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August 4, 2004

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Room TWB-204
Washington, DC 20554

Re: Notice of Ex Parte

**Request to Update Default Compensation Rate for Dial-Around Calls from
Payphones
WC Docket No. 03-225**

Dear Secretary Dortch:

IDT Corporation (“IDT”) submits this *ex parte* filing to provide further support for its request that the Commission implement a transition period of one year prior to the effective date for an increased default per-call compensation rate. First, IDT disputes the APCC’s allegation that the pending rate increase is somehow “overdue.” Second, IDT reveals the fallacy of the APCC’s argument that the time between the effective date of the revised rate and the collection date for PSPs presents an unfair burden upon PSPs. Third, IDT demonstrates that the FCC has previously delayed implementation of a revised compensation rate and that immediate or near-immediate implementation of a revised rate is not compelled by past practice. Fourth, IDT reiterates that other regulatory agencies have recognized that calling card providers need time to revise disclosures on calling cards and that the FCC should as well. Finally, IDT restates that calling card providers will lose millions of dollars if not given sufficient time to revise calling card disclosures, rates and tariffs. In conclusion, the Commission *must* provide adequate time – 12 months – before the implementation of any increase to the default per-call compensation rate.

The pending rate increase is not “overdue”

The APCC has repeatedly submitted claims such as “a rate revision is already two years overdue.” APCC *ex parte*, July 8, 2004. There is no basis for this claim. The Third Report and Order stated “If by January 31, 2001, parties have not invested the time, capital and effort necessary to remove these technological impediments [that inhibit the ability of payphone owners and carriers to negotiate fair compensation for dial around

calls], or we determine that other impediments to a market-based resolution continue to exist, the parties may petition the Commission regarding the default compensation amount, related issues pursuant to technological advances and the expected resultant market changes.”¹ Clearly, the Commission did not state – or even imply – that a revised rate would become effective at *any* particular date. Moreover, the Commission has acted in a timely manner in this proceeding, setting dates for comments, reply comments, etc. Thus, there is no basis for APCC’s claim. Moreover, it is IDT’s position (as it stated in its October 30, 2002 comments in the rulemaking that preceded this docket) that the very *existence* of this proceeding is contrary to the Commission’s Third Report and Order, as the Commission has not demonstrated that either of the above-mentioned determinations – which are conditions precedent to any proceeding to raise the default compensation amount – have been met.

The effective date of the revised rate and the collection date for PSPs does not present an unfair burden upon PSPs.

The APCC also claims that PSPs are hurt by the “delay” in receiving compensation (“[I]f the Commission were to defer implementation of the new rate until October 1, 2004 or later, PSPs will receive no payments under the new rate until April 1, 2005. In light of the accelerating decline in payphone deployment, subjecting PSPs to an additional nine-month delay on top of the two years they have already been waiting would be utterly unconscionable and illegal.”) APCC *ex parte*, July 8, 2004. Leaving aside the rather ridiculous “illegal” claim, the fact that PSPs do not recover per-call compensation immediately is already a factor used to set the rate they *do* recover. Thus, the Commission has already accounted for the delay and it need not further account for it. Moreover, if the PSPs wanted to reduce the delay, they could have petitioned the Commission for such a revision to the existing per-call calculation method. The PSPs failed to do so. They cannot make such arguments now.

Moreover, as IDT has previously stated, providing a transition period for a new dial-around rate will not have “grave consequences for PSPs and payphone development” as claimed by APCC in its June 28, 2004 *ex parte* and in numerous other filings. APCC’s comments throughout this proceeding demonstrate unequivocally that the reduction in PSP revenue and payphone deployment is due to the increased availability and use of wireless services, not the rate of dial around compensation. There is no evidence that an increased default per-call compensation rate will reverse the trend of decreased payphone deployment and/or the decreased number of calls made from payphones – which are the true causes for the reduction PSP revenue. Moreover, the evidence presented by calling card providers – that the result of an increased default per-call compensation rate will be increased payphone surcharges for calling card users and/or the blocking of calling card calls from payphones altogether – actually

¹ Third Report and Order, and Order on Reconsideration of the Second Report and Order, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd. 2545, 2571, ¶ 59 (1999)(footnote omitted)(.Third Report and Order.).

demonstrates that the number of calls from payphones will be reduced even further, leading to less widespread deployment.

The FCC has previously delayed implementation of a revised PSP compensation rate: immediate or near-immediate implementation of a revised rate is not compelled by past practice

APCC has requested that the rate increase be made effective immediately. APCC *ex parte* June 28, 2004 IDT has asked for a transition period of 12 months and other IXCs have asked for a transition periods of varying lengths. Despite the allegations of PSPs that the Commission has always implemented rate increases immediately or nearly immediately, the Commission previously delayed implementation of default compensation in CC Docket No. 96-128. For the reasons stated in this and other IDT filings, it should do so again.

In the initial Payphone Orders in CC Docket 96-128, the Commission determined that PSPs would be compensated on a per-phone basis for the period beginning November 7, 1996 and ending October 6, 1997. The Commission also determined that beginning October 7, 1997, to be eligible for per-call compensation, payphones were *required* to transmit specific payphone coding digits in order to be eligible for per-call compensation. PSPs that did not transmit payphone coding digits as of October 7, 1997 would have no right to receive per-phone compensation (because the period for per-phone compensation ran out) and would also not have the right to receive per-call compensation (because the PSPs did not pass the payphone coding digits). When it became apparent that certain payphones would not be able to transmit the necessary coding digits as of October 7, 1997, the Commission granted a grace period of five months (until March 8, 1998) to PSPs for those payphones that did not transmit the necessary coding digits to receive per-phone compensation. This extension of the rule extended the per-phone rate and prohibited the implementation of the per-call rate, thus presenting a parallel with the present issue before the Commission.

In the earlier instance, the Commission recognized that the equities compelled the Commission to delay the implementation of a rule change until technical and commercial concerns could be addressed in order to prevent harm to PSPs. Although the roles are reversed, the issue is the same in the current proceeding: one industry segment (calling card providers) argues that the equities compel the Commission to delay the implementation of a rule change until technical, commercial and legal concerns can be addressed. In both examples, the revised rate was not/would not be implemented immediately. Rather the revised rate was/would be implemented at a future date. As demonstrated by this example, the Commission has previously extended the applicability of an existing default compensation rate and instituted a transition period prior to the effective date of a new default compensation rate: it should do so again.

State regulatory agencies have recognized that calling card providers need time to revise disclosures on calling cards.

IDT has demonstrated beyond any doubt that in implementing regulations that compelled many calling card providers to revise their calling card disclosures, states have also recognized that calling card providers need time to implement changes, which is exactly what IDT and other IXC's are asking of the Commission. For example, Texas implemented a six-month transition period before its calling card disclosure rules became enforceable (16 TAC § 26.34(l)). So did Missouri (4 CSR 240-32.170(9)). Pending legislation in Illinois would permit approximately ten months (SB2731, pending governor signature). Florida granted more than three months (FAC 25-24.920(12)). Clearly, states that have considered the needs of calling card providers have recognized the legitimacy of providers' requests for a transition period. IDT and other calling card providers have asked the Commission for a slightly longer grace period than the examples above because the aforementioned state regulations only impacted cards prospectively printed and sold whereas the APCC's request would impact cards retrospectively printed and sold. Despite APCC's prostrations to the contrary, IDT's request for a 12-month transition period before the implementation of a payphone surcharge increase is reasonable and should be granted.

Calling card providers will lose millions of dollars if not given sufficient time to revise calling card disclosures, rates and tariffs.

Similarly, it remains unchallenged that prepaid calling card providers will lose millions of dollars on cards presently in the stream of commerce that contain rates for payphone surcharges that cannot be revised. The APCC repeatedly claims that calling card providers can simply increase their payphone surcharge. IDT has demonstrated that this claim is wrong. It is not in dispute that most – if not all - calling card providers list their payphone surcharge on their card and/or its packaging. IDT has provided numerous examples of state calling card regulations that demonstrate that prohibit revisions to listed rates – such as Florida's FAC 25-24.920(6), which states “A company shall not reduce the value of a card by more than the charges printed on the card, packaging, or visible display at the point of sale.” Moreover, IDT has clarified that generic language that appears on many carrier's phone cards (“Rates subject to change”) refers to rates – almost exclusively detariffed international rates – that are not explicitly listed on the card or its packaging. Thus, there is no doubt that if calling card providers are not granted a transition period prior to implement the increased per-call compensation rate, they will be forced to remit compensation that was not contemplated when the card's rates were set and their packaging was printed.

In conclusion, IDT urges the Commission to very carefully scrutinize PSPs' requests for an increase in the default payphone compensation rate. Furthermore, if the Commission chooses to implement an increase, IDT respectfully requests that the Commission provide sufficient time – 12 months – to permit calling card service providers to make all necessary changes and deplete existing calling card stock before implementing the default dial-around increase.

Sincerely,

/s/ Carl Wolf Billek

Carl Wolf Billek

Attachment

cc: Chris Libertelli (via email)
Daniel Gonzalez (via email)
Matthew Brill (via email)
Scott Bergmann (via email)
Jessica Rosenworcel (via email)
Jeffrey Carlisle (via email)
Tamara Preiss (via email)
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