your AT&T Account Team.

If you have questions regarding the FCC order, please refer to the Payphone Order (Docket No 96-128) Adopted September 30, 2003 and Released October 3, 2003.

If you have questions regarding the above AT&T options, please contact your AT&T Account Executive.

Thank you,

Diane Paris
AT&T Network Connection-Toll Free Services
Product Manager

EXHIBIT C



Date: February 23, 2004

To: AT&T Network Connection - Toll Free Customer

In a previous correspondence, dated December 17, 2003 and titled to AT&T Network Connection – Toll Free Customer, we provided communication regarding the FCC's new Payphone Order ("Payphone Order")¹ revising the payphone compensation rules for how Payphone Service Providers (PSPs) will receive compensation for payphone calls from Switch Based Resellers (SBRs)

In addition, pursuant to the Payphone Order, we described two options available for the AT&T Network Connection Toll Free Switched Based Reseller (SBR) Customer

Option 1 which provides for the SBR to pay payphone compensation directly to the PSPs and Option 2 which provides for AT&T to pay the PSPs on behalf of the SBRs on 100% of all delivered payphone compensation calls to the SBRs platform

This communication is to deliver additional details regarding both Option 1 and Option 2

The Payphone Order could take effect as early as April 1, 2004. When effective, this Order will change the party responsible for payphone compensation from (A) the first underlying facilities-based interexchange carrier whom the local exchange carrier (LEC) directly delivers such calls to (B) the Switched Base Reseller who completes the call. Also, AT&T considers an AT&T Network Connection Toll Free Customer a Switched Base Reseller if such customer has provisioned at least one IXC Toll Free arrangement with AT&T.

AT&T will need to know your choice for Option 1 or Option 2 by **March 10, 2004**. If we do not receive your response by March 10, 2004 and you have at least one IXC Toll Free arrangement provisioned on AT&T Network Connection, AT&T will default your choice to Option 1 which, pursuant to the Payphone Order, will require you, the SBR, to pay payphone compensation directly to the PSPs. Please provide a written response, electronic mail is acceptable, to your AT&T Account Team by March 10, 2004.

For your assistance, we have provided additional details regarding Option 1 and Option 2 below

- 1 Option 1 provides for the SBR to pay payphone compensation, as required in the Payphone Order, directly to the PSPs. In order to comply, AT&T will use all Toll Free Numbers provisioned to your AT&T Network Connection Toll Free Platform and can be reviewed in the AT&T Network Connect Inventory Tool available via Direct Connect. The Toll Free Inventory Tool has the ability to download all toll free numbers into either an excel spreadsheet or a text file. In addition, your CDRs will still reference these calls as Payphone Calls but will not pass the payphone surcharge to you. Option 1 will be the default choice if we do not receive your written response by March 10, 2004. Please include the Name, Address, Telephone number, and Electronic Mail address for the person(s) responsible to pay the PSPs.

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

- 2 Option 2 is available for SBRs who have gained concurrence from the PSPs as required by the Payphone Order². Under this option, AT&T will pay the PSPs on 100% of all delivered payphone compensation calls to the SBRs platform. AT&T will require a letter on Company letterhead stating that you have gained the necessary concurrence from the PSPs as required in the Order.

Please note, that regardless of the Option that you choose, AT&T will be providing you with an amended contract, to implement your decision.

AT&T has filed a Petition with the FCC requesting it to reconsider and/or clarify that when a SBR agrees to permit an IXC to pay PSPs on its behalf for all calls – completed and uncompleted – transferred from the IXC to the SBR's switch, such an arrangement is permissible without the PSPs' formal consent. As of the date of this letter, AT&T's Petition is still pending before the Commission. Therefore, under Option 2, the SBRs are still required to gain the needed concurrence from the PSPs. If you wish to support AT&T's Petition, AT&T encourages you to provide comments directly to the Commission.

If you have questions regarding the FCC order, please refer to the Payphone Order (Docket No 96-128), adopted September 30, 2003 and released October 3, 2003.

If you have questions regarding the AT&T options described above, please contact your AT&T Account Executive.

Thank you,

Diane Parisi
AT&T Network Connection-Toll Free Services
Product Manager

² *In the Matter of The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Report and Order, FCC 03-235, released October 3, 2003 ("Payphone Order"). A summary of the Payphone Order was published in the Federal Register on November 6, 2003. See 68 Fed. Reg. 62751.

EXHIBIT D



Date: March 23, 2004

To: AT&T Network Connection - Toll Free Customer

In a previous correspondence, dated February 23, 2004 and titled to AT&T Network Connection – Toll Free Customer, AT&T provided communication regarding the FCC's new Payphone Order ("Payphone Order")¹ revising the payphone compensation rules for how Payphone Service Providers (PSPs) will receive compensation for payphone calls from Switch Based Resellers (SBRs)

The effective date of the Payphone Order is the first day, of the first calendar-year quarter, following approval of the information collections requirements by the Office of Management and Budget (OMB). As of the date of this communication, the OMB has requested comments regarding the information collection requirements by April 15th. This means that based on this timeline, it appears that the Payphone Order will become effective July 1st 2004.

Pursuant to the Payphone Order, AT&T is making two options available to its AT&T Network Connection Toll Free Switched Based Reseller (SBR) Customer. Option 1 provides for the SBR to pay payphone compensation directly to the PSPs and Option 2 provides for AT&T to pay the PSPs on behalf of the SBR on 100% of all delivered payphone compensation calls to the SBR's platform.

Per the anticipated effective date of the Payphone Order to July 1st 2004, AT&T is extending the required response date for Option 1 or Option 2 to **April 15, 2004**. Please note, neither option will become operational until the Final Rules of the Payphone Order become effective.

If (1) you have not provided a response by the date of this letter and (2) AT&T does not receive your response by April 15th, 2004 and (3) you have at least one IXC Toll Free arrangement provisioned on AT&T Network Connection, AT&T will default your choice to Option 1 which, pursuant to the Payphone Order, will require you, the SBR, to pay payphone compensation directly to the PSPs. Please provide an immediate written response; electronic mail is acceptable, to your AT&T Account Team.

In addition, regardless of the Option that you choose, AT&T will be providing you with an amended contract, to implement your decision.

Thank you,

Diane Parisi
AT&T Network Connection-Toll Free Services
Product Manager

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

CERTIFICATE OF SERVICE

I, Theresa Donatiello Neidich, hereby certify that on this 27th day of April, 2004, a true and correct copy of the foregoing Declaration of Michael Guerra was served by email upon the following:

/s/ TheresaDonatiello Neidich
Theresa Donatiello Neidich

CERTIFICATE OF SERVICE

I, Theresa Donatiello Neidich, hereby certify that on this 27th day of April, 2004,
a true and correct copy of the foregoing Declaration of Michael Guerra was served by
email upon the following:

/s/ TheresaDonatiello Neidich
Theresa Donatiello Neidich

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